

Colonial Repercussions: Namibia

115 years after the
genocide of the
Ovaherero and Nama

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**COLONIAL
REPERCUSSIONS:
NAMIBIA**

**115 YEARS AFTER THE
GENOCIDE OF THE
OVAHERERO AND NAMA**

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COLONIAL REPERCUSSIONS IN GERMANY AND NAMIBIA

The colonial past and its complex repercussions have been present in post-colonial European public discourse for quite some time now. Still, neither former colonial powers like the United Kingdom, France and Germany, nor the successors of the private companies involved in colonization have yet fully acknowledged, apologized or paid reparations for the crimes committed during European colonialism. Beyond that, questions remain about how colonial structures persist in present-day national and international law.

Recently, a number of European governments, museums and cultural institutions have started to indicate their openness to addressing demands for redress of colonial injustices. So far, however, this development has had little to no effect on formerly colonized societies. One reason for this is that post-colonial structural inequalities between the Global North and the Global South continue to inhibit equal access to resources and discourses, thus hindering discussions about colonial injustice and post-colonial repercussions. Shifting these boundaries and having more diverse discussions about colonial injustice and post-colonial repercussions is necessary to credibly address the past.

The “Colonial Repercussions” event series organized by the Akademie der Künste and the European Center for Constitutional and Human Rights (ECCHR) aims to contribute to this process. As part of the series, a “Week of Justice” was held in Namibia on 25–29 March 2019. It included events in Windhoek and Swakopmund that focused on the German colonialization and the genocide of the Ovaherero and Nama peoples, the effects of which still reverberate strongly today.

This publication is a collection of academic and personal accounts by the conveners, speakers and participants in the “Week of Justice” event series in Namibia. It does not aim to summarize or depict the content discussed over the course of the week in a comprehensive manner, but rather seeks to showcase the diversity of perspectives, perceptions and approaches discussed during the different events, organized in collaboration with the Nama Traditional Leaders Association, the Nama Genocide Technical Committee, the Ovaherero Genocide Foundation, Akademie der Künste, the Goethe-Institut Namibia and ECCHR.

The first part of this publication aims to give an overview of the relevant historical events and their present-day repercussions in Namibia. The second part asks if and to what extent these events and their repercussions can be addressed within the framework of contemporary international law. It explores what decolonizing international law might entail, such as looking at counter-hegemonic arguments and interpretations of the law regarding restitution and reparations for genocide and colonial land grabs. Finally, the third part of the publication asks how (post-)colonial injustice can still be felt, and also potentially dealt with, in the present.

Discussions in Windhoek, Swakopmund and Berlin over the past years show that substantial decolonization requires that we deal with the past sincerely. Descendants of former colonizers need to acknowledge their present-day privileges resulting from colonization and its consequent universalization of Eurocentric concepts and values. Memories of the crimes committed by German *Schutztruppe* soldiers live on for the Namibian people and the Ovaherero and Nama in the diaspora through 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, socio-economic inequalities resulting from the genocide and colonial land grabs can be meaningfully addressed if solutions are developed together with and supported by as many affected people as possible.

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CHAPTER I

(Hi)stories of colonialism and present-day repercussions

THE GENOCIDE AGAINST THE OVAHERERO AND NAMA PEOPLES

The German colonization of what became German South West Africa commenced in 1884 and ended with German forces' surrender to the Union of South Africa in July 1915. The genocidal atrocities committed by German colonial troops from 1904–1908, sanctioned by General Lothar von Trotha's 1904 and 1905 orders to exterminate the Ovaherero and Nama, significantly changed the course of history and socio-economic status of the people who lived in Namibia at that time, as well as generations of their descendants.

It should be common knowledge by now that this genocide decimated the Nama and Ovaherero populations at the time: up to 80 percent of the Ovaherero, more than half of the Nama and a significant percentage of the Damara and San were killed during the 1904–1908 war. Some of the immediate consequences of the genocide included the expulsion of native populations from communally-owned lands, mass killings and massacres, appropriation of livestock through confiscation without compensation and the forbidding of livestock ownership, and appropriation of land for settlers. Additional consequences included forced labor, rape of native girls and women, taking of human remains to Germany for so-called "racial science" research, and confinement in concentration camps. That period still negatively affects the country's economic landscape today: land appropriation destroyed decedents' economic livelihoods.

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. Similar negative impacts surely 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 a people are "scars" left by the genocidal atrocities committed more than a century ago.

SAM GEISEB IS A MEMBER OF
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PREVAILING MYTHS AND THE RELEVANCE OF RACISM

After four years of negotiations between Germany and Namibia, official German representatives finally seem to be prepared to acknowledge that German colonial violence in 1904–1908 was indeed genocide. However, they insist that this should only be understood in a "moral and political sense," not a legal one. What this perspective misses is that it was also genocide in a historical sense. On this issue, almost all historians and genocide scholars agree, including the creator of the very concept of genocide, the Polish Jewish lawyer Raphael Lemkin.

The genocide in Namibia was the first of the 20th century. All political matters should emanate from this fact. There is no such thing as "negotiated truth," nor a truth agreed by majority vote.

Difficulties in acknowledging historical realities also arise from prevailing myths and distortions. One fundamental distortion has to do with the origins of the genocide, which I refer to as the myth of "illegitimate resistance." This is the idea that the Ovaherero started the war out of the blue, during an otherwise peaceful settlement (i.e. "colonization"), and that the Germans were on the defensive.

While it is true that the Ovaherero started the actual fighting in January 1904, this must be seen as part of a more general resistance against German colonialization that began 20 years earlier in Lüderitz. Enduring German claims that local chiefs in Namibia agreed to this colonial project were and are fundamentally flawed; African leaders never consented to abuse and disfranchisement, and German authorities never intended to honor their colonial treaties in the first place. The armed resistance that Samuel Maharero took up in January 1904 was therefore resistance against the colonial invasion as such.

The subsequent German war and genocide completed the German project of colonial conquest (with the exception of Ovamboland in the north). As the nature of German warfare quickly radicalized, German General Lothar von Trotha, notorious for his brutality, replaced German South West Africa Governor Theodor Leutwein in 1904.

During his voyage to Namibia, von Trotha issued an order to shoot all Ovaherero fighters on the spot. This decision did not emanate from the "heat of the battle," but was a cold-blooded strategy of annihilation.

Von Trotha continued this strategy against the entire population after the Ovaherero escaped his attempts to encircle them at Waterberg and fled into the dry Omaheke area, where German troops blocked their exit. Thus, he condemned thousands, including women, children and the elderly, to their deaths. The often cited “extermination order” of 2 October 1904 clearly shows this intention, which he and his successors later applied to the Nama as well.

The German genocide was not limited to warfare and strategy. The very idea of creating the first racist state in German history had a genocidal element at its core. In this racist utopia, Africans would have been transformed into a black servant class, void of any memory of their former ways of life and sense of identity as Ovaherero, Nama, Damara, San or Ovambo. Modern genocide scholars call this “cultural genocide.”

Military genocide, which is the focus of the current negotiations, was not an aberration and should be understood rather as an acceleration of genocidal colonial processes as such. It is time to acknowledge colonialism as a system of structural racism and injustice, in which genocide was embedded.

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FESTUS U. MUUNDJUA HISTORICAL ORIGINS OF THE OVAHERERO AND NAMA GENOCIDE

One cannot discuss the issue of the Ovaherero and Nama genocide without referring to the causes that gave rise to it. Although Eurocentric historians have written most of the history of our genocide, which therefore includes undue biases, people who follow the dictates of their conscience have also written records that are more objective.

The first contact between Germans and the Ovaherero and Nama occurred through missionaries, followed by many other colonial agents. These various actors substantially damaged Ovaherero and Nama socio-economic life through fraudulent trading practices, trade agreements and land deals, even before official colonization. In 1884 and 1885, German Chancellor Otto von Bismarck convened the Berlin Conference. Its aim was to expropriate African countries and agree on terms to prevent competing European powers from warring during this “Scramble for Africa.” The conference, which excluded African representatives, was assembled to organize the commission of a crime against the peoples of Africa.

Decisions made at the Berlin Conference had dire consequences. During the final decades of the 19th century and the beginning of the 20th, as Africans in general and Namibians in particular, we lost everything that was ours. Solid, arbitrary boundaries were drawn up, which in several instances, divided ethnic groups between countries. Africans lost their sovereignty, geopolitical territoriality and statehood. Europeans now controlled African men and women, giving them European names like Festus, Alfons, Barnabas, Reinhart, Erika, Esther, etc. Article 6 of the Berlin Conference Act of 26 February 1885 reads:

All the powers exercising sovereign rights or influence in the aforesaid territories bind themselves to watch over the preservation of the native tribes, and to care for the improvement of the conditions of their moral and material well-being [...] and to bring home to them the blessings of civilization.

If the “moral and material well-being” and “bringing home to them the blessings of civilization” were the real intent of the Berlin Conference and Germans in what was then German South West Africa, then what Germany did was quite the opposite. They came here and committed an international crime against the Ovaherero and Nama peoples, for no other reason than because they refused to be colonized.



FENCE NEAR AUS IN THE IKARAS
REGION OF SOUTHERN NAMIBIA
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A few examples of the atrocities committed during German colonial rule in the areas known as Hereroland and Namaland that, in my opinion, constitute the crime of genocide are: the brutal extermination, imprisonment in concentration camps and torture of our people, and their use as slave laborers by German farmers on their ill-gotten Ovaherero and Nama lands. German soldiers raped women and young girls and used them as sex slaves. Their offspring were left behind and cared for by destitute Ovaherero and Nama mothers. Ovaherero and Nama property, land, livestock and cultural items were looted and confiscated without any compensation, and then sold to museums and medical institutions in Europe and the US. Our people were forced to flee to other countries like Botswana, South Africa, Angola, Cameroon and Togo, where the descendants of those who survived remain today.

Some lost their culture, which amounts to yet another, cultural, genocide. They were subjected to terrible hardships while fleeing, for example, across the Kalahari Desert, where many perished from hunger and thirst, as intended by General Lothar von Trotha. These actions contradicted all of the supposedly good words in Article 6 of the Berlin Conference Act. It is against this background that the Ovaherero and Nama say that the atrocities constitute(d) the crime of genocide, as defined in the 9 December 1948 UN Convention on Genocide.

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BERNADUS
SWARTBOOI

ON THE LAND QUESTION

German expropriation of land, livestock and other goods at the beginning of Germany's colonization of what was then known as German South West Africa instantaneously established structural inequality. With immediate dispossession came immediate poverty on the side of the colonized, as well as immediate increased wealth on the side of the colonizers. This structural inequality continues to reassert itself in the modern state of Namibia, which remains one of the most unequal societies in the world.

The vestiges of German and South African Afrikaner colonial legacies linger large in Namibian social and economic realms. Still today, white Namibians hold most commercial agricultural land. White compatriots remain at the economic apex, while those who were historically dispossessed remain landless, homeless and without assets. Generations of descendants of the dispossessed communities who were victims of the genocide have become street kids and farm laborers, living in abject poverty without hope of a different or decent livelihood.

Upon attaining retirement age or when hit by a major disease, these people are dumped in urban or peri-urban centers of the country where they are reintroduced to a new level and scope of poverty, often living in corrugated iron shack dwellings in areas without sanitation. They experience personal and family insecurity, and lack retirement packages worthy of their many years of labor on white farms. This cycle repeats itself so often that some quarters of government and agricultural unions have accepted it as normal. Independence has not meant social justice.

The advent of colonialism brought three types of land ownership: state ownership, private ownership and black ownership on the native reserves onto which they had been forcibly pushed. State-owned land and private land were the result of expropriation without compensation by the colonial government. Private land was the most distinguished and valuable, on which the state invested. State-owned land was mainly used for touristic purposes, as well as the exploitation of natural resources. Again, the land was used to accumulate wealth for the settlers. Today, state-owned land is still in the hands of the Namibian government and public authorities.

We must ask ourselves the question: Is it just for a democratic government to continue benefiting from land acquired through unjust colonial expropriation without acknowledging past wrongs or giving any kind of reparations to the decedents and communities of those whose land was forcefully taken away during Namibia's colonization? Yes, we want reparations from the German government, but also from our own government here in Namibia.

To quote Edward Said, “To think about distant places, to colonize them, to populate or depopulate them: all of this occurs on, about, or because of land. The actual geographical possession of land is what empire in the final analysis is all about” (*Culture and Imperialism*, Vintage Books, 1993, p. 78). When you take that quote and the fact that white Namibians still hold most of the privately owned land in the country, you see that the colonial “empire” and its strength have hardly been reduced at all. The structure that empire created remains fundamentally intact. And as long as this remains so, inequality can never be overcome.

Within this framework, a new political agenda must arise that focuses on social justice and leads to reconciliation. My view is that the Namibian state has decent constitutional provisions to achieve fair, just and meaningful social and economic outcomes. It uses the principles of transformative constitutionalism in interpreting law and the constitution itself.

Without a determined effort to address social justice as an urgent cornerstone of nation-building, and therefore to achieve durable reconciliation, there is a continuing risk of systematic and systemic violence and public disorder in this country. The current Namibian government’s persistent social and economic policy failures, coupled with insatiable corruption, add to that fever.

Along these lines, settling the matter of the genocide of the Ovaherero and Nama is necessary, but must be done thoughtfully and in the context of a win-win for all parties concerned, especially victim communities and the German people—for lasting peace, understanding and friendship amongst us all.

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VEPUKA KAUARI COLONIALISM AND SEXUALIZED VIOLENCE

Although I am reflecting as a member of the diaspora, my national identity as an Ovaherero woman is subject to incessant scrutiny. During colonization, a myth was imposed upon and ascribed to Ovaherero women about being deviant and threatening.

Not only were we excluded from national identity and belonging, we were constantly haunted by discourse that historically constructed us as threat to the state. Colonial discourse sexualized and stigmatized us as subservient, bound to tradition and old-fashioned. When wearing the Otjikaiva, the traditional dress of Ovaherero women, one is repeatedly reminded of these prejudices. This dress has undergone an evolution in terms of style, but it is still unique. I have worn this dress in my travels to New York, Berlin, Hamburg and Paris. I have no difficulty reminding the world that I am an Ovaherero woman from Namibia. We descended from mothers and fathers who fought a war against the Germans, miraculously survived, and made it to Botswana and South Africa.

As Elisa von Joeden-Forgey pointed out in her article “Women in the Herero Genocide” (in: Elissa Bemporad and Joyce W. Warren, *Women And Genocide*, Indiana University Press, 2018, p. 36 ff.), sexualized violence was widespread in former German South West Africa. This is reflected in terms as *Verkafferung* (“going native”) or *Schmutzwirtschaft* (“dirty business”). Joeden-Forgey points out that colonial discourse failed to differentiate between consensual and forced sexual relations, the affected women’s will was irrelevant. To highlight this, she quotes Theodor Leutwein, Governor of German South West Africa until 1904. In a letter to the Colonial Department of the German Foreign Office he wrote: “Throughout the years I have spent in the protectorate, not a single case of rape has been brought to the authorities, although it cannot be denied that sexual relations are common between the natives and whites” (Bundesarchiv (BA), Reichskolonialamt (RKA), R 1001 2115, 17 May 1904, in: Joeden-Forgey).

As Joeden-Forgey points out, the experiences of Ovaherero and Nama women require a more in-depth analysis and need to be better integrated into existing studies on the genocide and the position of women before, during and after the genocide of 1904–1908. We need more research to fully understand the importance, gravity and continuing relevance of sexualized crimes committed against Nama and Ovaherero women as well as the continuing responsibility of Germany.

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CHAPTER II

International law and injustice in (post-)colonial contexts

REFLECTING ON THE GENOCIDE OF THE OVAHERERO AND NAMA PEOPLES 115 YEARS LATER

We all have an image of justice in our minds: a woman with a blindfold holding the scales of justice. I have always felt that this image is mistaken, because justice is not blind. It sees everything. It does not beg; it does not speak in the language of compromise; it demands. Justice speaks uncomfortable truths.

The genocide in Namibia cannot be understood in isolation. It is part of a larger discourse, a conversation, which one should begin by thinking about the devaluation and worthlessness with which the world views black life, and has viewed black life for the past 500 years.

In the modern age, some people say, “black lives matter.” We all know that as a normative question, black lives *should* matter. What I ask is: Have black lives mattered for the last 500 years? If you look at this history, and the African continent in particular, you see unspeakable crimes. In Namibia, this includes the genocide of the Ovaherero and Nama peoples committed by the Germans in the early 20th century.

One can fall into a trap by summarizing this human pain and suffering, and historicizing it as though it was not here with us today. This is what Third World Approaches to International Law (TWAIL) is about: resisting the abstraction of human suffering into the pain of an inanimate, curious and exotic “Other.” When we abstract human pain in such a way, we are complicit and obstruct accountability. We perpetuate powerlessness and denigrate black life.

TWAIL is very suspicious of international law. International law’s original purpose was not to increase public good, but to steal and plunder, especially in the Global South. International law has stamped Africa and Africans with sub-humanity, so that others could exploit them and their resources. There is no other way to understand Africa’s three traumas: enslavement, in which black people were turned into property to build the United States, other parts of the Americas and Europe, and which depopulated this continent; colonialism, which international law structured and some even say invented; and the Cold War, in which the East and West plundered Africa and used it as a pawn in proxy-wars for supremacy. Suing for justice at international fora requires going back to the enemy to ask for justice.

Still, as people who are suspicious of international law, including those like myself who teach it, we must still ask, how can we use the law? It is an avenue that must be used. Our challenge here is not to think in established categories, but to seek to reconstruct international law and the world it helped create.

In the context of the genocide of the Ovaherero and Nama, this involves thinking about the quandary of historical injustices. Justice is not a fixed concept; it is historical, contextual and contingent upon time and place. Whether a norm of justice is universally agreed is a matter of debate. What makes a local norm universal? Should accountability for colonial injustices be limited? How do we deal with actions that were wrong and beyond repugnant, but in the views of the powers of the day, to which social, moral or legal liability did not extend at the time? These are not simple questions. However, there is a shifting standard of accountability for past abuses and injustices, and this is where we need to pay attention.

Powerful states are able to make new rules, sometimes retroactively, *ex post factum*. Between 1945 and 1949, major Nazi war criminals faced trial in Nuremberg, Germany. In the eyes of many, these trials launched the modern human rights movement. The United States, Britain, France and the Soviet Union authored the London Charter, which legally established the Nuremberg trial. The Charter expanded crimes and sanctions for actions that did not constitute crimes at the time they were committed; established crimes against peace; and codified war crimes, crimes against humanity and individual criminal responsibility for international crimes. Views diverge about whether it is good or bad to criminalize actions that were repugnant, but not crimes when they were committed. However, one thing is clear: the Nuremberg trials demonstrate that the international community, represented by the big powers, can rewrite existing rules to punish past wrongs. It has been done.

The London Charter was relatively easy to accept, because of the singular gravity of the Holocaust, and because it occurred in the heart of Europe. Black people doubt that the West would have had the same response if these crimes had been committed against black people.

In looking at Namibia, we need to ask: Can Germans ever normatively see black Ovaherero and Nama as their equals? How the Germans respond to the genocide of 1904–1908, as a state and a people, will answer that question.

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FORMER CONCENTRATION CAMP ON SHARK ISLAND,
LÜDERITZ/NAMIBIEN IN THE IKARAS REGION OF SOUTHERN
NAMIBIA © ECCHR

THE LAW AS A (LIMITED) MEANS TO ADDRESS COLONIAL INJUSTICE

Calls for reparations for historic injustices dominate current Namibian discourse. Such calls are directed at both the German and Namibian governments. The German government is called upon to take full responsibility for the heinous crimes committed against the Ovaherero and Nama peoples during the 1904–1908 genocide. After all, the impugned genocidal acts were perpetrated under the infamous orders of General Lothar von Trotha, who acted in the name of the German Kaiser. The Namibian government is called on to facilitate the restoration of ancestral lands confiscated from indigenous communities during the colonial and apartheid period.

Many, including Namibian-born Germans, fiercely oppose calls for reparations. For instance, some call them backward-looking, vengeful and opportunistic. While the German government appears ready to atone for its role in colonial injustices, such readiness comes with questionable caveats. On the other side, the Namibian government has adopted a rather patronizing and know-it-all approach to the reparations debacle. The biggest obstacle to reparations, however, appears to be the law itself.

The grave violations committed against the Ovaherero and Nama peoples predate the establishment of international human rights law. This presents a real and formidable obstacle. The intertemporal principle deserves calling out. Under this doctrine, the validity of an act and its legal entailments are to be judged with reference to the law in force at the time the act was performed, not at a later date when a legal dispute arises. Following this doctrine, the vile acts committed against the Ovaherero and Nama peoples cannot be considered a genocide, because such a crime did not exist at the time. The German government invokes this legal doctrine to evade legal liability for the 1904–1908 genocidal acts.

The Namibian government similarly invokes archaic legal principles to suppress and reject ancestral land claims. The 28 August 2019 *Tsumib v. Government of the Republic of Namibia* judgment is a case in point. In this case, eight members of the Haillom community sought the court's permission to represent their community in taking legal action to reclaim their ancestral land rights over Etosha National Park and the

Mangetti area. They submitted six claims on behalf of the Haillom people. The court threw out the case without considering its merits. It held that the representatives did not have the necessary *locus standi* to represent the Haillom people. Namibia's law on standing is very restrictive. For example, it does not recognize class action, whereby one or more plaintiffs litigate on behalf of themselves and other similarly situated persons. The *Tsumib* judgment is disturbingly worrisome and regrettable. The case presented an ideal opportunity to develop archaic standing rules to espouse the Namibian constitution's value, spirit and purport. Yet, it appears that our courts are not ready to do this.

My take-home message is that efforts to redress colonial injustices in Namibia cannot be resolved by relying on the very laws that caused such injustices. Following the *Tsumib* judgment, there is a strong case to be made for exploring and investing in restorative justice processes as a way to achieve reconciliatory justice for colonial injustices in Namibia.

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MATTHIAS GOLDMANN DECOLONIZING INTERTEMPORAL INTERNATIONAL LAW

As with many legal disputes concerning Europe's bloody colonial past, conversations about the Ovaherero and Nama's right to reparations from Germany often reach a dead end at the mention of intertemporal international law. According to this doctrine, one should judge the past by the legal standards of its time, not by our modern perceptions.

As the rules of the past were mostly nasty and brutish, the argument goes, the victims of colonial injustice and their descendants—"regrettably"—do not possess a right to reparations. This leaves their claims for redress of past atrocities, the consequences of which often reach well into the present, at the mercy of their former colonizers. A puzzling reversal of roles ensues: those who should beg the victim groups for forgiveness find themselves in the comfortable position of trading compensation for forgiveness, and those who might grant forgiveness as an act of grace beg for the grace of reparations.

All this results from rules of intertemporal law. It is therefore high time to decolonize them. To change the rules entirely would—as the reader may guess—require the consent of all states, including the colonizers, and is therefore unlikely.

But there is another avenue, well known in theory though rarely used in practice. Legal interpretation offers tools to critically reread international law's past without changing it. It starts with observing that international law consists of language (treaties) and past practice. Accordingly, it does not work like a rack wheel, but like a chameleon. It changes its color with the context, and we might see widely different colors from different angles. Illustrative of this is an anecdote about Samuel Maharero. When some Germans asked to buy his land, he is said to have given them two buckets of sand. For the Germans, "land" was a determined part of the surface of the earth, while for Samuel Maharero, "land" could not be owned in that sense. Such ambiguity is intrinsic to many concepts in international law and the subject of much controversy. It sits uncomfortably with former colonial powers' defiant assertions that there are no legitimate claims to reparations.

A critical reading of international law can undermine such assertions. It exposes disputes among lawyers of different colonial powers, each coincidentally invoking the rules that best fit their country's interests; or disputes among lawyers of one country, where the dominant view is not necessarily the best informed or most consistent. It reveals that the colonized territories did not meet the test for *terra nullius* (a no man's land ready for occupation), as the colonizers' ignorance of the social and political organization of the colonized cannot rebound to the disadvantage of the latter. It investigates what a neutral observer would see as a protection agreement, or selling a piece of land. It undercuts the assertion that, at the time, international law was entirely separate from moral convictions. Well into the second half of the 19th century, international lawyers, for lack of precedent and shared practice, often looked to sources of moral philosophy to determine what the law was. Finally, it also exposes the fact that 19th-century international law was presented as a just order not only to serve, but also to appease colonizers' increasingly self-conscious and often skeptical home audiences.

Is the prospect of critically reinterpreting international law's past utopian? Maybe. But it is certainly no less daunting than the assertion that some of the most heinous atrocities were legal. If former colonial powers were serious about setting the record straight, decolonizing intertemporal law would be an adequate starting point.

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VASUKI NESIAH

GERMAN COLONIALISM, REPARATIONS AND INTERNATIONAL LAW

Reparations have become an increasingly important entry point to the conversation about the unfinished business of decolonization. Even though reparations have an established role in transitional justice and human rights, very little attention has been paid to the transition from colonialism or the legacies of colonial human rights abuses.

While Namibia's political independence was an important first step, the decolonization process did not confront two pivotal dimensions of colonial legacies. The first involves the external brutalities of racial capitalism and the economically exploitative world order that was birthed in the age of European empires and which contemporary imperial formations continue to reproduce. The second involves the internal brutalities of German colonialism, especially the genocidal policies undertaken against the Ovaherero and Nama communities.

Third World Approaches to International Law (TWAIL) is a critical school of international legal scholarship and practice that seeks to reckon fully with colonial legacies to understand international legal history and interpret international laws and norms. A unifying feature of TWAIL analysis is its attention to the histories and legacies of colonialism and slavery, as well as the legal, economic and institutional architecture that enables the unjust world order to continue and reproduce. In this paper, I briefly develop a TWAIL approach to reparations that I hope adds to the conversation about the unfinished business of German decolonization.¹

A TWAIL-inspired approach to reparations is fundamentally political rather than ameliorative. It seeks to "interrupt" what is normalized and codified in racial capitalism, not just mitigate its adverse impacts. This approach draws attention to the unjust enrichment of those responsible for colonialism and slavery who have *benefited* from exploitation and victimization (including nation-states such as Germany), to illuminate world systems and hold them accountable. This includes analyzing the work of international political economy, international institutions, military interventions, international law, as well as the cultural and epistemic violence of colonial histories. Concomitantly, it highlights the racial and regional patterns of unjust deprivation and the long-term structural legacies of that dispossession. A TWAIL approach does not see reparations as closure, but rather takes a vision of solidarity and social change to begin grappling with the history of exploitation. It is a call to change the world order, not just bookkeep a calculation of harm.

¹ While TWAIL is a larger tradition and network of scholars, it is internally diverse. Arguments developed here represent only my views, and my own contribution to the TWAIL tradition. This piece draws from my ongoing research and writing on reparations for colonialism and slavery. For more on TWAIL see Luis Eslava, "TWAIL Coordinates", in: *Critical Legal Thinking*, 2 April 2019.

The dominant anchor of reparations in public international law is the 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. In addition, complementary norms have emerged from decisions by international bodies, including courts and tribunals, as well as from national governments' transitional justice programs. Individualized remedies for civil and political rights violations that injure the body characterize the dominant human rights model of reparations. It emphasizes violations during a clearly demarcated historical period committed by state authorities in that jurisdiction.

Little attention has been paid to reparations for colonial harm with the important recent exceptions of the Mau Mau case in the British High Court of Justice, and Canadian reparations for the colonial policy of removing children from First Nations families. More often, reparation programs have treated structural conditions, historical legacies of slavery and colonialism, and the transnational world order, which has continuities with European colonialism, as irrelevant to the analysis of harms and benefits, violations and their impact. Instead, the dominant approach focuses on individualized, quantifiable bodily harm and its proximate causes.

The approach advanced here deviates from the dominant model on several grounds, including employing a longer historical vision and paying attention to: the collective impact of violations; transnational responsibilities of former colonial states and non-state actors, such as multinational corporations that benefited from structures that enable and exacerbate transnational economic exploitation; military aggression; and climate change-induced precariousness. In this sense, it is attentive to how colonialism, slavery and racial capitalism have been co-constitutive, calls for creative legal and policy strategies, and builds on political "third-worldist" solidarities that address structural dependency, sovereign debt and other symptoms of the trade-and-aid regime that shape our current world order.

Moreover, a TWAIL-inspired reparations framework draws on a broader foundation of international law that challenges Eurocentric biases in international legal history. It goes beyond examining the privileged actors that have shaped international law's doctrinal trajectory, seeking instead to pluralize and broaden international law by including historically excluded actors like women, peasants and the working class, as well as "third world" states' legal and normative principles, such as the New International Economic Order. TWAIL acknowledges the historic genocide of indigenous peoples and sees restituting local control of land and resources as central to the right of self-determination enshrined in international law. Finally, this approach is part of a larger process of decolonizing the foundations of international law, entailing an epistemic renaissance of subjugated knowledge, and imagining new political possibilities for our collective future.

This vision is ambitious but feasible if one understands a TWAIL approach not as a map but as a direction, and recognizes that it will require incremental but meaningful steps in this ambitious direction.

If the German government is at a crossroads of alternative policy paths to advance its stated commitment to decolonization, TWAIL offers guidance about the direction it should take.

The harm of German colonization cannot be undone. That does not mean that the German government cannot take consequential reparatory steps to reckon with its colonization of Namibia, and in particular, the genocide of the Ovaherero and Nama peoples. The issues highlighted by contemporary Ovaherero and Nama social movements, such as land redistribution, returning human remains, restoring cultural artifacts and acknowledging the scale and scope of German colonialism's harms, are all important and necessary steps.

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UAHIMISA
KAAPEHI

“This is the Swakopmund cemetery where our ancestors in the years of the concentration camp were buried. When they were killed in the camps, they were brought here and buried in and around this cemetery. According to historical records, up to 100 people were killed per day. Formerly, the area was not fenced off. People who did not know the history would drive over it on their way to the Swakopmund dunes tourist attraction. There was also a separation between this cemetery and the cemetery for white people during apartheid. I was part of a local initiative that tore down the wall between the cemeteries and fenced off the mass graves in the late 2000s.”

UAHIMISA KAAPEHI IS
SWAKOPMUND TOWN COUNCILOR

MASS GRAVES OF THE FORMER CONCENTRATION CAMP
IN SWAKOPMUND, NOW SWAKOPMUND CEMETERY, ERONGO
DISTRICT, NAMIBIA © ECCHR

PARTICIPATION RIGHTS OF INDI- GENOUS PEOPLES

Over the past three decades, indigenous peoples' rights have become an important component of international law and policy. This is a result of a movement driven by indigenous peoples, civil society and other stakeholders. One of its main achievements is the United Nations General Assembly's 2007 adoption of the Declaration on the Rights of Indigenous Peoples.

By 2010, the vast majority of UN member states supported the declaration, and none opposed. It is the most comprehensive instrument detailing indigenous peoples' rights in international law and policy with minimum standards for recognizing, protecting and promoting these rights.

Namibia has signed most of the major international human rights instruments, including the specific commitment to the rights of indigenous peoples. However, several conditions hinder accessing these rights: the majority rule in Namibian politics, dependence on external funding, and Namibia's definition of indigenous peoples.

Since Namibia's independence, the ruling party South-West Africa People's Organisation (SWAPO) has consolidated its political gains by introducing a consensus-oriented governance system perceived to be suitable to local conditions. The system's design aimed to foster widespread participation, rather than majority rule, that would exclude large parts of the population. Theoretically, this seems to be a sound aim. Institutionally, however, the system is a double-edged sword for groups considered outsiders. At its worst, it is used to exclude certain groups from interacting with the Namibian government, like in the case of Ovaherero and Nama leaders. The direct descendants of victims of the German genocide are prevented from directly participating in negotiations between the Namibian and German governments around acknowledging and apologizing for the genocide and implementing steps toward restorative justice. Instead, the government of Namibia, in contravention to its own constitution and international law, created a technical committee to represent victim communities by individuals who are not in any manner recognized as leaders other than being members of the ruling party.

In Namibia, the Traditional Authorities Act regulates the observance of customary law and promotion of traditional practices, customs and cultural heritage. The Namibian constitution, pursuant to Article 144, provides that international law and international agreements form part of Namibian law. These laws guarantee communities' rights, however their implementation is obscured by sovereignty and majority rule.

Traditional authorities, the governing structures of traditional communities in Namibia, do not have their own budgets. They depend on a monthly allowance from the national government to pay senior councilors and chiefs. This situation severely limits their capacity to influence decision-making. Alternative options for funding are limited: civil society organizations (CSOs) could form partnerships with traditional authorities, but they also typically rely on foreign donor funding to sustain their operations. Most CSOs are demanding accountability from the government, and it is highly unlikely that the government will support their activities. Corporate social operators are also inclined to stay aloof from potential conflict situations with government and rather concentrate their support on sports and arts activities.

Finally, the term "indigenous peoples" has limited application in Namibia because this status is only afforded to a few groups, such as the San, Ovahimba, Ovazemba, Ovatjimba and Ovatue peoples. They are understood to live in extreme poverty and on the margins of society. Life expectancy, health and literacy levels are considered to be much lower than the national average, while dependence on food aid and unemployment levels are higher than the national average.

Remaining groups, which include most of the Ovaherero and Nama, are defined as local communities that are part of the larger Namibian population. The Namibian government is of the opinion that not all Namibians who were born, or whose parents were born, in this country possess the characteristics attributed to indigenous peoples in international documents. As such, Namibia has adopted the African Commission's conception of indigenous peoples. Local communities are considered to be homogeneous, and therefore grouped together in one sovereign state, governed by majority rule. However, the government is not much concerned with citizen participation, open debate, socio-economic justice, fairness, civic understanding of duty, equality, or other values or notions that could encourage critical engagement with political leaders. Summing up, in practice, the described institutions and systems are configured to serve majority interests under the guise of sovereignty. Community participation is limited to political party representation and overshadowed by majority party rule.

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RACIST REPERCUSSIONS AND TRANSGENERATIONAL EXCLUSION

The German and Namibian governments seem to be about to finalize their negotiations on (the costs of) reconciliation. Several civil society actors and Ovaherero and Nama representatives criticize the procedure and want to be included in the negotiations—*inter alia* in a US lawsuit against Germany. The German government, however, denies that a genocide (in legal terms) occurred, referring to the principle of intertemporality in international law. What legal means are available to address violations that resulted in on-going racist repercussions in the law, and transgenerational exclusion due to the large-scale colonial transfer of wealth and power?

THE NAMIBIAN-GERMAN (POST-)COLONIAL CONTEXT

As part of the international conferences held in Windhoek and Swakopmund in March 2019, an interactive dance was performed: in the late twilight, an oil street lamp barely illuminated the silhouette of a woman sitting on a stool next to a tub of water. Someone gently and slowly washed her with a sponge. Standing nearby, I was struck that the pain she experienced cannot easily be removed. In their curatorial statement, the choreographers of *The Mourning Citizen* wrote, “We are deeply concerned about how Namibian patriarchal nationalism has denied us the right to mourn. We hereby occupy and mourn this land.”

The land that these performers occupied is a grassy hill that leads us up to the “Alte Feste” in the center of Windhoek: a military fort German colonialists built. It is impossible to separate a huge portion of today’s Namibian (and diaspora) population’s lack of access to land, natural resources, water, health, adequately paid work, or political participation rights, from Germany’s colonial violence.

In the second half of the 19th century, several political entities existed in the southwestern part of the African continent with defined standards on how to deal with conflict. Regulations on the use of (communal) land were in place. However, when the German settlers, traders, missionaries and military troops arrived, an “invisibilization” process of these legal standards and existing political entities began. In 1884, the German

colonial protectorates were formally installed. The large-scale transfer of wealth including possession of land, natural resources, cattle and influential positions in politics and administration intensified. Such a large-scale transfer of wealth and power has increased privileges on one side, and transgenerationally excluded the other.

THE “INVISIBILIZATION” OF LEGAL STANDARDS AND IMPOSITION OF A SEGREGATED LEGAL SYSTEM

German jurisprudence in the late 19th and beginning of the 20th contributed to the “invisibilization” of existing legal structures and standards in the region that is Namibia today. The European concept of individual property was introduced—without recognizing that it was replacing an existing system that organized the use of land. A dual system of colonial laws was installed, which justified racial segregation. One law applied to white German nationals, while another applied to non-Germans living under German colonial rule. Sexualized violence by colonizers against non-white women seems not to have been prosecuted.

The segregation inscribed in German law during the era of European colonialism has very concrete repercussions even today. Imposing a foreign legal system on the Ovaherero, Nama, San and Damara peoples wiped out existing social standards and structures governing how they wanted to live together, how they wanted to solve emerging conflicts amongst political entities, and how they wanted to distribute their land, cattle and natural resources. The concept of racialized differentiation and superiority was a social construction. It was not a “truth” “found” outside the legal sphere. It could not successfully address injustices in legal terms, as the law reflected power. This social construction—a colonial repercussion that the processes of European colonization imposed and globalized on a large scale (in completely different ways)—needs to be deconstructed.

Regarding the German context, we can trace remnants of legal texts and thinking back to the beginning of the 20th century. The German constitution in which until today certain fundamental rights (for instance Article 8, 9, 11 or 12) are formally reserved to Germans, can be seen as an example. The German legal system and jurisprudence at the end of the 19th century evolved according to the necessities of colonialism. “Adaptations” were dragged into subsequent legal texts. So far, major voices have not called for the substantial decolonization of these remnants. We need to address and fight structural racism and racist stereotypes that the law continues to reproduce. We need to research more about how to deal with the “invisibilization” (or forced disappearance) of political entities and legal standards that enabled the large-scale transfer of wealth, and racist violence.

INTERNATIONAL LAW'S PRINCIPLE OF INTER-TEMPORALITY—A REPRODUCTION OF COLONIAL RACISM?

A foreign legal system shaped by German lawyers (and based on liberal and openly nationalist political theory) was imposed on the Ovaherero, Nama, Damara, San and many others. This went hand in hand with “invisibilizing” their means of dealing with conflicts and their political entities (that the international level could have seen as equal to the German state). This is not a unique feature of German colonization, but was common amongst various European colonizers. And it is a core feature of international law. Antony Anghie and other decolonialist/TWAIL scholars emphasize that the racist ascription of these people as “uncivilized” or “savages” made this possible.

Regarding international law, the forced imposition of the socially constructed “universality” of (European) international legal norms as they evolved over the 19th and 20th centuries made it less promising to continue insisting on standards, practices and customs beyond Europe that could have shaped the international legal canon and the international customary law very differently. Homogenization was made possible by the socially constructed inferiority of racialized human beings and the suppression of their knowledge (concerning not only political theory or ways of conceptualizing what could be termed “law” in European tradition, but also for example concerning gender relations or cosmologies).

The principle of intertemporality is one of the core doctrines of contemporary international law. Article 28 of the Vienna Convention on the Law of Treaties confirms the non-retroactivity of treaties unless agreed otherwise. When deciding a case, later legal norms cannot be applied. Instead, the legal standards that were in place at the time need to be applied. This is coherent within a (hegemonic) vision of international law, as it depends on states’ willingness to be bound by it. In recent years, some exceptions have been made in cases of violating *jus cogens*—binding norms of international law—such as slavery.

The US lawsuit against the German government argues that German troops did not commit genocide in legal terms because there are not legal documents that state that the intended mass killing of thousands of (non-white) people for racist reasons constituted that crime. Two aspects are worth bearing in mind in determining the legal standards of the southwest African region in 1904. The first aspect Argentine writer Jorge Luis Borges describes in a text about a (perhaps fictitious) Chinese emperor: once he seized power, he burned all the books that could inform his “subjects” about how life was organized and structured before his empire. The second is that some authors claim that genocide was already seen (by European colonial powers and scholars) as a crime—but only if it was committed against people in Europe, not against indigenous peoples. If we are serious about applying the standards of the time when a political entity committed a crime in a specific region, why do we find so few voices of the Ovaherero, Nama, Damara or San?

Could it be that we continue to be so deeply entrenched in a European perspective that even today when we pretend to apply the standards of a precise historical moment (in a neutral way), we reproduce the “invisibilization” of “other” conceptualizations of what we (from a European tradition) call legal standards? The issue at stake is complex—and so are the transgenerational consequences and racist repercussions in contemporary (international) law. Much more research is needed on how acts committed during colonialism were categorized by non-European actors.

EPISTEMIC VIOLENCE AND THE DECOLONIZATION OF KNOWLEDGE

We need to know more about the complex repercussions of epistemic violence. From a legal point of view, we need to understand how to deal with the “invisibilization” of knowledge from a European perspective and tradition as categorized in political, legal, economic and “private” spheres. As Martti Koskenniemi and others stressed, we should be aware not to strengthen European legal concepts that evolved during colonialism by ascribing the same legal concepts (that are so familiar to us) to “pre-colonial” entities. We need to think beyond these categories. Only then will we be able to decolonize our knowledge, overcome transgenerational exclusion and find ways to deal with (the ongoing) transfer of wealth and deeply entrenched racism in (international) law.

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"HANGING TREE" OR "NGAUZEPO" IN OTJINENE, NEAR THE PLACE WHERE GENERAL LOTHAR VON TROTHA READ THE EXTERMINATION ORDER AGAINST THE OVAHERERO
© ECCHR

THE LAW AS A MEANS TO ADDRESS COLONIAL INJUSTICE

Did Germany's wars of extermination against the Ovaherero and Nama peoples violate international law, or do they raise only political and moral questions? This is the burning question presently debated in Germany, before US courts, among international law scholars, and in the court of public opinion. We believe the answer is all three: the genocides against the Ovaherero and Nama violated international law and raise profound moral and political questions for the German government and German people that must be urgently addressed.

Unsurprisingly, Germany has taken the position that it bears no legal responsibility for the first genocide of the 20th century, only a moral and political one. Special Envoy Ruprecht Polenz has crafted Germany's current position in an attempt to avoid any legal accountability, saying, "We do not view this as a legal question ... but rather a political and moral one" (*Deutsche Welle*, 28 July 2017), and "How we deal with the crimes that were committed between 1904–1908 is a political and moral question, but not a legal one" (*Deutsche Welle*, 6 January 2017).

Polenz's catchphrase is generally consistent with the German government's position in litigation brought against Germany in New York by representatives of the Ovaherero and Nama victims of the 1904–1908 genocides. There, Germany argues that the genocides and expropriations were "inner dealings" in its "own territory," not governed by international law; that the Ovaherero and Nama were imperial "subjects" to whom it could do *anything* it wished; and that international human rights did not protect "savages." Thus, the German government does not try to deny the genocides: it tries to *justify* them. No rights were infringed, argues the German government, because the Ovaherero and Nama had no right *not* to be exterminated.

This position is, however, inconsistent with the facts, the law and, most fatally, Germany's own public admissions. In 2015, the German Foreign Office declared, and the German federal government affirmed, that in their view, "The war of extermination in Namibia from 1904–1908 was a war crime and genocide." What is a "war crime" without a violation of international law? How could it have been a "crime" if—as Germany argues in New York—it acted fully in accordance with its legal obligations?

A "crime" is "a breach or violation of some public right or duty," according to *Black's Law Dictionary*. Here, the crime was the German government's violation of the customary international legal prohibition on genocide that protected the peoples and tribes of the world as of the mid-19th century: "Wars of annihilation and extermination against peoples and tribes capable of life and culture are violations of international law" (Johann Caspar Bluntschli, *Das moderne Völkerrecht der civilisirten Staaten als Rechtsbuch dargestellt*, 1868, § 535). These were human rights that customary international law had long recognized and which belonged not only to the Ovaherero and Nama, but also the Armenians and the Jews of Europe.

What value could any future hypothetical apology ever have if Germany argues in court that its treatment of unarmed Ovaherero and Nama civilians at Waterberg and beyond was fully justified? If the German government argues that it was entirely justified in trying to exterminate the Ovaherero and Nama, then does it not follow as a logical corollary that it was equally justified in deciding to treat the men, women, and children at Auschwitz-Birkenau in the manner it did? It is logically inconsistent and legally and morally repugnant for the German government to take the untenable position that it was entitled to kill and take the human remains of as many Ovaherero and Nama men, women, and children as it wished, while at the same time accepting both legal and moral responsibility for the extermination of some six million Jews.

Germany's attempt to justify the 1904–1908 Ovaherero and Nama genocides is an offense not only to the memory of the victims, survivors, and their children, but also to the memory of those targeted for extermination in the Holocaust. Every German either knows or should know that the Ovaherero and Nama genocides—like the Holocaust—were a violation not only of morality and politics, but also of law. The time, then, for the German government to take action to provide legal and restorative justice to the Ovaherero and Nama peoples is long overdue.

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FROM IDEOLOGICAL FIXITY TO MORAL ARGUMENT

Today, international law—and international human rights law in particular—provides the dominant frame, often augmented by negotiations, for responding to acts of genocide. While this frame is necessary, it may not be sufficient to address the deeper emotional and psychological scars associated with the 1904–1908 genocide in erstwhile German South West Africa. This is because the colonial project’s ideological fixity deeply implicates aspects of international law. Moreover, legal agreement often fails to result in a fair and just outcome. To achieve the latter, moral arguments seem unavoidable.

Moral arguments come from an older tradition that attempts to think in terms of what is right and wrong in war, dating to at least the 17th century, and even earlier in the case of some philosophers. Moral arguments, notwithstanding their contested nature, attempt to bring some order, clarity and moral principles to the problem of war. Questions of when a war is just, or what counts as “just acts” in the conduct of war, are ancillary to legal and political questions. While critics may rightly argue that moral principles are not law, if they are applied consistently and justly, such principles are not only a tribute to justice, but to humanity. They are a recognition of the oneness of humanity. Morally, genocide is a form of evil and a crime, an excess in the words of moral philosopher Emmanuel Levinas.

THE MORAL CASE AGAINST THE GERMAN STATE

The moral question is not simply *what* the former political and military leadership did in the name of the German state, but *why* it did what it did. The *why* part of the question left the deepest wounds, for it points to casting the Ovaherero and Nama communities *outside of the circle of “civilized” humanity*—fated as uncivilized and inferior to Europeans, belonging to Frantz Fanon’s “*zone of non-being*.”

There is another reason the moral argument matters. This relates to the concept of *moral responsibility*, distinct from legal responsibility. Moral responsibility can be seen as prospective responsibility, meaning that individuals have a moral duty to care for or attend to someone or something. Moral responsibility is also retrospective, arising when a person’s actions are adjudged morally *wrong*. That person then deserves to be blamed, held accountable or punished for their actions. This is certainly the case with respect to genocide.

Mindful of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (1948), the legal definition of what constitutes “genocide” is clear. To see the hard truth about the *morality* of Germany’s infamous “extermination orders” (*Vernichtungsbefehle*) against the Ovaherero and Nama peoples, the moral question of the *proportionality of means* in relation to the threat posed by the Ovaherero and Nama communities, is but one part of a more complex argument. The actions of the German state also violated the “laws of humanity and the public conscience,” as put forward in The Hague Convention of 1899, to which Germany was a party. There was a *moral culpability of killing by design*, which made the issuing and fulfilment of the extermination orders a *moral crime*.

Based on the contours of the argument presented above, we can answer the following questions:

Were the extermination orders necessary? — No.

Were they proportionate to the threat? — No.

Did they go against the drive of humanitarian principles’ aim to enunciate a way of controlling and limiting war? — Yes.

Did the genocide violate general moral standards recognized and agreed upon by Western civilization? — Yes.

Was it morally wrong? — Yes.

THE PRESENCE OF THE PAST: INTO THE FUTURE

In essence, this paper argues for the necessity of a moral argument in war; to suppose that there is no need for a moral argument in war is to condone barbarism. It is the mark of humanity to make an effort to act morally. Reparations cannot be the end of the relationship between Germany and Namibia, but they could and should form part of a process of reasserting our common humanity. Achille Mbembe is right when he says:

restitution and reparation, then, are at the heart of the very possibility of a construction of a common consciousness of the world, which is the basis for the fulfillment of universal justice. The two concepts of restitution and reparation are based on the idea that each person is a repository of a portion of humanity. This irreducible share belongs to each of us (Achille Mbembe, *Critique of Black Reason*, WITS University Press, 2017, p. 182).

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CHAPTER III

Living memories: Addressing the colonial past



A PERSONAL ACCOUNT OF THE GENOCIDE AGAINST THE NAMA

As a descendant of the victim communities, I want to share a personal account of how my family experienced the genocide of the Nama and Ovaherero. I believe it is important to personify the concept of justice and make it come to life. Justice is not just an academic or legal concept. It is personal.

Popular belief is that the 1904–1908 genocide is something alien, without repercussions. Many believe it happened too long ago, that we should forget about it and move on. These are underlying sentiments in both the Namibian and German governments, sentiments that I believe inform the negotiations between the two countries, regardless of the diplomatic language that pretends as if the two countries genuinely seek justice and reconciliation.

My late grandmother, Hanna Sedes Frederick, narrated my family's genocide story. When I was little, I used to think that she was making up horror stories to keep us away from the German and Afrikaner kids across the river. She used to shout, "Keep away from those children or you will end up on the island (*hurib ei //koe !as*)!", which literally means "the place on the sea." I had no idea that my grandmother was actually telling us about what I now know to be the Nama and Ovaherero genocide. She was narrating and reflecting on her and her mother's lives during the genocide and in the concentration camp on Shark Island and Okawayo internment camp, near Willemsburg.

My grandmother and her siblings were of mixed Nama and German descent. Their family history was strongly connected to the Okawayo concentration camp. My grandmother had long Caucasian hair my cousins and I loved to brush. Her father was a young German man—hence the Caucasian hair. My great grandmother, Katrina Frederick, or Oumama as we lovingly called her, was the niece of Cornelius Frederick, whose head General Lothar von Trotha put a 3,000 Mark bounty on when he ordered the extermination of all Namas.

According to my grandmother, Oumama was first rounded up with others in Bethanien [colonial name of IUiǃgandes in southwestern Namibia] and taken to Shark Island concentration camp in Lüderitz, which was also known as the "Death Camp." There she endured hunger and thirst. She was forced to scrape the human skulls of her next of kin clean, which were then transported to Germany. The whereabouts of her nephew's skull remains unknown to us after it was packed in a box to ship to Germany. "People's heads were cut off and the women had to clean them like you clean the head of a goat," Oumama would say. But

she never named the perpetrators as Germans; she called them "*khoe oreb*," which means "man eaters" or "cannibals." I presume my granny didn't know that the scraped skulls were taken for experiments, but thought the skulls were eaten, just as a goat's head is eaten as a Nama delicacy. As kids, we were so scared, thinking our heads would be cut off, wondering when the "*khoe oreb*" would come to get us.

My grandmother said that when Shark Island closed in 1907, Oumama was transferred to Okawayo camp, close to Karibib. The Frederick and Witbooi clans were a particular nuisance to the German Empire, as were all the other brave and resilient Nama clans who resisted colonial occupation without fear. The Germans feared renewed resistance, so they decided to close the horror of Shark Island and create a labor camp where Nama women and men would work for the German settlers. "Karibib is a place where they made the women and men work like slaves for the white people," my granny would say.

During this time, all Nama and Ovaherero land and property was confiscated without compensation by a series of legal ordinances. My grandmother was born in 1913. She and her family were only released from the camp when the British troops arrived in 1915. On 5 May 1915, British troops discovered survivors of Shark Island in Okawayo, including my Oumama and her infant daughter, my grandmother—still imprisoned six years after the concentration camps were ordered to be closed.

Confiscating land and property, raping women, incarceration, slave labor and feeding human beings to sharks happened to real people. My people, including my Oumama. We cannot pretend to be ignorant of the historical facts. Why am I sharing this account of the genocide? Because we need to understand that it is not just something that happened over 100 years ago. It continues because justice has not been served. I narrate these stories to my two children, aged nine and 14, so that they know who they are and where they come from, just as my beautiful grandmother narrated to me as a child.

When I went to school in the former whites-only suburb of Klein Windhoek, I was the only Nama child in a predominantly German private school. My mother was determined to get me a good education, but at school I was ridiculed by German children as trash that comes from the former township Katutura in the north of Windhoek. When I talked to my mother she said: "They will make you cry today but they will never take away your education." My mother was right. I persevered and got myself a solid education. It was also at this school that I became in my heart and mind an activist for social justice.

All genocide victims and their children have their personal stories. We try to make sense of why we are where we are. The world has a responsibility to hear these stories. It is my fervent wish that stories like this will make the world more aware of human rights abuses throughout the world, and that this will make us resist these abuses.

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ERIKA VON
WIETERSHEIM

A HISTORY THAT DIVIDES US FROM OUR FELLOW NAMIBIANS

Like most German-speaking Namibians, I was born and raised in Namibia and love my motherland. We work here, have our families here and our ancestors are buried here. We feel strongly, also emotionally, attached to this country and have its well-being at heart. Most of us have good relationships with our fellow Namibians, irrespective of their skin color. We are thankful that today we *all* live and work together in freedom and peace as fellow Namibians.

In view of our country's history, this is not self-evident. White Namibians—and German-speaking Namibians in particular—have a history that sadly divides us from our fellow Namibians. As white Namibians, we have benefited from the institution of apartheid, with all of its privileges for white people. And as German-speaking Namibians, we carry the burden of colonial history on our shoulders, no matter if our grandfathers took part in the colonial wars, or only came here later. Directly and indirectly, we have benefited from these dispensations, while hundreds of thousands of our fellow Namibians have deeply suffered.

Like many other Namibians, for a long time, I was not well-informed about our colonial history. During my education in Namibia and later in South Africa, Namibia's colonial history was never a topic. I only learned more about it in the 1980s when I lived on a farm in the south of Namibia, together with about twelve Nama families and their children.

As there was no compulsory education for black children at the time, we started a school for the children on and around our farm. When the pupils reached grade seven, the history syllabus included Namibian colonial history. I therefore started to read about that time—mostly colonial literature, as not much else was available. I was horrified. The cruel war, the deadly flight to Omaheke, the thousands of people who died of hunger and thirst, the concentration camps. I asked myself how I, a German-speaking Namibian, could present this to my Nama learners, the grandchildren of survivors of these horrific times. I spoke to the young pupils about the reasons for colonization and the revolt against it, about the war and what happened. While speaking, tears came to my eyes and I began to cry. Then something happened that I will never forget. The children came to me, took me in their arms and we cried together. “It's okay, *mevrouw* [Afrikaans for madam],” they said, again and again.

It was a healing experience for all of us. I realized how thankful we should be, that in spite of what happened, our fellow Nama and Ovaherero Namibians have always met us with respect and humanness.

Today, difficult negotiations between the German and Namibian governments characterize the situation. There is conflict between groups that feel left out of an expected dialogue process after the Namibian parliament's 2006 motion on genocide and reparations.

Nobody knows what the outcome will be. I hope that there will come a time when all those affected by our painful history will sit together and talk. Not to answer, but to understand, because our history is painful for *all* of us. And in becoming closer in the way I did with the Nama children long ago, we will be able to build a common future together.

ERIKA VON WIETERSHEIM IS AN AUTHOR,
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ELLEN NDESHI
NAMHILA

THE ROLE OF ARCHIVES IN COLONIAL INJUSTICES AND HISTORICAL REAPPRAISAL

The Namibian genocide happened over 100 years ago. Today, different sections of society remember it very differently. The past is always contested. That is why we turn to archives to learn more. Archival institutions contain memories of nations and societies in many forms: written documents and records, photographs, moving images and sounds from “when it happened.” They also include memories written later, as remembered at the time they were recorded. Historical, personal and societal memories enable one to understand the past and draw lessons from it. They are valuable means of examining the past.

In some societies, archives are referred to as “institutions of public faith.” A trusted source for the nation, they provide primary witnesses of the past, evidence for protecting human rights and confirming identity, as well as justifications for previous actions and current decisions.

Agate Beach →

← Shark Island

↑

🔥



Archival records must therefore be *authentic*—be what they claim to be; *reliable*—accurately represent the events they describe; and have *integrity*—their content must be sufficient to paint a coherent picture of the past.

Sadly, archives are often incomplete. One of the most difficult issues confronting modern archives is deeply divided societies, where the ruling power has all the means to create and maintain records, and others do not. Records of conquered peoples, the colonized “natives” and oppressed minorities, are largely missing from archives inherited from colonial regimes, all over the world. The information may never have been recorded, such as the names of inmates at Swakopmund and Shark Island concentration camps, or on death certificates with no names that were only used for statistical purposes (for example, the National Archives of Namibia, BWI [107] UA 10/6 *Totenregister für Eingeborene*, BLU). Other records, such as those incriminating colonial powers, have often been hidden or destroyed, willfully or accidentally.

Retention and disposal of archival records worldwide shows that information that could have been used as evidence to support individuals’ and groups’ claims for redress and justice were willfully destroyed. To cite a few examples, this is evident in the case of Australia’s “lost generation” (Hillary Rowell, *Reclaiming Identity*, Comma, 2011, pp. 123–134); Norwegian children of the German occupation (Gudrun Valderhaug, *Memory, Justice and the Public Record*, 2011, *Archival Science* 11, pp. 13–23); and the blond, blue-eyed children abducted from Poland and Ukraine in World War II for the SS “Lebensborn” program.

Records are vulnerable and easily destroyed. Sometimes their destruction is deliberate, like when the Nazis destroyed concentration camp records to cover up their crimes. Sometimes their destruction happens during war, like when German military archives burned following an air raid on Potsdam in March 1945, including war records from Namibia. And sometimes their destruction occurs through ignorance, such as many of the German district records from Namibia that incoming South African magistrates destroyed during or after World War I because they could not read German or thought the defeated enemy’s records were of no importance (Sally Harper, *The Government Archives in Windhoek, 1973 SWA Annual*, pp. 69–73). However, the South African colonizers were not entirely ignorant. When South African officials destroyed everything else, like Gibeon District records, they faithfully kept the land property records (National Archives of Namibia, Finding Aid 1/1/10, Kaiserliches Bezirksamt Gibeon). It is not difficult to guess why, as these records were of crucial importance to both the old and new colonizers: they proved that whites owned the land.

These records show who acquired the land, but for all the land confiscated by the German government’s stroke of a pen in 1907, they do not show the original owner from whom the land was expropriated. The records only show the German government sold the farms to the private owners. The memory of Namibians who lived, worked and herded their cattle on this land before the Germans arrived is obliterated in these archival records. But it is not obliterated in peoples’ memories, and it is not obliterated in other records that still exist.

This shows that archives are one-sided. However, they are not useless, because they nevertheless supply artifacts, archival documents and personal testimony to interpret the past based on evidence and analysis. Some historians may choose to ignore such evidence, because they themselves are biased, but the records remain to be studied and interpreted. History demands accuracy and corroborating sources.

What would the evidence of genocide look like if archivists had not preserved German General Lothar von Trotha’s extermination order? If a British officer in Bechuanaland had not seen the importance of preserving the evidence of this extermination order in Otjiherero or sending it to his superiors? The genocide would be seen with a different perspective, as one could assume it was just made up. But Dutch historian Jan Bart Gewald discovered this document at the National Archives of Botswana within correspondence about Ovaherero refugees (Jan-Bart Gewald, *The Great General of the Kaiser, 1994 Botswana Notes and Records* 26, pp. 67–76).

What I say is valid not only for written records, but also for oral history, which must be documented and preserved in a place of authenticity, where it can be accessed by future generations and compared with other sources. It is not easy to work with oral history—dates can be remembered wrongly and transcribers or researchers can mishear or misspell names of people and places—but it provides a fuller and more truthful record. Therefore, it is also vitally important to preserve original stories and recordings as they are told.

It is our common responsibility to collect evidence of our past, deposit it in archives, encourage our younger generation to develop an interest in and love for archives, and preserve our historical heritage for current and future generations. Let us start now. The National Archives of Namibia not only keep old documents, they continue to receive and preserve current documents and records from civil society, including precious and vulnerable oral accounts.

DR ELLEN NDESHI NAMHILA IS PRO VICE
CHANCELLOR OF THE UNIVERSITY OF NAMIBIA

CURATORIAL STATEMENT

THE MOURNING CITIZEN

Our collective devised process begins with asking ourselves: How do we mourn?
Who holds a passport to mourn?

We find our acts, rituals and archives of mourning in our cultures, communities, and far between spaces of...

HEALING & TRAUMA
CLEANSING & ERASURE
CARE & VIOLENCE
PRAYING & CURSING
WEEPING & WHIPPING

We are deeply concerned about how Namibian patriarchal nationalism has denied us the right to mourn.
We hereby occupy and mourn this land.

We recognise how culture and memory has been captured and demobilised in the new dispensation.

We demand that all gates of heritage be opened.

We also know that the Ministry of Mourning and Restorative Justice is non-existent. Therapy is expensive. We resist the denialism of our pain.

We acknowledge the unaccounted bones that litter the land. The ancestors are not asleep.
We demand their overdue rest.

We are aware of the haunted public sites. Ghosts dancing and singing the struggle in the cracks of the administration.

We demand to listen to the ghosts of our past.

We smell the blood shed on the roads. Bodies burning; we are orphans.

We pray for love.

We hold the trauma of the body, the trauma of the unborn:

The trauma of Hamakari
The trauma of Shark Island
The trauma of Apartheid
The trauma of Christianity
The trauma of Heteronormativity
The trauma of Lubango Dungeons
The trauma of Katutura and Neo-colonialism
The trauma of Gukurahundi
The trauma of HIV/AIDS
The trauma of Gender-based Violence

WE ARE MOURNING & WE ARE MILITANT
WE ARE MOURNING & WE ARE MILITANT
WE ARE MOURNING & WE ARE MILITANT

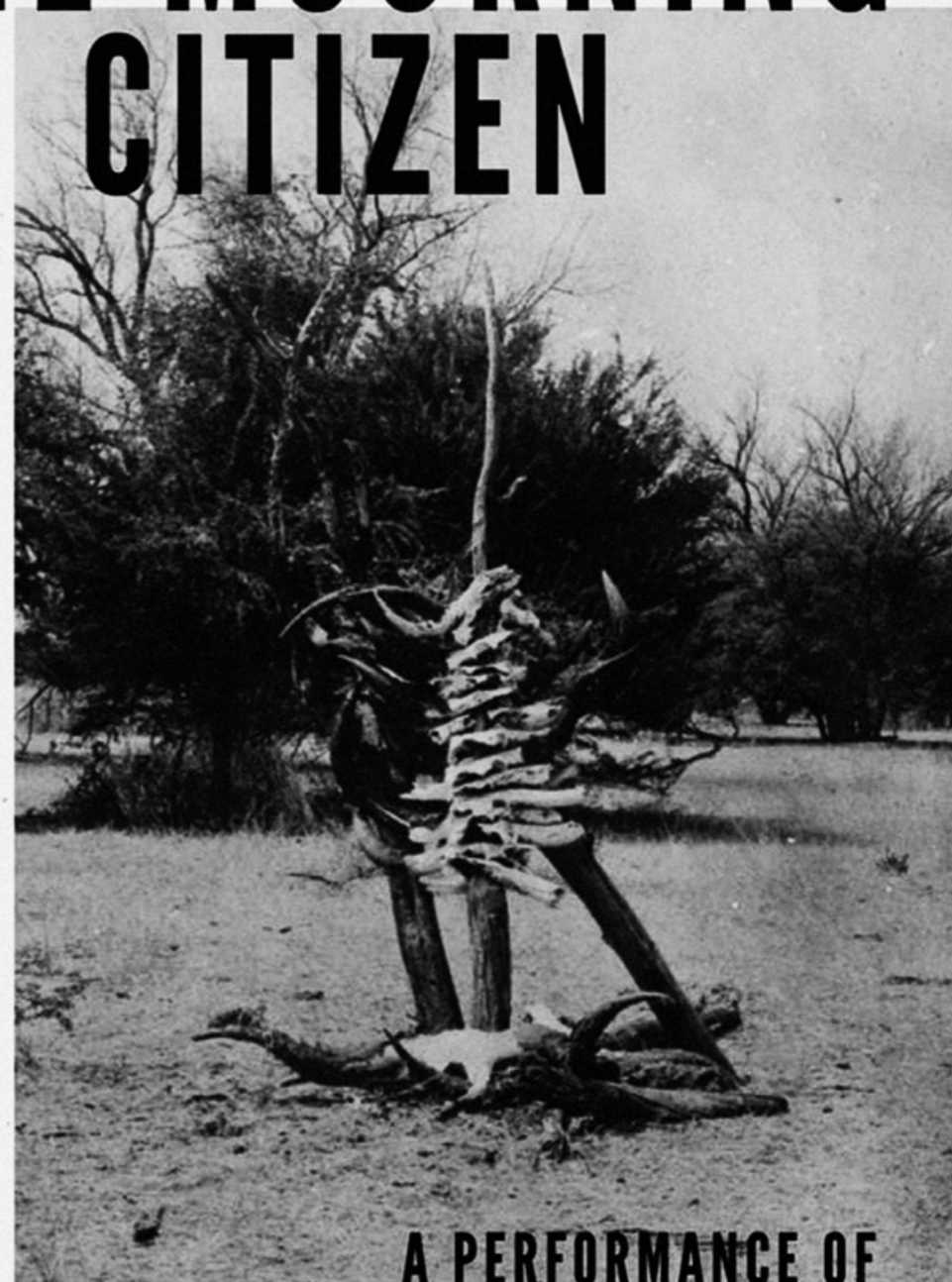
We are an unfinished revolution.

WE ARE THE MOURNING CITIZENS

THE MOURNING CITIZEN

MARCH 26, 2019 | 19H30 STARTING AT THE
GOETHE INSTITUTE AND THEN ON TO ALTE FESTE

FEATURING VISUAL, AURAL AND PERFORMANCE
ART INTERVENTIONS



**A PERFORMANCE OF
REMEMBRANCE AND HEALING**

FREE AND OPEN TO THE PUBLIC. ENTRY POINT IS IN FRONT OF THE
NATIONAL MUSEUM OFFICE BUILDING ON ROBERT MUGABE AVE.

IN ASSOCIATION WITH:



THE ROLE OF MUSEUMS

When we talk about addressing the colonial past and decolonization, museums should play an active role and make their numerous voices heard. In order to play a relevant role in this context, a museum must address all issues that affect society. It must offer a space to exchange and debate ideas, for a community to present its diverse talents, and celebrate its history and culture. It has to involve today's youth.

Colonial-era museum collections can give young people from both the Global North and Global South insights into the realities of colonialism. Through these collections, museums can create awareness and educate the public. However, discussions about colonial objects' copyrights, and their possible restitution are vital. How are copyrights, intellectual property rights and the return of stolen objects related to one another? Does it make a legal difference if an object is of ritual significance, or belonged to a specific family or royalty? What if the object's history is linked to particularly cruel, inhumane treatment?

Examples of repatriated items are numerous. The Hendrick Witboi Bible was recently returned to Namibia. A Finish museum handed back the Kwanyama power stones. Given their history, how could objects like these ever be linked to a place or culture other than the Witbooi/ Nama people, and the Ovambo/Kwanyama people respectively? Who is morally and legally entitled to the copyright or intellectual property of these objects? These questions point to why legislation governing art and cultural property has become a source of heated debate between people who work in museums, and in the global media.

A starting point for this discussion is to analyze colonial collections: What kinds of objects migrated to the Global North? What state they are in? How do they, or could they, benefit the current owners and countries of origin? Where are they now? If they are on display, what knowledge, information or stereotypes do they convey? Which of these objects are stored in boxes, storerooms, warehouses as is the case of many European museums?

Cultural property should be returned to source nations and indigenous peoples. This issue reflects larger debates about historic redress, injustices and social inequality; legacies of colonialism, exploitation and violence; and the respect for cultural differences. When talking about repatriation, we are also talking about closure, reconciliation, equal participation and involving communities of provenance in their own representation. If they can play a role in displaying and protecting these objects, and promote and develop their heritage, then the Nama and Ovaherero peoples will have some form of closure. If European

museums keep Nama and Herero objects, these wounds remain open. The Ovaherero and Nama peoples are asking for their own museums. They want to interpret their culture themselves. They are the rightful owners of their ancestors' objects.

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AT THE BOTSWANA NATIONAL MUSEUM

TALITA/
UI-#NUSES.

ON HUMAN REMAINS AND RESTORATIVE JUSTICE

The past undoubtedly has consequences for the present. To this day, the German government's mandate to Lothar von Trotha to commit the genocide of my people has seriously affected all of our tribesmen and women's life chances, risk of impoverishment, and given us a sense of hopelessness and confusion. German troops slaughtered, raped, stole livestock and drove my ancestors off their lands.

My own biological mother is half-German. German troops took away one of my grandmother's sisters and her whereabouts remain unknown. My grandmother's last living sister tells stories about how much she hated what happened to her family and land. Today, German decedents and absentee landlords occupy our land. The impact of German colonialism is that, today, Nama people are a vulnerable minority.

The matter of the skulls and bones of the Ovaherero and Nama, San, Baster and Damara who died or were killed during the colonial period, and were then transported to Germany—where they remain today—falls in this context. This is a very emotional matter. Unethical eugenic experiments were conducted on our people. We were treated as if we were not human at all. The Germans not only killed them, they degraded my people's dignity, beheading them and taking their remains to Germany. Unthinkable acts!

African cultural understanding of death before the white men came to Africa was one of transcendence, linking us eternally to our ancestors. Our ancestors are us, and we are our ancestors. Thus, the African adage: "I am because of them." Therefore, the German government's eugenic program and land acquisition is forever painful to us.

This historical behavior is unforgivable, but so is the modern German government's failure to take responsibility for the past. Clearly, to this day, the German government refuses to see and accept black people as human beings.

Handing over some of our ancestors' skulls and bones was a rare act of humanity towards us black people, as well as an admission of Germans' undeniable guilt. I applaud this gesture. However, that the German government has gone so far as to acknowledge and pay reparations to the survivors of the Holocaust, but consistently refused to acknowledge that the foundations of their genocidal acts began and were perfected on us, only makes matters worse.

The German government needs to talk humbly with us about what they did and how it affects us profoundly to this day. Certainly, the German government must be reminded that our ancestors were, and have always been, human beings. If reparations do not reach the Nama and Ovaherero, and if these tribes are limited in participating in and deciding on these processes, it will be a disaster.

The first step in the reparations process has to be an apology. This is saying that you are truly sorry for what you did—to us, the victims—and to ask openly for forgiveness. Then, the German government must honestly ask, what would you like to have repaired? What damage did we do to you? What pains, displacement, losses and impoverishment are you still suffering because of the genocide? Here you can see clearly what will not achieve this: a negotiation between our governments that does not include our tribes.

We, the victims of these heinous crimes, will have to sit down with the successor state of the perpetrator, Germany, and work this matter out. Not in a dialogue between governments, which we do not trust. This process needs the support of ordinary German people who may not be cognizant of the historical facts and acrobatic tendency of the German government to deflect responsibility for the crimes committed in its name.

TALITA /UI-#NUSES. IS A NAMIBIAN ACTIVIST
AND FORMER RESEARCH ASSISTANT AT ECCHR

THOMAS
R. HENSCHEL

CREATING SPACES TO NEGOTIATE ANTAGONISMS

An old man stands up from his chair in the first row. He has listened for a long time, become increasingly restless and frequently shook his head. Standing, he turns to the audience of mainly Nama and Ovaherero, and with a slightly trembling voice, reads a prepared text. He and the other German-speaking Namibians find themselves in for a new and uncomfortable environment.

Their identity-giving truths are publicly challenged. They perceive openly declared objections as provocations. At the same time, they see how opinions, which outside the protected space of the conference are those of a minority, are calm and self-confident.

The events in Windhoek and Swakopmund show: dialogue requires courage. Many conversations in everyday life serve self-affirmation. We like to exchange views, perspectives and opinions with people who share ours. Affirmation gives us a place in the world, orientation, security and, in the end, determines who we are—our identity. It requires courage to expose oneself to perspectives, opinions and views that diverge from our own, or are even diametrically opposed to them.

A goal of the Windhoek and Swakopmund events has been to create a space in which voices can be heard and expressed. But it is not enough to create such space and appeal for dialogue. Dialogue that deserves its name needs space in which antagonisms can be negotiated. This also requires knowledge about and experiences in how to talk to one another.

Mediation can create the space in which separated discourses and antagonists can enter into a dialogue. Initial surprise that others can rightfully counter one's own view is necessary for those of the majority opinion. Insofar, it is not surprising that present day negotiations between the German and Namibian states have stalled. A credible approach would need external, party-independent and professional mediators. Only in this way can spaces be created in which affected persons can autonomously determine their future. However, this requires courage, which participants of the events in Namibia have shown. With courage, dialogue can succeed.

DR THOMAS R. HENSCHEL IS
AN INTERNATIONAL MEDIATOR



GENOCIDE MEMORIAL IN FRONT OF THE ALTE FESTE IN WINDHOEK, NAMIBIA © ECCHR

RECONCILIATION AND ITS DISCONTENTS

Genocide does not end once it has been committed, but lives on in experiences and memories, as well as the shape of communities and their level of economic and political power or weakness. Solidified in this way, genocide stops being an event and turns into a structure. In Namibia, this structure is truly stunning: an estimated 18,000 to 20,000 German-speakers, primarily descendants of those who arrived before South African occupation, own most of the agricultural land in a country of two million. Settling colonial accounts is particularly difficult against this backdrop of drastic inequality.

The majority of German-speaking Namibians seem to engage in something that looks very much like denial of the Ovaherero and Nama genocide. The estimated 80,000 dead Ovaherero, they argue, is a falsification; atrocities were committed on both sides and the notorious “extermination orders” were misinterpreted. Soldiers were told to shoot over the heads of fleeing rebels as a mere act of intimidation, they say. This revisionist stance has a companion approach: celebrating civilizational development in German South West Africa. Consistent with this is a culture of remembrance that glorifies conquest and survival in a harsh land, along with military heroism and arduous, unceasing labor.

Then there is the flip side of denial, the victimization story. We saw a glimpse of it during the “Week of Justice” in Windhoek. This story publicly “dispels” the “myth” of preferential treatment of Namibia’s German-speakers by the German state. It recounts the wrongs committed against Namibia’s German-speakers during and after the World Wars, and under South African occupation: interning men as enemy aliens and the three waves of expropriation. Although the narrative appears benign and appeals to listeners’ sympathy, it establishes equivalence with Ovaherero and Nama experiences: the perpetrators experienced their own suffering. This undermines the image of a ruthless perpetrator.

None of the above cancels out the few sincere voices seeking reconciliation. In Windhoek, a slight woman in a gentle voice told the room of people how, in her thirties, she came across a colonial history book from which she learned, for the first time, about the atrocities her ancestors committed. Shaken to her core, she taught this history to her dark-skinned students, weeping as she spoke to them. Her pupils, seeing their teacher’s distress, embraced her with their fledgling arms, crying

together. The generosity of her students’ hearts, all of whom were Nama, she told the audience, was an extraordinary act of transcendence and forgiveness.

Although sincere, the voice asking for forgiveness is deaf to its own privilege. Nama and Ovaherero guests asked how she came to own the farmland? Which Nama lived on the farm whose children she taught? Why was she silent about the farm’s provenance? Did she use the forgiveness she experienced to undermine some more radical reparation claims from a prominent Ovaherero leader? The toxicity of genocide-as-structure history is that the latter risks turning reconciliation, which does not address white privilege, into another way of protecting plundered wealth.

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AMSTERDAM, NETHERLANDS

JOHANNES ODENTHAL

LIVING MEMORIES: THE ROLE OF THE ARTS

Apart from recognizing colonial injustices and looking for reconciliation possibilities, a central issue of the “Week of Justice” discussions in Namibia was the question of memory: how to address past wrongs and traumas, establish archives, undertake historical research, and use the transformative power of artistic theory and practice. Whether in performance art, music, fine arts or literature, young Namibian and southern African artists’ approaches are impressive.

In dialogue with us and other conference participants, they developed the idea of a research- and output-oriented Academy of Memory, the idea of a living memorial. Together with partners in Namibia and Germany, academic and the artistic institutions and initiatives could work to develop such a platform in order to more strongly engage past injustices.

The German colonial past is omnipresent in Windhoek and Swakopmund: it is not a matter of the past. The structural legacies of land grabbing, racism and genocide are very much alive. They remain an essential aspect of social and economic conflict in one of the world’s least densely populated countries. South African history, apartheid

policies and the neo-colonial global exploitation of the country's natural resources further obscure the traumatization of entire peoples like the Ovaherero and Nama.

The stratification of problems demands clear differentiation of thematic issues and different responses from different actors. At the level of interstate negotiation between Germany and Namibia, for example, Germany must acknowledge the genocide of the Ovaherero and Nama peoples. An official apology and reconciliation process are necessary. At the level of dialogue between the people(s) of Germany and Namibia, we need a civil society-led initiative between all those affected by German colonialism, especially but not exclusively the Ovaherero and Nama, both those in Namibia and the diaspora, as the groups targeted in the genocide. At the level of an institutionalized program of reparations and reconciliation, state funding from both Germany and Namibia should be channeled towards initiatives focusing on memory, identity and the future. We need to build a living culture of memory that includes the younger generation's inspiring approaches to addressing the past through the arts and academia. A mobility program could help level Namibian society's structural deficiencies, while the establishment or expansion of scholarship schemes, institutional exchanges and other educational and cultural initiatives could be possible ways to further empower affected communities in Namibia. Even though the interstate negotiations are important, they cannot solve affected communities' problems alone. We need dialogue between Namibians, Germans and the relevant diaspora communities, along with consolidated civil society initiatives.

Inquiry into racism and the colonial project's radical destruction of indigenous cultural networks is a necessary focal point for current artistic practice and academic research. Both art and academia pose questions about the possibilities of identity and culture, and can overcome clan-thinking, political divisions and generational conflicts. What we need is not a mausoleum, but a "living archive," a "living memorial."

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AT THE AKADEMIE DER KÜNSTE IN BERLIN, GERMANY

ESTHER UTJUIA
MUIJANGUE

ADDRESSING THE COLONIAL PAST

In recent years, people have come to realize the importance of colonial history in the development of racism and armed conflicts in Africa. In Namibia, German missionaries, explorers and fortune-seekers ventured into what was later-on called German South West Africa beginning in the mid-19th century. However, the territory did not become an official colonial possession of the German Empire until 1884. The presence of the Germans brought dramatic social, traditional and structural changes to the Ovaherero community.

German colonizers demonstrated a strong will to get hold of the country's natural resources. They traveled thousands of kilometers to drive away the Ovaherero from their land and confiscate their cattle, out of a sense of white supremacy and the conviction that African natives were too primitive to make good use of the land. When an uprising evolved on 12 January 1904, Kaiser Wilhelm II approved large numbers of troops for reinforcements. He replaced the relatively moderate Governor Theodor Leutwein, who wanted to avoid a costly war and sought peace through negotiations, with the colonial warrior General Lothar von Trotha. Von Trotha gave the "extermination order" against the Ovaherero people on 2 October 1904 and against the Nama people on 22 April 1905. In the following years, concentration camps were set up to detain the few survivors of the military initiative. These camps were disease-ridden; people were registered and labeled with metal tags, barred from owning land and cattle, and assigned to hard labor. By 1908, the Germans had wiped out more than 80 percent of the Ovaherero and 50 percent of the Nama populations.

This dark past cannot and will never be addressed and discussed without the involvement of the Ovaherero and Nama peoples. Hence the slogan: "It cannot be about us without us; anything about us without us is against us." The German and Namibian states asked special envoys to negotiate about how Germany can account for the historical past. These negotiations have now continued for several years and are carried out in secrecy.

The progressive genocide and reparation movements of the Ovaherero and Nama peoples, the Ovaherero Genocide Foundation and Nama Genocide Technical Committee have long called for a dialogue between: the Ovaherero and Nama, including those in the diaspora, as direct and indirect victims of the genocide; the government of the Federal Republic of Germany, as successor to the imperial German government; and last but not the least, the Namibian government, as a facilitator between the perpetrator and victims. However, such a dialogue has never been hatched nor taken place.

The Ovaherero and Nama peoples filed a lawsuit in New York against Germany in 2017 to seek compensation for the genocide and unlawful taking of property during the German colonial occupation. The case is now on appeal with the United States Court of Appeals for the Second Circuit, *a luta continua* [Portuguese for “the fight continues”]. The Ovaherero and Nama peoples are victims of the genocide and, as peoples, have the right to self-determination. They are not waiting for anyone to affirm their right in this regard. On their own initiative, they stood up and started to affirm such a right: the right to speak for themselves. The Ovaherero and Nama peoples are united in their demand that there be reparations to them from Germany. There is no ambiguity or compromise on the part of the Ovaherero and Nama about the justice of their cause. They believe that the German government must first admit to its crimes against humanity and then redress its transgressions in a fair and equitable manner. It is only then that reconciliation can take place.

ESTHER UTJIUA MUINJANGUE IS CHAIRPERSON
OF THE OVAHERERO GENOCIDE FOUNDATION

IDA
HOFFMANN

PERSPECTIVES ON THE GERMAN GENOCIDE OF THE NAMA

On 31 October 1992, I started a campaign for the restitution of colonial dispossession and the German genocide in Namibia, then known as German South West Africa. My main concern was that the beneficiaries of German colonialism were living a lucrative life on the expropriated properties of our people, while the latter were in a situation of decline and social disintegration.

Let me sketch a picture of the long-term effects of the German colonization of Namibia in the early 19th century. Of course, these effects are not confined to the Nama people, but have, as demonstrated by my Ovaherero colleagues and compatriots, significant negative impact on the social and economic status of the descendants of affected communities throughout Namibia.

Among the most critical effects that still largely define the socio-economic status of the Nama people in the Namibian context are, firstly, the *loss of human dignity* and eroding self-worth of several generations. The once proud Nama people, who ruled a significant part of what was then German South West Africa, are now confined mostly to communal

lands where they mainly exist at subsistence level. Secondly, and linked to that, is the *loss of fertile land* and associated rights. The “native reserves” to which we as a people are now confined, offer little potential for economic activity and other endeavors. Thirdly, resulting from this is *eroding socio-economic status* and wealth, as the Nama people’s economic situation continues to worsen, even in present-day Namibia.

We propose the following way forward as plausible solutions to some of these effects caused by the colonization of Namibia. This process is essential for justice for descendants of the victims of the genocide:

A comprehensive roundtable needs to be set up that includes representatives from the leadership of all affected communities, the governments of Namibia and Germany, as well as relevant international observers. This is key to opening and sustaining a meaningful dialogue on the matter.

A formal apology must come from the German people, spearheaded by the German government, whose forebears sanctioned and funded the genocidal activities of the colonial regime. This is essential in not only acknowledging, but also taking responsibility for the atrocities committed against not the Nama and all other indigenous communities whose paths unfortunately crossed Germany’s expansionist colonial ambitions in the early 1900s.

The repatriation of human remains that continue to be identified, as well as all artifacts and assets that were taken during the colonial era and languish in universities, museums and even private homes in Germany.

Reparations, though they will never adequately compensate affected communities for the losses suffered or impact on past and even future generations, are important and necessary to the proposed roundtable discussions. Appropriately targeted reparations for affected communities can address landlessness, socio-economic infrastructure needs, as well as education, health, agriculture, transport, communication and capacity-building initiatives on a sustainable basis.

Unfortunately, the current pace and approach to development in Namibia is not likely to significantly reverse the current situation for the majority of the Nama people. It is, of course, not too late. But the window of opportunity is slowly closing—a situation we must and should not allow.

IDA HOFFMANN IS FOUNDER AND
CHAIRPERSON OF THE NAMA GENOCIDE
TECHNICAL COMMITTEE



COLONIAL RAILWAY TRACKS NEAR
AUS IN THE IKARAS REGION OF SOUTHERN NAMIBIA
© ECCHR

GERMANY, WHAT ARE YOU WAITING FOR?

REFLECTIONS ON THE “WEEK OF JUSTICE” IN NAMIBIA

At the beginning of the Windhoek conference, Makau Mutua asked, “Can the Germans ever accept the Ovaherero, Nama and other black Namibians as equals?” He continued that the answer also lies in how Germans react to the questions of genocide and reparation.

German and other European colonial powers did not accept black Africans as equal human beings during their colonial regimes. They slaughtered, tortured, raped and robbed, and legitimized their crimes by describing them as being part of the “superior white race’s civilizing mission.” So far, so very bad.

Speakers at the conference made it visible, again, that Ovaherero and Nama communities in Namibia, Botswana and South Africa still suffer from the impact of colonial rule, especially from lack of access to fertile land and natural resources, which continues to hold—among other factors—these communities in poverty.

Some argue that the very fact that Germany is negotiating about the genocide with Namibia’s government delegation is more than many other former colonial nations are doing. We see it the other way around: the crimes were committed more than 115 years ago. Since then, nothing has happened.

Since the 100th anniversary of the genocide in 2004, the German public has been aware of Namibia’s claim for reparations, but the German government has feared that once established, reparations would strengthen complaints against Germany for World War II crimes. Germany did not act on these claims until the organized Ovaherero and Nama communities filed a civil lawsuit in a New York court in January 2017. One could argue that the US lawsuit might not bring justice to the Namibian people, and could be the wrong forum. But without the communities’ ongoing pressure, momentum from a German parliament resolution on the Armenian genocide, and the US lawsuit, Germany would not have reopened this historical chapter, and would not have begun negotiating with the Namibian delegation.

The negotiation process has a number of deficiencies. Genocide cannot be “repaired,” and after 115 years, it is very difficult to react at all. But failing to react and keeping silent is no answer. One could draw on transitional justice and reparations experience and knowledge since

Nuremberg, as well as abundant political science research on reconciliation processes. The minimum prerequisite for an appropriate reaction would be a very respectful procedure that includes affected individuals and communities at every step. This right is established in Article 18 of the UN Declaration on the Rights of Indigenous Peoples.

The ongoing negotiation process could violate this right because both governments make the right to participate dependent on the Ovaherero and Nama associations’ political behavior. Those who are close to the government are heard, while those with another political position are not allowed to participate. This is a serious deficiency of the entire process. Some German elites are willing to apologize for and acknowledge the genocide, at least in theory. But when it comes to the reparations question, public declarations have been very vague and the process has taken much longer than initially announced. Still, at the end of 2019, no solution is in sight.

One could observe this in the reactions of several white Namibians who attended the “Week of Justice” conference in March 2019, as well as in German officials’ reactions after the conference. Some white Namibians showed a complete lack of compassion about the genocide of the Ovaherero and Nama. On the contrary, they declared that Namibian society has lived in peace, which attempts to seriously address the genocidal crimes disturb. They demand reconciliation without actively participating in the reconciliation process. The German government, whose role should be to represent German society in all its diversity and meaningfully address colonial crimes, seems to act on behalf of the German-speaking minority in Namibia. Its website totes “close cultural ties with the German-speaking community” as part of special German-Namibian relations.

The “Week of Justice” was the first public conference of its scale on this topic to be organized by Namibian and German civil society actors. Sadly, after the conference there were complaints. People like former German Ambassador Christian Schlaga took positions like:

In Tanzania, we experience the opposite as in Namibia. There, no compensation is demanded. The country wishes to forget its colonial history and develop healthy relations [to Germany]. People want to see that Germany still supports them. In Tanzania, we are one step ahead (quoted in: *Namibische Allgemeine Zeitung*, 6 June 2019).

These positions fail to take into account that a reconciliation process has to be a real dialogue between German and Namibian societies, not one that is dictated and orchestrated by two state governments. As we have seen in the last five to ten years, civil society actors have in fact been much more active in furthering reconciliation than the two governments.

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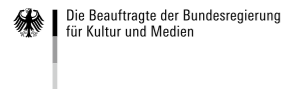
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