

Politics of Reparations: Unravelling the Power Relations in the Herero/Nama Genocide Reparations Claims

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Abstract

The Herero>Nama Genocide (1904-1908) under German colonialism in Namibia is the first genocide of the twentieth century and has stirred debates around reparations for historical injustices. Reparative Justice has evolved into a victim-centric pillar of justice, in which perpetrators are legally and morally obligated to pay reparations in its several forms to its victims, including material and symbolic reparations. This thesis is a case study of reparations claims for historical injustices, specifically colonial genocide and explores such claims as a political process. Firstly, defining victims of genocide is a political process in which colonial atrocities have been blanketed by a lawless cover, previously ignoring the rights of the former colonised. The acknowledgement of genocide victims is a not only a necessary step to claiming reparations, but is part of Reparative Justice in which the perpetrator recognises its victims, offers a formal apology and make amends to the victims' satisfaction. The acknowledgement of the Herero and Nama as victims of genocide has taken over a century for the German government to admit. Secondly, reparations claims is a political process in which requests are demanded and/or negotiated between perpetrator and victim. Germany's previous foreign policy avoided terms such as 'genocide' and 'reparations', which has been a form of colonial amnesia. Namibian actors cannot easily forget the weight of the genocide and have had to negotiate and demand overdue justice in the face of colonial amnesia.

Victim groups often do not speak with one voice, as noted in the Herero group, which is divided into general two camps: the Riruako group and the Maherero group. Under Paramount Chief Riruako, and his successor Rukoro, the Ovaherero Traditional Authority (OTA) have made several reparations claims to Germany over the last three decades. The Namibian government has previously played an unsupportive role, due to Germany's annual development aid, which has undermined the position of the Riruako group. However, Riruako's Motion on the Ovaherero Genocide in 2006, was unanimously passed and requested that the Namibian government facilitates negotiations between Germany and representatives of the affected communities. The two governments have since entered formal

negotiations on how to address the past, however this has been resented by the OTA and some reparations organisations, who argue that the Namibian government have taken the lead on negotiations, rather than facilitate them. Those participating in government negotiations are the Maherero group, and those who have refused to join is the Riruako group, who have lodged a lawsuit in 2017 against the German government for reparations. In 2015, the German government admitted that its shared history with Namibia involved genocide. However, this acknowledgement has transferred limited power to the Namibian actors who continue to be undermined as 'equal' counterparts to the German government. The German government continue to negotiate on their terms of redress, and have claimed state immunity towards the lawsuit. Therefore, there are small traces of colonial amnesia in Germany's conduct despite its recent change in foreign policy.

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1. Introduction

1.1. Thesis Topic Overview

Addressing historical injustices through reparations has gained momentum in Namibia in the last three decades, regarding the Herero/Nama Genocide (1904-1908). The Herero and Nama in Namibia, then known as German South West Africa (GSWA), experienced the first genocide of the twentieth century under German colonialism. The relentless and systematic killing of Herero and Nama civilians was sanctioned by German Kaiser Wilhelm II, and resulted in the loss of approximately 80 percent of the Herero population and 50 percent of the Nama.¹ Furthermore, the affected communities were stripped of prime arable land by the Kaiser's imperial decree in 1905,² resulting in economic and cultural losses of the affected groups. Throughout the last century, the genocide shaped the Herero traditional authorities, who pursued land restoration from South African authorities, who began to administer Namibia in 1915, and restoration of dignities through equal rights from the United Nations (UN) post 1945. However, given the social conditions within a colonial context, attempts for restoration were unsuccessful. Following independence in 1990, Herero leaders began articulating specific requests for reparations from the German government, whom they argued inherited the state responsibility to address this colonial genocide.³ The topic has been the source of international and local political tension, the latter involving the Namibian government, who have relied on German development aid since independence.⁴ The Namibian government officiated their support for reparations claims in 2006, through the unanimous adoption of the Motion on Genocide in parliament.⁵ Over a century after the genocide, and after much persistence of Namibian actors in pursuit of justice, Germany officiated their

¹ Jeremy Sarkin, *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers* (Cape Town: UCT Press, 2011), 137.

² David Olusoga & Casper W. Erichsen, *The Kaiser's Holocaust*, (London: faber and faber, 2010), 193.

³ Interview with Uazuva Kaumbi, September 4, 2018.

⁴ Jeremy Sarkin, *Colonial Germany Genocide and Reparations Claims in the 21st Century: The Socio-Legal Contexts of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908*, (United States of America: Greenwood Publishing group, 2009), 60-61.

⁵ Interview with Dr Zedekia Ngavirue, September 5, 2018.

acknowledgement of the genocide in 2015⁶ and are negotiating their state responsibility to repair with the Namibian government.⁷ However, Germany continues to ignore some Herero actors who have arguably initiated the reparations process.

Reparations is a process that involves either or both material and symbolic transferrals from perpetrator/s to its victim/s with the aim of repairing in full or in part damages of the injustice. Reparations is a legal term and practice that was initially conceived between Western states, therefore reparations was initially conceived as payments between European states.⁸ Richard M. Buxbaum looks at the legal history of international reparations and notes that before World War I (WWI), the nature of state-to-state reparations often involved the payment of resources by the vanquished state to the victorious as an element of peace negotiations.⁹ Buxbaum notes that before WWI, reparations had no particular moral connotations and were limited to the precedent nature of the post-war context. Therefore, reparations started as a political process in which the victor of conflict determined its opponent's punishment. However in a context of growing recognition of universal Human Rights, reparations has evolved over the last century in international law for perpetrators of injustice to bear a moral and legal obligation to victims. It is *an equitable principle* where "the beneficiary of an ill-gotten gain should make restitution, both as an act of contrition and good will, but also simply to restore the victim to some part of their previous lives."¹⁰

⁶ Mia Swart, 'Herero make new claim for genocide reparations against Germany', *Mail & Guardian: Africa's Best Read*, January 25, 2017, <https://mg.co.za/article/2017-01-24-herero-make-new-claim-for-genocide-reparations-against-germany> (accessed June 29, 2018).

⁷ Interview with Dr Zedekia Ngavirue, September 5, 2018.

⁸ Stephen Peté & Max du Plessis, 'Reparations for Gross Violations of Human Rights in Context,' in *Repairing the Past? International Perspectives on Reparations for Gross Human Rights Abuses*, ed. Stephen Peté & Max du Plessis (Antwerp: Intersentia, 2007), 11.

⁹ Richard M. Buxbaum, 'A Legal History of International Reparations,' *Berkeley Journal of International Law*, Volume 23, Issue 2, Article 5 (2005): 319.

¹⁰ Sidney Haring, 'German Reparations to the Herero Nation: An Assertion of the Herero Nationhood in the path of Namibian Development,' *West Virginia Law Review*, Volume 104 (2002): 404-405.

German reparations of WWII to Holocaust victims shifted public discourse on reparations from state centred to societal/individual centred reparations.¹¹ Reparations has a moral component that encourages the perpetrator of an injustice to make amends with victims through conciliatory conduct of material and symbolic transferrals. Its focus has shifted from the punishment of perpetrator to the needs of the victim.¹² Bernard R. Boxill (1979) argues that reparations is greater than the transferal of resources from the ‘injurer’ to the victim and involves the acknowledgement by the injurer of his/her unlawful act.¹³ Therefore, any transferrals which excludes the victim’s expression of grievances and the respectful acknowledgement by the injurer will fall short of Reparative Justice as the dignity of the victim continues to be offended. Material and symbolic reparations are therefore complimentary, and both essential for the victims’ repair.

Hitler’s Final Solution to destroy the Jewish population in Europe – and more broadly, the Holocaust which also targeted the Roma, Sinti and homosexuals – has been widely accepted as genocide, a crime so unique and cruel in its intentions and practice. The Jewish Polish lawyer, Raphael Lemkin coined the term genocide during WWII and campaigned at the UN to outlaw the specific practices of genocide in international law. Genocide has been defined in the 1948 UN Genocide Convention as the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”¹⁴ The UN regards genocide as the “ultimate crime and the gravest violation of human rights...possible to commit.”¹⁵ The murder of approximately six million Jewish people in WWII, including women, children and the elderly, solely based on their group identity, has been publicly condemned by the international community and by the

¹¹ Buxbaum, ‘A Legal History of International Reparations,’ 314.

¹² Gerry Johnstone, *Restorative Justice: Ideas, Values, Debates* (Devon: Willan Publishing, 2002), 1.

¹³ Haig Khatchadourian, ‘Compensation and Reparations as Forms of Compensatory Justice,’ in *Genocide’s Aftermath: Responsibility and Repair*, ed. Claudia Card and Armen T. Marsoobian (Oxford: Blackwell Publishing, 2007), 148.

¹⁴ United Nations, *Convention on the Prevention and Punishment of the Crime of Genocide*, 1951,

http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.I_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

¹⁵ United Nations Economic and Social Council Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, *UN Whitaker Report on Genocide*, United Nations, July 2, 1985, Thirty-eighth session, Item 4 of the provisional agenda, E/CN.4/Sub.2/1985/6, p5, paragraph 14, <http://www.preventgenocide.org/prevent/UNdocs/whitaker/section5.htm>

German government. After the campaigning of Jewish organisations and Israel, the German government has apologised for the Jewish Holocaust, and have acknowledged and accepted state responsibility to pay reparations based on its predecessor's crimes.

Issues around forgotten genocides have arisen in political and academic spheres, especially concerning colonial contexts, highlighting that the events of the Holocaust were not necessarily new war tactics, however were new to European civilians. Some scholars, such as David Olusoga and Casper Erichsen (2010) and Reinhart Kössler (2015) have referred to this as 'colonial amnesia', in which Europe has a tendency to forget its colonial past.¹⁶ Kössler refers to 'denialism', similar to amnesia, which ignores the narratives of previous colonial subjects.¹⁷ Victims of colonial atrocities, moreover colonial genocide, arguably face different obstacles to have their injustice acknowledged and atoned for. The Herero/Nama Genocide has gained international attention due to the plight for justice under the pursuit of members of the Herero and Nama community. The German government's previous hesitations to acknowledge the atrocity as genocide and their state responsibility to repair through reparations, have shifted in 2015 when the German Chancellor publicly acknowledged this genocide and the German government entered state-to-state negotiations with the Namibian government.¹⁸ This thesis will explore the political sphere in which reparation claims unavoidably fall into, arguing that reparations is not only a legal and moral responsibility to repair, but is also a political process in which positions of power define and recognise victims. More specifically, positions of power shape victim group mobilisation to negotiate acknowledgement that warrants justice and how Germany, as a former coloniser, responds to claims.

¹⁶ Olusoga & Erichsen, *The Kaiser's Holocaust*, 344.

¹⁷ Reinhart Kössler, *Namibia and Germany: Negotiating the Past* (Windhoek: University of Namibia Press, 2015), 119.

¹⁸ Reinhart Kössler & Henning Melber, 'Namibian genocide victims' remains are home. But Germany still has work to do,' *The Conversation Africa Inc.*, September 4, 2018, <https://theconversation.com/namibian-genocide-victims-remains-are-home-but-germany-still-has-work-to-do-102655> (accessed January 11, 2019).

1.2. Context

German colonialism (1884-1915) in South West Africa (Namibia) introduced the first genocide of the twentieth century. After the arrival of German settlers and Colonial Administration, the Herero and Nama groups based in central and southern Namibia suffered drastic loss of land, cattle and power under biased judicial laws.¹⁹ This resulted in the 1904 Herero War, where some groups rebelled against German authorities. As a response, the Kaiser appointed General von Trotha, a hardened colonial 'specialist',²⁰ deployed 2,000 German soldiers, and instructed that the war end by any means even though the Herero chiefs attempted to negotiate peace.²¹ What followed was the onslaught of Hereros, and later the Namas who rebelled in 1905. Von Trotha issued an extermination order for the Herero (October 1904) and for the Nama (April 1905), declaring that any Herero and Nama, including women and children, with or without a gun, would be shot.²² Surrenders were not permitted at first and the Herero, including the tribes that did not rebel, and the Nama groups that had rebelled, were tracked and killed. In 1905, the colonial administration permitted the surrender of Hereros and Namas in hiding and placed them in concentration camps that administered the systematic killing of men, women and children. This was done through forced-labour, rape, as well as a result of malnutrition, diseases with no medical attention, and extreme climate conditions especially along the coast. When the concentration camps closed in 1908, the German colonial administration reported that of the 15,000 Herero and 2,000 Namas in captivity, more than half had perished.²³

Germany lost its colonies as a result of its defeat in WWI, and Namibia became a mandate of South Africa. Under a white-led South Africa, all black Namibians experienced oppression, discrimination and segregation.²⁴ Under such circumstances, any attempts for land restoration by the Herero leaders

¹⁹ Olusoga & Erichsen, *The Kaiser's Holocaust*, 116-119.

²⁰ *Ibid.*, 135.

²¹ *Ibid.*, 144.

²² The Nama and Ovaherero Traditional Leaders, *Joint Position Paper from the Nama and Ovaherero People on the Issue of Genocide and Reparations*, 2007, <http://www.freiburg-postkolonial.de/pdf/2007-Ovaherero-Nama-Position-Paper.pdf>

²³ Sarkin, *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 141-142.

²⁴ Apartheid was officially introduced into Namibia in 1948.

were ignored in favour of white supremacy and settler unity. Throughout all these injustices, the genocide has shaped the identities of the affected communities. The events of 1904-1908, particularly concerning the Herero group, have been described as genocide by Lemkin in the 1950s, in his attempt to write a *History of Genocide*²⁵ following the ratification of the UN Genocide Convention.²⁶ In 1985, the UN Whitaker Report on genocides officially acknowledged the ‘Herero massacre’ as genocide.²⁷ Germany, however, only officially acknowledged this ‘war’ as genocide in 2015.²⁸

After little success for land restoration during colonialism and Apartheid, the reparation movement, initially spearheaded by Ovaherero Traditional Authority (OTA) and activists, made its first official requests in 1995, following Namibian independence in 1990. In 1995, the late Paramount Chief Riruako handed a petition to German Chancellor Helmut Kohl during a state visit to Namibia, requesting for the acknowledgement of genocide, apology and monetary compensation of 600 million USD from the German government.²⁹ The German government argued that there was no legal grounds for reparations, and the German President Roman Herzog argued that too much time had passed for an apology. Furthermore, it was argued that Germany acknowledged a responsibility to Namibia by contributing substantial annual development aid to the Namibian government. Sarkin (2009) estimated that Germany paid 20 million USD per year to the Namibian government.³⁰ Therefore, the reparation movement at this stage did not have the official support of the Namibian government. Legal action was taken in 2001, Riruako’s Hosea Kutako Foundation filed a lawsuit in the US Columbia District Court, attempting to sue three German companies and the German government for four billion USD, including a request for

²⁵ Due to Lemkin’s untimely death in 1959, *History of Genocide* remains unpublished. Therefore, this thesis has relied on the works of scholars who have had access to Lemkin’s unpublished works and personal journals.

²⁶ John Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention* (New York: Palgrave Macmillan, 2008).

²⁷ Jonathan Stempel, ‘Germany is sued in U.S. over early-1900s Namibia Slaughter’, *Reuters*, January, 5, 2017, <http://www.reuters.com/article/us-germany-namibia-genocide-lawsuit-idUSKBN14P25O> (accessed June 29, 2017).

²⁸ Swart, ‘Herero make new claim for genocide reparations against Germany’.

²⁹ Haring, ‘German Reparations to the Herero Nation: An Assertion of the Herero Nationhood in the path of Namibian Development’, 395.

³⁰ Sarkin, *Colonial Germany Genocide and Reparations Claims in the 21st Century: The Socio-Legal Contexts of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908*, 60-61.

a formal apology.³¹ Although this case was unsuccessful and the District Court found that there was a failure to state a case, the German government assured the Herero community on several occasions that its development aid is based on their shared history which prioritised looking to the future over the past. However no formal apologies had been given, and development aid through government did not guarantee that the affected communities would benefit from Germany's contributions.

In 2006, Riruako introduced the Motion on Genocide to the Namibian parliament, calling for the Namibian government's support in facilitating dialogue between the affected communities and the German government, in which reparations in the form of an apology, acknowledgement, and monetary compensation can be negotiated.³² The motion received the overwhelming support from the Namibian parliament and responsibilities were passed to the Executive Arm.³³ Subsequently, the Namibian government pursued bilateral negotiations with the German government in which it raised the issues brought to them by members of the affected community. As negotiated between the two governments, Germany formally acknowledged the genocide in 2015. The two governments officiated dialogue through the appointments of the Namibian Special Envoy, Zedekia Ngavirue, and the German Special Envoy, Ruprecht Polenz, to negotiate the issues of genocide and reparations.

However, those under the new Herero Paramount Chief Rukoro, Riruako's successor, argue for a dialogue in which elected representatives are equal counterparts to the two governments.³⁴ This group publicly expressed that the two governments have not offered the appropriate platform for elected members of the affected communities to negotiate reparations on their own behalf with the German government. This was articulated in 2007 when Riruako and the late Nama Chief David Frederick

³¹ Allan Cooper, 'Reparations for the Herero Genocide: Defining the Limits of International Litigation,' *African Affairs*, Volume 106, Issue 422 (2006): 113.

³² Kuaima Riruako, *Motion on the Ovaherero Genocide*, National Assembly of the Republic of Namibia. 2006, http://genocide-namibia.net/wp-content/uploads/2015/02/2006_09_Motion_Genocide_nam_parliament-1.pdf

³³ Interview with Dr Zedekia Ngavirue, September 5, 2018.

³⁴ Ellie Hamrick & Haley Duschinski, 'Enduring injustices: Memory politics and Namibia's genocide reparations movement', *Memory Studies*, The City University of New York, (2011): 7.

signed a joint position paper in which they “do not accept that we [they] have initially raised the issue and now it should be *about us* and yet *without us*.”³⁵ Therefore, the Ovaherero Genocide Foundation (OGF) and the Nama Genocide Technical Committee (NGTC), under respective traditional authorities (Rukoro and Frederick), have lodged a lawsuit in the New York District Court in March 2017 against the German government, calling for reparations and their right to represent themselves in governmental negotiations. While Germany maintains a ‘cordial’ relationship with the Namibian government in the hopes of finding what German Special Envoy Polenz describes as a ‘common understanding’ on the events of the past,³⁶ the German government have argued state immunity against the OGF and NGTC lawsuit claims.³⁷

1.3. Theoretical Approach and Methodology

This thesis is a case study of reparations and the politics that shape the validity, processes and outcomes of reparations claims for colonial genocide. Reparations claims from the German government for the Herero/Nama Genocide is one example of several the former colonised seeking justice from former colonisers.³⁸ More specifically, it is one example where direct victims and perpetrators have since passed away, and descendants of victims of state organised genocide seek delayed justice from governments who have inherited the state responsibility of the perpetrators.³⁹ Although Herero/Nama Genocide reparation claims can be situated in a larger context of reparation claims for genocide and/or

³⁵ The Nama and Ovaherero Traditional Leaders, *Joint Position Paper from the Nama and Ovaherero People on the Issue of Genocide and Reparations*.

³⁶ Isaac Mugabi, ‘Polenz: ‘Germany and Namibia need a common understanding of the past,’ *Deutsche Welle*, September 4, 2015, <https://www.dw.com/en/polenz-germany-and-namibia-need-a-common-understanding-of-the-past/a-18826081> (accessed October 10, 2018).

³⁷ Interview with Uazuva Kaumbi, September 4, 2018.

³⁸ In 2009, Italy agreed to pay Libya US\$10 billion for atrocities committed during colonialism. In 2011, the British government agreed to pay reparations to detention survivors from the Mau Mau Rebellion (1950s) in Kenya. Canadian government agreed in 2017 to pay reparations, approximately US \$600 million to aboriginals forcibly removed from their families and placed in Indian Residential Schools that saw to their cultural destruction. In 2018, 30 Cyprians won a lawsuit against the British government for human rights abuses in 1950s under colonialism.

³⁹ Similarly, the Tanzanian government has announced its intentions to demand monetary compensation from the German government for colonial crimes committed during 1905-1907 in the Maji Maji rebellion. Descendants from the Armenian Genocide have been vocal around reparations from the Turkish government. Reparations for slavery and genocide against Native Americans having become increasingly pressing in the last decade.

colonial atrocities, this case study approach looks at the specific circumstances and results of the 1904-1908 genocide on the affected communities and their descendants, and the political openings and complexities of reparation claims in post-colonial Namibia a century later. In order to unpack these complexities, which are determined by post-colonial political power structures, this case study will fall primarily under Reparative Justice Theory framework, complemented by Critical Victimology Theory. Lastly, although the Herero and Nama are both affected by genocide and involved in the reparation movement, this paper is centred on the Herero group who have had, to a larger extent, a greater presence in shaping the plight for justice over the last century and the first decade of independence.⁴⁰

The research topic – *Politics of Reparations: unravelling the power relations in the Herero/Nama Genocide reparations movement* – can be unpacked into several interrelated components: politics around defining and acknowledging victims of genocide; politics of accepting responsibility to repair; and politics of negotiating remedies of reparations. The overall component that runs through this thesis is how do actors' positions of power relate to one another when addressing the past through reparations claims. This thesis concurs with Reinhart Kössler's argument; that the relationship between Namibia and Germany in a post-colonial context is one that has been negotiated through *asymmetrical* positions of power between.⁴¹ This topic will be explored under several questions. Chapter two will deliberate the first question: how are victims of genocide defined by international standards in order to garner support for reparations claims? For this important question, a Critical Victimology theoretical framework will be applied to explore the extent to which positions of and access to power define victimisation, what groups are acknowledged as 'victims' and what atrocities are defined as 'genocide'.

⁴⁰ Scholarship on the Herero over the last century is significantly more prominent. During the research for this thesis, it has been observed that often the Nama group are incorporated as an additive to the study of the genocide, with the exception of the Olusoga & Erichsen's *The Kaiser's Holocaust* (2010) that looks into both experiences of the Namas and the Hereros in equal weight. This can be noted in the UN Whitaker Report that acknowledged the Herero massacre as genocide, with no mention of the Nama. More specifically, before the Nama entered a joint pursuit for reparations, as highlighted in the 2006 Motion and the 2007 *Joint Position Paper from the Nama and the Ovaherero People on the Issue of Genocide and Reparation*, the Nama maintained a lower profile in public discourse concerning reparations. Therefore, a separate study solely on the Nama and the specific political obstacles they have faced over the last century and post-independent Namibia would be valuable.

⁴¹ Kössler, *Namibia and Germany: Negotiating the Past*, 1.

Therefore chapter two will address the politics in naming genocide, and describe the events of 1904-1908 in greater details to demonstrate that what occurred in Namibia during German colonialism to the Herero and Nama is genocide. Furthermore, it will highlight the dire consequences of genocide and the inherited deprivations of the affected communities in order to understand and necessitate reparations claims. Thereafter, it will explore the political journey in which these events were eventually accepted as genocide by the international community, and by Germany, and how it was internalised by other Namibian actors including liberation parties in the second half of the century.

This approach towards the *politics* of recognition is infused by Andrew Woolford and Stefan Wolejszo's (2006) discussions on the various political factors that shaped the reparation movements following WWII. The authors critically compare the success of Jewish reparations claims and the initial failures of the Roma and Sinti reparations claims from the Federal Republic of Germany, using the Critical Victimology Approach.⁴² For the purpose of this chapter, the Critical Victimology Approach will be employed to not analyse the reparations movement, but the early formation of Herero Nationalism that sought restoration. Reparative Justice, which will be addressed in the third chapter, was not victim-centric in the decades following the Herero/Nama Genocide. Critical Victimology examines the role of politics that shape material and social conditions under which some victim movements successfully gain acknowledgement of their suffering while others are ignored, and how successful narratives can be translated into policies of redress.⁴³ Woolford and Wolejszo highlight '*political openings and social conditions*', as a factor which plays a pivotal role in victim group organisation and their success.⁴⁴ This includes victim groups' access to resources and the historical context in which these groups operate. Furthermore, '*discursive openings*' is a political factor that shapes "interpretive frameworks and trauma narratives developed by collective actors".⁴⁵ For example, the Nuremberg trial "succeeded in educating

⁴² Andrew Woolford and Stefan Wolejszo, 'Collecting on Moral Debts: Reparations for the Holocaust and Pořajmos,' *Law & Society Review*, Volume 40, Issue 4 (2006): 874.

⁴³ *Ibid*, 874.

⁴⁴ *Ibid*, 888.

⁴⁵ *Ibid*, 893.

the German populace about Nazi crimes and initiating a slow developing discursive opening.”⁴⁶ These may also include literature, other cultural outlets, and scholarship that spread and validate victim narratives, reaching an audience that this narrative can resonate with. Therefore, colonialism will play a central role in answering this question – how are victims of genocide defined? – arguing that colonialism not only permitted some genocides, but also created a context in which victims of colonial atrocities did not receive full recognitions. This draws consideration to ‘forgotten’ or unrecognised genocide victims who did not have the right social and political conditions to be recognised as victims worthy of redress. Furthermore, acknowledgement of genocide is not only a necessary step towards reparations claims, but forms part of Reparative Justice.

The second question asks how have reparations evolved over the last century in its nature, intentions and practices, and how do these elements feature in the Herero reparations claims? Chapter three outlines Reparative Justice, which falls under the pillars of *Restorative Justice* and *Corrective Justice*, a victim centric approach that repairs damages of injustices.⁴⁷ Therefore, requests by victim groups are more in line with Reparative Justice, opposed to proposals or ‘solutions’ put forward by perpetrators, especially if there is no prior formal engagement between perpetrator and victim. Therefore, requests articulated by the Herero will be considered, and how Germany responds to reparation claims in light of their responsibility to acknowledge, apologise and listen to the grievances and needs of the victim groups. Specific to this case study, debates around reparations to descendants of historical injustices in a post-colonial context will be explored in order to look at inherited inequalities *and* the inherited politics that continue to shape the post-colonial relationship between Germany and Namibia. It is worth noting that this is not a moral philosophy paper, although Reparative Justice does reside in larger moral debates, nor does it aim to validate the legality of reparations claims.⁴⁸ This thesis will focus rather on the different practices of reparations – *symbolic* and *material* practices – that are applicable to the

⁴⁶ Woolford & Wolejszo, ‘Collecting on Moral Debts: Reparations for the Holocaust and Pořajmos,’ 894.

⁴⁷ Johnstone, *Restorative Justice: Ideas, Values, Debates*, 1.

⁴⁸ Jeremy Sarkin’s 2009 work addresses the legal validity of Herero reparations claims from the German government.

reparations claims that have been put forward by Namibian actors and key scholars, and discuss how politics shape reparation victim group mobilisation and how Germany as a former coloniser takes on this responsibility. Furthermore, although colonialism and post-colonialism play a central role in the politics of acknowledging reparations claims for colonial genocide, this paper is not embedded in arguments for reparations for colonialism, rather for reparations for genocide in which the colonial and post-colonial context shapes the politics of reparations claims.

The third chapter simultaneously addresses the next question: how are reparations acquired? This question will further embed the case study into the political domain, arguing that reparations is a political process in which acknowledgement of victimisation and warranted redress are demanded and/or negotiated between actors in which different levels of power reside. Furthermore, given the social conditions of colonialism, post-colonial politics continue to undermine Herero/Nama reparations claims. Colonial amnesia and denialism will be demonstrated in Germany's early responses to Herero reparations claims that formally began in 1995, post-independence. Germany's foreign policy did not acknowledge the genocide, furthermore claims for reparations continued to be refuted and replaced with development aid. The question – how are reparations acquired – will continue to be deliberated in chapter four, which addresses politics of reparations post-2006, when the Namibian government changed its national policy on genocide and its foreign policy on reparations with Germany. This chapter will attempt to break down the politics within the Herero group, that have influenced two strategies in the reparations movements – state-to-state negotiations and a class action lawsuit against Germany. Furthermore, this chapter will address the German government's position of power in their responses to the two Namibian approaches in terms of respectful conduct, acknowledgement and setting the agenda on how to address the past. Although Germany's position changed in 2015 with the official acknowledgment of the Herero/Nama Genocide and engagement in state dialogue with Namibia, this thesis explores how traces of denialism of responsibility continue to shape Germany's approach to reparation claims.

Secondary literature on the history of the Herero/Nama genocide, the reparations movement, including broader literature on Reparative Justice Theory, feature in this thesis. However primary interviews with some of the key Herero figures in the reparation movement have been conducted in order to substantiate recent events – state-to-state negotiations and the lawsuit in the New York District Court. For the purpose of this thesis, Doctor Zedekia Ngavirue⁴⁹, the Namibian Special Envoy on Genocide and Reparations, was interviewed. As the Special Envoy, Ngavirue represents the Namibian government’s agenda to negotiate issues around genocide, apology and reparations with the German government, and acts as the counterpart of the German Special Envoy. Professor Phaniel Kaapama forms part of the Namibian Special Envoys Technical Committee. Kaapama is a political science professor at the University of Namibia (UNAM) and was approached by the Deputy Prime Minister to form part of the Namibian negotiating team.⁵⁰ Professor Peter Katjavivi⁵¹ is the Speaker of the National Assembly of the Republic of Namibia since 2015. Given that the Namibian parliament adopted the 2006 Motion on Genocide, it is within Katjavivi’s mandate to ensure that the motion is implemented, including follow ups and to communicate with members of the German parliament in order to guarantee that the Namibian mandate is understood. Lastly, Uazuva Kaumbi is the spokesperson of the OTA under the Paramount Chief Vekuii Rukoro. While the first three participants are in support of the Special Envoy’s proceedings, Kaumbi represents the voice of some Herero traditional leaders who support the OGF/NGTC’s ongoing lawsuit in New York District Court.

These interviews shed light on two spheres of politics – national and international politics. This thesis will highlight and explore national politics in order to define the positions of power of two different collective actors in Namibia: a democratically elected government with a jurisdiction over all Namibians, and the other being more in line with traditional authorities of the affected group. Woolford

⁴⁹ Dr Ngavirue was previously the ambassador to the EU and has served as a Namibian diplomat before retiring in 2003.

⁵⁰ Interview with Professor Phaniel Kaapama, September 3, 2018.

⁵¹ Professor Katjavivi served as the Namibian ambassador to Germany between 2006 and 2008, when the 2006 Motion was passed. Furthermore, it was in his capacity to officially deliver the Motion to the German Foreign Minister, which was the start of the reparations process between the two governments.

and Wolejszo draw attention to politics within a victim group, which often is not led by a unified voice.⁵² This thesis highlights the schisms between these two ‘camps’, however will attempt to break down the binary approach of Hereros vs. government, and highlight the two camps within the Herero community – the Maherero group and Riruako group⁵³ - that relate differently to government. The focus will shift to how Germany responds to these two ongoing approaches. This refers to international politics and Germany’s attitude, as a former coloniser, that continues to set the terms of ‘addressing the past’ and responds to claims superficially. Lastly, this case study will be considered in an international context in which former colonisers are responding to various requests from the former colonised concerning unjust pasts.

2. Genocide and Colonialism

2.1. Politics of Defining Genocide: Holocaust and Forgotten Genocides

The UN *Convention on Genocide Prevention and the Responsibility to Protect* (Genocide Convention) defines genocide as the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group,”⁵⁴ through the acts of killing members of that group, causing bodily or mental harm, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group.⁵⁵ The term ‘genocide’ was coined by Raphaël Lemkin⁵⁶, a Jewish Polish lawyer, and first appeared in his *Axis Rule in Occupied Europe. Laws of Occupation. Analysis of Government. Proposals for Redress* (1944). This term derives from the Greek *genos* for race or tribe,

⁵² Woolford & Wolejszo, ‘Collecting on Moral Debts: Reparations for the Holocaust and Pořajmos,’ 877.

⁵³ Hamrick & Duschinski, ‘Enduring injustices: Memory politics and Namibia’s genocide reparations movement,’ 9.

⁵⁴ United Nations, *Convention on the Prevention and Punishment of the Crime of Genocide*, 1951.

http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

⁵⁵ United Nations, *Convention on the Prevention and Punishment of the Crime of Genocide*, 1951.

⁵⁶ Lemkin specialised in international criminal law and fiscal law during the persecutions of the Jewish communities in Eastern Europe before WWII.

and the Latin *cide* translating to killing.⁵⁷ Although this term arose during the course of WWII and was a response to the mass persecution of the European Jewish communities by Nazi Germany, Lemkin acknowledged that the act of genocide was not new and could be traced throughout world history. Lemkin expanded his idea of genocide, usually equated to mass killings, to include the destruction of a group's 'genius', which covered cultural vandalism, destruction of property, obstruction of procreation and economic discrimination to envision a multifaceted approach to the extermination of a specific group.⁵⁸ When Lemkin published *Axis Rule*, his underlying argument was that wars were waged against armies and not civilian populations, as highlighted in the 1899 and 1907 Hague Conventions. Furthermore Lemkin proposed that Nazi leaders be persecuted for their war crimes and that genocide be recognised as an international crime.⁵⁹

Lemkin campaigned at the UN for the adoption of the Genocide Convention during 1946 and 1948, after which it was finally adopted after several political obstacles. John Cooper, who writes an autobiography on Lemkin using the lawyer and historian's unpublished works and personal journals, has described Lemkin's efforts at the UN as a single-handed campaign as no sovereign government championed his proposal.⁶⁰ Lemkin's proposal highlighted the cultural diversity in the world that all added value to a universal civilisation. Based on Lemkin's personal journals, Britain, Russia, and other Western democracies, of which many were colonial powers, opposed the draft convention as many governments would be guilty of genocide, including colonial excursions.⁶¹ Supposedly, the US and UK governments had issued private orders to their UN delegations "to bury the convention".⁶² Furthermore, this anxiety was noticeable among members of the Commonwealth with indigenous populations, such as Canada, South Africa and New Zealand, who voted for the deletion of the clause.⁶³ While the Western

⁵⁷ United Nations, 2017. United Nations Office on Genocide Prevention and the Responsibility to Protect, Definitions: <http://www.un.org/en/genocideprevention/genocide.html>

⁵⁸ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 18-19.

⁵⁹ *Ibid*, 273.

⁶⁰ *Ibid*, 93.

⁶¹ *Ibid*, 103.

⁶² Douglas Irvin-Erickson, *Raphaël Lemkin and the Concept of Genocide* (Philadelphia: Pennsylvania Press, 2017), 157-158.

⁶³ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 158.

bloc argued for the deletion of cultural genocide, the Eastern bloc argued for the deletion of political genocide – the persecution of groups based on their political allegiance. After amendments, the Genocide Convention was adopted by the UN General Assembly in 1948 and became an instrument that focused solely on physical genocide.⁶⁴ The Genocide Convention was encoded in international law in 1951 after it was ratified by twenty member states. The emergence of Latin American member states assisted in this outcome.⁶⁵ Since 2018, it has been ratified by 149 UN member states.

The Holocaust is not the first genocide, and Lemkin's understanding of the crime encompassed the attempted exterminations of groups throughout history, including some colonial atrocities. Lemkin's unpublished *The History of Genocide* dated genocides back to the 16th Century – genocide perpetrated by the Mongols committed against the Bohemian Protestants. Lemkin's case studies included slavery, colonial expansion and military conquests.⁶⁶ As such, his concept of genocide covered colonial genocides and a number of other pivotal genocides – the Herero Genocide (1904-1908), the Armenian Genocide (1915), the Stalinist inspired famine in Ukraine, the Roma and Sinti extermination during the Holocaust – however not every chapter was completed at the time of his death, 1959. Dominik J. Schaller argues that colonialism played a central role in Lemkin's notion of genocide, and that “it was the study of colonial mass murders that provided him with a conceptual framework for analysing the German policy of occupation and extermination in Eastern Europe during World War II.”⁶⁷ However, the Holocaust has generated a ‘uniqueness debate’ in which some scholars deliberate “whether or not it is even possible to compare the Jewish Holocaust with other genocides.”⁶⁸ Woolford and Wolejszo demonstrate that the Jewish Holocaust has become the prototypical genocide of which all other genocides are measured against. The authors argue that although the Jewish articulations of reparations have given platforms for other victims to articulate their grievances and demand justice, it has also

⁶⁴ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*.

⁶⁵ *Ibid*, 276.

⁶⁶ *Ibid*, 236-238.

⁶⁷ Dominik J. Schaller, ‘Raphael Lemkin’s view of European colonial rule in Africa: between condemnation and admiration,’ *Journal of Genocide Research*, 7, 4 (2005): 531.

⁶⁸ Woolford & Wolejszo, ‘Collecting on Moral Debts: Reparations for the Holocaust and Pořajmos,’ 881.

dulled other demands for reparations as other genocides are regarded as ‘lesser genocides’ in comparison to the Jewish Holocaust. The authors warn that to compare genocides is arguably unethical, as one falls into the trap of constructing death toll counts and percentages of populations killed.⁶⁹ Each genocide is unique and catastrophic to the affected group.

2.2. Colonial Genocide: the Herero and Nama Genocide 1904-1908

It has become internationally accepted that the events of 1904-1908 in Namibia constituted genocide. Jeremy Sarkin (2009 and 2011), Olusoga and Erichsen (2010), and Gewalt (2004), demonstrate that this genocide was state sanctioned by Imperial Germany. Gewalt notes that the personal involvement of the Kaiser signalled the highest authorisation and endorsement “for acts committed in the name of Imperial Germany.”⁷⁰ Sarkin (2011), similar to Olusoga and Erichsen, demonstrate the Kaiser’s intent to and approval of exterminating the Herero through his appointment of a ruthless general known for obliterating populations in other colonies, and his complacent silence when his general read out his extermination order.⁷¹ The genocide took place during the Herero War, which began in 1904 as a result of built up tension between the Herero and German settlers as colonial tactics to gain control over GSWA was laden with injustices towards the Herero and Nama.

The Herero War was spurred by drastic loss of land, cattle and livestock, which conflicted with central parts of Herero cultural values. This was done not only through ‘fair’ sales⁷² but through laws that the

⁶⁹ Woolford & Wolejszo, ‘Collecting on Moral Debts: Reparations for the Holocaust and Pořajmos,’ 883.

⁷⁰ Jan-Bart Gewalt, ‘Imperial Germany and the Herero of Southern Africa: Genocide and the Quest for Recompense,’ in *Genocide, War Crimes and the West: History & Complicity*, ed. Adam Jones (London: Zed Book Ltd, 2004), 60.

⁷¹ Jeremy Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*.

⁷² Land sales were known to bring large fortunes to the Herero and Nama chiefs – Maherero and Witbooi included. However, some land treaties had unjust payments and on some occasions taken under pretence, i.e. forging signatures. (Olusoga & Erichsen, *The Kaiser’s Holocaust*, 127.)

German Colonial Administration introduced.⁷³ Some figures suggest that by 1902 the Herero had managed to retain 46,000 heads of cattle of 100,000 from the 1880s.⁷⁴ In addition, under German settlers, Hereros were victim to rape⁷⁵, prejudiced violence,⁷⁶ and the introduction of corporal punishment.⁷⁷ Furthermore, Africans had to endure a racially biased legal system that often led to no justice and punishment for bearing a false testimony.⁷⁸ This build-up in tension led to an uprising in 1904 under Paramount Chief Samuel Maharero against the dominance of German male settlers, reflected in the Herero War tactics to narrow their attacks to German male settlers.

After a few military blows to German forces and pride, the German Colonial Administration alerted Germany that the Herero were attacking German civilians including women and children in order to stir an urgent response.⁷⁹ Ideas and images of a ‘savage’ race were depicted and conveyed in messages and propaganda art in Germany in order to justify the response that the Kaiser had in mind.⁸⁰ The response was the appointment of a hardened military commander, General von Trotha, who had “forged a reputation for ruthlessness”⁸¹ and the deployment of German troops consisting of 2,000 soldiers to defend Germany’s colony and settlers.⁸² As the Kaiser’s preferred choice, von Trotha was permitted

⁷³ This included fining natives for grazing their cattle on German land, and most often through confiscation of the cattle.

⁷⁴ Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 72.

⁷⁵ There were only 19 white women for every 100 white male settlers.

(Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 89.)

⁷⁶ “The result [of racism] was a wave of violence and abuse... Official records of beatings, rapes and murders committed in the years up to 1904 speak of a colony slipping out of control... The most commonly reported incidents were beatings. Many of these attacks were viewed by their perpetrators as semi-official acts of corporal punishment.”

(Olusoga & Erichsen, *The Kaiser’s Holocaust*, 117.)

⁷⁷ Olusoga & Erichsen, *The Kaiser’s Holocaust*, 116.

⁷⁸ Ibid, 119.

⁷⁹ Ibid, 130.

⁸⁰ Ibid, 130-131.

⁸¹ General von Trotha had garnered this reputation in German East Africa (Tanzania) colonial war – and arguably genocide – and in China after the Boxer Rebellion through mass executions and hangings as well as burning down villages with occupants still inside at times and clashed in views with the German East Africa Governor. The same would happen in Namibia, where Governor Leutwein resigned after the extreme response that was to befall on the Herero community, believing that the Herero community may still have a place in the colony.

(Olusoga & Erichsen, *The Kaiser’s Holocaust*, 135.)

⁸² Olusoga & Erichsen, *The Kaiser’s Holocaust*, 134.

supreme command in both military and civil affairs, and urged that the war end “by fair means or foul.”⁸³ Furthermore, the Colonial Department financed the war with 585 million marks, which was at the general’s disposal.⁸⁴ Some Herero chiefs, including Maherero, believed that peace negotiations were possible after they had demonstrated their strength, and despite recommendations by some of von Trotha’s officers to enter peace negotiations, the general responded with a powerful military attack on approximately 22,000 Herero soldiers and civilians, at the Waterberg Mountain on 11 August 1904, known as the Ohamakari battle.

The Ohamakari battle resulted in a devastating blow to the Herero population. A few thousands of Herero that managed to escape were forced to seek refuge in the Omaheke Desert, where many perished of hunger and dehydration. Whilst German troops hunted and killed survivors, von Trotha ordered that no surrenders be accepted. This was officiated six weeks after Ohamakari, on 3 October 1904, when von Trotha read out an extermination order outlining that the Hereros were no longer welcomed in GSWA, ordered to leave the land, and those who remain within German borders “whether found armed or unarmed, with or without cattle, will be shot. I shall not accept any more women and children, I shall drive them back to their people [Omaheke Desert] otherwise I shall order them to be shot. Signed: The Great General of the Mighty Kaiser, von Trotha”.⁸⁵ Whether the Kaiser had ordered this extermination cannot be confirmed, however based on von Trotha’s previous colonial excursions in South East Africa (Tanzania), the crushing of the Boxer Rebellion and his reputation he garnered for ruthless tactics on ‘rebels’, Sarkin argues that the Kaiser expected this conduct to be replicated in Namibia.⁸⁶ Two days after this order, von Trotha wrote to the Chief of the Army General Staff that he “neither can nor will come to terms with these people [Herero] without express orders from His Majesty the Emperor and King, it is essential that all sections of the [Herero] nation be subjected to rather stern treatment.”⁸⁷

⁸³ Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 195.

⁸⁴ Olusoga & Erichsen, *The Kaiser’s Holocaust*, 142.

⁸⁵ Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 110.

⁸⁶ *Ibid*, 194.

⁸⁷ *Ibid*, 195.

Therefore, the Kaiser's passivity to von Trotha's war extermination order arguably highlights that the German leader approved, if not supported it.

What followed was a hunt campaign for *all* Hereros⁸⁸, including twenty to 30,000 Hereros who had remained uninvolved throughout the uprising and were easier targets.⁸⁹ These hunts were at times recorded as 'battles' in Official German History, however had no casualties and deaths of German soldiers.⁹⁰ Given the immense expense of this extermination campaign, and the fear of Germany's reputation being tarnished, the Kaiser was advised in 1905 to allow the surrender of Hereros in hiding and placed them in 'confined areas' – concentration camps – where they would be used as labour to begin mending GSWA's economy.⁹¹ Concentration camps was not a new concept,⁹² and the erection of five main concentration camps permitted soldiers to begin accepting prisoners of war. Thousands of Hereros emerged from hiding, some described by a missionary pastor as resembling skeletons covered in skin. Those in concentration camps were to work and receive payment in food – 500 grams of rice for men, and less for women and children, at times even half the rations.⁹³ Hereros in these camps were subjected to rape, forced labour, mal-nutrition, diseases with no medical attention and extreme climate conditions. The Swakopmund concentration camp estimated that 40 percent of its prisoners died in the first four months and that new prisoner usually did not survive the first ten months of captivity.⁹⁴ Some records suggest that the extent of this suffering was known in the chains of command in Windhoek and Berlin, further signifying that the systematic killing of colonial civilains was state condoned.

⁸⁸ Some soldiers' journals captured their interpretation of the Extermination Order to "shoot, kill, hang. Whatever you liked. Old or young. Men, women, children."

(Olusoga & Erichsen, *The Kaiser's Holocaust*, 152.)+

⁸⁹ Olusoga & Erichsen, *The Kaiser's Holocaust*, 152.

⁹⁰ *Ibid*, 154.

⁹¹ Sarkin, *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 229.

⁹² Concentration camps were used in the Boer War (1899-1902), where the British had forced an estimate of thirty thousand Boers (mostly women and children) and over one hundred thousand black and coloured Africans. Spanish rulers in Cuba (1896) had also made use of concentration camps in response to a revolt. (Olusoga & Erichsen, *The Kaiser's Holocaust*, 160.)

⁹³ *Ibid*, 165.

⁹⁴ *Ibid*, 168.

After realising Germany's intention to fully dominate GSWA, the Nama uprising,⁹⁵ began in early October 1904 under Nama Chief Hendrik Witbooi. The Nama issued a declaration, stating that all German women and children, including men without weapons who chose to leave, be transported to Lüderitz Bay unharmed. In April 1905, von Trotha responded with a declaration: "The Great and mighty German Emperor is prepared to pardon the Hottentot [Nama] people and has ordered that those who surrender voluntarily will be spared...those who refuse to surrender will suffer the same fate suffered by the Herero people."⁹⁶ This has since been acknowledged by Herero and Nama leaders as a second extermination order⁹⁷, and although von Trotha voiced the acceptance of 'surrenders', their acceptance would lead to the systematic killing of the warring Nama clans. After several blows to the rebelling Nama communities and German troops, the surrender of Namas was welcomed and they were permitted to build small settlements with some livestock outside a small German town called Gibeon. Rumours of such treatment spread and large groups of Namas began to surrender at Gibeon in the following weeks, believing that they would not share the same fate as the Herero. Unbeknownst to them, more concentration camps north of Windhoek and along the coast were being erected for the Nama, who were transferred there in early 1906.

The Namas – and some imprisoned Damara and San people⁹⁸ – faced the same treatment of abuse, malnutrition, disease and extremely cold climates along the coast and were "systematically worked to death".⁹⁹ Furthermore, in order to support German physical anthropology and racial science that was becoming increasingly racist in the belief of racial hierarchies,¹⁰⁰ and even condoned colonial

⁹⁵ At the start of the Herero uprising, Maherero had written a letter to Witbooi with the hopes of forming an African anti-colonial alliance against European settlers, however the messenger was intercepted by the Rehoboth Basters leader and never reached Witbooi. When the Nama began their uprising, hopes of an effective anti-colonial alliance were reduced by the military blow at Waterberg. (Olusoga & Erichsen, *The Kaiser's Holocaust*, 174-175.)

⁹⁶ Olusoga & Erichsen, *The Kaiser's Holocaust*, 185.

⁹⁷ The Nama and Ovaherero Traditional Leaders, *Joint Position Paper from the Nama and Ovaherero People on the Issue of Genocide and Reparations*.

⁹⁸ Elke Zuern, 'Memorial politics: challenging the dominant party's narrative in Namibia', *Modern African Studies*, 50, 3 (2012): 503.

⁹⁹ Olusoga & Erichsen, *The Kaiser's Holocaust*, 215.

¹⁰⁰ Dan Stone, 'White men with low moral standards? German anthropology and the Herero genocide', in *Colonialism and Genocide*, ed. A. Dirk Moses and Dan Stone (London: Taylor & Francis Group Ltd, 2007).

behaviour, many hundreds of Herero, Nama, Damara and San skulls were transported to scientists in Germany for ‘scientific’ research.¹⁰¹ Such beliefs in race science and eugenics – the classification of races which required a large data base of human remains – was not limited to Germany and was ‘rife’ in Western Europe since mid-nineteenth century.¹⁰² Furthermore, Herero and Nama land and cattle were seized by the German Colonial Administrator after the Kaiser signed an Imperial Decree (1905) to expropriate all previously owned Herero land and sold tracts of land to German and Afrikaner settlers.¹⁰³ This ‘confiscation order’ was extended to the Nama in 1907.¹⁰⁴ Before the start of the uprising, white settlers owned 338 farms, a figure which increased to 1331 white-owned farms in 1913.¹⁰⁵ In 1907, a policy was enforced, stating that the Herero could no longer own cattle which was a direct attack on their cultural identity.¹⁰⁶

The concentration camps closed in 1908, and the Colonial Administration reported that of the 15,000 Herero and 2,000 Namas in captivity, more than half had died.¹⁰⁷ There have been various estimates around the number of deaths from the wars, the civilian-hunt campaigns and the concentration camps. Approximately 13,000 of 20,000 Nama were alive in Namibia in 1908. Of those who belonged to the clans that revolted and were imprisoned in concentration camps, ten percent survived.¹⁰⁸ Approximately 16,363 of almost 100,000 Herero were alive in 1908, of which 5,373 were children.¹⁰⁹ In total, the Herero people lost almost 80 percent of their entire population, although almost 1,000 Hereros had managed to escape into modern day Botswana after the Ohamakarri battle.¹¹⁰ The survivors’ economic and cultural wealth had been stripped away and many were reduced to wage seekers, having had their

¹⁰¹ In fact, “female prisoners were forced to boil the severed heads of their own people [including of loved ones and relatives] and scrape the flesh, sinews and ligaments off the skulls with shards of broken glass”. (Olusoga & Erichsen, *The Kaiser’s Holocaust*, 224.)

¹⁰² Kössler, *Namibia and Germany: Negotiating the Past*, 274.

¹⁰³ Olusoga & Erichsen, *The Kaiser’s Holocaust*, 193.

¹⁰⁴ Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 189.

¹⁰⁵ *Ibid*, 88.

¹⁰⁶ *Ibid*, 86.

¹⁰⁷ *Ibid*, 141-142.

¹⁰⁸ Olusoga & Erichsen, *The Kaiser’s Holocaust*, 229.

¹⁰⁹ Some of these children were born in the concentration camps, some of which were the result of rape.

(Olusoga & Erichsen & Erichsen, *The Kaiser’s Holocaust*, 230.)

¹¹⁰ Olusoga & Erichsen, *The Kaiser’s Holocaust*, 230.

sense of community and traditions lost.¹¹¹ By 1912 Hereros were legally permitted to own and breed livestock again, however almost ninety percent of all their males were employed in the colonial economy.¹¹² Herero leadership and their people were “labourers, subservient to the military, farmers, mine-owners and railway authorities who sought to control their every move.”¹¹³ The Herero and Nama endured all these events before the occupation of Namibia by South Africa and the introduction of Apartheid in 1948.

The Herero/Nama Genocide and land confiscation continue to impact the affected communities’ political positions, socio-economic status and cultural identity in present day Namibia. For example, the drastic reduction in population size has placed some of the Herero and Nama leaders at a political disadvantage in a democratic post-independent Namibia. Sarkin notes that there have been some estimations that suggest that the Herero would have been four or five times larger in population count if the genocide had not occurred.¹¹⁴ Uazuva Kaumbi, who is the official spokesperson for the OTA, highlights that “numbers and democracy means power,” and wonders what the Herero nation could have become had the genocide not taken place, “maybe it would have been SWAPO and a different party, competing... Now we are a very small minority, politically more or less insignificant.”¹¹⁵ This, as will be demonstrated, has also affected the political position of the OTA under Riruako and his successor Rukoro to negotiate reparations. Linked to the reduction of population size is the loss of land, which was a direct result of the genocide. The loss of ancestral land continue to impact the cultural identity and wealth of the Herero. Much of the seized land was sold to white farmers a century ago, who continue to benefit from this injustice. Sarkin (2009) highlights that white Namibians account for approximately one percent of the population, however own 4,128 farms of 6,300 that are on commercial

¹¹¹ Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 88.

¹¹² *Ibid.*, 86-87.

¹¹³ Jan-Bart Gewald, *Herero Heroes - A Socio-Political History of the Herero of Namibia 1890 – 1923*, (Ohio University Press, 1999), 223.

¹¹⁴ Sarkin, *Colonial Germany Genocide and Reparations Claims in the 21st Century: The Socio-Legal Contexts of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908*, 10.

¹¹⁵ Interview with Uazuva Kaumbi, September 4, 2018.

land.¹¹⁶ Furthermore, this amount constitutes about 70 percent of the most productive agricultural land.¹¹⁷ Not only is this a reflection and a perpetuation of the economic inequalities in Namibia, but constitutes a great symbolic loss for the Herero. Kaumbi speaks of Herero places of worship, one of which is Ohamakari, “which was the most symbolic place...that farm is owned by a German guy...we need to ask for permission from this guy to go visit our ancestors.”¹¹⁸ Therefore, the injustices of the genocide continue to be felt by the Herero groups, furthermore, continues to reinforce their victimisation.

2.3. Politics of Acknowledging the Herero/Nama Genocide

Woolford and Wolejszo demonstrate that although Jewish, Roma and Sinti groups experienced similar genocidal state crimes of Nazi Germany, the Jewish Holocaust survivors had a more opportune political opening, social condition and discursive opening. Firstly, an educated Jewish diaspora had access to resources to lobby for and influence Western governments to support reparations claims before WWII ended.¹¹⁹ Secondly, the defeat of Nazi Germany placed the perpetrator in a place of international condemnation and prosecuted in the Nuremberg Trial.¹²⁰ This further assisted in establishing a discursive narrative of war crimes that were judged as guilty and inhumane. In addition, the authors speculate that the Republic of Germany was in a position to actively separate itself from its Nazi past and be accepted back by Western powers. Therefore acknowledging the Jewish Holocaust, which had mobilised resonating support, would be a ‘symbolic step’ to re-joining the ‘family’ of Western nations.¹²¹ The Roma and Sinti on the other hand did not reach the same level of acknowledgement, and therefore redress, following WWII because they lacked the political resources and the international networks to produce wider resonance for their cause. Furthermore, the Republic of Germany argued

¹¹⁶ Sarkin, *Colonial Germany Genocide and Reparations Claims in the 21st Century: The Socio-Legal Contexts of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908*, 51.

¹¹⁷ Ibid, 51.

¹¹⁸ Interview with Uazuva Kaumbi, September 4, 2018.

¹¹⁹ Woolford & Wolejszo, ‘Collecting on Moral Debts: Reparations for the Holocaust and Pořajmos,’ 884.

¹²⁰ Ibid, 890.

¹²¹ Ibid, 891.

that they were persecuted for criminal, rather than racial reasons.¹²² Therefore, no political benefits was likely to come to Germany from acknowledging and addressing Roma and Sinti atrocities, which would have had to operate solely on a moral level.¹²³ Consequently, the authors argue that acknowledging genocides that warrant redress is a political process which are determined by social contexts, resources and a supportive international audience.

With this analogy in mind, the recognition of the Herero/Nama genocide can be situated into a political and discursive colonial context. The events of 1904-1908 have proven to be a state sanctioned genocide even though the term had not been defined as a unique crime until 1944 onwards. However, Sarkin (2009) argues that Germany's response to target all Hereros – men, women, children and the elder – including groups that had not rebelled, and the rebelling Nama clans, was an international crime at the beginning of the twentieth century.¹²⁴ Germany's response exceeded what was condoned as fair war tactics in the Hague Conventions, which similar to Lemkin's view outlined that wars were between armies and not civilians and that prisoners of war remain unharmed. The events of 1904-1908 has been previously referred to as the Herero War, however considering the uneven blows to the involved populations and the exponential response of the Kaiser, one can hardly defend the hunting of famished civilians and their systematic killings after their surrender simply as 'war'. The politics of acknowledging this genocide will be broken down into three audiences: the international community (UN); the Hereros and Namas (and other Namibian groups, including German descendants); and Germany.

Formal reparations requests and demands for acknowledgement to Germany that began post-1990 did not appear in a vacuum since the genocide. Woolford and Wolejszo explain that in contexts of intense

¹²² Woolford & Wolejszo, 'Collecting on Moral Debts: Reparations for the Holocaust and Pořajmos,' 880.

¹²³ Ibid, 892.

¹²⁴ Sarkin, *Colonial Germany Genocide and Reparations Claims in the 21st Century: The Socio-Legal Contexts of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908*, 88.

oppressions where resources and audiences are not easily accessible, “one must be careful not to mistake the absence of exhibited agency for the absence of agency.”¹²⁵ Under the social conditions of colonialism under Germany and later South Africa, the likeliness of the Herero leadership reaching an audience with which their narrative could resonate with were improbable. The authors argue against blaming victims for failure to press claims, rather “in times of intense oppression, these resources of resistance may exist only in embryonic or latent form.”¹²⁶ Although ‘reparations’ as a legal and moral obligation was not articulated by the victim group closely following the end of the genocide,¹²⁷ the Herero chiefs were vocal around restoration of land and the right to govern themselves as a nation, applicable to their settler colonial context. Therefore, although reparations became a legal demand post-independence, these earlier attempts for acknowledgement and restoration are the foundation of which the reparation movement under the OTA is built on.

The lengthy timeframe for the international community to acknowledge the Herero/Nama Genocide takes place in a context where colonialism continued to be an international norm and decolonisation, that began post 1945, came with little ‘redress’. Furthermore, Namibia was one of the last African countries to receive independence in 1990. Therefore, any discursive and political opening for articulation of grievances and its translations into policies of redress/restoration were miniscule. Seven years after the end of the genocide, 1915, the British South Africans defeated the German army in Namibia during WWI in a successful Campaign for GSWA.¹²⁸ British officers began assembling factual material around the treatment of ‘colonial subjects’ under Imperial German in an attempt to strengthen the British Empire’s claims to German colonies.¹²⁹ Information was collected from the German archives in Namibia, and detailed statements taken under oath by surviving Namibians of the horrific treatment of war, labour camps and its aftermaths were taken in the hopes of redress and return

¹²⁵ Woolford & Wolejszo, ‘Collecting on Moral Debts: Reparations for the Holocaust and Pořajmos,’ 874.

¹²⁶ Ibid.

¹²⁷ Considering the Jewish Holocaust Reparations Claims which paved the way for other victims of genocide took place decades later.

¹²⁸ Jan-Bart Gewald, ‘Herero genocide in the twentieth century: Politics and Memory,’ *African dynamics* (2003): 286.

¹²⁹ Ibid.

of land, which according to Gewalt, the British had promised in 1914 in order to lure Herero soldiers into assisting with the invasion in 1915.¹³⁰ This resulted in the publication of the 1918 *Report on the Natives of South West Africa and their Treatment by Germany*, known as the ‘Blue Book’. The Blue Book concluded that Germany was unfit to govern colonies due to severe treatment of the ‘natives’, showing that this treatment was condemned internationally.

This infamous Blue Book assisted in the discursive opening by capturing the narratives of the victim groups, however in relation to settler colonial politics, this was short lived. Germany’s rather unsuccessful retaliation was the ‘White Book’, a detailed account of British activities in their colonies. Gewalt questions the sincerity behind these books and whether the dignity and lives of the colonial subjects were the core concern, or most likely, the books were political ploys against one another in a world war setting.¹³¹ Representatives of the German settler party, the *Deutsche Bund in Südestafrika*, campaigned for the abolition of the Blue Book, claiming that it was merely a ‘war instrument’ and “consciously denied the recorded role of German settlers and soldiers in the Herero genocide.”¹³² With the abolition of the Blue Book (1926) by South African authorities, the discursive opening for the Herero was not only closed, but validated the German narrative. In order to solidify white settler unity in Namibia – German, British and Afrikaners – destroying the negative image of Germany and its settlers would be in the interest for everyone – except African groups.¹³³¹³⁴ Gewalt concludes that the losses and inhumane treatment of the Herero and Nama during the colonial genocide were “dismissed and forgotten in the interests of white cooperation.”¹³⁵ As a result, the lack of hope for their narrative acknowledgement is reflected in relative silence of the Herero following 1926.¹³⁶

¹³⁰ Jan-Bart Gewalt, *Herero Heroes - A Socio-Political History of the Herero of Namibia 1890 – 1923*, (Ohio University Press), 1999, 231.

¹³¹ Gewalt, ‘Herero genocide in the twentieth century: Politics and Memory,’ 288.

¹³² *Ibid*, 288-289.

¹³³ Olusoga & Erichsen, *The Kaiser’s Holocaust*, 346-347.

¹³⁴ Gewalt, ‘Herero genocide in the twentieth century: Politics and Memory,’ 288.

¹³⁵ *Ibid*, 289.

¹³⁶ *Ibid*.

Similarly, the lack of political opening for restoration is easily noted in the context of settler colonialism. The Herero began formally requesting restoration for losses as early as 1919, a year after the *Blue Book* publication, when hopes for land restoration were ripe. The Herero leaders submitted a letter to the British Governor General of South Africa requesting for the return of some land after the defeat of Germany, so that “we [the Herero] can live as a nation and where our families can grow into a nation.”¹³⁷ This request was rejected under the political context of settler colonialism, so that the British, Afrikaners and Germans could continue to inhabit prime Namibian land. The Hereros inhabited less arable reserves, which were also scattered, and the Herero as a nation could not be restored. Therefore, hopes and attempts for restoration were evident, however the politics of recognition in a context of white colonialism in Namibia – and the continent – offered little persuasion for Germany or German settlers to officially acknowledge this past, let alone restore it. This politics of recognition was further reinforced by colonialism on a global scale in which most Western powers were guilty of colonial atrocities.

A political and discursive opening was ignored shortly after the establishment of the UN in 1945, a period that spoke of Universal Rights and the conceptualisation of ‘genocide’. During Lemkin’s campaign for the Genocide Convention at the UN, the Herero Chief’s Council (HCC) under Paramount Chief Hosea Kutako began petitioning at the UN to oppose the incorporation of Namibia into South Africa at the UN in 1946. This was done through Reverend Michael Scott, a British anti-colonial activist. Scott’s personal engagement with the Herero leaders in 1947 and the events of the genocide shaped his understanding of inequalities under colonialism in Namibia and its link to the genocide – “a people driven off their land, slaughtered, banished to live in barren homelands, and *still* with no rights.”¹³⁸ Scott was granted a formal hearing at the UN in 1949 to oppose the incorporation into South Africa, and during this he re-introduced the Herero Genocide¹³⁹ to the world, highlighting its persisting consequences on the affected communities. This occurred a year after the 1948 Genocide Convention,

¹³⁷ Harring, ‘German Reparations to the Herero Nation: An Assertion of the Herero Nationhood in the path of Namibian Development,’ 412.

¹³⁸ Gewald, ‘Herero genocide in the twentieth century: Politics and Memory’, 291

¹³⁹ There is no mention of the Nama at this stage.

with the recent memory of the Holocaust. Scott made an explicit link between Nazi's atrocities and the colonial atrocities of 1904-1908, highlighting aspects of genocide.¹⁴⁰ Furthermore, he noted that inequalities continued under white South Africans, who had lured natives into their WWI Campaign for GSWA under false promises of land restoration that was later denied in favour of white settler unity.¹⁴¹

As noted before, Lemkin acknowledged events in the Herero War as genocide. Not only did the lawyer have a historical and intellectual interest in the Herero Genocide, Lemkin had an active interest before he began his *History of Genocide*. Reverend Scott had written to Lemkin on 9 June 1948, a few months before the Genocide Convention was adopted, where "Scott stated that 'I informed the [Herero] chiefs how very good you had been in helping me get their opinions made known [among United Nations delegates] and they were very grateful indeed'".¹⁴² In light of the link between colonialism and such atrocities, Lemkin was an advocate for the process of decolonisation. During the campaign for the Genocide Convention, the Herero Genocide was one of the atrocities that informed Lemkin's desire to have colonial genocides acknowledged by the international community. The UN, however, did not acknowledge the Herero Genocide during this time, given the anxieties around colonialism and colonial genocide when establishing a convention that was so informed by the Jewish Holocaust. Olusoga and Erichsen argue that while many German scholars and Nazi leaders during WWII linked expansion into East Europe and its war of annihilation on 'lesser' populations to earlier colonial episodes, other European powers intentionally overlooked this colonial link when condemning the Holocaust as a result of 'colonial amnesia' which the authors have defined as "Europe's propensity for ignoring or forgetting the colonial past."¹⁴³ Although statements began to shift from 'Herero War' to the 'Herero massacre' during the start of the campaign for Namibian independence, the UN only acknowledged this massacre as a genocide in 1985 in the UN *Whitaker Report*.¹⁴⁴

¹⁴⁰ Gewald, 'Herero genocide in the twentieth century: Politics and Memory,' 291.

¹⁴¹ Ibid, 291-292.

¹⁴² Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 250.

¹⁴³ Olusoga & Erichsen, *The Kaiser's Holocaust*, 344.

¹⁴⁴ Stempel, 'Germany is sued in U.S. over early-1900s Namibia Slaughter.'

Within this historical context tainted by Western colonial power, Germany has taken a lengthier timeframe to officially acknowledge the events of 1904-1908 as genocide. As will be explored in chapter four, as a defensive response to absolve Germany of legal responsibilities to owe reparations, German foreign policy previously avoided the term 'genocide'. In 1989, Germany passed a resolution which acknowledged a 'special historical responsibility' to Namibia. However, Henning Melber (2017) points out that there was no mention of 'genocide' even though the UN acknowledged the Herero Genocide four years prior. Furthermore, the resolution made reference to the German-speaking community, which led Melber to consider that "German policy seemed more concerned with acts of the colonial settler perpetrators, than the fate of the victims or their descendants."¹⁴⁵ In June 2004, the German Parliament adopted the resolution 'Remembering the victims of the colonial war in the then German South West Africa'.¹⁴⁶ This was most likely a response to calls for reparations, which forced Germany's focus to shift to the 'victims of the colonial war'. However, Manfred Hinz highlights that this resolution completely avoided the terms 'genocide'. Hinz further notes that German Foreign Affairs' policy of 2004 cautioned that any 'compensation-relevant statement' should be avoided.¹⁴⁷

In 2015, Germany created a stir when it officially acknowledged the Armenian Genocide of 1915 under the Ottoman Empire. The Turkish government, being held accountable by Armenian groups, were enraged by the hypocrisy and selectivity of the German government who had not yet acknowledged their own colonial genocide.¹⁴⁸ The German media also questioned the hypocrisy of the German government. Germany officially acknowledged the genocide in German Chancellor Angela Merkel's speech in 2015 that admitted that what happened to the Herero constituted a genocide.¹⁴⁹ This was

¹⁴⁵ Henning Melber, 'Uncovering the 20th century's first genocide,' *New African*, Issue 570, (2017), 28.

¹⁴⁶ Manfred O. Hinz, 'More than one hundred years after Ohamakari: How to deal with genocide committed by Imperial Germany,' *Namibia Law Journal* Volume 4, Issue 2 (2012): 113.

¹⁴⁷ *Ibid.*

¹⁴⁸ Melber, 'Uncovering the 20th century's first genocide,' 29.

¹⁴⁹ Swart, 'Herero make new claim for genocide reparations against Germany.'

translated into official policy the following year.¹⁵⁰ This statement was overdue, considering that the UN classified the Herero massacre as genocide 30 years before.¹⁵¹ The political interactions that contributed to Germany's officially acknowledged genocide will be addressed in chapter four in greater detail.

What this section has demonstrated is that defining genocide, and therefore officially acknowledging its victims, is a political process that fits into international and local historical contexts. Given the central position of the Jewish Holocaust in the formation of the international understanding of genocide – the prototypical genocide – other genocides have not received the same level of acknowledgement of victimhood and therefore their need for redress has been overshadowed. Each genocide is unique and contextual, furthermore any genocide, given its nature, indicates a devastating loss to a community including significant traumas and economic damages for survivors and their descendants should there be no form of redress. The political and discursive openings under contexts of unrelenting colonialism under Germany (until 1915) and South Africa (until 1990), shaped the drawn-out timeframe for affected communities to receive official acknowledgement. One reason that can explain this, is that the international community were amidst establishing decolonisation as an international norm over the course of the second half of the twentieth century. Namibia was one of the last African countries to receive independence, after which descendants of genocide immediately exercised their newly established political freedom to demand justice in the form of reparations. Kaumbi highlights that a vital process of reparations is acknowledgement, where Germany “admit[s] that it committed genocide and not try to sugar coat it with words like ‘atrocities’.”¹⁵²

¹⁵⁰ Kössler & Melber, ‘Namibian genocide victims’ remains are home. But Germany still has work to do.’

¹⁵¹ Stempel, ‘Germany is sued in U.S. over early-1900s Namibia Slaughter.’

¹⁵² Interview with Uazuva Kaumbi, September 4, 2018.

2.4. Genocide Shapes Herero Nationalism, Liberation and Restoration

As mentioned, demands for reparations post-independence did not appear in a vacuum since the genocide. Although Kutako's campaign at the UN that began in the late 1940s was not for 'reparations'¹⁵³, the idea of restoration for the Herero and other Namibians was tied to the idea of independence, given that this context encompassed the first wave of decolonisation. Kaumbi ties in Herero Nationalism in which Herero chiefs "did not use...words like reparations, they were talking about getting land and restoring our dignity."¹⁵⁴ Kaumbi highlights that Herero Nationalism following the genocide, shaped the way in which the Herero leaders attempted to restore the Herero nation over the last century, including the earliest campaigns at the UN under Kutako that ultimately groomed Sam Nujoma, Namibia's first democratic president.¹⁵⁵ The Herero Chiefs Council (HCC) under Kutako was formed in 1945 and were the first to campaign at the UN through Reverend Scott. Many Namibians, including non-Hereros, shared Kutako's vision to oppose foreign rule and actively petitioned at the UN, such as Mburumba Kerina¹⁵⁶ (1956), on behalf of the HCC; Hans Beukes and Jariretundu Kozonwere (1959) sent to New York by the HCC with the intention of "becoming representatives of the future independent Namibia at the UN"¹⁵⁷; Andimba Toivo ya Toivo (1958) and Nujoma (1960), both Owambo; and Nama leader Hendrik Samuel Witbooi and nephew Hendrik Witbooi (1958).¹⁵⁸ During this time, these figures were more-or-less united under the idea of being separated from the Union Government in South Africa and its Apartheid policies that were introduced in 1948.

¹⁵³ Considering that reparations claims for individuals was not a norm, with the exception of the Jewish Holocaust Reparations Claims.

¹⁵⁴ Interview with Uazuva Kaumbi, September 4, 2018.

¹⁵⁵ Ibid.

¹⁵⁶ Kerina was a Herero figure who is known for naming Namibia after the Namib Desert, a defiance towards South Africa's intention to incorporate 'SWA' into South Africa and as an expression of independence so that the people of 'SWA' would begin identifying themselves as independent from colonialism.

¹⁵⁷ Dennis U. Zaire, 'Namibia and the United Nations until 1990,' in *Namibia's Foreign Relations: Historic contexts, current dimensions, and perspectives for the 21st Century*, ed. Anton Bösl, André du Pisani and Dennis U. Zaire (Konrad-Adenauer-Stiftung, 2014), 40.

¹⁵⁸ Zaire, 'Namibia and the United Nations until 1990', 40-41.

However, the creation of several liberation parties contributed to political tension concerning competitive ambitions to rule an independent Namibia. South West Africa National Union (SWANU) was founded in 1959, dominated by Herero ideologies of which loss of land during the Herero Genocide became a major mobilising factor to campaign for independence.¹⁵⁹ SWAPO was founded in 1960 by Sam Nujoma, dominated by Owambo ideologies stemming from treatment of contract labourers under the South African regime. The HCC broke away from SWANU, where Kutako, Clemens Kapuuu and Mburumba Kerina founded the National Unity Democratic Organisation (NUDO) in 1964, which joined the Democratic Turnhalle Alliance (DTA; an alliance of groups that could collectively compete against SWAPO) in the 1970s.¹⁶⁰ Kapuuu became Kutako's successor as Paramount Chief in the OTA, followed by Riruako, who was president of the DTA until he led NUDO out of DTA in 2004.¹⁶¹ Riruako would be the first to formally request reparations from Germany. Although the genocide resonated with all parties' nationalism, it was central to SWANU and NUDO's, given their strong roots in Herero Nationalism.

While independence was a common goal for the liberation parties, politics to gain recognition as Namibia's sole representative caused tension amongst the parties.¹⁶²¹⁶³ SWAPO was acknowledged as the sole authentic and representative of Namibia by the Organisation of African Unity (OAU) in 1975

¹⁵⁹ Gewalt, 'Herero genocide in the twentieth century: Politics and memory', 292.

¹⁶⁰ Sarkin, *Colonial Genocide and Reparations Claims in the 21st Century: The Socio-Legal Context of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908*, 52.

¹⁶¹ Ibid.

¹⁶² SWAPO's diplomatic wing was more successful than SWANU's, creating more offices around the globe, establishing an education front for Namibians in exile, and eventually establishing a military wing, the People's Liberation Army for Namibia (PLAN) in 1966 which began engaging in war in 1968. Furthermore, Nujoma had strong ties with many renowned African leaders who assisted SWAPO's exile networks, whereas SWANU's President Kozonguizi condemned African leaders of acting as imperial puppets in 1966 at the Afro-Asian-Latin American People's Solidarity Conference. This resulted in the OAU (Organisation of African Unity) retracting its recognition of SWANU. By 1975 the OAU Council of Ministers passed a resolution that recognised SWAPO as the sole representative of the Namibian people. The following year, the UN General Assembly officially recognised SWAPO as the sole and authentic representative of the Namibian people.

(Chris Saunders, 'Namibian diplomacy before Independence,' in *Namibia's Foreign Relations: Historic contexts, current dimensions, and perspectives for the 21st Century*, ed. Anton Bösl, André du Pisani and Dennis U Zaire (Konrad-Adenauer-Stiftung, 2014)).

¹⁶³ Sarkin, *Colonial Genocide and Reparations Claims in the 21st Century: The Socio-Legal Context of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908*, 52.

and by the UN in 1976.¹⁶⁴ Gewald argues that the different parties in the liberation movement used “the historical recollections of the Herero-German War as a political instrument to support and further their own ends.”¹⁶⁵ The author suggests that SWAPO used these events as propaganda in order to further their cause for liberation, and that after independence, SWAPO “tried to ensure that Herero claims for reparation would remain muted or couched within the demands of the nation-state which they controlled.”¹⁶⁶ The author argues that rivalry in the liberation struggle ran along tribal lines; SWAPO was dominated by the Owambo, and SWANU by the Herero.¹⁶⁷ It is worth noting that SWANU and SWAPO were not restricted to tribal lines and that SWAPO has high ranking Herero, Nama and Damara leaders, however majority of the party membership and leadership are Owambo, reflective of the demographics in Namibia. Furthermore, SWAPO’s campaign was not solely based on genocide, and was based on the treatment under Apartheid. While there may have been some differences amongst political parties, Kaumbi highlights that the OTA had hoped that “with independence...this cause [restoration since the genocide] will now be advanced as a sovereign state, unfortunately that did not happen.”¹⁶⁸

In 1990, Namibia received independence and the democratically elected ruling party, SWAPO, adopted a ‘Policy of National Reconciliation’, which Godwin Kornes equates to a silent reconciliation.¹⁶⁹ This meant little to no official national exploration of past injustices, which resulted in lack of avenues for dialogue on justice and/or consolation for these atrocities, including the genocide. White Namibians were permitted to keep their land and Herero land restoration claims were “merged with a broad-based

¹⁶⁴ Saunders, “Namibian diplomacy before Independence,” 31.

¹⁶⁵ Gewald, ‘Herero genocide in the twentieth century: Politics and memory’, 281.

¹⁶⁶ Ibid, 296.

¹⁶⁷ Ibid.

¹⁶⁸ Interview with Uazuva Kaumbi, September 4, 2018.

¹⁶⁹ This policy was partly to bury SWAPO’s past – the torturing and disappearances of Namibians under SWAPO’s care in exile during the Spy Drama.

(Godwin Kornes. ‘Negotiating ‘silent reconciliation’: The long struggle for transitional justice in Namibia,’ *Arbeitspapiere des Instituts für Ethnologie und Afrikastudien der Johannes Gutenberg-Universität Mainz* (Working Papers of the Department of Anthropology and African Studies of the Johannes Gutenberg University Mainz) Volume 141, (2013): 6.)

need for land reform...and must be asserted against a Namibian government, not a colonial state.”¹⁷⁰ Furthermore, these claims must be processed alongside other claims and demands for land asserted by other indigenous groups. In addition, requests for symbolic gestures, such as the official and national memorialisation that captures the narratives of genocide in Namibian history is now placed under the initiatives of the Namibian government. However, in terms of the responsibility to repair – morally and legally – the victim groups have placed this obligation under the German government, the legal successor of Imperial Germany, who funded and deployed a German army to exterminate the Herero and Nama a century ago.

3. Reparative Justice and Politics of Reparations Claims

3.1. Reparative Justice Theory Overview

This section addresses the topic of reparations, its various forms and how Reparative Justice fits into larger debates around justice and reconciliation, with specific connections to the reparation movement in Namibia. An injustice is an immoral act that leads to deprivations and trauma of individuals and groups. Justice entails fairness and equity, and are the processes to restore equity to victims of an injustice, and the attempts to hold the perpetrators of the injustice accountable. Reparations is one pillar of justice, and is a moral and legal responsibility of the perpetrator after an injustice has occurred. It is a term and practice that is embedded in common and international law as *an equitable principle* where the perpetrator and beneficiary of an injustice and ill-gotten gain should make restitution, as an act of contrition and good will, with the aim of restoring the victim to some part of their previous lives.¹⁷¹ Given the endless history of mass atrocities, international law has evolved to govern state relations, therefore reparations was first conceived as payments between states after international conflict.¹⁷² This however often involved Western state relationships with one another, and were therefore the recipients

¹⁷⁰ Haring, “German Reparations to the Herero Nation: An Assertion of the Herero Nationhood in the path of Namibian Development”, 412.

¹⁷¹ Haring, ‘German Reparations to the Herero Nation: An Assertion of the Herero Nationhood in the path of Namibian Development’, 404-405.

¹⁷² Peté & du Plessis, ‘Reparations for Gross Violations of Human Rights in Context,’ 11.

of reparations after winning a war, also known as Victor's Justice. This meant that reparations "had no particular moral connotation, and payments were limited by the limited nature of the preceding war."¹⁷³ However, Sarkin argues that provisions for individual reparation have existed in international law at the time in the 1907 Hague Convention to civilians for unfair damages suffered during wartime.¹⁷⁴ Nonetheless, some scholars have argued that individual rights for reparations against a state were not fully recognised in international law until post-WWII, at the Paris Reparations Conference in 1945 where stateless victims of Nazi atrocities were recognised as eligible for compensation from Germany.¹⁷⁵

The years following 1945 were pivotal for the evolution of universal Human Rights with the creation of the UN (1945), the UN Charter (1945) and the Universal Declaration of Human Rights (1948) in which "universal respect for, and observance of human rights and fundamental freedoms for all [was recognised] without distinction as to race, sex, language or religion"¹⁷⁶ Furthermore, this refers to a political opening for non-state actors, such as individuals, corporations and other entities, to claim reparations from states. More recently, policies on reparations have been outlined and adopted in the *UN 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* (UN Basic Principles) in 2005 by the UN General Assembly, and the International Criminal Court's (ICC) Rome Statute in 1998, obliging all member-states to respect Human Rights through the practice of reparations when such rights have been violated.¹⁷⁷ While reparations is a legal obligation, reparations has evolved beyond state-to-state relations and has included individual rights which can be pursued through three main approaches: truth seeking process; criminal justice; and strategic litigation. As will be discussed, the OGF/NGTC are claiming reparations through strategic litigation in a class

¹⁷³ Buxbaum, 'A Legal History of International Reparations,' 319.

¹⁷⁴ Sarkin, *Colonial Germany Genocide and Reparations Claims in the 21st Century: The Socio-Legal Contexts of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908*, 17.

¹⁷⁵ Peté & du Plessis, 'Reparations for Gross Violations of Human Rights in Context,' 11.

¹⁷⁶ Ibid, 12.

¹⁷⁷ Sarkin, *Colonial Germany Genocide and Reparations Claims in the 21st Century: The Socio-Legal Contexts of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908*, 144.

action lawsuit, and the Namibian government has opted for political a state-to-state approach, however with the absence of Victor's Justice and have opened political dialogue.

Reparative Justice Theory falls under *Restorative Justice* and *Corrective Justice*, both approaches having underlying similarities. The former is an approach that prioritises the needs of the victim over the punishment of the perpetrator.¹⁷⁸ This approach warrants that the perpetrator is fully aware of the harm they have caused, furthermore, that the perpetrator is aware of their obligation to repair damages through a combination, if not all of the following; restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition. Therefore a meeting between victim and perpetrator should be facilitated in a safe space where the offenders account for their actions and victims describe the material, physical and psychological harm that the offender's actions inflicted. Most importantly, "all parties are encouraged to decide upon a mutually agreeable form and amount of reparation – usually including an apology".¹⁷⁹ Corrective Justice on the other hand is an approach that believes that "liability rectifies the injustice inflicted by one person on another".¹⁸⁰ Theories on Corrective Justice date back to Aristotle, who argued that an injustice should be corrected through the restoration of what was unlawfully taken from a victim as a remedy to achieve equality.¹⁸¹ Bernard R. Boxill (1979) has identified two forms of Corrective Justice: *compensation* and *reparation*.¹⁸² Although both usually entail the transferal of resources to the victims, compensatory justice does not necessarily entail that it is the perpetrator who pays compensation, whereas reparations under Corrective Justice obligates the perpetrator to pay compensation and make amends.

¹⁷⁸ Johnstone, *Restorative Justice: Ideas, Values, Debates*, 1.

¹⁷⁹ Ibid.

¹⁸⁰ Ernest J. Weinrib, 'Corrective Justice in a Nutshell,' *The University of Toronto Law Journal* Volume 52, No. 4 (2002): 349.

¹⁸¹ Ibid.

¹⁸² Khatchadourian, 'Compensation and Reparations as Forms of Compensatory Justice,' 148.

Boxill stresses that reparations is greater than the transferal of resources from ‘injurer’ to victim, and is only completed with the acknowledgement by the injurer of his/her unlawful act.¹⁸³ Without this acknowledgement, the perpetrator continues to insult the dignity and humanity of the victims and therefore the transfer of resources alone does not meet the criteria of reparations.¹⁸⁴ A system of reparations is a public statement that “forces injurers to recognize, acknowledge, and honor their victim’s rights”¹⁸⁵. Therefore, ideally reparations should be multifaceted and often should involve a logical process of acknowledgement, apology and material and symbolic transferrals that leads to the relative satisfaction of and relief to the victim. Needless to say, listening to the victim is vital to achieve this satisfaction. Not all reparation programmes are the same, as the needs of victims vary in different contexts and each programmes should look at what would bring justice and satisfaction to the respective victims.¹⁸⁶

3.2. Reparative Justice Practices: Material and Symbolic Reparations

Reparations may come in the form of individual and collective reparations, of which this case study falls in line with collective, and may come in the form of either or both material and symbolic reparations. Material reparations refers to transferral of resources from perpetrator to the victim as a form of compensation for economic losses, traumatic grievances or can be the restitution of stolen property.¹⁸⁷ Material reparations is not limited to monetary compensation and may include scholarships, development projects, infrastructure, etc. Essentially, it is a form of reparations that is targeted at the socio-economic upliftment of a victim group. Although material reparations can never make up for the losses and damages suffered, such as the loss of lives and trauma – including intergenerational trauma – material reparations should aim to restore the social and economic status of the victim group’s wellbeing. Symbolic reparations are objects, gestures and proceedings contributing to the intangible healing and can provide closure to the victims whilst serving to discontinue the ‘othering’ that may have

¹⁸³ Khatchadourian, ‘Compensation and Reparations as Forms of Compensatory Justice,’ 148.

¹⁸⁴ Ibid, 149.

¹⁸⁵ Ibid, 155.

¹⁸⁶ Pablo de Greiff, ‘Justice and Reparations,’ in *The Handbook of Reparation*, ed. Pablo de Greiff (New York: Oxford University Press for the International Court for Transitional Justice, 2006), 455.

¹⁸⁷ Ibid, 452.

led to their initial victimisation.¹⁸⁸ These may include monuments, museums, renaming public spaces, transforming sites of conflict into sites of memories, and commemorative events, formal apologies, establishing narratives of the victims, returning bodily remains, etc.¹⁸⁹¹⁹⁰ Brandon Hamber attaches a psychological importance to symbolic reparations as symbolism verifies the victims' place in society and can "signal whether there is social space for their grief, anger and feelings of injustice."¹⁹¹ Hamber highlights the benefit of reparations, which is that granting reparations may be an expression of guilt and good will,¹⁹² which can assist in the reconciliation between perpetrator and victim. Therefore, the symbolic recognition and acceptance of the responsibility by the perpetrator is necessary for the deliverance and acceptance of material reparations, and for its perception to be understood as 'repairing' rather than 'opportunism' of the victim group.

Apologies as a form of reparations carries great symbolic significance if done remorsefully and can be central to reconciliation. Although victims often seek apologies from their perpetrators, this is not often the only form of reparation they seek, however it is one that should accompany the other forms.¹⁹³ In the UN's *Basic Principles* (2005), apologies is described as a form of 'satisfaction and guarantee of non-repetition'. Furthermore, the UN guidelines encourage that apologies be public and should constitute acknowledgement and accept responsibility.¹⁹⁴ An apology can act a symbolic turning point after the injustice and the "choice of words, the tone of delivery, and the time and place in which the apology is made all contribute to the way the apology meets or falls short of its intentions and expectations."¹⁹⁵ Rhoda E. Howard-Hassmann and Mark Gibney (2004) suggest that international politics is transforming in the 'Age of Apology', where there is a universal recognition that societies

¹⁸⁸ Brown, 'Commemoration as Symbolic Reparation: New Narratives or Spaces of Conflict?' 275.

¹⁸⁹ Ibid.

¹⁹⁰ Brandon Hamber, 'Narrowing the Micro and Macro: a Psychological Perspective on Reparations in Societies in Transition,' in *The Handbook of Reparation*, ed. Pablo de Greiff (New York: Oxford University Press for the International Court for Transitional Justice, 2006), 566-567.

¹⁹¹ Ibid, 571.

¹⁹² Ibid, 566.

¹⁹³ Ruben Carranza, Cristián Correa & Elena Naughton, 'More than Words: Apologies as a Form of Reparations,' *International Center for Transitional Justice*, (2015): 3.

¹⁹⁴ Ibid, 3.

¹⁹⁵ Ibid, 4-5.

ought to address their past.¹⁹⁶ Furthermore, apologies change the historical political nature of the world – that the powerful may act as contented and that the weak have little choice to accept – and that the ‘Age of Apology’ is bringing the powerful to apologise to the relatively weak.¹⁹⁷ ‘Age of Apology’, they describe, has been brought in with a new politics of recognition of ‘others’.¹⁹⁸ Formal apologies for historical injustices acknowledges that the previous political norm that permitted transgressions by the powerful on to the relatively weak was unjustifiable and in a sense, this thesis argues, surrenders or shifts power to the victims in theory, if accompanied by other remedies. To a large extent, a formal apology acknowledges, accepts and projects the narratives of the victims into the international community, adding greater value to the victim’s discursive opening.

Examples of apologies include Germany’s apology for the Holocaust by Former Chancellor Willy Brandt in 1970 when he knelt in front of a Holocaust memorial, issuing a strong statement of humility; former US President Ronald Reagan’s apology for the internment of Japanese-American citizens during WWII in 1988; Apartheid government’s apology by former President F.W. De Klerk during the South African Truth and Reconciliation Commission in 1996; former Australian Prime Minister Kevin Rudd to Aborigines in 2008 for racist policies including the separation of Aborigines children; and former UK Prime Minister David Cameron for the unjustified detention of IRA (Irish Republican Army) militants without trial.¹⁹⁹ Janna Thompson highlights that some scholars such as McLaughlin (1997) find apologies to be meaningless and made by insincere leaders.²⁰⁰ Although Thompson does not equate all apologies to insincerity, the scholar acknowledges that some apologies are not welcomed by victims should the gesture be superficial. For example Aboriginal leader Patrick Dodson considers that the

¹⁹⁶ Rhoda E. Howard-Hassmann & Mark Gibney, ‘Introduction: Apologies and the West,’ in *The Age of Apology: Facing Up to the Past*, ed. Mark Gibney, Rhoda E. Howard-Hassmann, Jean-Marc Coicaud, and Niklaus Steiner (Pennsylvania: University of Pennsylvania Press, 2008), 1.

¹⁹⁷ Howard-Hassmann & Gibney, ‘Introduction: Apologies and the West,’ 2.

¹⁹⁸ *Ibid.*, 3.

¹⁹⁹ Dan Fastenberg, ‘Top 10 National Apologies,’ *Time*, June 17, 2010, http://content.time.com/time/specials/packages/article/0,28804,1997272_1997273_1997286,00.html (accessed September 14, 2018).

²⁰⁰ Janna Thompson, ‘Apology, Justice, and Respect: A Critical Defense of Political Apology,’ in *The Age of Apology: Facing Up to the Past*, ed. Mark Gibney, Rhoda E. Howard-Hassmann, Jean-Marc Coicaud, and Niklaus Steiner (Pennsylvania: University of Pennsylvania Press, 2008), 32.

guarantee and protection of Aboriginal Australians in the Constitution as a stronger form of apology. Other Aboriginal leaders claimed that an apology would be meaningless as it rather serves the purpose of making non-Aboriginal Australians feel less guilty.²⁰¹ Therefore, formal apologies should be accompanied by other forms of reparations that solidifies sincerity, an issue that will be explored further in this case study.

Thompson highlights the challenges of avoiding such scepticism of political apologies. The first relates to historical injustices – how can citizens and state representatives take responsibilities of their ancestors’ transgressions? The second is to explain how a collectivity such as a state can be remorseful. And the third is how to explain state commitments to avoid wrongdoing in the future.²⁰² Therefore, what is required would be reflection and investigation into the injustice by the perpetrator or their descendants. Ruben Carranza, Cristián Correa and Elena Naughton explain that often apologies are not spontaneous and are usually processed in response to demands by victim groups and civil society. Upon request, government officials ‘take stock’ of past violations, which the authors describe as the investigations of the roles actors and institutions played in committing, enabling or failing to prevent Human Rights violations.²⁰³ This suggests that apologies are a response to civil society demands and are not genuine as they were not self-invoked. However, demands by victim groups for an apology should be met with a response, and through formal investigations, the perpetrator or their descendants can come to accept their responsibility. Leonard Jamfa reiterates this sentiment; “[a]n apology can be considered seriously when the culprit and the victim share the same assessment of the facts.”²⁰⁴ Furthermore, a formal apology may appear more sincere when other forms of reparations – material and symbolic – are given to the victims under respectful conduct. In the case study of the Namibian reparations movement, this paper will address the following forms of material and symbolic reparations

²⁰¹ Thompson, ‘Apology, Justice, and Respect: A Critical Defense of Political Apology,’ 32.

²⁰² Ibid, 35.

²⁰³ Carranza et al., ‘More than Words: Apologies as a Form of Reparations,’ 6.

²⁰⁴ Leonard Jamfa, ‘Germany Faces Colonial History in Namibia: A Very Ambiguous “I am Sorry”,’ in *The Age of Apology: Facing Up to the Past*, ed. Mark Gibney, Rhoda E. Howard-Hassmann, Jean-Marc Coicaud, and Niklaus Steiner (Pennsylvania: University of Pennsylvania Press, 2008), 210.

which will be explored in Germany's conduct towards the Namibian actors; monetary compensation, formal apology, narratives and memorialisation, and return of remains.

3.3. Reparations for Historical Injustice

Reparations claims for historical injustices is a legal and moral contested issue in Reparative Justice, especially when claimants are not direct victims and perpetrators. Some scholars, such as Stephen Kershnar, have argued that it is unfair to make innocent descendants of a wrongdoing pay reparations for a crime they did not commit, and by doing so violates their rights.²⁰⁵ Furthermore, Kershnar highlights the issue around rights to reparations, arguing that simply being a member of a group that endured the injustice does not warrant reparations, especially if the injustice is a historical one. Thompson who argues for reparation claims for historical injustices, calls this the 'Exclusion Principle' – "that individuals or collectives are entitled to reparation only if they were the ones to whom the injustice was done"²⁰⁶. This same principle applies to perpetrators, that only they can be obligated to pay reparations. Others, like Christian Tomuschat, argue that some historical injustices have no legal relevance today, that current law cannot be applied retroactively, and that "lawfulness must be assessed against the yardstick that was applicable at the time".²⁰⁷ Therefore Tomuschat is not arguing that reparations cannot be paid for historical injustices, but rather that one cannot use current law to assess legal obligations for a historical injustice prior to the creation of that law. Tomuschat argues that some mass killings such as the attempted exterminations of the Native Americans by European settlers, the Armenians in 1915 and the annihilation of a large part of the Herero tribe in 1904 deserve to be condemned as genocide retrospectively, but the term genocide cannot be used as a legal term to characterise legal obligations today.²⁰⁸ Sarkin (2009) and Rachel Anderson (2005), however, argue that treatment of the Herero and Nama populations during 1904-1908 were illegal at the time and constituted

²⁰⁵ Freeman, 'Back to the Future: The Historical Dimensions of Liberal Justice', 44.

²⁰⁶ Thompson, 'Historical Injustice and Reparation: Justifying Claims of Descendants,' 116.

²⁰⁷ Christian Tomuschat, 'Prosecuting Denials of Past Alleged Genocides,' *The UN Genocide Convention – A Commentary*, ed. Paula Gaeta. 2009. Oxford University Press. 517.

²⁰⁸ Tomuschat, 'Prosecuting Denials of Past Alleged Genocides', 516.

an international injustice. The authors refer to the 1899 and 1907 Hague Conventions, stating that Germany had violated the 1899 Convention that condemned mistreatment of civilians during wartime and that the 1907 Hague Convention permitted individuals the right to reparations.²⁰⁹ Anderson argues that the 1885 Berlin West Africa Convention offered protection to indigenous Africans, “not only as individuals but also as distinct socio-political groups.”²¹⁰ In addition, the use of force labour violated the 1890 Anti-Slavery Conference in Brussels, and similar to the Berlin West Africa Conference, provided “an additional avenue for redress under the third party beneficiary doctrine.”²¹¹ Sarkin (2014) situates this in a wider colonial context and argues that Africans had rights during the colonial era, and attempts to claim reparations for crimes in the colonial era are “based on those rights.”²¹² Therefore claims to the Herero case are contested in a legal sphere, however, as this thesis is argued, politics plays a role in contesting who are legally applicable to reparations.

Some scholars argue for the moral necessity to address historical injustices, in which politics of victimisation should be considered. Michael Freeman argues that the persisting effects of historical injustices on cultural hierarchies and current inequities are constantly undermined. However, Freeman outlines this as a ‘moral amnesia’ in which forgetting or denying the past renders the theory of contemporary justice incomplete.²¹³ This ‘moral amnesia’ is similar to ‘colonial amnesia’. Freeman further validates recognition of historical atrocities, as the injustice lies in contemporary inequalities and not in the historical injustice, linking present injustice to its past roots. This can be seen in the lost land of the Herero and Nama, which have forced their descendants on to smaller and less arable lands while a minority group continue to own majority of agricultural land in central post-colonial Namibia.

²⁰⁹ Sarkin, *Colonial Genocide and Reparations Claims in the 21st Century: The Socio-Legal Context of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908*.

²¹⁰ Rachel Anderson, ‘Redressing Colonial Genocide Under International Law: The Herero’s Cause of Action Against Germany.’ *California Law Review* 93, 1155, (2005): 1183.

²¹¹ *Ibid*, 1158.

²¹² Jeremy Sarkin, ‘Should reparations for massive human rights abuses perpetrated on African victims during colonial times be given?’, in *Justice for Victims: Perspectives on rights, transition and reconciliation*, ed. Inge Vanfraechem, Antony Pemberton, Felix Mukwiza Ndahinda (London: Routledge, 2014), 89.

²¹³ Michael Freeman, ‘Back to the Future: The Historical Dimensions of Liberal Justice’, *Repairing the Past? International Perspectives on Reparations for Gross Human Rights Abuses*, ed. Stephen Peté & Max du Plessis. (Antwerp: Intersentia, 2007) 37.

Other scholars to voice a similar rhetoric are Henry Shue and Janna Thompson. Shue argues that theories on justice should expand from a primary theory – of what duties are owed to victims by perpetrators – to include a secondary theory of what duties are owed when primary duties are not arranged.²¹⁴ Thompson argues that when neither the victims nor their heirs receive any compensation for their suffering, the consequences of the unaddressed atrocity can persist after the deaths of the perpetrators and victims.²¹⁵ Thompson further argues that to treat those suffering from the consequences of historical injustices as ‘equal citizens’ with those who were not harmed “is to deny an important form of inequality”.²¹⁶ Therefore the Exclusion Principle, is a limited principle in Reparative Justice,²¹⁷ which limits reparations claims to immediate victims of an atrocity and thereby feeds into the moral and colonial amnesia for some historical injustices.

The Exclusion Principle ignores colonial power structures in which primary duties owed to colonial victims were absent, thereby necessitating secondary duties that have been passed down to descendants. It excludes a history of political disadvantages of oppressed ancestors that attempted to seek restoration for the primary atrocity in the face of decades of continuous colonisation and were denied based on these disadvantages, as seen in 1919 when the Herero ancestors requested for some land restoration. After Namibian independence in 1990, descendants of the Herero/Nama genocide have echoed a claim for justice that has been voiced by their ancestors throughout the last century under colonialism as the genocide continues to shape their socio-economic status in an independent Namibia. In an international political context, Sarkin points out that those in favour of reparations for crimes under colonialism are generally from the Global South, “including Africa, Latin America and Asia...[and] generally speaking, those in the Global North, in other words (but with some exceptions) people in Europe and North America besides African Americans do not often support such claims.”²¹⁸ Not so ironically, this divide

²¹⁴ Freeman, ‘Back to the Future: The Historical Dimensions of Liberal Justice,’ 34.

²¹⁵ Ibid, 33.

²¹⁶ Ibid.

²¹⁷ Thompson, ‘Historical Injustice and Reparation: Justifying Claims of Descendants’, 116.

²¹⁸ Sarkin, ‘Should reparations for massive human rights abuses perpetrated on African victims during colonial times be given?’ 90.

is similar to those who did not support the UN Genocide Convention at first, based on their implications in colonial and cultural genocides, whereas new nation states from the emerging Global South, the former colonised, supported the ratification of Lemkin's resolution in 1948.

In relations to responsibilities of descendants of perpetrators, Julian Baggini's article in *The Guardian* explains that Reparative Justice should not be seen as 'punishing children for their parent's crime,' and does not require a narrative of disciplining the 'wicked'.²¹⁹ Therefore, although the German government is not the direct perpetrator of genocide, reparations claims against them should not be viewed as 'punishment' of the 'wicked'. Baggini highlights that it is however necessary for descendants to acknowledge that their wealth is partly ill-gotten and that losing some of that is a less injustice than giving the victim nothing. Furthermore, for those who are dismissive towards reparation claims out of fear of appearing guilty, need remind themselves that individual and collective responsibility are distinct, and acknowledging collective responsibility "requires no more than acknowledging that you belong to and benefit from a group that has done something wrong."²²⁰ However, some scholars have argued that Germany fails to recognise their collective link to the injustice that continue to define the affected communities. Kössler highlights that the genocide weighs differently in Germany than in Namibia, as descendants of genocide are reminded of the injustice in their daily lives, i.e. the land distribution in central and southern Namibia that contribute towards inequalities. Germany on the other hand are not confronted with realities of the genocide, which the author argues is a contributing factor to a general post-colonial amnesia and denialism.²²¹ For example, in 2001, the Green Bundestag Deputy Hans-Christian Ströbele, leader in the Bundestag committee for development cooperation, stated that "Germany has been driven out of colonialisation early on...Germany can now act in an unencumbered way and assume the role of avant-garde' in Africa."²²² Such sentiments convey a disconnect from

²¹⁹ Julian Baggini, 'Reparations for slavery are not about punishing children for parents' sins,' *The Guardian*, Friday, November 3, <https://www.theguardian.com/commentisfree/2018/nov/30/reparations-slavery-sins-parent-child-reparative-justice-holocaust> (accessed 10 October 2018).

²²⁰ Baggini, 'Reparations for slavery are not about punishing children for parents' sins.'

²²¹ Kössler, *Namibia and Germany: Negotiating the Past*, 49-50.

²²² *Ibid*, 49.

Germany's colonial legacies that continue to impact groups, and whilst assisting in African development, Germany has previously refuted the historical responsibility it has to descendants of genocide, including accepting grievances, and making amends through acknowledgment and payments to the satisfaction of the victim groups.

Kaumbi acknowledges that the current German government is not the perpetrator, however argues that the current government has "inherited the wealth of Imperial Germany."²²³ Therefore, similar to the fact that the German government is not the perpetrator, the OTA acknowledges that Hereros and Namas are not the direct victims of the genocide, however they too have inherited the generational effects of the genocide, including the sense of injustice. Furthermore, while the Herero and Nama communities are aware that they are not the direct victims of the genocide, Kaumbi highlights that they have inherited the generational effects: the significant reduction in population; the significant losses of arable and cultural land; resettlements on smaller less arable 'native reserves'; decline in economic and social wealth; and the inherited identity of injustice and loss of dignity. Ngavirue highlights that those most in need of reparations are the affected communities in southern and central Namibia, however includes the Damaras in this.²²⁴ Compensation from Germany in this sense is seen by the Namibian government and by traditional authorities as a way of healing a complex past by restoring in part some of the communities' status before the genocide as a form of *overdue* justice.

3.4. Reparations Movement under the Ovaherero Traditional Authority

3.4.1. Monetary Compensation

Kaumbi expresses that while one cannot put a calculative value on a human life, and although monetary compensation is not Namibia's only demand, "unfortunately everything at some stage will need to be

²²³ Interview with Uazuva Kaumbi, September 4, 2018.

²²⁴ Interview with Dr Zedekia Ngavirue, September 5, 2018.

quantified.”²²⁵ The OTA is one of the traditional authorities that exist within the Herero cultural group and do not represent all Herero chiefs. However, the OTA under Paramount Chief Riruako initiated the reparations movement in Namibia. The OTA separated their claims from the mass atrocities of colonialism and have focused on the act of genocide during 1904-1908 and have based their claims in the same light as claims of Holocaust survivors where Germany is making reparations to survivors and Israeli state.²²⁶ In 1995, approximately three hundred Herero members led by Riruako and the OTA, handed a petition to German Chancellor Helmut Kohl during a state visit to Namibia.²²⁷ The petition called for reparations in the form of acknowledgement, apology and monetary compensation of 600 million USD from the German government. At this stage, the German and Namibian governments opposed this movement, the latter argued that all Namibians suffered under colonialism and one group cannot be singled out.²²⁸ In 2000, Prime Minister Hage Geingob²²⁹ criticised the Herero leaders for seeking compensation for Herero speakers only and for condemning the Namibian government for their inaction when all Namibians suffered in the previous decades.²³⁰ Furthermore, scholars have speculated that the Namibian government relied on German development aid and wanted to protect this relationship. The German government argued that there were no legal grounds for reparation claims. In fact, in 1998, former German President Roman Herzog, stated in a speech that “no international legislation existed at the time under which ethnic minorities could get reparations”.²³¹ Sidney Haring argues that such a statement is embedded in the ‘language of colonialism’²³² and that the dismissal of such a claim “can only be called racist”²³³.

²²⁵ Interview with Uazuva Kaumbi, September 4, 2018.

²²⁶ Haring, “German Reparations to the Herero Nation: An Assertion of the Herero Nationhood in the path of Namibian Development”, 396.

²²⁷ Ibid, 395.

²²⁸ Sarkin, *Colonial Genocide and Reparations Claims in the 21st Century: The Socio-Legal Context of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908*, 55.

²²⁹ Hage Geingob, who is Damara, from SWAPO became the Namibian president in 2015.

²³⁰ Sarkin, *Colonial Genocide and Reparations Claims in the 21st Century: The Socio-Legal Context of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908*, 55.

²³¹ Haring, ‘German Reparations to the Herero Nation: an Assertion of Herero Nationhood in the Path of Namibian Development?’ 406.

²³² Ibid.

²³³ Ibid, 404.

In 2001 the Hosea Kutako Foundation, under Riruako, filed a lawsuit of 2 billion USD against three German companies²³⁴ for their ‘brutal alliance’ with Germany during the 1904-08 Genocide, including complicity in forced labour and concentration camps, and a 2 billion USD lawsuit against the German government, including a request for a formal apology.²³⁵ This was done through the Alien Torts Claims Act (ATCA), a law adopted in 1789 that grants jurisdiction to US federal courts over “any civilian action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States”.²³⁶ The aim was to gain reparative capital that would permit Herero chiefs to repurchase land and distribute for Herero re-settlement, and to gain the recognition that the Herero lacked for almost a century. The lawsuit recited the 1899 Hague Convention, stating that Germany had violated international law and that the 1907 Hague Convention permitted individuals the right to reparations.²³⁷ Germany contested this lawsuit, claiming that the Herero were not signatory to the Hague Conventions at the time and therefore had no legal ground. Harring disagrees that Germany may argue that there existed one rule of warfare amongst Europeans, and a separate set for Europeans conducting colonial wars, which is “an untenable moral position”.²³⁸

The US District Court of Columbia dismissed the case a few years later “for failure to state a claim”.²³⁹ German Ambassador to Namibia Wolfgang Massing explained that lawsuits would “not lead to any results... [w]hile it is necessary to remember the past we should move forward together and find projects that will heal the wounds of the past”.²⁴⁰ However this solution left members in the affected groups unsatisfied as these projects are discussed exclusively between two governments. Furthermore, such projects are not reparations, as there is little satisfaction amongst members in the affected groups who

²³⁴ Deutsche Bank, Terex Corporation and Woermann Line (SAF marine).

²³⁵ Cooper, ‘Reparations for the Herero Genocide: Defining the Limits of International Litigation,’ 113.

²³⁶ Ibid, 115.

²³⁷ Sarkin, *Colonial Genocide and Reparations Claims in the 21st Century: The Socio-Legal Context of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908*.

²³⁸ Harring, ‘German Reparations to the Herero Nation: an Assertion of Herero Nationhood in the Path of Namibian Development?’ 407.

²³⁹ Swart, ‘Herero make new claim for genocide reparations against Germany.’

²⁴⁰ Deutsche Welle staff, ‘Germany Urges Herero to Drop Lawsuit’, *Deutsche Welle*, August 5, 2004, <http://www.dw.com/en/germany-urges-herero-to-drop-lawsuit/a-1287663> (accessed June 29, 2017).

have argued that the Herero and Nama communities have not received their full recognition as genocide victims and there is little guarantee that development aid money will reach these groups. Furthermore, ‘special relationship’ and ‘healing the wounds’ are vague terms that do not acknowledge that the Herero and Nama suffered exponential losses and that special amends are owed. Kaumbi, argues that there is no agency by the affected communities over Germany’s development aid, it is rather something they only hear about.²⁴¹ Furthermore, there was little to no public acknowledgment of the genocide.

3.4.2. Narratives and Memorialisation

Kris Brown notes that what “all the forms [of symbolic reparations] have in common is an explicit aim to carry meaning and shape narratives.”²⁴² Therefore, memorialisation and commemoration as a form of symbolic reparations validates the narrative and dignity of the victim group. Furthermore, they are strongly linked to discursive openings, as a stronger national and international consensus on the victims’ narratives strengthens the political position of the affected communities to claim reparations. Public memory and politics of memory in Namibia is covered by several scholars; Henning Melber (2005); Sarkin (2009); Heike Becker (2011); Elke Zuern (2012); Ellie Hamrick and Haley Duschinski (2017). For the descendants of Herero and Namas, there exists tension on two political fronts in Namibia: the German descendants who have valorised their narrative of the Herero War through the commemoration of fallen valiant soldiers; and SWAPO who have shaped and dominated national memory around liberation narratives, in which the Herero and Nama rebellions are not reflected in national commemoration. Melber touches on these themes of commemorative narratives, in which the ‘selectivity’ of narratives commemorated in Namibian public memory tend to downplay the genocide in national liberation history.²⁴³ Similarly, Zuern highlights the role of liberation narratives in public memory, in which SWAPO’s narrative has taken a central position in national commemoration and

²⁴¹ Interview with Uazuva Kaumbi, September 4, 2018.

²⁴² Kris Brown, ‘Commemoration as Symbolic Reparation: New Narratives or Spaces of Conflict?’ *Human Rights Review* 14, 3 (2013): 275.

²⁴³ Henning Melber, ‘How to Come to Terms with the Past: Re-Visiting the German Colonial Genocide in Namibia,’ *Africa Spectrum*, 40, 1 (2005): 139.

memorialisation. Zuern defines memorials as “sites of personal, cultural and political remembrance, offering stylised presentations of the past, highlighting and glorifying certain actors while purposefully forgetting others.”²⁴⁴ Zuern argues that certain memories in Namibia, such as the genocide, have been almost forgotten in national public memory, and has added to the feelings of injustice of the descendants. Becker demonstrates this further, highlighting that the Heroes’ Acre in Namibia is the “centre stage of the annual political rituals”²⁴⁵ which commemorate Namibian heroes and heroines, however this is limited to SWAPO soldiers.²⁴⁶ Similarly, Hamrick and Duschinski argue that “Namibia’s monuments, memorials and museums suppress the genocide from national memory.”²⁴⁷

German descendants’ role in public memory has been an affront on the public memory on genocide, commemorating a colonial history in several ways, which opposes a discursive opening for the Herero. Including the abolition of the Blue Book, there have been instances when German speaking Namibians have diluted the atrocities of genocide with narratives of war between the German settlers and the Herero population. In 1964, German descendants commemorated fallen German soldiers during the Herero War.²⁴⁸ This narrative validates the Kaiser’s war in which heroic German soldiers lost their lives defending German settlers. Herero leaders publicly argued that this commemorated genocide and the killings of women and children. Kutako, who had personally endured the hardships and losses of the Ohamakari battle, the Omaheke desert and concentration camp,²⁴⁹ argued that it would remind them of an unjust past. Kapuuo argued that German descendants were commemorating genocide and stated that

²⁴⁴ Zuern, ‘Memorial politics: challenging the dominant party’s narrative in Namibia,’ 495.

²⁴⁵ Heike Becker, ‘Commemorating Heroes in Windhoek and Eenhana: Memory. Culture and Nationalism in Namibia, 1990-2010’, *International African Institute* 81, 4, (2011): 523.

²⁴⁶ Becker argues that the inclusion and exclusion in Namibian liberation public memory run along the lines of regionalism and ethnicity (dominated by Owambo heroes), political affiliation (dominated by SWAPO), and gender (militarised and masculine depictions of liberation heroes).

²⁴⁷ Hamrick & Duschinski, ‘Enduring injustices: Memory politics and Namibia’s genocide reparations movement’, 3.

²⁴⁸ Gewalt, ‘Herero genocide in the twentieth century: Politics and Memory’, 293.

²⁴⁹ New Era Reporter, ‘Ovaherero to honour Hosea Kutako every year,’ *New Era*, July 25, 2018, <https://neweralive.na/posts/ovaherero-to-honour-hosea-kutako-every-year>

“there is little difference between the extermination order of General von Trotha and the extermination of Jews by Adolf Hitler.”²⁵⁰

In post-colonial Namibia, overlooking the CBD in Windhoek remains the Alte Feste, a fort built by the German Colonial Administration, which serves as Namibia’s National Museum.²⁵¹ The plaque placed on this fortress reads: “The Alte Feste was built in 1890...as a stronghold to preserve peace and order between the rivalling Namas and Hereros.”²⁵² Although conflict between the two groups existed, Zuern argues that this narrative condones German colonialism and portrays their dominance as ‘selfless’. This fits into the narrative that colonialism was for the greater good of Africans. Carrying a similar narrative, the *Reiterdenkmal* a grandiose statue, erected in 2012 on the Kaiser’s birthday, stood to the left of the Alte Feste, a war memorial “celebrating the might of German Empire.”²⁵³ Across the road from this statue, the Christuskirche church was built to commemorate the defeat of the Herero and Nama, housing bronze plaques in the interior listing the names of German soldiers who died.²⁵⁴ Similarly, the *Marine Denkmal* statue was erected in 1908 in Swakopmund, and depicts two German soldiers – one standing with a rifle, the other lying dead on the rock.²⁵⁵

Zuern captures the agency of descendants of genocide that have confronted this imbalanced public memory.²⁵⁶ The *Reiterdenkmal* statue was removed in 2009 and replaced with the Independence Memorial Museum, which includes the Herero/Nama Genocide in its displays on liberation, standing between the church and the fort. This was strategic in order to shift the dominance of the German colonial narrative and to shift the narrative towards the liberation against the oppression of foreign rule.

²⁵⁰ Gewald, ‘Herero genocide in the twentieth century: Politics and Memory’, 293.

²⁵¹ Zuern, ‘Memorial politics: challenging the dominant party’s narrative in Namibia’, 506.

²⁵² Ibid.

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ Elke Zuern, ‘Namibia’s Monuments to Genocide,’ *Dissent Magazine*, June 13, 2014, <https://www.dissentmagazine.org/blog/namibia-genocide-monuments-reparations-germany> (accessed October 12, 2018).

²⁵⁶ Activism around public memory in Namibia can be traced back to when Kutako and Kapuuo spoke out against the commemoration of German soldiers in 1964.

More recently in 2017, activists in Namibia splashed red paint on the *Marine Denkmal* in Swakopmund.²⁵⁷ ‘Operation Back to Germany’ is an activist group initiated by Namibians that began lobbying in 2015 to have the *Marine Denkmal* removed from its central spot in Swakopmund and returned to Germany. In an interview conducted by New Era journalist, activists explained that the statue and its central position “mocks the pain and suffering Namibians had to undergo during German genocide and this humiliation cannot be allowed to continue after 25 years [after independence].”²⁵⁸ Kössler (2015) explores denialism in Namibia, particularly in Namibia’s only German newspaper, *Allgemeine Zeitung*, in which many printed public letters from the German community within Namibia refute the idea that the war involved genocide.²⁵⁹ More recently, (2018) public debates have re-surfaced in various Namibian newspapers in which anonymous German descendants have reiterated a similar rhetoric. The participant claimed that the “current tribal chief of the Herero and his underlings are trying to enrich themselves on the back of their ancestors, nothing more nothing less.”²⁶⁰ While not every German speaking Namibian internalise such narratives of the past, there is a spectrum of narratives, in which the two ends contradict one another. Furthermore, such rhetoric reduces the nature of reparations to monetary gain, which does not paint an accurate picture of a century long plight for restoration of dignity and economic status that continues to shape the aspirations of the Herero community leaders.

Katjavivi argues that the inclusion of German speaking Namibians in national dialogue around the question and acceptance of genocide would be beneficial to national reconciliation, by “bringing various Namibian communities to appreciate the fact that events of the past should not continue to haunt us.”²⁶¹ Katjavivi argues that such conversations can be prompted by a stronger national commemoration and memorialisation of the genocide, including its inclusion in education curriculums and in the cultural sector. For example, Namibian artist, Isabel Katjavivi’s art exhibition, titled *They Tried to Bury Us*

²⁵⁷ Zuern, ‘Namibia’s Monuments to Genocide.’

²⁵⁸ New Era Reporter, ‘Coastal activists call for removal of Marine Denkmal’, *New Era*, July 17, 2015, <https://neweralive.na/posts/coastal-activists-call-removal-marine-denkmal>

²⁵⁹ Kössler, *Namibia and Germany: Negotiating the Past*, 119.

²⁶⁰ Windhoek Observer Reporter, ‘Local Germans deny genocide,’ *Windhoek Observer*, March 16, 2018, <https://www.observer.com.na/index.php/national/item/9507-local-germans-deny-genocide>

²⁶¹ Interview with Professor Peter Katjavivi, September 5, 2018.

(2018), in the National Art Gallery of Namibia captured the tension of neglecting an important narrative of Namibian history.²⁶² Displaying fragile clay heads and body parts on the floor, the artist covered these pieces with sand, stones and grass collected from scenes in Namibia that are strongly connected to the Genocide (Omaheke Desert, Ohamakari, etc.). The audience walked “the thin line between the past and the present,”²⁶³ with the past staring up at them. This interaction represented the need for Namibia to unearth its history – its *narrative* – in order to heal the wounds of the past and reconcile.

While the government have made become more inclusive towards other narratives of liberation, i.e. the Independence Museum, Kaumbi argues that “there is no political will to elevate this thing of genocide and to memorialise it to the extent that you want it.”²⁶⁴ Rightfully, Kaumbi insists that the genocide “is of national importance. Even before Cassinga²⁶⁵...there was this [genocide] within the boundary state known as Namibia. It was the first genocide of the 20th century. Before even the Holocaust. Before the Armenian Genocide. We had a genocide inside here. That should take a place of honour and respect.”²⁶⁶ The government is yet to create a national memory, a motion that is pending in the Namibian parliament since 2016. SWANU’s president, Usutuaije Maamberua, introduced a motion in 2016 for a Genocide Remembrance Day,²⁶⁷ which received positive responses from ruling and opposition parties, however has not been formalised. While there are several visible reminders of the liberation struggle in which SWAPO rose to power, state initiated memorials of the genocide still need to become a reality. Further insensitivities towards memorialisation include the commercial construction on the sites of genocide mass graves in Swakopmund, as well as a camp site on Shark Island, which was a concentration camp

²⁶² Confidante Reporter, ““They Tried To Bury Us” – a genocide exhibition by Isabel Tueumuna Katjavivi,” *Confidante*, August 16, 2018, <http://www.confidante.com.na/2018/08/they-tried-to-bury-us-a-genocide-exhibition-by-isabel-tueumuna-katjavivi/>

²⁶³ Ibid.

²⁶⁴ Interview with Uazuva Kaumbi, September 4, 2018.

²⁶⁵ South African troops attacked a SWAPO civilian camp, Cassinga, in 1978, killing approximately 600. It is a well-known national public holiday in Namibia (4 May).

²⁶⁶ Interview with Mr. Uazuva Kaumbi, September 4, 2018.

²⁶⁷ The Namibian Reporter, ‘Parliament proposes 'genocide remembrance day,' *The Namibian*, April 28, 2016, <https://www.namibian.com.na/150225/archive-read/Parliament-proposes-%E2%80%98genocide-remembrance-day%E2%80%99>

in which many Namas and other Namibians perished.²⁶⁸ There have however been some citizen-initiated memorials to break away from this dominant narrative and “provide a more inclusive narrative of local histories,”²⁶⁹ such as the *Ovaherero/Ovambanderu Memorial* in the Swakopmund Memorial Park.

Zuern acknowledges that the German government’s role has been helpful towards memorialisation in some respects, such as its funding towards Namibian activist-initiated projects, i.e. the Okakarara Community Cultural and Tourism Centre and part of the Swakopmund Memorial Park. Furthermore, the German government has sent representatives to commemorations and other events held at these sites. However, Zuern argues that the “German government has sought to present itself as addressing the past, without acknowledging genocide or offering reparations.”²⁷⁰ This not only includes monetary compensation, but a formal apology. Germany’s propensity to determine what duties are owed by them influenced its reluctant attitude towards these forms of reparations.

3.4.3. Apology

The OTA have been demanding a formal apology from Germany since 1995 in Riruako’s petition. When former German President Herzog visited Namibia in 1998, the President argued that too much time had passed since the incident for a formal apology to make sense.²⁷¹ However, Herzog assured Herero leaders and other Namibians that Germany would live up to its historical responsibility through development aid projects in Namibia.²⁷² President Herzog had failed to make a connection to the crimes of German ancestors which obligate a responsibility to repair, and assuming that development aid is a suffice consolation to descendants of genocide. An apology was given in 2004 by German Minister for Economic Cooperation and Development, Heidemarie Wiecek-Zeul offered an apology in 2004, at

²⁶⁸ Hamrick & Duschinski, ‘Enduring injustices: Memory politics and Namibia’s genocide reparations movement’, 3.

²⁶⁹ Zuern, ‘Memorial politics: challenging the dominant party’s narrative in Namibia,’ 506.

²⁷⁰ Ibid, 511.

²⁷¹ Jamfa, ‘Germany Faces Colonial History in Namibia: A Very Ambiguous “I am Sorry”’, 203.

²⁷² Karie L. Morgan, ‘Remembering against the nation-state: Hereros’ pursuit of restorative justice,’ *Time & Society* 21, 1 (2012): 28.

a ceremony that commemorated the hundredth year anniversary of the beginning of the genocide.²⁷³ In Wiczorek-Zeul's plea for forgiveness, she acknowledged:

“A century ago, the oppressors – blinded by colonialist fervour – became agents of violence, discrimination, racism and annihilation in Germany's name. The atrocities committed at that time would be termed genocide – and nowadays a General von Trotha would be prosecuted and convicted. We Germans accept our historical and moral responsibility ...in the words of the Lord's Prayer that we share, I ask you to forgive us our trespasses.”²⁷⁴

This apology was accepted by Minister of Lands, Hifikepunye Pohamba²⁷⁵ and Riruako. Prime Minister, the late Theo-Ben Gurirab, called on Namibians to accept the apology, however explained that the apology did not answer enough questions. Given that there have been renewed requests for a political apology by Namibian government and communities, this has been disregarded as a formal apology. One can argue whether the apology in 2004 constituted a state apology although some scholars have accepted it as such.²⁷⁶ Hinz however, refers to the German Parliament Resolution of June 2004 that made no mention of the terms ‘genocide’ and ‘apology’ and states that the German minister stepped “beyond the limits set by the German Foreign Minister”.²⁷⁷ Hinz refers to Wiczorek-Zeul's autobiography where the minister had feared that she may be dismissed upon arrival in Germany,²⁷⁸ revealing that the apology was not state approved. Although the minister was applauded by many upon her arrival and she was not dismissed, her doubts reveal that her apology was a reflection of her personal commitment to reconciliation and not necessarily the state's. Leonard Jamfa has questioned the sincerity behind this gesture and speculates that this apology was in response to two factors. The first factor is the events in Zimbabwe that began in 2000, which was the seizure of land from white farmers after

²⁷³ Morgan, ‘Remembering against the nation-state: Hereros’ pursuit of restorative justice,’ 21.

²⁷⁴ Heidmarie Wiczorek-Zeul, *Speech at the commemorations of the 100th anniversary of the suppression of the Herero uprising*, Okakarara, Namibia, August 14, 2004.

²⁷⁵ Pohamba who would become the president of Namibia the following year

²⁷⁶ “Although Germany finally apologized for the Herero genocide on 14 August 2004...”

(Cooper, ‘Reparations for the Herero Genocide: Defining the Limits of International Litigation,’ 117.)

²⁷⁷ Hinz, ‘More than one hundred years after Ohamakari: How to deal with genocide committed by Imperial Germany,’ 113.

²⁷⁸ *Ibid*, 114.

slow land reforms and the withdrawal of British financing.²⁷⁹ Jamfa suggests that members in Germany feared the same would happen in Namibia and acknowledged the responsibility they had to Namibians of German descent. The second factor, and the most probable cause for the apology, was the Court Case that Riruako's Hosea Kutako Foundation filed against Germany in 2001.²⁸⁰

Within this same speech, the German minister re-iterated Germany's commitment to development aid: "Accepting our special historical responsibility towards Namibia, we wish to continue our close partnership at all levels...looking towards the future and wishes to help Namibia tackle the challenges of development."²⁸¹ Therefore, this apology was given without the acknowledgement or acceptance of state responsibility to pay reparations for genocide, which carries more symbolic weight than development aid to the Namibian government for *all* Namibians. Furthermore, Jamfa highlights that the German minister's phrase 'atrocities committed at that time would be termed genocide nowadays' served as a subtle reminder that there is no legal obligation today. Moreover, she asks for forgiveness in the name of God, and not in the name of the German state, which further reduced Germany's legal responsibility in 2004 to pay reparations.²⁸² Kaumbi highlights the essential crux of reparations, "Sometimes you can repair an injustice through your *conduct*. If your conduct is conciliatory, you have proper remorse and respect, people will start to look at it differently. But if you want to play hard ball then obviously people will ...say it's all about the money."²⁸³

As Thompson argued, a political apology is central to Reparative Justice as an injustice to a group becomes part of their historical identity.²⁸⁴ An apology in this context would assist in the restoration of dignity to these identities. Boxill similarly regards a formal apology as essential to reparations and not

²⁷⁹ Jamfa, 'Germany Faces Colonial History in Namibia: A Very Ambiguous "I am Sorry",' 206-207.

²⁸⁰ Ibid, 207-208.

²⁸¹ Wieczorek-Zeul, *Speech at the commemorations of the 100th anniversary of the suppression of the Herero uprising*.

²⁸² Jamfa, 'Germany Faces Colonial History in Namibia: A Very Ambiguous "I am Sorry",' 211.

²⁸³ Interview with Uazuva Kaumbi, September 4, 2018.

²⁸⁴ Thompson, 'Apology, Justice, and Respect: A Critical Defense of Political Apology,' 33.

separate to Reparative Justice.²⁸⁵ Thompson argues that a state's remorse may be impossible as not all citizens may come to acknowledge the events as genocide or feel responsible as descendant. However dialogue on the matter is a necessary step to allowing the narrative of genocide and historical injustice that continue to impact descendants to disseminate into Namibian and German communities. Therefore, the exploration and state acceptance of the victims' narrative is essential for the formation of a collective identity around responsibility to repair. What comes to mind is the mandatory education curriculums in Germany around the Holocaust and its purpose to condemn the genocide of WWII, whilst Germany pays reparations to its survivors, Jewish organisations and the State of Israel. The state apology for the Holocaust further reaffirms the victim narrative of Jewish Holocaust survivors. While there may be German citizens that deny that the Holocaust took place, the state is taking necessary steps to circulate narratives in which the German state is responsible for the human rights violations committed against the Jewish community in Europe during WWII.

3.4.4. Return of Remains

Another form of symbolic reparations is the return of bodily remains, which has taken place at an international level with the return of skulls from Germany. In order for the process to carry symbolic weight, the return should be done in a sensitive conduct. During the genocide many hundreds of Herero, Nama, and Damara and San skulls were transported to scientists in Germany for scientific research.²⁸⁶ This has been one of the many sore aspects of the genocide; the repatriation, remembrance and burial of ancestors' skulls. Although the practicality of tracking and identifying skulls and human remains may be a massive task, Kössler notes these issues carry "deep symbolic implications, both on the level of an individual's descendent and on that of communities seeking closure."²⁸⁷ After the Herero and Nama traditional leaders appealed to the Namibian government, an official request for the repatriation of bodily remains was forwarded to the German government in 2008.²⁸⁸ In 2011, twenty skulls had been

²⁸⁵ Thompson, 'Apology, Justice, and Respect: A Critical Defense of Political Apology,' 34.

²⁸⁶ Olusoga & Erichsen, *The Kaiser's Holocaust*, 224.

²⁸⁷ Kössler, *Namibia and Germany: Negotiating the Past*, 282.

²⁸⁸ *Ibid*, 285.

returned, followed by another forty in 2014, and more recently nineteen skulls and other bones were handed over in August 2018. While under 100 skulls have been returned, thousands of skulls remain unaccounted for.

In 2011, a delegation of seventy people, comprised of members from government, activist organisations including the OGF (and Riruako) and NGTC, received the remains of victims of genocide in what has been described as an unceremonious event in Berlin. This was due to the absence of some invited VIP German officials. Furthermore, the German Foreign Minister's speech avoided the term 'genocide'.²⁸⁹ Within the same speech, the minister pled for reconciliation in the absence of a state apology, reiterated Germany's cooperation in development aid, and mentioned the high percentage of German tourists that visit Namibia.²⁹⁰ The message one can derive from such a speech is that reconciliation ought to happen on Germany's terms whilst reducing the extent of the atrocity with the removal of the term 'genocide'. Kössler observes that the repatriation of 2011 did not bring closure to the affected communities and its modalities "opened a new chapter of painful and conflict-ridden proceedings".²⁹¹ Furthermore, members of the OGF and NGTC who had brought documents to Berlin in 2011 calling for reparations, were accused by the German Ambassador to Namibia for having made a bad impression and going with a hidden agenda.²⁹² This insinuates that the return of skulls and requests for monetary compensation should be held separately, whilst both form part of reparations. The 2014 repatriation received less publicity as no representatives from the affected communities were part of the delegation, except the deputy chairman of the Council of Traditional Leaders in the government structures.

²⁸⁹ Kössler, *Namibia and Germany: Negotiating the Past*, 294.

²⁹⁰ *Ibid.*

²⁹¹ *Ibid.*, 298.

²⁹² *Ibid.*, 299.

4. 2015 Politics of Reparations: Germany Acknowledges Genocide

4.1. 2006 Motion on Genocide: One Common Ground and Two Trajectories

The OTA's political opening that supports their reparations claims had no substantial state support before 2006. The Motion on the Ovaherero Genocide (Motion) introduced by Riruako to the Namibian parliament in September 2006, which was unanimously passed, can be seen as one aspect that all interest parties agreed on, however has led to several disagreements. The Motion is pivotal in the reparations movement as it called for the Namibian government to assist with the Herero/Nama reparations claims after the 2001 class action lawsuit brought no results. The main points that were highlighted in the Motion were that Germany acknowledge their crimes against the Ovaherero that constitute genocide – including similar treatment towards the Namas and the Damaras; to offer an apology, and to enter a dialogue with representatives of the affected communities and the Namibian government in order to negotiate reparations.²⁹³ This motion received the overwhelming support from the National Assembly in October 2006 and the implementation was taken to the Executive Arm of government.²⁹⁴ Woolford and Wolejszo highlight that the involvement of a state in a reparation movement cannot be undermined when understanding the political opening for a victim group, as seen with Israel in the Claims Conference (1951).²⁹⁵ However this motion has led to two different trajectories; state to state dialogue under the two governments and a class action lawsuit by the OGF and NGTC. Both these approaches are based on the respective actor's position of power in relation to Germany. The Motion and its key points have become the foundation for the mandate of the Namibian Special Envoy on Genocide and the OGF/NGTC's court case in New York, which emphasises acknowledgment, apology and compensation payments.²⁹⁶

²⁹³ Kuaima Riruako, *Motion on the Ovaherero Genocide*, National Assembly of the Republic of Namibia. 2006, http://genocide-namibia.net/wp-content/uploads/2015/02/2006_09_Motion_Genocide_nam_parliament-1.pdf

²⁹⁴ Interview with Dr Zedekia Ngavirue, September 5, 2018.

²⁹⁵ Woolford & Wolejszo, 'Collecting on Moral Debts: Reparations for the Holocaust and Pořajmos,' 891.

²⁹⁶ New Era Reporter, 'Government has Legal Mandate on Genocide Talks,' *New Era*, April 6, 2018, <https://neweralive.na/posts/government-has-legal-mandate-on-genocide-talks>

Almost a decade after the 2006 Motion was adopted, the Namibian and German governments officiated dialogue on Genocide in 2015 through the appointments of the Namibian Special Envoy, Dr Zedekia Ngavirue²⁹⁷, and the German Special Envoy, Ruprecht Polenz.²⁹⁸ Both Special Envoys represent the views and positions of their respective governments. Current speaker of the National Assembly Professor Peter Katjavivi stresses that linked to these negotiations is the need for Germany to admit to genocide, return bodily remains of victims, to offer a formal apology and for the Namibian government to look towards stronger memorialisation.²⁹⁹ Katjavivi, noted that this approach may bring about a ‘win-win’ outcome as “it is in the interest of Germany to come clean to one of those issues that have been haunting them throughout history.”³⁰⁰ Ngavirue recaps that the aim of ongoing negotiations is to clear this issue around reparations “with the view of getting proper reconciliation between the two countries.”³⁰¹ Furthermore, the Special Envoy cautions that monetary compensation is not exclusive to the Herero and Nama as other communities such as the San and Damara inherited significant losses. Therefore affected areas will be targeted for reparations development programmes, specifically southern and central Namibia.³⁰²

When the Motion was passed, the implementation was passed to the Executive, who appointed a special cabinet committee to oversee this process of negotiation.³⁰³ This committee established a technical committee to carry out the research and work out the documentation that would form the basis of the Special Envoy’s mandate. There are opportunities for representation of Herero and Nama traditional authorities at two levels: the Technical Committee and the Chief’s Forum. Some chiefs of the affected communities have sent representatives to the Technical Committee in order to feed in information and requests, and to report back to the respective chiefs. It was later considered that a more appropriate and effective mechanism for the chiefs to get direct communications and to be part of decisions, the special

²⁹⁷ Interview with Dr Zedekia Ngavirue, September 5, 2018.

²⁹⁸ Mugabi, ‘Polenz: ‘Germany and Namibia need a common understanding of the past.’

²⁹⁹ Interview with Professor Peter Katjavivi, September 5, 2018.

³⁰⁰ Ibid.

³⁰¹ Interview with Dr Zedekia Ngavirue, September 5, 2018.

³⁰² Interview with Professor Peter Katjavivi, September 5, 2018.

³⁰³ Interview with Dr Zedekia Ngavirue, September 5, 2018.

cabinet committee established the Chief's Forum, chaired by the Vice President.³⁰⁴ Whilst chiefs and interest parties such as the OGF and NGTC are encouraged to participate in such structures, some members of the affected communities are displeased with the leading role the government has taken, reducing them to supportive roles, while others view this as an opportunity to pursue negotiations. Therefore, considering that there is no unified voice within the Herero group, the involvement of the state has either positively or negatively affected the political opening of the reparations movement.

Hamrick and Duschinski break down the politics of the Herero groups in terms of political traditional authority affiliation, political affiliation, genocide committee/organisations support, historical narrative, and legal imagination.³⁰⁵ Under different affiliations and expectations, the authors have identified two groups: the Riruako and Maherero group. Although both groups' narratives acknowledge the genocide of 1904 and the need for justice, the Maherero group view the genocide as connected to the Apartheid liberation struggle and that the Herero are part of the 'one Namibia, one Nation' and have to cooperate within this context. The Maherero group do not recognise Rukoro as Paramount Chief³⁰⁶ and support the various Herero sub-chiefs of the Royal House.³⁰⁷ Furthermore, this group is generally politically affiliated with SWAPO, who in turn recognises their traditional authorities. In addition, the Maherero group's genocide committee affiliation lies with the Ovaherero/Ovambanderu Council for the Dialogue (OCD-04). This has since included some Nama chiefs, which now make up the ONCD-04 (Ovaherero/Ovambanderu *and Nama* Council for Dialogue).³⁰⁸ The Riruako group supported Kuaima Riruako's claim to Paramount Chieftaincy before his death in 2014, and his successor, Vekuii Rukoro.

³⁰⁴ Interview with Dr Zedekia Ngavirue, September 5, 2018.

³⁰⁵ Hamrick & Duschinski, 'Enduring injustices: Memory politics and Namibia's genocide reparations movement,' 9.

³⁰⁶ Paramount chieftaincy is a long standing contestation. Samuel Maherero was selected by the German Colonial Administration as the first Herero Paramount Chief, which was not fully recognised by all Herero chiefs. When Maherero was exiled in Botswana, he selected Hosea Kutako as Paramount Chief in his absence. Thereafter, South African authorities approved of successors, such as Kapuuo and Riruako as NUDO, and then the DTA, believed in diplomatic cooperation with the South African government in order to negotiate independence while SWAPO believed in guerrilla warfare.

³⁰⁷ Hamrick & Duschinski, 'Enduring injustices: Memory politics and Namibia's genocide reparations movement,' 9.

³⁰⁸ Interview with Professor Phanel Kaapama, September 3, 2018.

Politically, the Riruako group support opposition parties to SWAPO, including NUDO. Hamrick and Duschinski suggest that since Riruako was the leader of the opposition party NUDO, the SWAPO-led government refused to recognise him as the Herero Paramount Chief.³⁰⁹ In addition, the Riruako group maintain that the OGF, who report to the current Rukoro traditional authority (OTA), are the champions of the reparation movement. Furthermore the OGF and the NGTC work closely together.

Phanuel Kaapama, who is a supporter of the Maherero group and present in the Special Envoy negotiations, explains that the government represents a much bigger constituency of groups that were not affected by genocide. This places the government “in a very difficult situation for having to balance the needs of all the different communities, others that may be sitting without basic human needs but were not affected by genocide.”³¹⁰ Therefore Kaapama highlights that it is important for the affected communities to work within the current political context of Namibia, while it is also important for the government to recognise “the special relationship, the special impact, the extraordinary impact that the genocide...committed by Germany has on their community.”³¹¹ Kaapama concludes that the government’s position is not ‘straight forward’. Furthermore, Kaapama cautions that the OGF and NGTC “do not represent all members of the affected communities of the genocide.”³¹² The nuances in politics within the Herero group highlight that reparation movements do not have a unified voice. With regards to the government structures, Kaapama views that “to some, the glass was half empty and they rejected it outright...to others, it was half full and they opted to negotiate with dialogue.”³¹³

Part of those who view the Special Envoy structures as the ‘glass half-full’ are the Maherero group, specifically Herero and Nama chiefs in the ONCD-04. Members of the ONCD-04 were reported in *The Namibian* (March 2017) to have claimed in March 2017 to be the true representatives of the affected

³⁰⁹ Hamrick & Duschinski, ‘Enduring injustices: Memory politics and Namibia’s genocide reparations movement,’ 9.

³¹⁰ Interview with Professor Phanuel Kaapama, September 3, 2018.

³¹¹ Ibid.

³¹² Ibid.

³¹³ Ibid.

communities.³¹⁴ The ONCD-04 have joined negotiations as an interest party and through dialogues, have made proposals and amendments to the governments' proposed structures, i.e. the Chief's Forum.³¹⁵ The ONCD-04 are represented in the Technical Committee and the Chiefs Forum, and Ngavirue explained that "those people who are representing the chiefs that are participating, sit with me in the negotiations and they make suggestions."³¹⁶ In addition to the traditional representatives who have been elected by their respective communities, Kaapama highlights that other members of the communities such as himself and Ngavirue, who are both Herero, have not necessarily been selected by their communities, rather by the government based on their expertise.³¹⁷ Therefore, there is a combination of representatives and government-selected experts from Herero and Nama communities present in the government structures who have a direct invested interest and contribution to the negotiations with Germany. However, Katjavivi – also a member of the affected community – explains and concedes with the government's position; "that first the negotiations are between the two governments...[however] the government of Namibia is...conscious of the fact that various stakeholders must form part of the team that is involved in shaping the activities relating to negotiations."³¹⁸ Ngavirue explains that the negotiations are "state-to-state, but with the community speaking...being adequately represented, and participating, but with a single spokesperson."³¹⁹ However Ngavirue specifies that in a state-to-state dialogue, interest parties are 'not equal' to the Special Envoy.³²⁰

Those who view the glass half-empty, are the Riruako group and Nama traditional authorities under the late David Frederick, who rejected to join the Special Envoy's team unless they are given autonomy from and within the government structures. Although the Motion called for the Namibian government to act as an interest party, Kaumbi argues that the government is acting as "*the party*".³²¹ The OTA

³¹⁴ Ndapewoshali Shapwanale, 'Namibia: Groups Split Over Genocide Claims,' *The Namibian*, March 2, 2017, <https://allafrica.com/stories/201703020832.html>

³¹⁵ Interview with Professor Phanel Kaapama, September 3, 2018.

³¹⁶ Ibid.

³¹⁷ Ibid.

³¹⁸ Interview with Professor Peter Katjavivi, September 5, 2018.

³¹⁹ Interview with Dr Zedekia Ngavirue, September 5, 2018.

³²⁰ Interview with Dr Zedekia Ngavirue, September 5, 2018.

³²¹ Interview with Uazuva Kaumbi, September 4, 2018.

under Rukoro and their allied Nama chiefs, and the OGF and NGTC, have argued for a ‘tri-partied’ dialogue or ‘trialogue’ among the German government, the Namibian government and elected representatives from the affected communities, all present as equal parties.³²² Kaumbi explains that the government structures need further changes through negotiations with Namibian interest parties so that either there are two heads of negotiations, or suggests the compromise of a deputy to Special Envoy Ngavirue who has been elected by people of the affected communities.³²³ There are no national statistics that suggest support base figures for each group. Ngavirue speculates that in terms of Herero and Nama chiefs, there are more chiefs present in government structures, however admits that he cannot deny the large crowds that Rukoro draws.³²⁴

Given that the government has insisted that their structures remain as they are, those who have rejected such structures have opted to pursue reparations through strategic litigation in the New York District Court, where they hope to either sue the German government for reparations or reach an agreement where they are included in the state-to-state negotiations with greater autonomy. The ongoing court case was launched in January 2017, after the appointments of the Special Envoys and is somewhat similar to the case of 2001, however there are several differences. The first is that it is not led under the Hosea Kutako Foundation, however by its successor OGF, and the NGTC. Secondly, the Namas have since been included in a joint legal pursuit for reparations given the similar treatment during the genocide. This shared history was acknowledged in 2007, in a joint position paper, undersigned by the Nama and Herero Traditional Leaders (the late Fredericks and the late Riruako), where the Extermination Orders for the Herero (2 October 1904) and for the Nama (22 April 1905) are recalled.³²⁵ Lastly, in addition to the ATCA, the ongoing court case is making use of the UN Declaration on the Rights of Indigenous Peoples, which advocates for the right of indigenous peoples to represent

³²² Hamrick & Duschinski, ‘Enduring injustices: Memory politics and Namibia’s genocide reparations movement,’ 7.

³²³ Interview with Uazuva Kaumbi, September 4, 2018.

³²⁴ Interview with Dr Zedekia Ngavirue, September 5, 2018.

³²⁵ The Nama and Ovaherero Traditional Leaders, *Joint Position Paper from the Nama and Ovaherero People on the Issue of Genocide and Reparations*.

themselves internationally. The aim of the joint pursuit in reparations is highlighted by Kaumbi, who explains that there is a “certain logical process...the first one is for Germany to admit that it committed genocide and not try and sugar coat it with words like atrocities...then the next step is obviously an apology...the next thing is reparations”.³²⁶ These are key elements in the OGF and NGTC position on reparations; financial compensation, repatriation of bodily remains and cultural artefacts, consulted development projects in areas of the affected communities, apologies and other forms of symbolic acknowledgements, including monuments, memorials and museums.³²⁷ Furthermore the OGF and NGTC have noted that efficient land reform that acknowledge precolonial land claims would be ideal³²⁸ as some ancestral land is owned by white farmers.³²⁹

While there is a divided opinion on representation, the Namibian government has expressed that the doors will remain open to all interest parties, whom they continue to encourage to join under the Special Envoy.³³⁰ Katjavivi chooses not to share a judgement on the New York court case, however states that “some people [unknown] say maybe it is not a bad thing to energise the German government to see the urgency of the matter.”³³¹ Kaumbi explains that there is no hatred between the Namibian government and OGF/NGTC and their respective traditional leaders. Furthermore, Kaumbi acknowledges that it is the democratic right of all Namibians to talk about genocide in whichever forum suits them. Lastly, Kaumbi acknowledges that whichever pursuit succeeds, all Herero and Namas would benefit in that victory of justice:

“But we know that should they [Namibian government] succeed for instance, we would also benefit, because they won’t say ‘no, you are not ONCD-04’... On the

³²⁶ Interview with Uazuva Kaumbi, September 4, 2018.

³²⁷ Hamrick & Duschinski, ‘Enduring injustices: Memory politics and Namibia’s genocide reparations movement’, 7.

³²⁸ Ibid.

³²⁹ “...we have to look at the issue of land. How do we get our land back? We need to look at our places of worship, some of our places of worship and the graves of our forefathers are on white-owned land. We need to ask for permission... Even Hamu-kari [Waterberg battle site where German troops attacked Herero communities including women, children and the elderly]...that farm is owned by a German guy...we need to ask for permission from this guy to go visit our ancestors.”
(Interview with Uazuva Kaumbi, September 4, 2018.)

³³⁰ Interview with Professor Peter Katjavivi, September 5, 2018.

³³¹ Ibid.

other hand also, if we succeed in our court case, they will also benefit because remember it is a class action. So it's not about Rukoro. It is a class action for all the people who qualify or meet the class criteria...every Herero, whether they supported us or even if they were our biggest opponent, will also benefit."³³²

Therefore, although there is no clear consensus on Namibian unity and representation, there are some common goals, such as the requests for acknowledgment, apology, and reparations – both symbolic and material – and that the affected areas, central and southern Namibia, be targeted for reparations. Furthermore the acknowledgement that the Namibian government improve memorialisation is accepted by members in government and the civil society organisations. More importantly, there is a consensus that despite the schisms and fragmentation in pursuits, there is a common vision of results – that central and southern areas in Namibia are targeted for reparations. Germany has responded to both approaches differently: the appointment of a German Special Envoy to negotiate with Ngavirue; and the refusal to be summoned to the New York District Court by claiming state immunity.

4.2. 2015: Germany's New Position

As demonstrated in chapter three, the German government's responses before 2015 has been to superficially acknowledge its 'special' relationship with Namibia through annual payments of development aid, to refute the legal grounds of reparation claims and avoid contact with the OTA and reparations organisations. Even as the German government began recognising the need to acknowledge its shared past with Namibia, the acknowledgment of 'genocide' was absent. Whilst the German government has funded some projects, such as the memorial sites in Okakarara and Swakopmund, they have not termed these as 'reparations', however as means of 'addressing the past.'³³³ Similarly, while Germany pays development aid, scholars such as Sarkin and Kössler, some of the Herero and Nama chiefs, and more recently the Namibian government, have not accepted these as Reparative Justice. This

³³² Interview with Uazuva Kaumbi, September 4, 2018.

³³³ Zuern, 'Memorial politics: challenging the dominant party's narrative in Namibia', 511.

approach to ‘heal the wounds’ of the past are Germany’s terms of reconciliation, not the victim’s terms. This is arguably due to the position of international power of Germany, to set the terms of reconciliation whilst appearing as the ‘rescuer’ through development aid. Furthermore, by avoiding terms such as ‘genocide’, ‘reparations’ and ‘justice’, Germany’s foreign policy towards the affected communities have continued to add insult to injury in order to evade state responsibility.

Therefore 2015 is pivotal in the development of the reparations movement. German Chancellor Angela Merkel publicly admitted in an international broadcasted speech that what happened to the Herero constituted a genocide.³³⁴ This was translated into official policy the following year.³³⁵ This statement was overdue, considering that the UN classified the Herero massacre as genocide in the 1985 Whitaker Report.³³⁶ Nonetheless, this official acknowledgement in 2015 was a necessary step in order to solidify a dialogue within Germany, and between Namibia and Germany in which a state apology is part of the agenda. Since 2015 one may argue that the German government has changed its position on how to address the past and pursuing a more genuine reconciliation with Namibia through the appointment of Ruprecht Polenz as the Special Envoy on the German-Namibia Relationship, and has accepted the need for additional payments and a formal apology once the negotiations are concluded. However, this was done after decades of political obstacles that descendants of genocide have faced in order to receive such an acknowledgement. Furthermore, the appointment of Polenz and Ngavirue is monumental in the sense that the two individuals are meant to act as equal counterparts in what the German Foreign Minister Frank-Walter Steinmeier described in 2015 as a ‘confidential dialogue’.³³⁷ This chapter will explore Germany’s new reluctant approach under the Special Envoy, and consider whether this is a break from the German government’s previous policies, and whether there are small traces of denialism in their conduct.

³³⁴ Swart, ‘Herero make new claim for genocide reparations against Germany.’

³³⁵ Kössler & Melber, ‘Namibian genocide victims’ remains are home. But Germany still has work to do.’

³³⁶ Stempel, ‘Germany is sued in U.S. over early-1900s Namibia Slaughter.’

³³⁷ Mugabi, ‘Polenz: ‘Germany and Namibia need a common understanding of the past.’

4.2.1. Special Envoys: Negotiating a Common Position on the Past

Events in 2015 can be seen to an extent as a break from prior ‘denialism’/‘amnesia, and has solidified the acceptance of the narrative of genocide by the German state, a symbolic gesture which has been overdue, considering that the UN had officially acknowledged the Herero Genocide in 1985. In an interview conducted by Isaac Mugabi with Polenz, the German Special Envoy stated that through this dialogue between the Special Envoys, the two countries need to find a common understanding of what happened in the past, which he admits is not an easy topic. Furthermore, Polenz states that Germany is serious about finding this common understanding by listening to the requests of the Namibian side, the Herero side and the Nama side. This can presumably be requests by Herero and Nama chiefs in the ONCD-04 through Ngavirue as the OTA, OGF and the NGTC are not present in negotiations. Nonetheless, Polenz’s mandate concerns his counterparts – the Namibian Special Envoy and his team – and notes that a *common understanding* is necessary for a ‘reliable positive relationship’ between the *two governments*. The difficulty, Polenz highlights, arises out of the need for the two governments to find a “common diplomatic language, a common understanding and conclusions for the future.”³³⁸

However, there seems to lack of a common diplomatic language during negotiations between the Special Envoys and their teams. Special Envoy Ngavirue and Kaapama, who are present during negotiations, offer great insight into the issues around language between the two counterparts that does not seem very ‘common’. Ngavirue notes that “from the word go, the Germans have been very sensitive to the use of the term ‘reparations’”.³³⁹ Ngavirue suggests that the word ‘reparations’ is a sensitive word to Germany as they have a delicate history with the term following WWI and WWII. Furthermore, Ngavirue suggests that Germany tends “to think it will open up a Pandora’s Box to other countries that are now also wanting some form of compensation and using reparations.”³⁴⁰ From Kaapama’s experience at the negotiating table, the politics professor notes that first Germany was reluctant to pay

³³⁸ Mugabi, ‘Polenz: ‘Germany and Namibia need a common understanding of the past.’

³³⁹ Interview with Dr Zedekia Ngavirue, September 5, 2018.

³⁴⁰ Ibid.

reparations because they “at first rejected the term ‘reparations’. Later on when they came and said yes we can do it, but...without that term.” This he suggests may be due to the OGF/NGTC’s lawsuit in New York against the German government, which has placed them in a nervous position. When asked which term the Namibian negotiating team uses, Ngavirue stated that he and his team “have stuck to the terms of reference resulting from our motion...so we use ‘reparations’ and they talk of ‘healing wounds’”.³⁴¹ Therefore, while there seems to be a break from ‘denialism’, there seems to be a continuation of vague language from the German negotiating team that evades the term ‘reparations’ due to the international implications of former colonial subjects demanding justice in the forms of reparations from former colonisers and to dissuade legal obligations in the New York District Court.

While an amount of ‘reparations’/‘healing wounds’ is an issue in negotiations – Germany rejected Ngavirue’s proposed amount of N\$1.3 trillion in early 2018³⁴² – one successful outcome from negotiations is that development aid will remain separate from the negotiated amount.³⁴³ Therefore, there is arguably a break from Germany’s previous language that placed development aid as their ‘remedy’ to address a blanketed past. However, Ngavirue and Kaapama suggest that Germany’s attitude towards this notion was not easily compliant. Ngavirue notes that in the early stages of the negotiations, there were those in the German government who felt that the Namibian team should take the development aid Germany has been paying into consideration when negotiating an amount. Kaapama states that “in the process of negotiations, you always hear every now and then the German Special Envoy or a member of the German negotiating team referring to the development aid they are already giving to Namibia...I know that Germany has been implicitly trying to use development aid...to subdue the Namibian demands for reparations.”³⁴⁴ Furthermore, the Namibian team “took notice of how the German Envoy and negotiating team were trying to do power posturing,” however the Namibian

³⁴¹ Interview with Dr Zedekia Ngavirue, September 5, 2018.

³⁴² The Patriot Reporter, ‘Genocide negotiations fundamentally flawed: Rukoro,’ *The Patriot*, March 23, 2018. <https://thepatriot.com.na/index.php/2018/03/23/genocide-negotiations-fundamentally-flawed-rukoro/>

³⁴³ Interview with Dr Zedekia Ngavirue, September 5, 2018.

³⁴⁴ Interview with Professor Phaniel Kaapama, September 3, 2018.

negotiating team ‘stood their ground’ in order to keep development aid and reparations separate.³⁴⁵ Relating back to a history of German officials publicly referring to development aid in place of reparations, development aid continues to be Germany’s weapon and outlook on the matter. Therefore, a common language in which ‘development aid’ does not feature as ‘reparations’ needs to be established between the two negotiating teams.

Therefore, there is a continuity of Germany’s ‘power posturing’ which attempts to subdue the Namibian Special Envoy’s team during the negotiations, considering that ‘reparations’ continues to be missing from the Special Envoy Polenz’s ‘common diplomatic language’ and replaced by ‘healing wounds’, and the reoccurring references to development aid. This refers back to Kössler (2015) who argues that the ‘special’ relationship between the two governments, in which genocide and consequences are debated, is asymmetrical.³⁴⁶ Although the Namibian government – and organisations such as the OGF and NGTC – has stood its ground and has pushed for Germany to officially acknowledge genocide, return bodily remains, and agree to an apology, Germany’s approach continuously tries to take advantage of its position of power in a post-colonial context to subdue requests or superficially address their duties owed as ‘healing wounds’. Lastly, this lack of common position can be noted in the two Special Envoys publicly referred titles. Ngavirue is often referred to as the Special Envoy on *Genocide* in Namibian news outlets, whereas Polenz is referred to as the Special Envoy on *Dialogue or Namibian Relations* in German news outlets.

Rukoro reported in March 2018, arguing that the appointment of Polenz is ‘fundamentally flawed’ and that the negotiating sides on the genocide are not equal as “the Namibian envoy is mandated by parliament and subsequently appointed by the President...the German Envoy is appointed by the Federal Minister and is at the level of an African desk in the foreign ministry and reports to the head of

³⁴⁵ Interview with Professor Phanel Kaapama, September 3, 2018.

³⁴⁶ Kössler, *Namibia and Germany: Negotiating the Past*, 1.

the African department”³⁴⁷ Therefore, to Rukoro, the importance of the genocide reparations talks exist at different levels in the respective governments, and therefore carry different weights of significance. Furthermore, Rukoro explains that the Special Envoy Ngavirue is the result of a unanimous vote in parliament, and therefore his mandate is derived from the main points highlighted in the 2006 Motion. According to Rukoro, the German parliament on the other hand has yet to pass a resolution that affirms the Special Envoy’s mandate, and therefore questions what Polenz’s mandate is derived from. Ngavirue explains that one challenge that remains is that one single opinion on genocide and reparations does not exist in the German coalition government, which may complicate the outcome. Ngavirue expresses that “there is therefore a need to get a consensus in Germany which will help our negotiations.”³⁴⁸

4.2.2. Apology

An official state apology has yet to take place. Negotiating an official apology is within the mandate of Special Envoy Ngavirue.³⁴⁹ Katjavivi claims that “there is an acceptance...that once an agreement has been concluded, an official apology will have to be conveyed when the time comes.”³⁵⁰ Members from the traditional authorities who have argued for stronger representation in the negotiations have contended that before an apology is made, they have to be permitted to “vent our frustrations and our anger...the truth must be talked there...they need to look us in the eye and say, ‘we are sorry about that, it was wrong, let’s now close that chapter and move on’. It’s part of the healing process. We need to hear it from their mouths, and they need to hear it from our mouths.”³⁵¹ Therefore, how representatives are included in the negotiations to articulate grievances will play a critical role in whether an apology will be accepted by all members of the affected community. The ongoing negotiations are undoubtedly inimitable, and it cannot be stressed more that the ongoing negotiations ought not to be a missed opportunity for both governments to assure that members of the affected communities heal from their

³⁴⁷ The Patriot Reporter, ‘Genocide negotiations fundamentally flawed: Rukoro.’

³⁴⁸ Interview with Dr Zedekia Ngavirue, September 5, 2018.

³⁴⁹ Ibid.

³⁵⁰ Interview with Professor Peter Katjavivi, September 5, 2018.

³⁵¹ Interview with Uazuva Kaumbi, September 4, 2018.

past with a sincere apology followed with compensation. Whether the Namibian government and Herero and Nama chiefs in the ONCD-04 accept Germany's formal apology, this may have little effect on chiefs and activist organisations in the Riruako group. Furthermore, as mentioned in the previous chapter, an apology without additional forms of efficient reparations can be perceived as meaningless.³⁵²

4.2.3. Return of Remains

The return of skulls and remains in August 2018 was notably different from previous repatriations since the change in Germany's foreign policy on genocide. Ngavirue explains that Germany has come to accept full responsibility for the expropriation of skulls and remains, whereas in earlier accounts, they argued that it was a non-state issue where private researchers had extracted body remains.³⁵³ This was negotiated during state-to-state dialogue, whereas before the German state did not hold itself accountable for the extraction of skulls during the colonial era, arguing that the extraction was organised by private research units.³⁵⁴ The delegation of seventy-four people, comprised of traditional leaders and government officials, was led by the Minister of Education, Arts and Culture, Katrina Hanse-Himarwa and the event was held in a Lutheran church in Berlin with the attendance of invited German VIP guests.

Whether this recent handover of skulls was less superficial than the previous attempts, highlighting a change in Germany's recognition of responsibility to repair, has been debatable in Namibian media, and by Kössler and Melber. Minister Hanse-Himarwa stated that the Namibian government appreciated that the German government had agreed to a state-to-state handover for the first time and that these were necessary steps towards achieving reconciliation with Germany.³⁵⁵ This change in conduct is further noted as a delegation of German officials led by the Minister of State at Germany's Federal

³⁵² Thompson, 'Apology, Justice, and Respect: A Critical Defense of Political Apology,' 32.

³⁵³ Interview with Dr Zedekia Ngavirue, September 5, 2018.

³⁵⁴ Interview with Professor Phaniel Kaapama, September 3, 2018.

³⁵⁵ Namibian Broadcasting Corporation Reporter, 'Government appreciates first state-to-state handover of human remains,' *Namibian Broadcasting Corporation*, August 28, 2018, <https://www.nbc.na/news/government-appreciates-first-state-state-handover-human-remains.18598>

Foreign Office, Michelle Müntefering, travelled to Windhoek to attend and observe respective rituals for the return of human remains in August 2018.³⁵⁶ However, Kössler and Melber argue that repatriation process “was marred by friction”.³⁵⁷ The authors consider this ceremony with a pinch of salt, arguing that negotiations between the two governments are in ‘impasse’ as the “full recognition of the genocide, an appropriate apology and a willingness for redress on the side of Germany”³⁵⁸ remain unresolved. Therefore, similar to the issue of an apology, repatriation cannot be separated from other reparative obligations that Germany is reluctant to address. This is noted in speeches in the ceremony in which ‘official pronouncements’ on formal recognition of genocide and redress remained elusive.³⁵⁹

The ceremony was under the responsibility of the German Protestant Church and the Namibian Council of Churches, which the authors speculate as an “obvious attempt to keep a low profile on the side of the German state.”³⁶⁰ Rukoro expressed that the venue of the handover was not formal enough as it was not a government building, rather a Lutheran Church that was complicit in the genocide.³⁶¹ Furthermore, Rukoro expressed dissatisfaction in the Namibian media towards both German and Namibian governments as members of the OGF and NGTC were not initially invited to speak during the handover of remains. In addition Rukoro argued that the German activists supporting the OGF and NGTC, and who have been raising awareness in Germany about the genocide and call for reparations, were excluded from entering the venue.³⁶² Therefore, satisfaction to the victims – one pillar of reparations – differs amongst the Riruako and Maherero group. However, even members of the community cooperating with the Namibian government stressed that any acts of contrition would be measured against other reparative obligations that continue to lack.

³⁵⁶ Kuzeeko Tjitemisa, ‘Namibia: German Minister to Attend Skulls Ceremony in Windhoek,’ *New Era*, August 29, 2018, <https://allafrica.com/stories/201808290471.html>

³⁵⁷ Kössler & Melber, ‘Namibian genocide victims’ remains are home. But Germany still has work to do.’

³⁵⁸ *Ibid.*

³⁵⁹ *Ibid.*

³⁶⁰ *Ibid.*

³⁶¹ The Namibian Reporter, ‘Skulls repatriation process irks Rukoro,’ *The Namibian*, August 31, 2018, <https://www.namibian.com.na/180939/archive-read/Skulls-repatriation-process-irks-Rukoro>

³⁶² The Namibian Reporter, ‘Skulls repatriation process irks Rukoro.’

4.3. New York Lawsuit

Ngavirue notes that the state-to-state negotiations and the New York lawsuit are being held as separate issues by both governments, therefore it is necessary to explore separately how the German government responds to the ongoing attempts to summon Germany (Defendant) to the New York District Court by Rukoro and the OGF/NGTC (Plaintiff). According to Kaumbi, the German state's response have been very negative and have reinforced the sense of injustice felt by some members in the Herero communities. Since the lawsuit was first lodged in January 2017, the requests have been centred on material and symbolic reparations, and that Germany enter negotiations with the elected members of the affected communities, considering that the plaintiffs of this case have been excluded – as equal counterparts – in government negotiations. According to their Amended Class Action Complaint, filed 14 February 2018, this is a violation of international law as Germany is a signatory to the 2007 UN Declaration on the Rights of Indigenous People. In this sense, they do not have the support of a state and therefore have resorted to lawsuit in order to have Germany engage with them.

Since its launch in 2017, Germany pledged state immunity and refused to be summoned to a foreign court.³⁶³ In response to the Amended Complaint, Germany submitted a Motion to Dismiss, stating that the New York District Court lacked subject matter jurisdiction under the US courts' Foreign Sovereign Immunity Act (FSIA).³⁶⁴ Therefore Germany is not legally obligated to be tried in a US court. Therefore, the asymmetrical positions of power of a state versus a group of individuals is apparent in this case despite any UN resolution or declaration should domestic laws protect them. However, the New York District Court urged them to appear in court to vouch its defence of state immunity, as state immunity provided by the FSIA is waived for severe crimes such as genocide.³⁶⁵ In 2018, a year after the court

³⁶³ Interview with Uazuva Kaumbi, September 4, 2018.

³⁶⁴ *Defendant's Notice of Motion to Dismiss For Lack of Subject Matter Jurisdiction, For Lack of Personal Jurisdiction For Failure to Exhaust Remedies in Germany and Under the Doctrines of Political Question and of Forum Non-Conveniens.*

Case: 17 cv 00062 (LTS), Document 42, Filed 03/13/18, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

³⁶⁵ Interview with Uazuva Kaumbi, September 4, 2018.

case was lodged, Kaumbi is disappointed that the merits of the case have not been addressed whilst the issue of state immunity continue to be contested in court. Furthermore, the level of acknowledgement that is conciliatory and remorseful that the Plaintiff under Rukoro seek from Germany is undermined. In the Defendant's 2018 Motion to Dismiss, the German government acknowledge the Plaintiff's 'alleged' causes for a case, however do not confirm them:

“German colonial authorities allegedly seized their land and livestock and the German authorities allegedly turned a blind eye to systematic rape and the use of the people in forced labor... The German Imperial troops allegedly killed over 100,000 people and forced the survivors into concentration camps... The Amended Complaint alleges that there has been no reparation or compensation for these acts... The Plaintiffs allege that they have not been permitted to participate in recent talks entered into by the Federal Republic of Germany and the Republic of Namibia.”³⁶⁶

The purpose of such language is undoubtedly to reduce legal obligations to pay reparations in monetary compensation, as they acknowledge the accusations as 'alleged'. The legality of this case is considered, however what must be deliberated is that the narrative of genocide and causes for remorse continue to be downplayed. Furthermore, it should be considered that the OGF and NGTC have taken legal action as a last resort due to the lack of political power to engage with the German government on reparations. Therefore, Germany's response is not only a dismissal of legal obligations, but can be seen as a continuation of political expression to denounce the severity of the historical injustice, which has consequently resulted in legal action. Kaumbi highlights that the German government has refused to enter negotiations with the elected members of the affected communities, however they continue to hope for an out of court settlement.³⁶⁷ Therefore, whilst the Maherero group have aligned themselves to the Namibian government structures and therefore have their energies and requests channelled into

³⁶⁶ *DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION, FOR LACK OF PERSONAL JURISDICTION, FOR FAILURE TO EXHAUST REMEDIES IN GERMANY AND UNDER THE DOCTRINES OF POLITICAL QUESTION AND FORUM NON CONVENIENS*

Case: 17 cv 00062 (LTS), Document 43, Filed 03/13/18, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

³⁶⁷ Interview with Uazuva Kaumbi, September 4, 2018.

negotiations, which Germany arguably continues to undermine, the Riruako group have received less satisfaction out of their engagements, or lack thereof, with the German government.

5. Conclusion

Although reparations claims are embedded in legal and moral spheres, it is ultimately a political process. Reparations is a political process in which acknowledgement of victimisation and warranted redress are demanded, negotiated, ignored and/or reluctantly adhered to, based on social conditions, norms and pressures. These conditions shape victim group agency, mobilisation, and subsequently their access to resources. A victim group's political opening is further shaped by discursive openings for trauma narrative articulation and whether this narrative resonates with a wider audience.³⁶⁸ The Herero>Nama Genocide is the first genocide of the twentieth century, however the history of acknowledging this genocide, which is a crucial element of reparations claims, has been influenced by international politics and social norms of colonialism and post-colonialism. The international norm around recognising colonial genocides over the last century was in a 'developing' process as decolonisation only begun shortly after the 1948 UN Genocide Convention. As a result, many nations in the Global North did not support the official acknowledgement of the unique crime at first, as many colonial powers were guilty of 'cultural' genocide.³⁶⁹ Furthermore, in an international post-colonial context there is a general tendency that governments in the Global North (Europe and North Americas besides African Americans) do not support reparations for historical injustice, whereas generally speaking, governments and actors in the Global South (Africa, Latin America and Asia) support such claims.³⁷⁰ This is arguably due to colonial amnesia and denialism in which former colonisers collectively do not experience the legacies of colonial historical injustices such as loss of land and persisting inequalities. These burdens are however experienced by descendants of historical injustices.³⁷¹ This gap of experiences and public

³⁶⁸ Woolford & Wolejszo, 'Collecting on Moral Debts: Reparations for the Holocaust and Pořajmos,' 872.

³⁶⁹ Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 103.

³⁷⁰ Sarkin, 'Should reparations for massive human rights abuses perpetrated on African victims during colonial times be given?' 90.

³⁷¹ In some cases, not all direct victims of historical injustices have passed away. For example, Britain agreed to pay victims of the Mau Mau Rebellion and detention camps (1952-1960).

memory is where politics, specifically positions of power, shapes reparations processes. Kössler employs five dimensions of public memory as a post-colonial practice: assertion, commemoration, denial, amnesia, and recognition.³⁷² These are reflected in positive (assertion, commemoration, recognition) and negative (denial and amnesia) attitudes that either keep the memory alive or ignore it, and therefore either assist in the healing or re-victimisation of descendants that cannot easily forget this past. The negative attitudes – denial and amnesia – have arguably dominated former colonisers’ public memory of some historical injustices that took place in the name of colonialism. This thesis is not arguing for reparations for colonialism, which is a different debated topic. It is rather arguing that crimes that breached international laws at the turn of the twentieth century and attempts for redress have been pushed into a ‘lawless’ corner in which rights of the former colonised are problematically contested.

Based on this international power enjoyed by the Global North, synchronic to Western states, it took several decades after the 1948 UN Genocide Convention for the international community to acknowledge some colonial atrocities as genocides. Woolford and Wolejszo refer to the contradiction of the Jewish Holocaust’s effect on other genocides. The authors discuss the Jewish Holocaust as the prototypical genocide, of which all other genocides are measured against. Therefore, while Jewish reparations claims have influenced other victims to articulate their grievances and demand justice, it has also become a reference point in which other genocides are seen as ‘lesser genocides’ in comparison to the Jewish Holocaust.³⁷³ Members in the Herero community have articulated that there has been little difference between the Herero Genocide and the Holocaust, noting that the only difference was that one genocide persecuted Europeans. This double standard can be arguably attributed to attitudes of colonial denialism/amnesia. While the Herero/Nama Genocide was acknowledged as a genocide by Lemkin, the pioneer of the term, activist Reverend Scott in the late 1940s, and by Herero chiefs, the UN Whitaker’s Report in 1985 can be seen as a great symbolic international achievement that boosted notions of reparations claims. The German government on the other hand officially evaded such terms, ‘genocide’

³⁷² Kössler, *Namibia and Germany: Negotiating the Past*, 2.

³⁷³ Woolford & Wolejszo, ‘Collecting on Moral Debts: Reparations for the Holocaust and Pořajmos,’ 881.

and ‘reparations’ for legal purposes, to the dissatisfaction of the affected communities, whose daily lives continue to be impacted by the genocide. After shifts in the international arena in which several genocides were being acknowledged, such as Germany’s acknowledgment of the Armenian Genocide in 2015, Germany officially acknowledged the Herero Genocide in 2015 in order to avoid double standards.

Considering that the acknowledgment of victims of genocide is a political process influenced by positions of power and influence, it is understandable that having reparations claims met is correspondingly a political process. While in theory, reparations has evolved to be victim centric, the politics of defining victims translate into the politics of reparations. Reparative Justice Theory suggests that reparations is greater than transferrals of resources and monetary compensation, and should include symbolic processes such as acknowledgement, apologies, memorialisation, return of remains, and acceptance of responsibility to make amends and repair. These symbolic processes are often not so easily and organically adhered. Political demands and strategic litigation that bring perpetrators to repair injustices do not exactly spell out remorse, and any successful outcomes would appear more as a loss for the German government rather than a moral gain. However, components of Reparative Justice Theory continue to be central to requests made by Namibian actors. Katjavivi argues that reconciliation through reparations can be a win-win outcome as Germany can place their painful past to rest as well.³⁷⁴ This is further reflected in the OTA spokesperson Kaumbi’s statement that calls for conciliatory conduct from Germany, in which one can “repair an injustice through your *conduct*...[if] you have proper remorse and respect, people will start to look at it differently.”³⁷⁵ However, symbolic gestures seem to be avoided out of fear of possible legal accountability.

³⁷⁴ Interview with Professor Peter Katjavivi, September 5, 2018.

³⁷⁵ Interview with Uazuva Kaumbi, September 4, 2018.

The politics of reparations is not limited to the perpetrator vs. victim paradigm, as politics within a victim group can also shape contestation around reparations processes. In a post-independent Namibia, the Herero collective political power is undermined in a democratic Namibia in which their numbers have been reduced to a minority as a direct result of the genocide. It has been speculated that the Herero could have been a major political force in Namibia, however the loss of 80 percent of the Herero population has placed them in a significantly inferior democratic position to the Owambo group.³⁷⁶ The leading party, SWAPO, have a responsibility to all Namibians, including those who have not been affected by genocide. In addition, there are Namibians who have opposed reparations claims, arguing that the Herero had violently taken their land before the arrival of German settlers.³⁷⁷ Therefore, the Namibian government needs to take a complex history into consideration, whilst acknowledging that this unique atrocity that affected the Herero and Nama disproportionately needs redress. Therefore, how this genocide fits into Namibia's long history of colonialism and justices has led to several views on what reparations should mean not only to the Herero and Nama, but to Namibia. This invites further political contestations around reparations for genocide, and not reparations for colonialism.

Therefore, as demonstrated in this case study, not all reparations movements speak with one unified voice, as noted by schism between Riruako and Maherero group.³⁷⁸ The two groups differ in terms of political allegiance, acknowledgments of paramount chieftaincy and situations of the genocide in a post-independent political context. The Riruako group has played a pivotal role in the reparations movement, considering that it was this group that articulated the first requests for reparations for genocide from the German government and separated their claims from other colonial atrocities in Namibia. The Maherero group on the other hand have viewed the genocide as part of a bigger colonial context in which they need to situate their reparations claims within a political context in which all Namibians suffered under

³⁷⁶ Sarkin, *Colonial Genocide and Reparations Claims in the 21st Century: The Socio-Legal Context of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908: The Socio-Legal Context of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908*, 10.

³⁷⁷ Cooper, 'Reparations for the Herero Genocide: Defining the Limits of International Litigation,' 119.

³⁷⁸ Hamrick & Duschinski, 'Enduring injustices: Memory politics and Namibia's genocide reparations movement', 9.

colonialism, whilst acknowledging that special duties are owed to the affected communities. Therefore, although the history has shaped the identity of the affected communities, including the Namas, politics affects the different platforms in which grievances are articulated and heard by Germany, as seen with the Maherero group that are more politically affiliated with SWAPO. The SWAPO-led government, furthermore, has a role to play in the national memorialisation of the Herero/Nama Genocide and assist in the symbolic healing of the descendants. Tension has built between the OTA and the Namibian government, given that previous memorialisation and commemoration of the liberation of Namibia has been dominated by SWAPO narratives, which various scholars have argued has reduced the presence of the Herero and Nama rise against colonialism and the genocide that ensued in national public memory.

Furthermore, the government previously took a passive position on reparations claims from Germany following independence in favour of development aid, whilst the early pioneers of the reparations movement under Riruako persevered purposely despite the lack of state support. Therefore, the politics of reparations is further deliberated in Riruako's Motion on Genocide that was unanimously passed in the Namibian parliament in 2006, which signalled the government's active role in facilitating negotiations between representatives of the affected communities and the German government. This has yet resulted in two avenues for reparations claims a decade later: a state-to-state negotiations officiated in 2015, in which the Maherero group have accepted government terms in which the government-elected Ngavirue will lead the negotiations; and a lawsuit against the German government by the Rukoro group for reparations, in which the Rukoro group argue for the right to represent themselves in state-to-state negotiations. Schism continued considering that there is a difference of opinion on the government's leading role, where some such as the Rukoro group, have interpreted the Motion's point to incorporate the Namibian government as an interest party and disagree with the government's approach to champion the negotiations. The Maherero group on the other hand have accepted the government's compromise and work alongside Ngavirue in supportive roles, sit in meetings with the German Special Envoy and make approved demands through Ngavirue. The aim of

this thesis is not to ‘pick’ one group over the other, however to highlight their political positions that shape their political openings to claim reparations.

Rather, this thesis is focused on Germany’s different responses to these two groups, in which a common thread of superiority shapes their conduct with Namibian actors. This thread of superiority is synonymous to Kössler argument that Germany’s relationship with Namibia in a post-colonial context is asymmetrical.³⁷⁹ Although Germany’s foreign policy since 2015 has been notably different on paper, this thesis has deliberated whether this new foreign policy to reach a common understanding with Namibia has been fully translated into ideas of Reparative Justice Theory. Prior to 2015, Germany repeatedly insisted that there were no legal grounds for reparations and that too much time had passed for an apology. Furthermore, Germany’s annual development aid from a wealthy First World nation has been used as a tool to address the past ambiguously. This is further noted in poor attempts for apologies (2004) that indiscreetly reinforced Germany’s position to determine what dues are owed, and return of remains (2011 and 2014) in which the German government absolved itself of state responsibility to return the skulls of Herero, Nama, Damara and San genocide victims.

However, there has been a global shift in which former colonised groups are having articulations of grievances heard and met and/or contested. While former colonisers are treading carefully, so as not to open Pandora’s Box, there have been examples that demonstrate that there is political shift in accepting responsibility to repair. In 2013, Britain agreed to pay reparations to its victims in detention camps during the Mau Mau rebellion. That same year, the Dutch government offered an apology and compensation to widows in Indonesia who had lost their husbands to the colonial war in which thousands of men were executed.³⁸⁰ The British government has recently paid compensation to ex-

³⁷⁹ Kössler, *Namibia and Germany: Negotiating the Past*, 1.

³⁸⁰ The Straits Time Reporter, ‘Dutch apology for Indonesian colonial atrocities opens old wounds,’ *The Straits Time*, May 1, 2014, <https://www.straitstimes.com/asia/se-asia/dutch-apology-for-indonesian-colonial-atrocities-opens-old-wounds>

guerrilla fighters in Cyprus for human right abuses during their independence war in the 1950s.³⁸¹ More recently (2018). The first three examples, compensation was governments were forced to pay via court, which is leading to pre-emptive approaches by former colonisers. For example, France announced its intentions around the restitution of stolen African artefacts during the colonial era to the continent in 2018.³⁸² Germany's official acknowledgement of the Herero/Nama Genocide is situated within a global political shift in which strong redress the relatively weak, whether through strategic litigation or negotiations.

Germany's official acknowledgement of the genocide can be interpreted as a departure from previous foreign policies which avoided terms such as 'genocide', 'reparations' and 'apology'. While Germany have included 'genocide' in their foreign policy (2016), there are arguably small traces of denialism in their conduct with Namibian actors. Therefore, this thesis argues that there is a difference in officially acknowledging victims of genocide, which is as simple as incorporating the words into foreign policy, and morally acknowledging the victims of genocide, which is to translate these words into action and conduct. Furthermore, to consider and treat victims of genocide and their descendants as equal counterparts. The caution around accepting full responsibility to repair may be based on the reluctant shift in global political norm in which former colonisers are being held accountable for crimes under colonialism. Although paying reparations may be 'an investment in Germany's reputation,' Melber (2017) suspects that Germany is "expected to act with loyalty to fellow Western states instead of pave the way for many more claims of a similar nature".³⁸³ However, quite simply, it may not only be an issue of accepting responsibility, but a difference in opinion on how to accept responsibility, which is Germany's tendency of setting the standards and approaches to 'heal the wounds' or 'address the past' via development aid.

³⁸¹ Helena Smith, 'Cypriot veterans win right to claim damages over UK torture claims,' *The Guardian*, January 12, 2018, <https://www.theguardian.com/world/2018/jan/12/cypriot-veterans-win-right-to-claim-damages-over-uk-torture-claims>

³⁸² BBC Reporter. 'Benin artworks: France to return thrones and statues.' BBC News, November 23, 2018, <https://www.bbc.com/news/world-46324174>

³⁸³ Melber, 'Uncovering the 20th century's first genocide,' 30.

Therefore, Namibia's attempts to keep development separate from reparations continues to be an issue, even though the two governments accepted that the two would be distinct. Both Ngavirue and Kaapama admit that this progress was not easily accepted by the German government who continue to refer to their development aid during negotiations as a means to subdue the Namibian position. Therefore, Germany's constant suggestions towards development aid in reparations negotiations resembles Germany's attitude towards reparations claims a decade ago. Secondly, while the Namibian team pronounce their requests as 'reparations' during negotiations, the German team address proceedings as 'healing of wounds', a term that state officials previously (pre-2015) used in order to avoid state responsibility to repair in full. Therefore, there lacks a common understanding and common language, which German Special Envoy Polenz previously expressed was a priority. While the term 'reparations' is more humbling towards Germany's duties to descendants of genocide, 'development aid' portrays Germany as a 'rescuer', a common paradigm concerning former colonisers and former colonised who are dependent on the former's wealth.

The symbolic nature of Reparative Justice continues to be a contested area in this case study. While the third repatriation of skulls in 2018 has been regarded as progress by some, others have highlighted a continuity of Germany's tendency to deal with claims superficially. One positive change was the German government's active participation in the repatriation's organisation and handover, compared to previous repatriations (2011 and 2014) when German VIP state officials did not participate or attend. However, merits of this repatriation ought to be measured alongside Germany's speeches at the ceremony that evaded terms such as 'genocide' and 'reparations.' Furthermore, while it has been confirmed that an apology is underway and will be delivered once negotiations are finalised, this apology is yet to be confirmed to be packaged as 'reparations' as the German Special Envoy Polenz and his negotiating team refrain from using this term in the media and during negotiations.

The German government's sense of superiority as a Western nation in state-to-state negotiations has also offered them protected treatment in terms of legal litigation. The lawsuit in New York faced similar, if not worse, continuities of post-colonial positionality and traces of denialism as Germany claimed state immunity and refused to be summoned to a foreign court.³⁸⁴ This is a political obstacle as it is extremely difficult to sue a state in court, obligating a government to accept full responsibility, let alone a Western state. Therefore the shifting norm that is bringing former colonisers to atone for crimes under colonialism, has yet to have its full impact. Moreover, considering that the plaintiff is a none-state actor, the Rukoro group's political opening is severely undermined whilst Germany enjoys its privilege of 'state immunity' under US courts' Foreign Sovereign Immunity Act (FSIA).³⁸⁵ While the Rukoro group have built a strong case against the German government, merits of the case cannot be legally addressed in court until the issue of state immunity is settled. However, in order to achieve reconciliation, it can be argued that Germany should concede some of its power in order to face its past by levelling with members of the affected communities. Melber argues that "material reparations in relation to the size of German state coffers, compensation for damages could solve a problem and might even be an investment for Germany's reputation."³⁸⁶ Although the Rukoro group have pursued reparations through class action lawsuit, the overall aim is to have an out of court settlement in which they can be regarded and treated as equal counterparts to the German government in which their grievances are articulated and acknowledged, requests met, and in which they can close this dreadful chapter with dignity and satisfaction. Therefore, despite any possible future conclusions that may result from the state-to-state negotiations that could possibly – and arguably – lead to the satisfaction of the Maherero group, Kaumbi insists "that we [OTA] will still continue with our fight."³⁸⁷

³⁸⁴ Interview with Uazuva Kaumbi, September 4, 2018.

³⁸⁵ *Defendant's Notice of Motion to Dismiss For Lack of Subject Matter Jurisdiction, For Lack of Personal Jurisdiction For Failure to Exhaust Remedies in Germany and Under the Doctrines of Political Question and of Forum Non-Conveniens.*

Case: 17 cv 00062 (LTS), Document 42, Filed 03/13/18, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

³⁸⁶ Melber, 'Uncovering the 20th century's first genocide,' 30.

³⁸⁷ Interview with Uazuva Kaumbi, September 4, 2018.

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