

## **NATIONAL ASSEMBLY STATEMENT ON GENOCIDE, APOLOGY AND REPARATION BY THE HONOURABLE FRANS KAPOFI, MP**

Honourable Speaker and Esteemed Members of the House,

1. I stand before you, Honourable Speaker and Esteemed Members, as freely-elected representatives of the People of Namibia who, amongst others as Members of the National Assembly, apart from making and repealing laws for the peace, order and good governance of this country in the best interests of its People, are also constitutionally tasked to agree to ratification or accession to international agreements, to receive reports on the activities of the Executive and to discuss and advise the President in regard to any matter which by the Namibian Constitution he is authorised to deal with.
2. In addition, Honourable Speaker, Esteemed Members of the House, there remains an ever-present obligation upon us to remain vigilant for purposes of ensuring that the scourges of, amongst others, politically-induced division amongst our People regionalism and tribalism do not again manifest themselves in any form in our country. It is with this in mind that I humbly urge and ask all of us when discussing this important and emotive public issue to avoid making statements or acting in a manner that divides rather than unites our People.

3. At the same time, it bears emphasis that we must, when discussing this important national issue, be sensitive to and tolerant of divergent and sometimes strong views on the matter. After all, Honourable Speaker, Esteemed Members, robust but dignified deliberation over national issues is part of our cherished and hard-won democratic culture. In this respect, we must not act as if we are oblivious to the fact that even within the affected communities there are strong and divergent views on the subject matter of our discussion today. Our main goal and purpose as we discuss this matter should therefore be that we discuss this matter in a manner that brings everyone on board and makes all our People, regardless of their views on the topic, to feel truly represented in this House.
4. We, now a sovereign Nation which attained self-governance after difficult episodes of successive foreign colonial regimes for more than a century, recognise that the freedom and independence ultimately won came at a cost measured in countless human lives and suffering. In all our activities as Members of this House and members of the public we must therefore all work hard so that Namibian lives and properties would never ever be destroyed on the basis of political or other kinds of justification.
5. The most painful and deeply dehumanising part of that difficult and dark episodes of our history was the staggering brutality meted out against certain communities in our country, namely the ovaHerero and

Nama people who, between 1904 to 1908 were subjected, at a genocidal scale, to senseless and barbaric killings, torture, forced labour, inhumane detentions in concentration camps, rape, dispossession of property including land and livestock, and destruction of culture and traditions, etcetera. As part of the Germans' brutal acts against Namibian communities, a large number of the Damara and San, were also exterminated. The effects of all these cruel and barbaric acts by the German colonial forces are felt by the descendants and these communities to this date.

Honourable Speaker and Esteemed Members of the House,

6. I am here to speak to you, Honourable Speaker and Esteemed Members, about a protracted negotiation process on the genocide committed against the ovaHerero and Nama, which started in this House as far back as 2006. The main goal was primarily to secure an acknowledgment and acceptance from the government of the Federal Republic of Germany that the German Imperial troops led by General Lothar von Trotha committed genocide against the ovaHerero and Nama people, as well as to seek a genuine and sincere apology and reparation to the affected descendants, or more appropriately, the affected communities. Before saying more about this aspect which, as I stated, was initiated by this House during 2006, it may be appropriate for context and clarity to first briefly touch upon the genocidal acts perpetrated against the ovaHerero and Nama people.

7. On 3 October 1904 General Von Trotha infamously issued his first extermination order against the ovaHerero, with a clear and manifest genocidal intention and plan to completely annihilate the ovaHerero people. Distressingly, at the end of Von Trotha's genocidal crusade against the ovaHerero, thousands of women, men and children have died in brutal and cruel circumstances beyond description, almost completely annihilating them. It is disheartening that unfortunately a big number of survivors of the genocide were forced to leave their motherland for foreign countries, predominantly to neighbouring countries such as Botswana and South Africa where to this day their descendants live. As if having wiped out about 80% of the ovaHerero people was not enough, Von Trotha conceived another genocidal plan, this time around against the Nama people, by issuing a second extermination order on 22 April 1905. The Nama people were likewise subjected to untold suffering through killings, cruel torture, inhumane detentions in concentration camps, rape, forced labour, etcetera.
  
8. Earlier and after the two extermination orders, these two communities lost their land, livestock, livelihoods, culture, dignity and were subjected to forced labour in concentration camps, living under inhumane conditions. Because of dispossession of huge hectares of land from the victims of genocide, descendants of these communities are to date destitute.

9. The sheer magnitude and scale of the genocide and the long-term socio-economic and cultural effects the genocide have to this date represents open wounds to the descendants of the ovaHerero and Nama. Since Namibian independence in 1990 there has been a number of attempts made by individuals and leaders of the affected communities to engage the government of the Federal Republic of Germany in order to get it to account for the 1904-1908 genocide committed by its colonial troops against the ovaHerero and Nama communities. While these noble and brave attempts regrettably did not yield any success, Honourable Speaker and Esteemed Members, we must pay tribute to a number of individuals and leaders who spearheaded these efforts in seeking restorative justice for the affected communities in very difficult circumstances.
10. Honourable Speaker, sadly a number of the individuals at the forefront of these important efforts have since passed on, some of them are Chief Kuaima Riruako, Gaob Eduard Afrikaner and Advocate Vekuii Rukoro. May their souls rest in peace. All these attempts culminated in this House during 2006 passing a resolution, amongst others, calling for a lasting solution to be found on the issue of genocide perpetrated by the German colonial army.
11. After this House passed the resolution I earlier referred to, Dr Hage Geingob at the time a SWAPO backbencher, accompanied the Speaker of this House at the time, the late Theo-Ben Gurirab, when he was

invited for a visit by his counterpart at the Bundestag. While the two were in Germany they attended a discussion on genocide in the Bundestag. It became clear from the discussions that only a few Members of Parliament in the Bundestag supported the genocide issue. That being the case, and unsurprisingly, the motion seeking a formal apology and consideration of restorative justice for the OvaHerero and Nama people was at that point rejected by the Bundestag. Of course, this is one of many setbacks and challenges experienced in the journey to seek restorative justice for the affected communities.

12. It was against that background that the Namibian government decided to take up the genocide issue on a State-to-State basis, particularly because it was felt that international practices dictated and pointed to the fact that non-State actors could not effectively negotiate with State actors. It was for this reason that President Hifikepunye Pohamba at that point assumed responsibility and decided to communicate with the Chancellor of Germany, Ms Angela Merkel. In pursuit of the issue of genocide for the benefit of the affected communities, President Pohamba designated the then Minister of Foreign Affairs, Honourable Utoni Nujoma, as his first Special Envoy. Honourable Utoni Nujoma was later replaced by Honourable Netumbo Nandi-Ndaitwah when she succeeded him as the Minister of Foreign Affairs.
13. Further engagements between President Pohamba and Chancellor Merkel led to President Pohamba on 9 July 2013 inviting members of

the affected communities to State House. It was after such a gathering at State House that President Pohamba announced the formation of a Cabinet Committee under the chairmanship of the then Prime Minister, Dr Hage G. Geingob, to direct and steer Namibian negotiations on the issue of genocide, apology and reparations. The Committee consisted of Honourable Netumbo Nandi-Ndaitwah, Minister of Foreign Affairs; Honourable Saara Kuugongelwa-Amadhila, Minister of Finance; Honourable Immanuel Ngatjizeko, Minister of Safety and Security; and Dr Albert Kawana, Minister of Presidential Affairs and Attorney-General.

14. Subsequently, Cabinet in November 2015 appointed a Special Political Cabinet Committee chaired by the Vice-President to guide and oversee the negotiations between the two governments and mete out a clear negotiation position for Namibia. In view of this, a Technical Committee chaired by Ambassador Tonata Iitenge-Emvula and composed of Namibian experts on economics, history and research, and representatives of the affected communities was appointed to conduct research and produce Namibia's Negotiation Position Paper.
15. In ensuring that the process of negotiation was transparent and above board the Special Political Cabinet Committee constituted a Chiefs Forum composed of Traditional Leaders of the affected communities in order to provide them with feedback on the negotiation and to allow them to make input and advise Cabinet on the negotiation strategy.

Between 2016 and 2021 the Chiefs Forum held more than eight sessions and during these sessions Traditional Leaders and their advisors made meaningful inputs to the negotiation strategy and provided wisdom to the Special Envoy and his negotiating team, including on the nature of reparation.

16. It was after such processes that the two countries agreed to appoint respective Special Envoys who would lead negotiation on the genocide, apology and reparation issue. Namibia on its part made a decision to appoint a seasoned diplomat, historian and in fact a descendant of the victims of the 1904-1908 genocide in the person of the late Dr Zed Ngavirue who, sadly, left us a few months ago due to the devastating COVID-19 pandemic. May his soul rest in peace.
17. We as government and the negotiation team are prepared to candidly acknowledge the fact that we were not under any illusion that the negotiation process would be an easy one. This is particularly so because of various factors which made it difficult to achieve the desired outcomes. Some such factors that served as considerable challenges were
  - (1) The sheer period of time that has passed from the time the genocide was committed to the negotiation – a period spanning over a century.



- (2) Successive changes of government and political structures in Germany over the years.
- (3) Unlike the negotiations and reparations made to the Jewish people by Germany, Namibia on its part for various reasons did not have the luxury of negotiating this issue with Germany under favourable terms and conditions, as was the case with the Jewish people.

Honourable Speaker, Esteemed Members,

18. After a protracted and sometimes disappointing negotiation process, marred by multi-faceted difficulties, problems and challenges, the Namibian negotiation team ultimately got Germany to agree on its part to three pillars, which I will deal with one by one, namely:

### ***Genocide***

Honourable Speaker, Esteemed Members,

19. For more than a century Germany has sought to escape any degree and sense of accepting its responsibility over the genocide committed against our People, namely the ovaHerero and Nama. Germany, as I said not without difficulties and persistent fight on the part of our negotiating team of more than five years, accepted and acknowledged responsibility for the acts of genocide committed by German colonial

forces against the ovaHerero and Nama. The acceptance of responsibility as a matter of public policy and international Humanitarian Law is a primary step in the process of seeking restorative justice for victims of crimes of serious gravity such as genocide. Although the killing of the ovaHerero and Nama people with the sole aim of exterminating them has always qualified as a criminal act of serious gravity, hence making the Germans criminally responsible, the absence of an international legal framework at the time (1904-1908) to provide for penalties against persons guilty of genocide and to provide restorative remedies to victims of such heinous crime, made it difficult and almost impossible for the victims in this case and their dependents, and later their descendants, to obtain any effective restorative remedies over the years.

20. About 40 years after the genocide by the German colonial troops, the UN General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide, having recognised that at all periods of history genocide has inflicted great losses on humanity and having been convinced that in order to liberate mankind from such an odious scourge, international cooperation between States was required. The Convention defines "genocide" as

*acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such*

*(a) killing members of the group;*

- (b) causing serious bodily or mental harm to members of the group;*
- (c) deliberately inflicting on the group's conditions of life calculated to bring about its physical destruction in whole or in part;*
- (d) imposing measures intended to prevent birth within the group;*
- (e) forcibly transferring children of the group to another group.*

21. It is undisputed that the utter brutality committed against the ovaHerero and Nama people, including killings of women and children at a very distressing scale, perfectly fits the definition under Article 2 of the Convention. It is therefore appropriate to acknowledge that at least in this respect it is an achievement, of some measure, to get the Federal Republic of Germany accepting responsibility, for the first time after a period of more than a century, that genocide has as a matter of fact and law been committed against the ovaHerero and Nama people.

## ***Apology***

Honourable Speaker, Esteemed Members,

22. In respect of the second pillar – the apology – it is worth noting that the UN General Assembly in 2005 adopted a set of basic principles on

reparations, namely the UN General Assembly Basic Principles and guidance 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. Those Basic Principles and Guidance describe “apology” as a form of satisfaction for victims, and it requires an apology to be made publicly and it should at the minimum constitute an acknowledgment of the facts and acceptance of responsibility by those who are responsible for acts of human rights violations.

23. It is pleasing to note that the Namibian negotiation team was at all material times alive and alert to the fact that an apology should always signal a real intention of a State or a liable party to recognise its obligations towards victims. Furthermore, we as government was pleased to note that the Namibian negotiation team was cognisant of the fact that depending on the content, delivery tone, and proper timing, apology could be one of the effective ways to heal victims’ wounds. In this context, the second pillar will require of the government of the Federal Republic of Germany, represented by its President, to tender a genuine and sincere apology in Namibia, in this House to the affected communities and, more appropriately, to the descendants of the victims. In this respect, it is important to point out that it is an essential understanding that the apology will be made in particular towards the descendants of the victims of genocide, and in general to the People of Namibia. It must be remembered that at this stage the text of the apology itself has not as yet been agreed upon

by the parties. The Namibian negotiation team will at the material time ensure that whatever apology will be tendered is made in terms and in a tone acceptable to it.

24. It bears emphasis that the government and its negotiating team recognise that while the apology would have a value in itself and can address the moral harm, it should necessarily be combined with some material form of reparation. It is noteworthy to have realised that the negotiation team ensured that a disproportionate emphasis is not placed on apology only but went further to secure a third pillar, which is reparation.

### ***Reparation***

Honourable Speaker, Esteemed Members,

25. Firstly, before directly addressing reparation being the third pillar of negotiation, it may be helpful by way of background to state that the genocide against the ovaHerero and Nama people was committed when institutionalised impunity by colonial powers reigned supreme. The scale of impunity regrettably created a situation where the victims and their dependents not only did not have remedies for reparation for the violation of their rights, in fact, they could never have hoped for reparation under the circumstances of open and complete impunity enjoyed by the German colonial forces in this particular case. Hence,

discussing reparation many years after these horrifying and dehumanising events against our people would understandably be a difficult undertaking altogether for various reasons, as alluded to earlier.

26. Reparation, however late it could turn out to be is important to the cause of justice for victims, particularly victims of heinous and odious crimes such as genocide. In fact, Lykes and Mersky had this to say about reparation:

*Reparations without justice are not reparatory and the wider social-political struggles for justice and against impunity and specific psycho-social interventions need to be increasingly consonant and integrated in a unified strategy.<sup>1</sup>*

27. Furthermore, Gina Donoso, in her article *Inter-American Court of Human Rights' reparation judgments. Strengths and challenges for a comprehensive approach*,<sup>2</sup> stated the following:

*One of the most important and significant goals of reparations for victims of political violence, is that it allows them to channel their frustration, aggression and feelings of revenge through*

---

<sup>1</sup> Lykes and Mersky, in: De Greiff, P., *The Handbook of Reparations*. The International Centre for Transitional Justice, Oxford University Press, US, 2006, p. 616.

<sup>2</sup> ICTJ Revista IIDH, Vol. 49, p. 37.

*language and symbolic acts. Well-processed reparations can bring closure or the beginning of mourning and can serve as symbols of healing."*

Honourable Speaker, Esteemed Members,

28. The parties have agreed that following the admission of responsibility by the Federal Republic of Germany, the apology to be tendered must be accompanied by payment of reparations. On its own, to get the German government, after its unwillingness to accept responsibility over the years, to agree to payment of reparations is not an insignificant step in the process of negotiation at all. It is an achievement that we must all acknowledge. The Federal Republic of Germany has as a fact offered €1.1 billion (around N\$18 billion) as part of reconciliation and reconstruction projects over a period of 30 years. This amount for various reasons, some of which I dealt with earlier, can never be said to be satisfactory or good enough. The Namibian government has since raised issues on a number of aspects relating to the quantum and the disbursement period. It is thus encouraging that, depending on the negotiations between the parties, an improvement of the terms of reparations, particularly on quantum, is not out of the question.

29. The Namibian government, recognising the inadequacy of the amount offered by the German government for reparations, have built in the following safeguards:
1. That there will be regular and periodic comprehensive impact assessment.
  2. That the structures created during the negotiation process will be used to address any other issues or projects that will be identified by the affected communities.
30. It is important to underscore that a separate and independent vehicle will be established by the two governments to implement the reconciliation and reconstruction programme for the benefit of the affected communities. The governance structure of this implementing vehicle will, amongst others, comprise of members of the affected communities in key decision-making positions.
31. It is thus clear from what I state above about the progress made in respect of the three pillars that major progress has been made to the effect that the responsibility for genocide has been unconditionally accepted. Judging from experience in other jurisdictions, accepting and acknowledging responsibility for genocide has not been easy to secure from perpetrators. Again, in many cases perpetrators of serious crimes seek to make statements purporting to be apologies when in fact there is no apology to victims in a manner that is conducive to their healing.



The fact that reparations will be paid by the German government has been agreed, except that the Namibian government is not satisfied with the quantum and has in fact raised it with the German negotiating team. These engagements are currently ongoing and we hope that progress will be made in this regard.

32. We wish, therefore, to advise the affected communities in particular, and the Namibian Nation at large, that we will to the extent possible work hard in order to secure an improved and acceptable reparations quantum. Through the ongoing consultation with the affected communities and constant consultation between government structures, we assure the Namibian nation that the views and aspirations particularly of members of the affected communities are receiving the utmost attention by government.
33. Before I conclude, lest we forget, this is not a genocide issue being debated between two competing Namibian communities, or as between the Namibian government and its communities. In fact, the government and its people, and primarily the affected communities, share the same and common goal and interest on matters being discussed and negotiated with Germany. There is therefore all the reason for us to approach this matter with unity of purpose.
34. We must therefore be careful not to turn a discussion of this serious and emotive issue into a reason or a recipe for disunity or instigating

communities against one another, or against government. This is a national project. Everybody's view, Honourable Speaker, Esteemed Members, is worth listening to. We must therefore discuss this issue and conclude it in a dignified manner so as to posthumously pay homage and our last respects to those who lost their lives during these dreadful acts of genocide, in pursuit of restorative justice for our People.

35. Having made these statement on behalf of the government of the Republic of Namibia, and knowing the enormous interests the Honourable Members have in the matter as well as members of the public, I wish to thank everyone for having listened to the statement and now respectfully ask Honourable Members to, in a dignified and constructive manner discuss this important matter of public interest. In conclusion, it would be appropriate at this stage to acknowledge and thank all those who have in one way or another supported and contributed to this difficult national process thus far.

I thank you.