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"The World itself is Stolen Goods. All property is theft and those who have stolen most of it make the laws for the rest of us." John Updike, Brazil

Attention.

- The President of the Republic of Namibia;
- The Speaker of the Namibian National Assembly;
- The President of the Federal Republic of Germany;
- The Speaker of the Bundestag of the Federal Republic of Germany.

Copy to:

- Special Rapporteur on the Rights of Indigenous Peoples, United Nations Commission on Human Rights;
- Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees on Non-Recurrence, United Nations Commission on Human Rights;
- Independent Expert on Human Rights and International Solidarity, United Nations Commission on Human Rights;
- Chair on the Permanent Forum on Indigenous Issues, United Nations Secretariat;
- European Court for Constitutional and Human Rights;
- African Commission on Human and People's Rights;
- Congressional Black Caucus, United States Congress;
- The President of the United States of America;
- The Speaker of the House of Representatives of the United States of America;
- The President of the Senate of the United States of America.

Date: 23 May 2021

Objection from the Nama & Ovaherero Leadership and affected communities locally in Namibia and in the diaspora, concerning the so called "reconciliation agreement" - not reparations agreement

We, the undersigned representatives of the Nama & Ovaherero peoples, strongly oppose the alleged agreement that the Namibian & German Governments entered into as reported by Deutschlandfunk on 15 May 2021.

It has been brought to our attention by the media that currently both governments have come to an agreement without consulting the genocide affected people, namely the Nama & Ovaherero.

On the 26th of September 2006, Paramount Chief Kuaima Riruako tabled a motion the Namibian National Assembly which was unanimously adopted as a resolution by the august Legislative House. The resolution outlined four principles that formed the basis/mandate for any negotiations and final agreements/settlement with the German regime on the genocide of our People:

1. That what happened to the Nama and Ovaherero during the 1904-1908 was a **brutal act of Genocide** sanctioned by the German Government of the day;
2. That the Nama and Ovaherero people are **entitled to demand reparations** from the German government;
3. That the Namibian government should be **an interested party** in any **discussions between its nationals and the German Government** on the issue of **reparations**;
4. That dialogue be convened between, on one hand, the Namibian Government and representatives of the victim communities, and on the other hand the German Government, to try and resolve this matter amicably and thereby strength and solidify the excellent relationship between the two countries, Germany and Namibia.

This resolution was subsequently enhanced by Namibia's Minister of Foreign Relations, Utoni Nujoma, when he made a Policy Statement in Parliament on 19th September 2011. Nujoma assured the nation that the Government of Namibia will not do anything that was not in the best interest of the Genocide victim communities and that the Government would be eager to play a **facilitating role** in the **anticipated negotiations**.

Subsequent to these commitments President Geingob unilaterally appointed Dr. Zed Ngavirue without consulting the victim communities. President Geingob then proceeded to set up puppet Nama and Ovaherero so-called "technical/advisory" Genocide Committees under his Special Envoy. He made it clear that the Government would not need the leadership representing the overwhelming majority of the said communities. This was followed by painstaking attempts on the part of the leaders of the victim communities to seek a meeting with the Namibian President, but no response came from the Presidency. Parallel to this Germany point blank refused to entertain any discussions with us as leaders of the victim communities as per the resolution of the Namibian National Assembly, arguing that as a sovereign State it does not negotiate with non-state actors – even though that's exactly what it did and how it resolved the genocide/holocaust negotiations which involved no less than 23 non-State Jewish Groups. It is after this course of developments that the leadership of the victim communities decided to take refuge to provisions of international law by instituting a class action lawsuit in the courts of the United States against Germany. This then is the backdrop to the arrival of our current case pending before the US Supreme Court.

On 15th May 2017 President Geingob eventually acceded to the request of the leaders of the victim communities to meet him and the two parties met at State House for consultations on how best to

proceed. During this meeting significant and broad agreement was reached on key issues such as, that a Namibian delegation consisting of a Namibian Government component and a Victim's Group component would be composed to enter negotiations with Germany as contemplated for by the noted resolution of our National Assembly and that the leaders of the victim communities would speak for **themselves** at the meeting with Germany. The meeting of 2017 resolved to reconvene after two weeks to try and resolve the other issues on which no agreement could be reached. To our surprise, these two weeks have become 4 years. The latest appeal by Nama and Ovaherero leaders to meet the President of Namibia was in April 2019 to find out what happened to the commitment of 2017. Until today we have heard nothing from the Office of the President. It is therefore mind boggling to hear through the media that the Namibian Executive have reached a "reconciliation agreement" with the German Government, only a month after the Namibian President claimed in Parliament that the negotiations have reached a deadlock.

The National Assembly has grossly neglected its responsibility of holding the Executive accountable for the resolution that was taken in September 2006. The said resolution neither referred to nor contemplated a **reconciliation agreement**, but rather a **reparation agreement**. Neither does the Namibian Executive have any mandate from the its highest organ, the Parliament, to negotiate on behalf of the genocide victim communities. The unilateral decision by the President to blatantly act contrary to a parliamentary decision, only shows the contempt that the Namibian President has for the electorate, the victim communities and international law instruments which Namibia has acceded to.

Further, it is a fact that no Namibian Parliament existed when the Nama and Ovaherero genocide occurred. Neither did a Namibian State exist in 1904. We then ask, how do you reconcile when you are denying the existence of a people that you victimised yet do not recognise?

Prior to the Genocides, the Ovaherero sovereign polities of Hereroland comprised a Federation of Ovaherero, Ovambanderu, Ovatjimba, and other Otjiherero-speaking Bantu peoples, whose ancestral lands cover the central highlands of modern-day Namibia, who were governed by Chiefs and at times a Paramount Chief (the *Ombara Otjitambi*), and who were subject to customary Ovaherero law. The Ovaherero people were the subjects of Hereroland, a ranching-based aristocracy ruled by various dynasties. The Ovaherero peoples prospered as cattle ranchers, and much of the collective property and ownership rights included real and usufructory land rights to Hereroland, with tribal authorities as trustees—as phrased in the 1890s: "*ehi orovaherero, okuti kuetu*,": "the land and field belong to us, the Ovaherero." Ovaherero society, property, the bilineal inheritance rights system of *eanda* and *oruzo*, and liberties were governed by customary Ovaherero law. By the late 19th century, the Ovaherero population reached some 100,000 with cattle herds in the hundreds of thousands.

The Nama sovereign polities of Great Namaqualand— the Witboois, the Red Nation, the Bondelszwarts, the Zeib, the Afrikaner, the Bondelszwarts, the Topnaars, the Fransmans, the Khaua, the Veldschoendragers, the Groot Doden, the Zwaartboois, the Swartmodder, and the Oorlam, comprised a Confederation of Khoikhoi peoples—the Nama—whose ancestral lands cover much of the southern and some of northern Namibia, who were governed by Chiefs, *Gaobs*, and Captains, and subject to the supremacy of customary Namaqua law. The Nama polities belonged to a confederation established under the Treaty of Hoachanas of 1858, which guaranteed the unity and equality of the Nama clans and peoples, who numbered over 20,000 by the late 19th century.

The Ovaherero and Nama Traditional Authorities today are corporate successors to the tribal authorities that ruled Namibia over one-hundred years ago. We note that as the custodians of this claim, we have never been consulted, nor have we given the go ahead to any of the two Governments to enter into a reconciliation agreement. In fact, we reject the very notion of a reconciliation agreement and demand a reparation agreement flowing from an unequivocal acknowledgement by

Germany that its predecessor State has committed brutal acts of genocide; that it apologises unreservedly for such genocide and commits itself to negotiate in good faith with the true representatives of the victim communities to arrive at a reasonable settlement in respect of reparations due to the descendants of the victim communities.

We therefore strongly object to the so-called reconciliation agreement for the following reasons:

1. It is clear that Germany has once again, bamboozled the Namibian government into a meaningless and sell-out agreement. It is a monumental shame and a shocking betrayal of trust that a descendant of the Victim Communities, is the one who initiated such an agreement which makes a mockery of the three negotiating Pillars that the SWAPO Government set for itself, namely:

- A: that Germany must acknowledge that the mass killings of our ancestors constitute genocide;
- B: that Germany must apologise for that genocide;
- C: that Germany must pay Reparations for the Genocide.

2. The so-called "Reconciliation Agreement" - not REPARATION AGREEMENT, is a Public Relations coup by Germany and an Act of Betrayal by the Namibian Government. It is no more than a mere restatement of the 2004 Ohamakarri minimalist position adopted by then German Minister Heidemarie Wiecek-Zeul, which was even rejected by her own Government! Clearly, Germany still has NO intention to recognize that what Von Trotha did constitutes genocide in terms of international law, therefore, Germany did not commit a crime against humanity and has no intention to apologize for ANY crime of GENOCIDE - especially not to the descendants of the Victim Communities! It therefore follows that Germany will not pay ANY form of REPARATIONS - especially not to the descendants of the Victim Communities!

3. It is against the backdrop of that principled and inflexible negotiating position that the Namibian Government has been arm twisted into a sell-out agreement in exchange for continuing to receive so-called generous development aid from Germany! The so-called "compensation" to finance "social projects" is nothing but a cover-up for continued German funding of Namibian Government projects under its NDP5 and Vision 2030, as stated by the Prime Minister of Namibia in Parliament on 16 March 2021.

4. Given the above, we reject the initialled Reconciliation Agreement negotiated without the participation of the legitimate representatives of the majority of the Victim Communities with the contempt it deserves. It is not worth the paper it's written on and we urge the United Nations, the African Union and the rest of the international community to reject this gimmick by Germany and Namibia. We equally call upon the UN and the US Government to recognize the 1904-08 massacres by Germany as genocide and crimes against humanity.

Yours sincerely,

Advocate Vekuii Rukoro - Ombara Otjitambi jo Vaherero (OTA)



Gaob Johannes Isaack - Nama Traditional Leaders Association (NTLA)

