



Berlin, 18 July 2022

Secretariat of the Committee on the Rights of the Child Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais des Nations
CH-1211 Geneva 10,
Switzerland

Additional Submission for Consideration and Action to the Committee on the Rights of the Child

Dear Members of the Committee on the Rights of the Child,

This Additional Submission is presented to you by Berlin Postkolonial e.V., Decolonize Berlin, the European Center for Constitutional and Human Rights (ECCHR), the Nama Traditional Leaders Association (NTLA) and the Ovaherero Traditional Authority (OTA). All submitting organizations address colonial crimes and the present-day repercussions of European colonialism as priority in their work. These repercussions include multiple forms of discrimination, which affect children living in Germany or the former German colonies today.

The authors of this Additional Submission seek to draw your attention to several aspects of the German policy regarding colonial repercussions and racial discrimination. As will be outlined below, these policies have an impact on the rights of children living today in several regards. In particular,

- the possession of human remains/Ancestors from the former colonies by German institution has an impact on the child's right to identity and on the child's rights to development (Articles 4, 6(2), 8, 27 (1), 29(1), 30) – **see below II.a.**,
- the commemoration practices and education of children about German colonialism also has an impact on the child's rights to education and cultural identity (Articles 28(1), 29(1)(c) and 30) – **see below II.b.**

The topic of racial discrimination is explicitly addressed in No. 4 in the List of Issues, but neither State Report nor the Written Reply have made any reference to the discrimination of Black People of Color and its relationship to German colonialism.

I. Historical background

1. Germany was one of the European powers actively involved in the European colonialism of the late 19th century. While the German Empire was a “late colonizer” compared to England or France, by the end of the 19th century the German colonial empire was the world’s third and fourth largest in terms of land mass or population. Among the states formerly encompassed by German rule are present-day Namibia, Tanzania, Kameron, Togo, Burundi, Samoa, Papua-New Guinea.
2. Many of the crimes and structural interferences into the colonized societies affect these until today. Of the different historical events, the Ovaherero and Nama genocide from 1904-1908 and looting of human remains/Ancestors¹, cultural artefacts, ceremonial objects, and intangible cultural heritage are particularly relevant for this submission:
3. From 1904-1908 the German imperial military forces (*Schutztruppe*) were responsible for the death of tens of thousands in the colony German Southwest Africa (GSA), present day Namibia. Estimated 80 percent of the Ovaherero and 50 percent of the Nama died by means of physical violence, creating conditions of malnutrition, starvation, and thirst.² This conduct against the Ovaherero and Nama peoples was qualified as the first genocide of the 20th century.³ While the Ovaherero and Nama were the targeted groups, all Black persons living in the so-called “police-zone” of GSA, in particular Damara and San, were directly affected by the genocidal conduct.⁴
4. Beyond the physical extermination of the Ovaherero and Nama, the ensuing treatment of the survivors in so called concentration camps (*Konzentrationslager*) and the establishment of a racist settler-state aiming at the destruction of their culture, history and livelihood characterized the German conduct.
5. The German colonizers and soldiers were initially mostly men. Sexual violence, unequal relationships as well as marriages between German men and Ovaherero and Nama women were widespread in particular during the first decades of colonialism. These so called “mixed marriages” (*Mischehen*) were considered a problem by the colonial administration. Since the adoption of an order sanctioning these marriages in 1905, both the women in and children born into these marriages have faced double discrimination for being linked to the colonizers and the colonized.⁵ A problem inherited by many Ovaherero and Nama – adults and children - living today who have German descendants: Their special relationship to Germany, unlike for their German speaking

¹ The terminology "Ancestors/human remains or human remains/ Ancestors" will be used to emphasize that to many people the human remains in public museums or private collections are actually Ancestors, whose right to human dignity have been violated. The terminology "Ancestors" is moreover the most common term used by claimants from former colonies to repatriate their community members and complete their burial rituals.

² Research Service of the German Parliament: Sachstand. Zur Einordnung historischer Sachverhalte als Völkermord, WD 2-3000-092/15, 29 May 2015, p. 10, (in German) available at: <https://www.bundestag.de/resource/blob/459004/ca4beaf04bbf08916db7ba711331184e/WD-2-092-15-pdf-data.pdf>; Kößler, Reinhart: Namibia and Germany: Negotiating the Past (2015), p. 17.

³ Revised and updated report on the question of the prevention and punishment of the crime of genocide prepared by Mr. B. Whitaker, UN Doc E/CN.4/Sub.2/1985/6 (2 July 1985), p. 9.

⁴ Gordon, Robert. Hiding in Full View: The “Forgotten” Bushman Genocides of Namibia. 4 (1) *Genocide Studies and Prevention*, (2009), 29–57.

⁵ For more, see Joeden-Forgey, Elisa: Women in the Herero Genocide, in: Bemporad, Elissa; Warren and Joyce W: Women and Genocide, Indiana University Press (2018), p. 36 ff., For a case example, see only the account of Sima Luipert in: ECCHR: Namibia: Colonial Repercussions (2019), p. 46-47, available at: https://www.ecchr.eu/fileadmin/Publikationen/ECCHR_NAMIBIA_DS.pdf.

Namibian relatives, has never been recognized. Applications for citizenship are rejected referring to the historic colonial statutes.⁶

6. Also in other contexts, colonization was marked by violence and looting. Indigenous peoples' human remains/Ancestors, ceremonial objects and cultural artefacts have often been taken from them throughout a long history of dispossession and appropriation. This is true for the Namibian concentration camps, from where human remains of former detainees were taken to Germany.
7. Another instance being, between 1905 to 1907, the Maji-Maji war of resistance against German colonialism in present-day Tanzania, during which indigenous peoples fought and after which their human remains/Ancestors were buried in mass graves and also taken to Germany.⁷
8. In the Tanzanian Kilimanjaro Region the German colonizers shipped ancestral remains from that region to Germany in the late 19th century, an era marked by colonial headhunting and plundered graves.⁸ Thousands of human remains were collected by doctors, soldiers, officers, and others. They were brought to Europe and Germany during the German colonial era, but also beyond,⁹ ready to be used as material for anatomical and pathological research, for German museums and universities to study, measured and compared, often what later on was rightly to be understood as racist sciences.¹⁰ Many of these human remains/Ancestors are still in the possession of German institutions.
9. Until today, numerous colonial repercussions can be seen in the former colonizing and formerly colonized societies. In Namibia, the effects of the Ovaherero and Nama genocide consolidated during apartheid. The remnants and traces of racist segregation, transgenerational trauma, the socio-economic effects of the loss of land and assets are still ubiquitous. Notwithstanding, the historical sites of the genocide are often badly preserved, unexplained or lying inaccessibly on private land.¹¹
10. In Germany, the colonial past did not play a prominent role in the public discourse for a long time. This has been described as a state of "*colonial amnesia*"¹² and changed only to a very limited extent after the Namibian independence in 1990 and over pressure of Namibian and German civil society initiatives. Until today, the commemoration, truth-telling and education about these events remains precarious and thus, for many people,

⁶ See, for example, for the former colony of Togo, the case of Mr. Gerson Liebl: <https://taz.de/Gerson-Liebl-streitet-fuer-deutschen-Pass/15858491/> (in German – last visited 15 July 2022).

⁷ Yann leGall, Songea Mbano and the 'halfway dead' of the Majimaji War (1905–7) in memory and theatre, *Human Remains and Violence* 6/2 (2020), 4–22.

⁸ Yann LeGall & Mnyaka Sururu Mboro, Re-membering "scattered" pieces of colonial history: Wachaga ancestors at the institute of anatomy in Strasbourg (conference paper) " Colloque Anthro-Responsabilité. Musée du Quai Branly, Paris. 29 Jan. 2021; Isabelle Reimann, "We want them back", a Scientific Report on the presence of human remains from colonial contexts in Berlin, commissioned by Co-ordination office for a city-wide concept for coming to terms with Berlin's colonial, available at: https://decolonize-berlin.de/wp-content/uploads/2022/02/We-Want-Them-Back_english-web.pdf (last visited 1 July 2022), at 32ff: Case study: the Search for the head of Manga Meli; In the following cited as: We want them back.

⁹ We want them back, at 50ff.

¹⁰ Ibid.

¹¹ For a detailed account of commemoration practices in Namibia see: Förster, Larissa: *Erinnerungslandschaften. Postkoloniale Erinnerungslandschaften. Wie Deutsche und Herero in Namibia des Kriegs von 1904 gedenken* (2010) (in German).

¹² See for example: Kößler, Reinhart; Melber, Henning: *Koloniale Amnesie. Zum Umgang mit der deutschen Kolonialvergangenheit, Standpunkte* 9/2018, (in German) available at: https://www.rosalux.de/fileadmin/rls_uploads/pdfs/Standpunkte/Standpunkte_9-2018.pdf.

the link to their own history and identity amiss. This can be also be observed in the very concrete example of the return of human remains:

11. Despite this dark legacy, Germany has continuously refused to adopt institutional and efficient measures in order to return the human remains/Ancestors placed in German institutions back to indigenous populations. While some progress has been made within the last years regarding the restitution of artefacts, the German approach to restitution and respective provenance research lacks consistency and comprehensiveness. It was only in 2021 that such comprehensive research has been done, at least for the Berlin region. Yet one has to note that it was done only since a civil society network of Black, diasporic, postcolonial, and development groups “Decolonize Berlin”,¹³ in their capacity as a coordination office for the reappraisal and remembrance concept on the history and consequences of colonialism in the state of Berlin, took on this task by commissioning a report on the situation of human remains/Ancestors in Berlin. The publication “We want them back”¹⁴ is still one of its kin, yet limited to Berlin. Hence a nationwide equivalent is still much needed, but still amiss.
12. This means, that until today, in the vast majority of cases, the descendants of the deceased are neither informed about or aware of where their Ancestors were taken or where they are currently placed. Nor is there an effective and systematic effort planned to bring them back and allow for a proper burial of these persons.
13. Likewise, many descendants of the former colonizers have never been legally acknowledged as such nor have they been granted the German nationality, *inter alia* due to the non-recognition of so-called “mixed marriages” under colonial law.

II. Impact on child rights today

14. The described historical events and present-day conduct affect children’s rights on various levels: Children living today are the descendants of those who suffered from the colonial injustices of the colonizer and colonialism as a system of oppression and systematic denial of human dignity, identity and culture.
15. As this section shows, the long-term impact of the described historic events correlates with general as well as child-specific human rights obligations linked to the possession of human remains/Ancestors from the former colonies (Articles 4, 6(2), 8, 27, 29 (1), 30 (**below a**). Governmental commemoration practices and education of children about German colonialism also impact the child’s rights to education and cultural identity (Articles 28 (1), 29 (1)(c) and 30) (**below b.**).
16. In principle, the impact of colonialism and slavery on the human rights of people living today, including children, has meanwhile been recognized by numerous international and legal bodies and frameworks. Core human rights treaties like ICERD acknowledge this legacy of colonialism¹⁵ and its link to continuous racist discrimination and deprivation of equal enjoyment of fundamental human rights, such as those laid out in the most widely accepted human rights convention, the ICCPR.

¹³ <https://decolonize-berlin.de/en/koordinierungsstelle/>

¹⁴ We want them back.

¹⁵ See ICERD preamble, which then refers to GA, Res. 1514 (XV). Declaration on the Granting of Independence to Colonial Countries and Peoples, UN Doc. A/RES/15/1514, 14 December 1960.

17. The United Nations Declaration of the Rights of Indigenous peoples (UNDRIP)¹⁶ spells out the rights to remedy and redress of the grievances indigenous peoples and their future generations suffer, *inter alia*, from being the object of colonialism and colonial repercussions in terms of continued marginalization. For instance, the text of preamble as an all-permeating interpretative part of the declaration, mentions a special concern for the recognition of the suffering by indigenous peoples “*from historic injustices as a result of, inter alia, their colonization*”, hence addressing colonialism as a present day problem of the descendants and their general human rights, - individual and collective and their right to remedy and reparations.
18. Against this background, it was the honorable Committee on the Rights of the Child (from now on “Committee”), in its general comment no. 11¹⁷, which declared that “*the specific references to indigenous children in the Convention are indicative of the recognition that they require special measures in order to fully enjoy their rights*”.¹⁸
19. Several UN special procedures have acknowledged that colonial contexts are relevant for their fields of work:¹⁹ For example, in 2014, the Report of the Special Rapporteur in the field of cultural rights on memorialization processes included the commemoration of slave trade and colonialism in the scope of the report, noting the gap in memorialization regarding slave trade and colonization.²⁰
20. More recently, two reports dealing explicitly with colonial contexts were released by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence:²¹ The report on memorialization processes (2020)²² as well as the report and transitional justice measures and addressing the legacy of gross violations of human rights and international humanitarian law committed in colonial contexts (2021).²³
21. Regarding the obligations of the former colonizing state, the 2021 report clearly states: “*As there are two States involved in these cases, there are obligations and expectations of response to past or continuing rights violations that should require compromise by both parties. The duties to provide effective remedies to victims, ensure accountability, contribute to truth and memory, facilitate unrestricted access to archives and grant reparations to victims are clearly incumbent on the former colonizing Power.*”²⁴ The report thus clearly identifies the topic of truth and commemorations as responsibilities of the former colonizing state.

¹⁶ UNGA Res. 61/ 295 (13 September 2007) United Nations Declaration on the Rights of Indigenous Peoples UN Doc A/RES/61/295. In the following cited as: UNDRIP A/RES/61/295.

¹⁷ Committee on the Rights of the Child. Indigenous Children and their rights under the Convention. General Comment no. 11. CRC/C/GC/11. Geneva, 12 January-30 January (2009).

¹⁸ Committee on the Rights of the Child. Indigenous Children and their rights under the Convention. General Comment no. 11. CRC/C/GC/11. Geneva, 12 January-30 January (2009).

¹⁹ For further examples see also para 3 of: Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, Transitional justice measures and addressing the legacy of gross violations of human rights and international humanitarian law committed in colonial contexts UN Doc A/76/180 (19 July 2021). In the following cited as: Colonial Contexts Report A/76/180.

²⁰ Report of the Special Rapporteur in the Field of Cultural Rights, Farida Shaheed, Memorialization Processes, UN Doc A/HRC/25/49 (3 March 2014), para. 34.

²¹ Colonial Contexts Report A/76/180.

²² Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, Memorialization Processes UN Doc A/HRC/45/45 (9 July 2020).

²³ Colonial Contexts Report A/76/180.

²⁴ *Ibid.*, para 19.

22. Moreover, declarations and actions plans such as the Durban Declaration and Programme of Action (*DDPA*)²⁵ and in particular the follow up resolutions 66/144 of 19 December 2011, 67/155 of 20 December 2012 and 74/137 of 18 December 2019 and Resolution 75/237 of 31 December 2020²⁶ are exemplary for the urgency to combatting racism, racist discrimination and to guarantee the full enjoyment of all human rights by all and especially by those to whom they were denied in the past in order to legitimize the colonist regime of expansion, exploitation and extraction.
23. Against this background Germany as a former colonial power has to assume its full responsibility for its colonial legacy as set forth the 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,²⁷ which codify the rights already recognized by the international community.
24. Accordingly, the Federal Republic of Germany has a duty to provide and facilitate effective remedies to victims, ensure accountability, contribute to truth and memory, facilitate unrestricted access to archives and grant reparations to victims²⁸.
25. In light of these commitments to tackle colonial injustices, to safeguard non-repetition, the recognition, protection, the implementation and enforcement of those child's rights of the descendants of the formerly colonized demand special attention.
26. Germany has a legal responsibility for its colonial legacy and its impact on the rights of children living today. Only by understanding and tackling the contemporary and future dimension of the colonial past, children from affected communities can escape the continuing effects of colonialism, the very real colonial repercussion of transgenerational trauma and exclusion.

a) Human remains/Ancestors from the colonies still in possession of German institutions (arts 4, 6(2), 8, 27, 29(1)(a), 30)

27. The repatriation of human remains/Ancestors falls within the specific needs of indigenous children concerning their right to their identity and development. The ongoing dehumanization of human remains/Ancestors in the German archives informs the daily lives, their psychological well-being and identity of the living descendants. It is related to how they are able to form and preserve their own identity and their family ties according to their culture and customs and thus the right to identity as provided by articles 8. Closely related to the obligation under article 8 is the right to development pursuant to article 6 (2). As Mnyaka Sururu Mboro, a Tanzanian activist in search of ancestral remains states "*Currently, most live in trauma — because they have not yet buried their ancestors and believe that this results in climate disasters and diseases.*"²⁹

²⁵ World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban Declaration, UN Doc. A/CONF.189/12 (8 September 2008).

²⁶ UNGA, Res. 66/144 (19 December 2011); UNGA, Res. 67/155 (20 December 2012); UNGA, Res. 74/137, (18 December 2019); GA, Res. 75/237 (31 December 2020).

²⁷ UNGA Res 60/ 147 (16 Dec 2005).

²⁸ This is reaffirmed by the report submitted to the General Assembly by Fabian Salvioli, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolution 45/10, published in June 2021 and submitted in July 2021.

²⁹ We want them back, at 4.

28. When human remains are kept from indigenous peoples, the latter lose dignity, face difficulty carrying out spiritual practices, and are prevented from honoring their cultural obligations, as stated by the Report of the Expert Mechanism on the Rights of Indigenous Peoples on Repatriation of ceremonial objects, human remains and intangible cultural heritage under the UNDRIP.³⁰ Therefore, they suffer violations of their rights to religion, culture, spirituality, education and traditional knowledge.
29. The right to development is set forth by the Convention throughout several articles. Article 4 requires States parties to undertake, to the maximum extent, all appropriate measures for the implementation of social and cultural rights of children. Accordingly, article 29(1)(a), states that “*state Parties agree that the education of the child shall be directed to the development of the child’s personality, talents and mental and physical abilities to their fullest potential*”. Even more straightforwardly, article 6(2) proclaims that States Parties shall ensure to the maximum extent possible the survival and development of the child and article 27 recognizes State Parties’ obligation to ensure the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
30. As stated by the Report of the Expert Mechanism on the Rights of Indigenous Peoples on Repatriation of ceremonial objects, human remains and intangible cultural heritage under the UNDRIP³¹, established its expectation for States to interpret “development” in its broadest sense as a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development³².
31. The deprivation of the Ancestors involves the forced ignorance of the descendants about their whereabouts and thus about their family ties, relevant aspects of their own identity and culture.
32. In the abovementioned General Comment No. 11, the Committee affirmed that the Preamble of the Convention stresses the importance of the traditions and cultural values of each person, particularly with reference to the protection and harmonious development of the child and emphasized the specific needs of indigenous children whose communities retain a traditional lifestyle.
33. Moreover, in UNDRIP we find very clear formulations in regard to states’ obligation to repatriation of human remains. Article 12 (1) UNDRIP, endorsed by Germany clearly asseverates State’s obligation to enable the access and/or repatriation of ceremonial objects and human remains, and therefore declares the existence of a right to repatriation of human remains/ Ancestors. *Member of indigenous people have the right to [...] the repatriation of their human remains. (2) States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.*³³
34. Indigenous peoples have their own laws, customs and traditions concerning the treatment of ceremonial objects, human remains and intangible cultural resources. The process of honoring the dead through funerals and other ceremonies is deeply

³⁰ Human Rights Council. Report of the Expert Mechanism on the Rights of Indigenous Peoples. Repatriation of ceremonial objects, human remains and intangible cultural heritage under the UNDRIP A/RES/61/295.

³¹ Ibid.

³² Committee on the Rights of the Child. General Measures of Implementation of the Convention on the Rights of the Child (arts. 4,42 and 44, par.6). General Comment no. 5. CRC/GC/2003/5. 19 September-3 October (2003).

³³ UNDRIP A/RES/61/295.

entrenched in their spirituality, cultural values and cultural identity. As noted by the Expert Mechanism on the Rights of Indigenous Peoples, “*Intangible resources, such as religious songs, plant knowledge and human, plant and animal DNA, are similarly important for the individual and collective cultural rights and responsibilities of indigenous peoples.*”³⁴ From this perspective, denying indigenous children access to ceremonial objects and human remains, means denying them important aspects of their own cultural and spiritual identity (intergenerational identity and ceremonial practices) and compromising their full development.

35. This is particularly important as children represent the future of indigenous people, and therefore the fundamental aspect of maintenance of the cultural identity and reference of indigenous peoples.
36. The second Session of the Permanent Forum on Indigenous Issues³⁵ included recommendations that governments and UN bodies prepare specific policies and implement programs for indigenous children and youth to promote their human rights; strengthen, recover and conserve their languages; promote their culture and education; reaffirm their traditional knowledge; and contribute to their self-esteem.
37. The Committee’s general comment No. 11³⁶, declared that “*the specific references to indigenous children in the Convention are indicative of the recognition that they require special measures in order to fully enjoy their rights*”. Moreover, the Committee emphasized the interrelationship between relevant provisions, notably with the general principles of the Convention such as nondiscrimination, the best interests of the child, survival and development.
38. The Committee has already observed that in implementing their obligations under the Convention many States parties give insufficient attention to the rights of indigenous children and to promotion of their development³⁷. The Committee noticed that the Convention attributed considerable importance to traditions and cultural values, as they are essential to the individual’s development and enjoyment of culture³⁸.
39. The ongoing (mis)treatment of human remains/Ancestors remains seized in colonial context and held in German (state) institutions are the result of a historical process that excludes certain racialized people and communities from the realization of constitutional and human rights.³⁹
40. The Federal Republic of Germany’s lack of comprehensive and effective and rule of law-based recognition of the constitutional and human rights dimension on the field of restitution and repatriation of human remains/Ancestors is detrimental to the full enjoyment of children’s rights to respect for her identity and development.

³⁴ Human Rights Council. Repatriation of ceremonial objects, human remains and intangible cultural heritage under the United Nations Declaration on the Rights of Indigenous Peoples. Report of the Expert Mechanism on the Rights of Indigenous Peoples. Forty-fifth session (21 July 2020).

³⁵ ECOSOC, Permanent Forum on Indigenous Issues Report on the second session (12-23 May 2003) E/C.19/2003/22.

³⁶ Committee on the Rights of the Child. Indigenous Children and their rights under the Convention. General Comment no. 11. CRC/C/GC/11. Geneva, 12 January-30 January (2009).

³⁷ *Ibid*, para. 20.

³⁸ Committee on the Rights of the Child. Indigenous Children and their rights under the Convention. General Comment no. 11. CRC/C/GC/11. Geneva, 12 January-30 January (2009).para. 35.

³⁹ P. Gragl, D. Angst and E. Lantschner (eds), *ICERD Internationales Übereinkommen zur Beseitigung jeder Form von Rassismus: Handkommentar* (1st ed., 2020), at Artikel 1 para. 19.

41. To mourn and bury one's ancestors, according to one's respective cultural customs and traditions forms an integral part of one's identity and human dignity, both rights not only recognized under international human rights law, but also recognized by the German constitution, under arts 1,2 Basic Law.⁴⁰ Having the choice to face one past, is crucial to understand one's place in the world, within one's culture. To bury one's ancestors is knowing that one's community is whole, one's history as part of one's identity is being told and carried on. Sensitivity and respect towards local and regional cultural customs and their respective understanding of the role of Ancestors within the group of the living is elementary. Hence, keeping Ancestors randomly in archives, often not even adequately stored, robs the children/ descendants of the possibility to decide who they are in dialogue with, to be connected to their ancestral history.
42. To give one example quoted in the report "We want them back": "*Our ancestors yearn in death to remain a part of the 'ohana (family), to be helpful and relevant to their living descendants and family members. Examples include the fashioning of fishhooks from their bones, providing inspiration and courage when requested, and helping guide when required.*"⁴¹ By depriving the Children of affected communities of their Ancestors they lack this support recognized by their culture and customs, hence those parts relating them back to their family are missing as long as those human remains/Ancestors are far away in German archives. Moreover, by putting literally the wall of the archives around the Ancestors or glasses of the display cabinets around spiritual objects, Germany disrupts the spiritual communication of current and future generations with their Ancestors, thereby endangering the spiritual well-being of the affected communities' children.
43. Yet, the question of restitution of human remains/Ancestors, cultural artefacts and intangible cultural resources, never once was mentioned in the State Report and continuously disregarded by Germany within the implementation of indigenous children's development right.
44. In order to develop a more sensitive and respectful take on the question of human remains/ Ancestors in German archives Claudia Roth, the newly appointed German government's commissioner for culture and media Claudia Roth stated: "*Human remains from colonial contexts have no place in our museums and universities, their return must be a priority,*"⁴²
45. Meanwhile, the language of the so called "government contract"⁴³, the contract between the newly elected parties forming the government in Germany since last year, which lays out the grounds for their politics, is rather disconcerting. The topic of human remains is subsumed under the heading "colonial heritage" instead of naming it for what it is: a question of responsibility and redress for colonial wrongs. Moreover, the text talks about "*collections*"/"*Sammelgut*" and "*Objects*"/"*Objekte*" instead of acknowledging the humanness of those people to whom those remains belong, thereby

⁴⁰ Art. 1 GG (Basic Law – Grundgesetz), available at: https://www.gesetze-im-internet.de/englisch_gg/ (last visited 1 July 2022).

⁴¹ "We want them back", at 161.

⁴² <https://www.dw.com/en/germany-bremen-museum-returns-human-skulls-to-hawaii/a-60706108> (last visited 1 July 2022).

⁴³ Coalition Agreement between the Political Parties SPD, the Greens and FDP for the 20th legislative period 2021-2025

<https://www.bundesregierung.de/breg-de/service/gesetzesvorhaben/koalitionsvertrag-2021-1990800> at 125 (last visited 1 July 2022).

perpetuating the colonial logic of dehumanization of the colonized and their descendants.

46. In addition, a concerning disconnect between these declarations and the actual restitution practice can be observed.
47. The 2019, „*Ersten Eckpunkte zum Umgang mit Sammlungsgut aus kolonialen Kontexten*“ (First key points for dealing with collections from colonial contexts) declared the political will to prioritize the processing of human remains from colonial contexts and to create the conditions for repatriation.⁴⁴ as well as the 2021 3rd edition of “Guidelines for German Museums Care of Collections from Colonial Contexts”⁴⁵ reiterated that position, until today, actions of actual restitution, if they happened at all, remain highly isolated incidents, politically strategized and state orchestrated events.⁴⁶
48. The most recent guidelines with the specific focus on the care of human remains in Museums and Collections do, very briefly though, mention the constitutional and human rights dimension, yet their instant rejection⁴⁷ as a realistic approach to the question of restitution is quite telling. It reflects an understanding that still wants to circumvent, disregard, discard and minimize those claims based on constitutional and human rights.
49. Overall, what still is amiss even in 2022 is a general guarantee of access and assistance for everyone on whom the intergenerational harm and impediment to mourn was inflicted. So, there is a significant disconnect between what is said and what is done.
50. Germany does not acknowledge what this treatment implies to the descendants and affected communities, namely that *"They [our Ancestral Relatives] are treated as property and reside in a perpetual state of posthumous slavery."*⁴⁸
51. As a consequence, what we still have is blank refusal of even attempting to work out a coherent rights-based institutionalized standards for the restitution in these cases. This position is in stark contrast to the rule of law, the procedural guarantee to effectively and non-arbitrarily protect rights under the German constitution, art 19 (1) and (4) Basic Law⁴⁹
52. The repatriation of human remains/Ancestors does not fall within a moral obligation of Germany; rather, it constitutes a legal obligation for those states, where “(...) *persons of indigenous origin exist* (...)” The comprehensive interpretation of article 30 leads to the understanding that the statement ‘shall not be denied’ underlines the existence of both negative obligation of non-interference, and positive obligation of undertaking measures that respect, protect, and ensure the fulfilment of the rights identified in

⁴⁴ See: <https://www.kmk.org/aktuelles/artikelansicht/eckpunkte-zum-umgang-mit-sammlungsgut-aus-kolonialen-kontexten.html> (last visited 1 July 2022).

⁴⁵ German Museums Association (DMB): Guidelines: Care of Human Remains in Museums and Collections, 3rd edition, 2021, available at <https://www.museumsbund.de/publikationen/care-of-human-remains-in-museums-and-collections/> (last visited 1 July 2022).

⁴⁶ Cf. BBC, *Germany returns skulls of Namibian genocide victims*, 29 August 2018, available at <https://www.bbc.com/news/world-africa-45342586> (last visited 1 July 2022); Mnyaka Sururu Mboro & Christian Kopp, *Unter Kannibalen – Afrikanische Initiativen zur Rückführung der Ahnen*, in: Sandra Mühlenberend, Jakob Fusch, Vera Marušić (eds.), 2018, 35-46, in particular at 41.

⁴⁷ Ibid: Carola Thielecke and Michael Geißdorf: Legal Provisions for Dealing with Human Remains in Museums and Collections, 96-109, for instance at 99.

⁴⁸ “We want them back” report, at, 5.

⁴⁹ Art. 1 GG (Basic Law – Grundgesetz), available at: https://www.gesetze-im-internet.de/englisch_gg/ (last visited 1 July 2022).

Article 30⁵⁰. This positive obligation encompasses the duty to protect the child from state and non-state actors that might threaten the effective exercise of these rights and the adoption of measures that actively empower indigenous children to exercise in particular, their rights to culture, religion⁵¹, both rights applicable to the practice of burying and mourning one's ancestors.

53. Accordingly, the Committee stated that *“when State authorities including legislative bodies seek to assess the best interests of an indigenous child, they should consider the cultural rights of the indigenous child and his or her need to exercise such rights collectively with members of their group”*⁵² as art 31 of the Convention requires the States Parties to respect and promote the right of the child to participate fully in cultural life.

54. In other words, to be connected to one's Ancestors is an essential part of children's rights within the human rights framework, and thus Germany's refusal to address the repatriation of those Ancestors who were dislocated during colonial time has severe adverse effects on the enjoyment and realization of the rights of the child set forth by the Convention.

55. To conclude with another example from the report *“We want them back”*

56. *“The objectifying of human remains is a colonial harm that paves the way for additional harms (...) to dehumanize the ancestors (...) and in doing so dehumanizes the living descendants.”*⁵³

57. This statement illustrates very well what many cultures experience. Continuing dehumanization harms the identity, the development, the completeness and humanity of the living children of today.

b) Commemoration practices and education of children about German colonialism in relation to the right to education and cultural identity (articles 29 and 30),

58. The education of children about colonialism both in schools and as part of the general political education has an impact on the rights of children living in Germany as well as the rights of children from formerly colonized territories as a minority.⁵⁴ Knowledge of its own history is crucial for the development of the child. In particular Black children as members of a minority, have a right to learn about African histories by competent teachers.

59. Until today, the role played by Germany's colonial history in general and the Ovaherero and Nama genocide as part of general political education in particular remains very limited. The in other aspects quite abundant German memory landscapes render the history of colonialism still largely invisible. For example, there is no museum or public memorial site dealing with German colonialism in Berlin.

⁵⁰ Arkadas-Thibert, A., Ruggiero, R., Article 30: Cultural, Religious, and Linguistic Rights of Minority or Indigenous Children, in Vaghri, Z., Zermatten, J., Lansdown, G., Ruggiero, R. (eds) *Monitoring State Compliance with the UN Convention on the Rights of the Child. Children's Well-Being: Indicators and Research*, vol 25. (Springer 2022).

⁵¹ *Ibid.*

⁵² Committee on the Rights of the Child. Indigenous Children and their rights under the Convention. General Comment no. 11. CRC/C/GC/11. Geneva, 12 January-30 January (2009)., para. 31.

⁵³ *We want them back*, at. 163.

⁵⁴ BIPoC.

60. In the same line, in 2018, the Working Group on People of African Descent by the United Nations, on the occasion of the a visit to Germany, stated that “*Germany’s crimes against Africans and people of African descent are overshadowed by the country’s focus on other parts of its history.*”⁵⁵
61. The Federal Concept for Memorial Sites (*Gedenkstättenkonzeption des Bundes*) still addresses exclusively the historical contexts and places of the National Socialist Regime and the Dictatorship in the German Democratic Republic.⁵⁶ The coalition agreement of 12 March 2018 of the last German federal government (*Koalitionsvertrag*) for first time stressed the importance of dealing with the colonial past as a foundation for a stronger collaboration with states in Africa.⁵⁷
62. However, when the Federal Concept for Memorial Sites was updated and further developed in the same year, no changes were made to include colonial contexts in its scope.⁵⁸ Also the coalition agreement of the current federal government, while affirming the commitment to address the German “*colonial heritage*”,⁵⁹ envisages only the drafting of a concept for a learning and commemorations site regarding colonialism “*Lern- und Erinnerungsort Kolonialismus*” for the next electoral period.⁶⁰ It is unclear, if or which concrete steps will follow from this very generic commitment.
63. At the same time, existing sites commemorating the colonizers often continue to be maintained, uncommented or unexplained. This is true for many streets named after former colonizers or using racist terms referring to Black people⁶¹ and also for graves of the former colonizers.
64. The German War Graves Commission (*Volksbund Deutsche Kriegsgräberfürsorge e.V.*), funded in parts by the German Foreign Office, is maintaining graves of exclusively German soldiers in Namibia who died abroad during the German colonization of Namibia from 1884-1915, leaving the history of the Ovaherero and Nama who lost their lives largely invisible in Namibia.⁶²

⁵⁵ Report of the Working Group of Experts on People of African Descent on its mission to Germany, UN Doc A/HRC/36/60/Add.2 (15. August 2017), para 7.

⁵⁶ Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Dr. Kirsten Kappert-Gonther, Erhard Grundl, Margit Stumpp, weiterer Abgeordneter und der Fraktion BÜNDNIS 90/DIE GRÜNEN, BT Drs. 19/5130, 18 October 2018, p. 4-5, (in German) available at: <https://dip21.bundestag.de/dip21/btd/19/051/1905130.pdf>.

⁵⁷ Coalition Agreement between the Political Parties CDU, CSU and SPD for the 19th legislative period, 12 March 2018, line 7954-7957: „Ohne Erinnerung keine Zukunft – zum demokratischen Grundkonsens in Deutschland gehören die Aufarbeitung der NS-Terrorherrschaft und der SED-Diktatur, der deutschen Kolonialgeschichte, aber auch positive Momente unserer Demokratiegeschichte.“; Wir wollen die kulturelle Zusammenarbeit mit Afrika verstärken und einen stärkeren Kulturaustausch befördern, insbesondere durch die Aufarbeitung des Kolonialismus sowie den Aufbau von Museen und Kultureinrichtungen in Afrika,” line 7320-7322, (in German) available at:

<https://www.bundesregierung.de/resource/blob/975226/847984/5b8bc23590d4cb2892b31c987ad672b7/2018-03-14-koalitionsvertrag-data.pdf?download=1>.

⁵⁸ <https://www.bundesregierung.de/breg-de/bundesregierung/bundeskanzleramt/staatsministerin-fuer-kultur-und-medien/weiterentwicklung-der-gedenkstaettenkonzeption-461682>

⁵⁹ Coalition Agreement between the Political Parties SPD, the Greens and FDP for the 20th legislative period 2021-2025, „https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag/Koalitionsvertrag_2021-2025.pdf

⁶⁰ Coalition Agreement between the Political Parties SPD, the Greens and FDP for the 20th legislative period 2021-2005, „https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag/Koalitionsvertrag_2021-2025.pdf

⁶¹ For example the „Mohrenstraße“, „M*street” in Berlin. For the planned renaming of two streets in Berlin based on an initiative by Berlin-Postkolonial e.V. and others, see here: Bechhaus-Gerst, Marianne: Koloniale Spuren im städtischen Raum, in: APuZ 69. Jahrgang, 40–42/2019, 30. September 2019, p.40-45, 42-44.

⁶² See the online search module on the website of the Volksbund Deutsche Kriegsgräberfürsorge e.V., (in German), available at: <https://kriegsgraeberstaetten.volksbund.de/friedhof>, for further details see: Förster, Larissa:

65. In Germany the grave of Lothar von Trotha, who gave the extermination order against the Ovaherero and Nama in 1904, is located at the Poppelsdorfer Friedhof in Bonn. Until recently, the grave was mentioned on a sign listing the graves of honor on the cemetery and until today, there is no comment on the historical context available on site.⁶³
66. Accordingly, German school education and the respective school books make limited reference to German colonialism and hardly any reference to Black histories in Germany or abroad. It is essential, that teachers are trained and competent in these histories as part of the standard school education.
67. Pursuant to a recent survey⁶⁴ European imperialism as a precondition for World War I is a standard subject in German school schedules, while education about German or European colonialism is part of voluntary modules (*Wahlmodul* or *Leistungskurs*).
68. Out of three recently analyzed history school books by the big educational publishers for German high schools, only one reserved a comprehensive section for the topic.⁶⁵ Of the other two, one addressed German colonialism on one out of 700 pages and the other one did not mention the genocide of the Ovaherero and Nama. All three books fall short of clearly labeling German colonialism as such as form of injustice.
69. While the governmental statements acknowledging the colonial heritage are be welcomed, it should be noted that they have so far led only to a number of temporary initiatives.
70. In addition, there is a gap between general statements and actual state practice, as can be seen on the example of the National Action Plan against Racism (2017). In its descriptive sections, the National Action Plan recognizes the importance of education about colonialism in the context of discrimination of Black Persons of Color (3.1.4.). However, this insight is not reflected in the identified fields of action (*Handlungsschwerpunkte*, 5.3.) or suggested concrete measures (*Maßnahmen* 6, page 44) in the field of political education.⁶⁶
71. The described shortcomings correspond to obligations of states within the international human rights system. As outlined above, the former colonizing state has an obligation to contribute to truth and commemoration as form of reparation for colonial injustice. In the context of child rights, the knowledge about the history colonialism needs to be considered in the light of the child's right to education and cultural identity. Article 28

Erinnerungslandschaften. Postkoloniale Erinnerungslandschaften. Wie Deutsche und Herero in Namibia des Kriegs von 1904 gedenken (2010), p. 104.

⁶³ General-Anzeiger-Bonn: Poppelsdorfer Friedhof: Der Name von Trotha soll verschwinden, 17. Februar 2017, (in German) available at: https://www.general-anzeiger-bonn.de/bonn/stadt-bonn/der-name-von-trotha-soll-verschwinden_aid-43234089.

⁶⁴ Vogel, Steffen: Kolonialismus im Schulbuch. Was Schüler*innen heutzutage über den Kolonialismus lernen, Rosa Luxemburg Stiftung-Nachricht 20.8.2020, available at: https://www.rosalux.de/news/id/42834#_ftn4

⁶⁵ Frank Bahr, Ulrich Baumgärtner und Matthias Bode: Horizonte. Herausgegeben von Wolfgang Woelk. Gymnasiale Oberstufe, Berlin, Brandenburg, Rheinland-Pfalz, Saarland, 1. Auflage, Braunschweig: Westermann 2016; Steffen Barth u.a.: Geschichte und Geschehen. Schülerband. Allgemeine Ausgabe, Gymnasium, 1. Auflage. Stuttgart, Leipzig: Ernst Klett Verlag 2017; Robin Gliffe und Robert Rauh: Kursbuch Geschichte. Oberstufe, Berlin, Brandenburg, Mecklenburg-Vorpommern, 1. Auflage. Berlin: Cornelsen 2020, see: Vogel, Steffen: Kolonialismus im Schulbuch. Was Schüler*innen heutzutage über den Kolonialismus lernen, Rosa Luxemburg Stiftung-Nachricht 20.8.2020, available at: https://www.rosalux.de/news/id/42834#_ftn4 (last checked 15 June 2022), Fn. 4.

⁶⁶ Bundesregierung, Nationaler Aktionsplan gegen Rassismus (14.6.2017), available at: <https://www.bmfsfj.de/resource/blob/116798/5fc38044a1dd8edec34de568ad59e2b9/nationaler-aktionsplan-rassismus-data.pdf>

provides the child's right to education. Pursuant to article 29(1)(a) and (c) the education of the child shall also be directed to the child's personality, talents and mental and physical abilities to their fullest potential as well as the development of respect for both the child's cultural identity and values and also for civilizations different from their own.

72. Pursuant to article 30 a child belonging to a minority shall not be denied the right to enjoy his or her own culture. Accordingly, the CRC has in the past called up states to develop curricula for all schools which include minority history and culture in order to promote understanding, tolerance and respect.⁶⁷ In the case of Germany, such histories comprise both the teaching of German colonial history by sensitive and competent teachers as well as African histories in general, which are underrepresented in the current curricula.

73. In its General Comment No. 11, the Committee called upon States parties to recognize and respect indigenous distinct cultures, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation.⁶⁸ The above described standards fall short of these standards set out in the convention and affirmed in the jurisprudence of the CRC.

⁶⁷ see: CRC Committee, Concluding Observations: Poland, CRC/C/15. Add.194, 2002, para. 53; North Macedonia, CRC/C/MKD/CO/2, 2010, para. 84, Republic of Moldova, CRC/C/MDA/CO/3, 2009, para. 63; Italy, CRC/C/ITA/CO/3-4/2011, para. 67.

⁶⁸ Committee on the Rights of the Child. Indigenous Children and their rights under the Convention. General Comment no. 11. CRC/C/GC/11. Geneva, 12 January-30 January (2009), para. 18 referring to CERD Committee General Recommendation No. 23, A/52/18, annex V at 122, 1997.

Contacts:

Berlin Postkolonial is an association that seeks to critically reappraise the colonial history of Berlin and the Federal Republic of Germany. The non-governmental organization was founded in 2007. It organizes cultural tours of the city, lectures, exhibitions, conferences and campaigns. Since Germany's first return of stolen ancestral remains to the Ovaherero and Nama in 2011, it has been involved in the campaign „No Amnesty on Genocide!“ Berlin Postkolonial is currently a cooperation partner in the joint project "Dekoloniale. Memory Culture in the City". Contact: C. Kopp (buero@berlin-postkolonial.de), Board Member Postkolonial)

Decolonize Berlin e.V. is an association based on a civil society network of Black, diasporic, postcolonial, and development groups in Berlin and includes groups like Initiative Schwarzer Menschen in Deutschland (ISD) e.V. and many others. It is committed to the critical examination of the history and present of colonialism and racism, to the recognition and reappraisal of colonial injustice, and to decolonization throughout society. Contact: Vorstand Decolonize Berlin (vorstand@decolonize-berlin.de and info@decolonize-berlin.de)

The **European Center for Constitutional and Human Rights (ECCHR)** is an independent non-profit human rights organization, registered in Berlin (Germany) since 2007. By engaging in strategic litigation, ECCHR uses legal means to protect groups and individuals against systematic human rights violations and to hold state and non-state actors accountable for these egregious acts. Since 2018, ECCHR has considered colonial crimes and the present-day repercussions of European colonialism a priority in its work. Contact: Sarah Imani (imani@ecchr.eu), Judith Hackmack (hackmack@ecchr.eu) both Legal Advisors with ECCHR.

The **Nama Traditional Leaders Association (NTLA)** is a Namibian association comprising of traditional leaders of the Nama indigenous peoples. NTLA is working toward bringing together all of its community engagement activities under one overarching strategy aiming to ensure community engagement is planned meaningful and carried out in a timely manner. The association hope to get everyone involved and plays a part in ensuring that the Nama people participate directly and actively in their socio-economic development in the regions where they live, be it in Namibia or in the diaspora. Contact: Sima Luipert (simagoeieman@gmail.com), Deodat Dirkse (deodatdirkse@yahoo.com): NTLA Secretary-General.

The **Ovaherero Traditional Authority (OTA)** is an officially gazette Ovaherero people's non-hereditary republican governance structure with a jurisdiction over all peoples of Ovaherero descent, be they resident in Namibia which historically, particularly in respect of central, north-western and eastern regions, was known as Ovahererland or in the diaspora where many fled following the 1904-08 genocidal war with Germany. The OTA chiefly seeks to advance Ovaherero peoples socio-economic, cultural, linguistic and political interests both in Namibia and elsewhere. In pursuit of justice from Germany which at the turn of the last century assaulted Ovaherero people through an act of genocide, the OTA had established the Ovaherero Genocide Foundation (OGF) as its vehicle for restorative justice campaign. Contacts: Mutjinde Katjiua (mkatjiua@gmail.com): OTA Paramount Chief, & Nandi Mazeingo (nandimazeingo@ogfnamibia.org), OGF Chairperson.

