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PRESS STATEMENT ON THE COMMUNICATION OF THE UNITED NATIONS SPECIAL RAPPORTEURS TO THE GERMAN AND NAMIBIAN GOVERNMENTS REGARDING THE INTERSTATE NEGOTIATIONS BETWEEN THE TWO GOVERNMENTS LEADING TO THE JOINT DECLARATION

ISSUED ON 27 APRIL 2023 IN WINDHOEK, NAMIBIA

BY THE

OVAHERERO TRADITIONAL AUTHORITY AND THE NAMA TRADITIONAL LEADERS' ASSOCIATION

Dear Ombaras, Goagu and all Senior Councilors present

The Nama and Ovaherero Nations

All Namibians and the International Community

Members of the press

This press conference is primarily called to inform you that the United Nations Special Rapporteurs have confirmed that the **participation rights of Ovaherero and Nama have been violated by the German and Namibian Governments, in terms of International Law**, during the interstate negotiations leading to the Joint Declaration, and that the UN Special Rapporteurs have sent communication to urge the German Government to grant reparations.

However, it is only befitting to give a vote of gratitude to all those who participated in all forms during the Genocide Remembrance and Reparations Week, which was held from 21 to 23 April 2023 over the past weekend in Luderitz at Shark Island, before we give a briefing on the content of the communication by the UN Special Rapporteurs to the German and Namibian Governments.

The past weekend was **HISTORIC** in every sense of the word. For the 1st time in the history of an independent Namibia, the children of the victims of the genocide committed during the German colonial era, gathered specifically at Shark Island as Ovaherero and Nama people, and as Namibians and citizens of the world. What is also **HISTORIC** about the past weekend's event, is that for the 1st time, the Nama and Ovaherero people, through their legitimate LEADERS, have erected a **Remembrance Tombstone** in honor of ALL the victims of the Shark Island Concentration Camp.

Ever since the dawn of Namibian independence, we have witnessed public symbols of remembrance of the SWAPO Liberation Struggle. Never has it occurred to SWAPO, that anti-colonial resistance existed even before SWAPO was ever born.

For 33 years in post-independence Namibia, attempts have been made, not only to erase the horrific crime of genocide which took place on current day Namibian soil. Rather, very calculated attempts have also been made to erase the story of Shark Island, by creating a Tourism Campsite which never reflected the history of this Island. Since the dawn of independence, our Namibian Government has consistently narrated Namibian History from the perspective of the formation of SWAPO, which was only formed in the 1960s as only a last chapter to a campaign for self-governance in our own space that begun many generations before..Whatever happened in terms of colonial history in Namibia before the formation of SWAPO, has been erased in all forms of public remembrance narrative. Namibia has become so obsessed with pretending as if colonial resistance started with the formation of SWAPO, such that Namibians have started to believe the dishonesty fed to them by the official narrative. A so-called Heroes Burial Shrine on the outskirts of Windhoek was specifically birthed to advance this narrative of Swapo the sole liberator and to date, outside the empty graves decorated with the names of towering figures of our early resistance like Hendrik Witbooi, Komombumbi Kuṭako and others not meaningfully honored elsewhere, largely only cadres of the Swapo latter efforts of 1960s are honored with burials on that site and thus, in the Swapo heroes only narrative, Namibian heroes worthy of honoring

The past weekend at Shark Island has marked the determination of the Nama and Ovaherero people to never forget that they are survivors of one of the most horrific crimes committed in history. Without any official government assistance, the Nama and Ovaherero people have shown their resilience and determination to claim their right to exist as a people. As leaders of the Nama and Ovaherero Nations, the NTLA and OTA would therefore like to thank each and everyone of you for making the event a resounding success.

We particularly take note of the conspicuous absence of any official Namibian or German Government representation at the event. We also take note of the absence of any official representation of the German Speaking Namibians. At the instruction of Gaob Johannes Isaack and the Paramount Chief of the Ovaherero people, Prof Dr. Mutjinde Katjiua, all the mentioned parties were officially invited by the Chairperson of the Organizing Committee.

At the level of the Namibian Government, the Deputy Prime Minister and Minister of Foreign Affairs, Honorable Netumbo Ndeitwah was inter alia invited in person whilst in attendance at the occasion of celebrating the life and times of the Deputy Gaob Stephanus Goliath who incidentally served as the first Governor of the !Karas Region..

The technical team was also instructed to invite the Regional Governor of the //Kharas Region, Honorable Governor Aletha Frederick, in her capacity as regional representative of the President of the Republic of Namibia. Both the Deputy Prime Minister and the Governor further on received official invitations, yet both neither acknowledged the invitations sent, nor attended or invited proxies to represent them. Equally, invitations were sent to the Ambassador of the Federal Republic of Germany in Namibia, His Excellency Mr Herbert Beck, as well as the Chairperson of the Forum for German Speaking Namibians, Mr Harald ... Both parties abstained from attending without any official explanation.

It is indeed sad and regretful, that the same people who preach reconciliation without even talking about reparation, remain oblivious to the generational impacts of the genocide, and rather seem to pay political lip service to the injustice from which they have inherited economic and political privilege. In our considered view, just as the ruling party has gained political privilege from the genocide, so too Germany and the descendants of the German settlers have gained economic privilege. Their calls for reconciliation is thus effectively exposed as mere rhetoric with no sincerity attached.

This unfortunately is a fact that must be addressed through honest conversation and we invite all parties mentioned to such conversations.

Nonetheless, our resilience has endured. The Nama and Ovaherero people rose up in numbers to pay homage. Thank you for travelling from every corner of Namibia but equally the diasporan communities of Botswana, South Africa, United States of America, Canada, United Kingdom but also continental Europe which too represented by various delegations from various counties, to the southern tip of this majestic country, to honor the bravery of the ancestral spirit. I call on you today, to start preparing wherever you are, for an even bigger event next time our joint-leadership calls on us to march south once more. Organize yourself, use your creativity to garner the resources required, for the next season we will show the universe, that we are human beings, we shall be seen, we shall be respected and we shall demand our justice.

The Germany-based German Civil Society organizations, who have been in solidarity with us over many years, joined in our mourning and celebration of life. A special word of gratitude is extended to the entire German Solidarity Network who made it possible to raise the funding that enabled us to hold this event. I will not name them, for they know who they are, because they have always been our trusted friends, who have never stood back when we call on them to rise to an occasion which seems insurmountable. They remained loyal and true to our common cause and union when some others in their midst deserted this noble undertaking to the comforts of government air-conditioned Offices AND corridors of power to dine with those working against our interests.

Now we shall return to the core purpose of this press conference.

Early in the year 2023, the NTLA and OTA, through their legal representation, officially approached the UN Special Rapporteurs, to question the lawfulness of the conduct of the Namibian and German Governments, in the interstate negotiations between the

two governments on the matter of the 1904-1908 genocide and the subsequent Joint Declaration announced by the two governments.

On 24 April 2023 several United Nations Special Rapporteurs started publishing their joint communication with the German and Namibian governments on violations of international law during their interstate negotiations on reparations for colonial crimes and by the Joint Declaration. In this communication to the German and Namibian Governments, the varied Rapporteurs confirm that participation rights of Ovaherero and Nama, as both targeted and affected nations, have been violated during the interstate negotiations leading to the Joint Declaration and urge the German Government to grant reparations.

I will reflect now on the Special Rapporteurs letters to the governments and their subsequent communication.

On 23 February 2023, the following UN Special Rapporteurs jointly wrote one letter to the German government (AL DEU 1/2023) and one letter to the Namibian government (AL NAM 1/2023), in which they expressed their grave concerns regarding the violation of international law. The Special Rapporteurs are as follows:

- the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli;
- the Special Rapporteur in the field of cultural rights, Alexandra Xanthaki;
- the Special Rapporteur on extrajudicial, summary or arbitrary executions, Morris Tidball-Binz;
- the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Balakrishnan Rajagopal;
- the Special Rapporteur on the rights of indigenous peoples, Francisco Cali Tzay;
- the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, K.P. Ashwini; and
- the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem.

Both governments had 60 days to respond, during which the communication stayed confidential.

On April 12, the German government asked for an extension of the deadline until May 8, 2023, arguing that answering the legal questions required the cooperation of several ministries and that this would take longer.

The Namibian government did not respond at all.

I REPEAT, THE NAMIBIAN GOVERNMENT DID NOT RESPOND AT ALL!

IT EFFECTIVELY AND PURPOSEFULLY ALTOGETHER ELECTED TO IGNORE THE VOICES OF REPRESENTATIVES OF THE UNITED NATIONS WHICH MIDWIVED ITS OWN FORMATION AS A NEW NATION STATE AND PROMISING REPUBLIC BUT ABOVE IT ALL, ONCE MORE CHOOSE TO IGNORE, DISCARD AND RELEGATE TO NOTHINGNESS THE VOICES OF OVAHERERO AND NAMA

NATIONS WHO'D ONLY, AS IS THEIR INALIENABLE RIGHT TO DO SO, ASKED FOR MEANINGFUL INVOLVEMENT AND PARTICIPATION IN PROCESSES THAT MUST DEFINE JUSTICE FOR CRIMES ONLY THEY KNOW BEST AS VICTIMS EITHER BY DESCENT OR BIRTH INTO SOCIETIES DECIMATED BY THE MOST GROTESQUE OF ALL HUMAN CRIMES, A GENOCIDE..and the first of its kind in the 20th century!.

We will now touch on the legal obligation to actively seek the effective participation of affected communities (including those in the diaspora)

One of the main legal issues the Special Rapporteurs raise, is the lack of effective participation of Ovaherero and Nama, as targeted and affected people speaking for themselves and or through their elected representatives, during the German-Namibian interstate negotiations between 2015 and 2021 leading to the Joint Declaration initialed in May 2021.

The United Nations Rapporteurs state clearly that Ovaherero and Nama people's direct and meaningful participation through self-elected representatives was not a matter of political discretion of the two governments, but is guaranteed by international law and enshrined for instance in Article 11 and 18 of the United Nations Declaration of Indigenous People.

The UN Rapporteurs also make it clear that the invitation to an advisory technical committee by the Namibian Government that does not allow for direct participation, and thus their decline of that unsolicited invitation cannot be construed as a refusal to participate by the targeted and affected communities.

All of these points have been raised by the German and Namibian governments in an attempt to divert public attention from their legal accountability and to argue that the whole process belongs to the political sphere of foreign policy and thus entails broad political discretion. The change of names from reconciliation agreement to Joint Declaration and political declaration is just one more example.

Furthermore, the German Executive seeks to delegate its own legal obligation to ensure active participation in terms of international law to the Namibian Executive. It argues that nation-states are the primary actors in the international order and that the German government is bound to negotiate with the Namibian executive as the sole legitimate representative of all Namibians. And it argues that they trust that the Namibian Executive has ensured that those participation rights were respected that they formally acknowledge and aim to implement.

The UN Special Rapporteurs make it clear, that this reasoning is flawed and incorrect as both governments have a legal obligation to respect, protect and fulfill participation rights. None of the two states therefore can abdicate their individual obligations to honor these commitments to another. Each solely and collectively carries these obligations and failure of either must be owned individually without reference to it being a joint failure.

Lastly, the Special Rapporteurs make an important clarification regarding the moment, when the governments are to seek the active participation by the affected communities, including those in the diaspora: They affirm that the participation rights apply not only

during negotiations but already before, when transitional justice mechanisms are designed, and later when the agreed measures are implemented.

We will proceed on the matter of Legal Recognition of Genocide, Reparations and Reconciliation.

The UN Special Rapporteurs urge the German government to assume legal responsibility for the colonial crimes committed during colonial rule and to grant reparations. They make it clear that the Joint Declaration initialed in 2021 does not contain effective reparative measures and does not provide the necessary means to achieve reconciliation. They affirm that according to international standards reparation should aim at comprehensively addressing the multiple consequences and effects of the harm suffered, including as a result of killings, starvation, torture, gendered violence, forced labor or loss of property, and should entail measures in the areas of restitution, compensation, rehabilitation and satisfaction.

In 2021 already, Fabián Salvioli said that any negotiation on reparations for colonial crimes had to take into account lessons learnt from transitional justice processes over the last 40 years. In addition to the lack of direct and meaningful participation of the affected communities of Ovaherero and Nama, the Special Rapporteurs criticize the strict secrecy agreed upon between the two states regarding their negotiations. They emphasize that this kind of top-down approach is incapable of providing a sustainable basis for a peaceful future as experiences from other transitional justice processes show.

Furthermore, they criticize the substitution of *reparations by development aid*. They confirm that the provision of development aid to address the legacy of colonialism risks perpetuating, rather than rectifying, colonial dynamics.

Reproduction of colonial racism and the decolonization of the doctrine of intertemporal law

The UN Special Rapporteurs also raise the reproduction of colonial racism by the current interpretation of the doctrine of intertemporal law by the German government according to which the laws at the time did not protect the Ovaherero and Nama from being killed in large numbers. They reiterate that this interpretation of the doctrine of intertemporal law is an obstacle to reparations and that the German government should refrain from interpreting it in that way. Already in 2021, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and racial intolerance, then Tendayi Achiume, affirmed in her report on human rights obligations of Member States in relation to reparations for racial discrimination rooted in slavery and colonialism that the pursuit and achievement of reparations for slavery and colonialism required a genuine decolonization of the doctrines of international law that remain barriers to reparations. She explicitly referred to the principle of intertemporal law.

Insufficient memorialization about the genocide

The UN Special Rapporteurs expressed concern about the insufficient memorialization of the Genocide in both Namibia and Germany but moreso Namibia where related historical sites are either not memorialized AND or poorly preserved, unexplained , or

located on an inaccessible private land. The Genocide, they also affirmed, is rarely mentioned in public discourse and in education.

IN CONCLUSION

Three points are noteworthy in the communication of the UN Special Rapporteurs. They are as follows:

The UN Special Rapporteurs emphasize and remind both governments of their legal obligation to actively seek the effective participation of affected communities (including those in the diaspora)

They further emphasize the matter of Legal Recognition of Genocide, Reparations and Reconciliation. Which thus far the two Governments have been dancing about without either unqualified admission of guilt to the crime of genocide by Germany as the perpetrator AND serious drive to establish that guilt admission on the Namibian side as the should-be advocate of Ovaherero and Nama interests.

Lastly, they remind the two governments of the reproduction of colonial racism and the decolonization of the doctrine of intertemporal law, and urge them to guard against the dangers of such reproduction.

What is of particular interest, as we examined the communication over the last two days, is that the UN Special Rapporteurs are reminding both the Namibian and German Governments, of the same violations of international and human rights we have been warning against ever since the 2006 Namibian Parliamentary Resolution on Genocide, Apology and Reparations.

There is nothing fundamentally different in the argument we have always made, albeit that the two governments have been reminded of their legal obligations.

Therefore, we call on the Nama and Ovahehero Nations, wherever you are, and on the Namibian people and the citizens of the world, to rally international solidarity support behind our demands and behind the communication of the UN Special Rapporteurs. We urge all of you, to increase pressure on both the Namibian and German Governments, to respect UNIVERSAL HUMAN RIGHTS, and the COVENANTS and TREATIES to which they are lawful signatories.

Our call stands.

NOTHING ABOUT US WITHOUT US. THEREFORE, LET THE BLOOD OF OUR ANCESTORS FUEL OUR RESOLVE FOR RESTORATIVE JUSTICE