



REPUBLIC OF NAMIBIA

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30 May 2023

Special Rapporteur Mandate Holders
Special Procedures Branch
OHCHR
Palais Des Nations
1211 Geneva
Switzerland

Special Rapporteur Mandate Holders,

JOINT COMMUNICATION FROM SPECIAL PROCEDURES

I wish to acknowledge receipt of the Joint communication dated 23 February 2023 seeking information on the participation of indigenous groups in the Genocide Discussions in Namibia.

The German nation committed a terrible genocide which still haunts Namibia and its people and should not be used politically to induce division amongst our people, regionalism and tribalism. The issue of genocide by its nature has far-reaching implications on the population and economic growth, in that it continues to negatively impact the population and economic development.

The main goal of negotiation process on the genocide committed against the Namibian people, which started in 2006, 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 Namibian people, as well as to seek a genuine and sincere apology and reparation to the affected descendants, or more appropriately, the affected communities.

The Government of the Republic of Namibia has valued the input from the affected communities whom are all fully represented on the Technical Committee on Genocide Apology and Reparations, and are part and parcel of the negotiating team. These team was drawn from different sectors of the society, namely, the academia, politics, law and finance

and economy. With this in mind, the Government of Namibia has always remained and will continue to remain open to have unified voice in this regard.

Attached hereto, please find the Government of Namibia's response pertaining to the alleged lack of meaningful participation by affected communities in the negotiations that led to the issuance of the Joint Declaration by the Government of the Republic of Namibia and the Government of the Federal Republic of Germany.

Lastly, let me reiterate that the Government of Namibia is raising the issues of genocide with the German government in the best interest of the Namibian people.

Yours sincerely,



Netumbo Nandi-Ndaitwah, MP
DEPUTY PRIME MINISTER AND MINISTER



**RESPONSE OF THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA TO THE
JOINT COMMUNICATION FROM SPECIAL PROCEDURES, DATED 23
FEBRUARY 2023**

INRODUCTION

First and foremost, reassures through your good offices, the Rapporteurs for the six Special Mandate Holders in particular, and the Human Rights Council in general, of the steadfast commitment of the Government of the Republic of Namibia (GRN) to its obligation to institute various measures to ensure, truth, reparation and guarantees of Non – Recurrence of Past Human Rights Violations. In so doing, reassures that despite the fact that both the Republic of Namibia and the Federal Republic of Germany on the one side, together with representatives of the communities affected by the 1904 – 1908 genocide on the other, had over the past seven years embarked on a voluntary political process of negotiations, (GRN) on her side had done everything within her power to as much as possible heed the provisions contained in 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.

Pursuant to GRN commitment as a State Party, I therefore herewith on behalf of the Government of the Republic of Namibia file for your consideration the herein contained responses to the version contained in the Joint Communication from the Rapporteurs of the Special Procedures. As will become apparent the responses strongly refute the allegations that the Government of the Republic of Namibia has renegaded on its obligations as a State Party under the relevant Human Rights legal instruments to adopt measures to ensure, truth, reparation and guarantees of Non – Recurrence of Past Human Rights Violations.

DISCUSSION

The Government of the Republic of Namibia is pleased to provide answers to the questions raised in an attempt to assist the Special Rapporteurs with the execution of their mandates as provided by the Human Rights Council, of establishing the full and accurate facts in respect of cases brought to it. The information contained below is structured as set out below to provide the candid observations and responses of the Government of the Republic of Namibia in respect of the specific solicitations numbered 1 to 7 as featured on pages 10 and 11 of the Joint Communication:

- i) Solicitation 1 for additional information and/or comment on the allegations and concern expressed through the Joint Communication are dealt with under “Question 1”;
- ii) Solicitation 2 on measures to guarantee the right to participation is dealt with under “Question 2”;
- iii) Solicitations 3, dealing respectively with measures to provide remedy to victims and restitution, rehabilitation, and satisfaction is dealt with under “Question 3”;
- iv) Solicitation 4, dealing with measures adopted in assisting the affected Ovaherero and Nama people with access to adequate land and housing, sources of livelihood

- and economic opportunities, and medical and educational services, is dealt with under “Question 4”;
- v) Solicitations 5, dealing with measures to establish truth about the facts and circumstances surrounding the genocide violations, are summed under “Question 5”;
 - vi) Solicitation 6 dealing with memorialization measures and or process adopted to inform the general public about the violations suffered by the Ovaherero and Nama people is dealt with under “Question 6”;
 - vii) Lastly, solicitation 7 dealt with under “Question 7” provides additional information and general comments.

QUESTION 1

The 2006 National Assembly Resolution and the German – Namibia Talks on Genocide Apology and Reparation:

In October 2006, the National Assembly passed a historic Resolution in support of a Motion introduced by the [REDACTED] the President of the National Unity Democratic Organisation (NUDO) and Chief of the Ovaherero Traditional Authority. As a mover of the Motion, the [REDACTED] in his closing remarks on the debate on October 26, 2006, he implored his fellow Parliamentarians “*to adopt the Motion as tabled, since by so doing this House would have discharged a historic responsibility towards our people...*”. This Resolution directed the Namibian Government to facilitate the convening of “*a dialogue be convened between, on the one hand, the German Government and on the other hand, the Namibian Government and representatives of the affected parties to try and resolve this matter amicably and thereby strengthening and solidifying the existing excellent relationship between the two countries (Namibia and Germany)*”. For close to a decade the GRN under the leadership of His Excellency President [REDACTED] used various diplomatic avenues to convince its German counterpart to come to the Negotiation Table. These efforts bore fruits when the latter conceded to the Namibian proposal, which marked the beginning of seven long years of very intricate exchanges on complex issues of Genocide, Apology and Reparation.

QUESTION 2

Meaningful Participation and the Representativeness:

The Joint Communication avers that there has been “*a lack of meaningful participation, through self – elected representatives, of the Ovaherero and Nama peoples in the negotiations leading to the Joint Declaration by the Federal Republic of Germany and the Republic of Namibia in remembrance of our colonial past, united in our will to reconcile, united in our vision of the future*”.

In refuting both these averments and the claims on which they may be based on, I put forth the facts set out below.

After Germany's conceded to the Namibian Government request for a Dialogue, which I referred to above – outlined 2006 National Assembly Resolution, the Government of the Republic of Namibia through the Office of the Vice President, the late [REDACTED] addressed letters to [REDACTED] of Ovaherero Genocide Foundation that was allied with the Ovaherero Traditional Authority, [REDACTED] of the Nama Genocide Technical Committee that was allied to the Nama Traditional Leaders Association, and [REDACTED] of the Ovaherero – Ovambanderu Council for Dialogue on the 1904 – 1908 Genocide that represented a number of other Traditional Authorities within the Ovaherero and Ovambanderu communities. The purpose of these letters was mainly to inform the affected communities that the Germany Government has agreed to come to the Negotiation Table. The second purpose was to put to the leaders of the communities a proposed outline of the modus operandi as contemplated by the GRN Cabinet on the negotiation strategy. Finally, GRN invited each leader of the communities to nominate a representative to become a member of the Technical Committee (TC) which was tasked with the preparation and executing of the negotiations on behalf of the affected communities. Thus, the TC is made up of members from the affected communities and from the GRN.

Only the Ovaherero – Ovambanderu Council for Dialogue on the 1904 – 1908 consented to the invitation and came forth with ideas of their own in response to the GRN proposals. For instance, they demanded the gradual increase of their representatives, which now stand at five, all of whom were at all times represented and actively participated in the official rounds of negotiations. GRN also established another forum consisting of all traditional Chiefs from the affected communities, the Chiefs' Forum. The Chiefs' Forum is a platform that serves as a direct liaison between the chiefs of the affected communities and the Vice President of the Republic of Namibia, as the designated GRN Representative on the genocide negotiations. Many such engagements took place before and after the initialling of the Joint Declaration.

In reply, the Ovaherero & Ovambanderu Traditional Leaders and the Nama Traditional Authorities Association represented by [REDACTED] [REDACTED] respectively, rejected the invitation in a letter received on 09 February 2016, stating that "...we politely decline and reject the invitation to nominate our representatives to participate in structures intended to sell out our legacy, for which our ancestors had paid with their lives."

However, the GRN did not, has not and will not relent in its extension of a hand of collaboration to the two groups, or any other group for that matter. The efforts of the GRN are in this regard exemplified by the following initiatives. In 2020, [REDACTED] the President of the Republic of Namibia, convened a meeting with a delegation of the Ovaherero and Nama Traditional Leaders, led by the late [REDACTED] the successor to [REDACTED] in his effort to amicably resolve differences and pave the way for working together. Similarly, as recently as December 2022, H.E. [REDACTED] Vice President of the Republic of Namibia convened a meeting with the Chiefs under the auspices of the Nama Traditional Leaders Association in Mariental.

QUESTION 3

Access to remedy for victims belonging to the Ovaherero and Nama people for violations endured, including women victims of sexual violence and their descendants

With regard to the issue regarding women victims of sexual violence and their descendants (Paragraph 8 of the Joint Declaration acknowledges that “*tens of thousands of men, women and children were subjected to the orders and associated German policies. They were shot, hanged, burned, starved, experimented on, enslaved, worked to death, abused, raped, and dispossessed, not only of the land, property and livestock, but also of their rights and dignity*”).

As rightly observed in the Joint Communication that as the result of the long – term effect of the genocide, including the establishment of a racist colonial settler state in Namibia, the intergenerational trauma of the aftermath of colonialism and genocide are still pervasive today.

It would, however, be totally unfair to blame this state of affairs on the Namibian Government and even more, not to recognise GRN’s effort to provide restitution to the traumatised victims through various measures contained in 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.

QUESTION 4

Reparation Through the Measures of Restitution, Rehabilitation and Satisfaction:

The Joint Communication of the Special Rapporteurs avers that “*the lack of effective reparative measures afforded to the [Ovaherero and Nama people] including an unqualified recognition of the genocide committed against these communities in the former German Southwest Africa colony between 1904 and 1908*”.

As rightly observed in the Joint Communication that as the result of the long – term effect of the genocide, including the establishment of a racist colonial settler state in Namibia, the intergenerational trauma of the aftermath of colonialism and genocide are still pervasive today.

It would however be totally unfair to blame this state of affairs on the Namibian Government and even more, not to recognise GRN’s effort to provide restitution to the traumatised victims through various measures contained in 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. The restitution and trauma suffered by the Namibian people has a historical background. The Constitution of the Republic of Namibia remain the most cardinal milestone in the efforts as a government, the efforts for ensuring that the victims’ liberties are restored, the human rights guaranteed, the cultural identities restored, their family lives and citizenship are ensured and protected. For those finding themselves today displaced and living in foreign lands because of the genocide, Namibia had since independence in 1990, instituted the necessary diplomatic engagements with

the Government of the Republic of Botswana regarding the voluntary repatriation of all those desiring to return to the country of their ancestral roots. I must add that after the Second National Land Conference held in 2018, [REDACTED] appointed a Presidential Commission of Inquiry into Matters of Ancestral Land Rights and Restitution, whose Report of more than 800 pages was presented in June 2020, and have since been enjoying attention at the highest level.

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, provide for compensation for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law. The issue of quantum (Reparation) has remained the complex sticking point in the negotiations, and the position of the Government of the Republic of Namibia has always been and remains that it would not be possible nor fair to put a fixed amount that can be considered as a full and total consummation of the valued lives that were lost in the carnage of the colonial genocide. On this basis, in its phrasing restitution, rehabilitation and satisfaction, GRN drew a cue from the experience of the Reparation from the Jewry, who initially agreed to US\$ 3 Billion in 1952 but has over seven decades not only managed to secure an accumulated amount in excess of US\$ 70 Billion, but also broaden both the scale and scope of the coverage of their package. Hence the inclusion in the Joint Declaration under Paragraph 21 of the Bi – National Commission to work continuously towards the full realisation of the aspirations contained in the 2006 Parliamentary Resolution.

In pursuance of 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, and its principle for satisfaction, the initialled Joint Declaration under Paragraphs 11 to 13 deals with the acknowledgement of the facts and acceptance of responsibility by Germany, as the successor state. The position agreed through the Chiefs' Forum, which has guided the Namibian Negotiating Team is that Germany at the highest State level should come to Namibia to tender a public official apology – as an affirmation of paragraph 11 to 13 in the Joint Declaration, to restore the dignity, the reputation and the rights of the victims and of persons closely connected with the victims.

QUESTION 5

Measures to establish the truth about the facts and circumstances surrounding these violations, including sexual violence committed against women and girls

Answered in question 3

QUESTION 6

Memorialisation Measures/Processes:

The Joint Communication queried what it termed “*the reported insufficient memorialisation in Namibia about the colonial past and particularly about the genocide*”.

In this regard, the Government of the Republic of Namibia wish to draw the attention of the Special Rapporteurs to the establishment of the National Heritage Council of Namibia (NHCN) a statutory body created through the National Heritage Act, (Act Number 27 of 2004), which carries the overall mandate for the preservation of Namibia's historic, natural and cultural heritage. In the execution of these responsibilities this entity had in recent years collaborated with various entities from the communities affected by the 1904 genocide, on both the protection, conservation and registration of places and objects related to this genocide. Let me state for your record, [REDACTED] one of the claimants for the vacant chieftaincy of the Ovaherero Traditional Authority, previously held a NHCN Directorship from 2017 to 2019.

Listed below for purposes of illustration, are a few examples in this regard. The registration as heritage sites, of both the site for the historic Battle of Ohamakari in the proximity of the scenic Waterberg Mountain that marked the final Ovaherero stand – off against the German colonial forces; as well as the Ozombuzovindimba heritage site located 18 kilometres to the Northeast of the sprawling small of Otjinene, erected at the site of the very hill on which Lothar von Trotha, the ruthless German colonial General stood on October 1904 to publicly issue the infamous Order for the total extermination of the Ovaherero people.

In addition, on March 20th, 2014, His Excellency [REDACTED] unveiled the Genocide Memorial Statue sited on the location of a Genocide era concentration camp, on the spot where the colonial Rider Statue, or the Soldier on Horseback, previously stood. During that occasion he described this new Statue as having been “*conceived and erected as a national symbol in remembrance of all our people who lost their lives and were subjected to untold hardships and suffering at the hands of the heartless and heavy-handed soldiers of the Schutztruppe and the entire German colonial machinery*”.

Furthermore, GRN, has thus far negotiated, facilitated, and financed the successful repatriation to Namibia, of three separate consignments of human remains of our forebearers from the Ovaherero, Ovambanderu and Nama communities, which were shipped to Germany at the height of the 1904-1908 Genocide. In line with the Satisfaction Principle of 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, GRN remain open to discussions regarding reburial of the returned remains in accordance with the expressed or presumed wish of the descendants of the victims, or the cultural practices of the relevant communities. In this regard, GRN also facilitated the repatriation of cultural artifacts, such as the return after 120 years, of [REDACTED] bible and whip in 2019, from a Stuttgart Museum.

Lastly, the Government of the Republic of Namibia is finalising the refurbishment work on the homestead of legendary [REDACTED] a warrior who actively engaged in the anti-colonial resistance battles and survivor of the hardship of 1904 Genocide, who later led and orchestrated the petitioning of the UN starting in the late 1940s, against the South African violations of its mandatory trusteeship over South – West Africa/Namibia. The homestead was already nominated in July 2010 by the Omaheke Regional Council to become a national heritage site, and the refurbishment project is fully Government financed and is being undertaken in close collaboration with the Ovaherero Traditional Authority, as well as the descendants of the Mungunda/Kutako clan.

It is of critical importance to point out that both the Government of the Republic of Namibia and the National Assembly has already agreed in principle to the **National Genocide Remembrance Day**, however, the date of such remembrance shall be confirmed after consultation with the affected communities (the Ovaherero and Nama communities).

For the future, the negotiated and initialled Joint Declaration explicitly commits to *“finding appropriate ways of memory and remembrance, supporting research and education, cultural and linguistic issues, as well as by encouraging meetings and exchange between all generations, in particular the youth”*.

QUESTION 7

The Current Status of the Negotiations:

After the Joint Declaration was initialled by the two Special Envoys, it was presented to the National Assembly to generate inputs and guidance for the Namibia Negotiating Team, after which the contested Paragraphs of the Joint Declaration were ring-fenced for renegotiation. I must register that during the discussion in the National Assembly, the Government of the Republic of Namibia invited all the leaders of the affected communities to participate in the negotiations between Namibia and Germany. The process was thus transparent.

CONCLUSION

Additional Information and General Comments and Observations in Respect of the Allegations and Conclusions/Observation in the Joint Communication from the Special Procedures:

The Special Rapporteurs need no reminding to the fact that, in all its efforts to conform to 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, the Government of the Republic of Namibia remains obliged to ensure that it does not derogate from the international or national protected rights of others, including the right of those related to those accused for the perpetration of the genocide, to benefit from applicable standards of all due process.

In conclusion, as the Joint Communication rightly acknowledged, a review application is currently before the High Court of Namibia, therefore various aspects relating to the Joint Declaration would be considered as sub judice. Nonetheless, once more receive the Namibian Government's reassurances and highest regard to the Six Rapporteurs, as mandate holders on behalf of UN Human Rights Special Procedure, for the procedural courtesy in affording us this opportunity to reply to the referenced Joint Communication.

-END-

