

## **Annex I: Historical Overview**

Between 1884 and 1915 present-day Namibia was attributed to the German Empire as the settler-colony German West Africa (GSWA). While the temporal scope of the German colonial rule was limited, it continues to have multiple effects until today. The fact that GSWA was the only settler colony of the German Empire, facilitated the replacement of the indigenous population through German settler population and the creation of a racist, colonial administration. The conflicts resulting from this conduct culminated in the events, which have later become known as the Ovaherero and Nama genocide:

From 1904 to 1908 the German imperial military forces (Schutztruppe) were responsible for the death of tens of thousands in the colony German Southwest Africa (GSWA), 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.<sup>1</sup> This conduct against the Ovaherero and Nama peoples as targeted groups was qualified as the first genocide of the 20<sup>th</sup> century.<sup>2</sup>

Beyond the physical extermination of the Ovaherero and Nama, the ensuing treatment of the survivors in concentration camps and the establishment of a racist settler-state aiming at the destruction of their culture, history and livelihood characterized the German conduct. While the Ovaherero and Nama were the targeted groups, all Black people living in the so-called “police-zone” of GSWA, namely Damara and San were directly affected by the genocide.<sup>3</sup>

The surviving Ovaherero and Nama who had not fled to the neighboring countries Botswana, South Africa and Angola, faced a radical change in their living conditions in comparison to the time before the war from 1904-1908. The German colonial administration now could fully implement their plans for a racist colonial settler state. Living conditions for the Black population (referred to as “Eingeborene”) were characterized by systematic surveillance and discrimination. In 1905 and 1906 property including the land, cattle and other property were expropriated through an imperial regulation (Kaiserliche Verordnung: Einziehung von Vermögen Eingeborener). Following regulations of 1907 prohibited the possession of land and cattle by the Black population who were thus deprived not only of their means of economic production, but also the reproduction of their culture and collective identity.<sup>4</sup> The freedom of

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> Kößler, Reinhart: Namibia and Germany: Negotiating the Past (2015), p. 18-22.

<sup>4</sup> Zimmerer, Jürgen: Krieg, KZ und Völkermord in Südwestafrika. Der erste deutsche Genozid, in: Zimmer, Jürgen; Zeller: Der Kolonialkrieg (1904-1908) in Namibia und seine Folgen, p. 60-61 (in German).

movement was repealed. As part of general passport obligations, Black people over the age of seven were required to wear an identity tag (Erkennungsmarke) made of sheet metal indicating the district where they lived. The Union of South Africa controlled Namibia starting from 1915, later backed by a League of Nations Mandate, and kept several core characteristics of the German colonial system, among them the duty to work (Arbeitspflicht) for Black people and the passport regulations.<sup>5</sup>

Numerous colonial repercussions can be seen until today in both the Namibian, but also the German society. In Namibia the remnants and traces of racist segregation, transgenerational trauma, the socio-economic effects of the loss of land and assets are still ubiquitous today. Not at least the decrease of the Ovaherero and Nama population in numbers, who were the majority population in the police zone and have become minorities in their country, still has a major impact on their everyday life.<sup>6</sup>

In Germany, the colonial past did not play a prominent role in the German public discourse for a long time. This has been described as a state of “colonial amnesia”.<sup>7</sup> This changed only slowly after the Namibian independence in 1990 and over pressure of Namibian and German civil society initiatives. Accordingly, on a visit to Germany in 2018, the Working Group on People of African Descent by the United Nations describes that “Germany’s crimes against Africans and people of African descent are overshadowed by the country’s focus on other parts of its history.”<sup>8</sup>

Between 2015 and 2021 intergovernmental talks were held in consultation with selected representatives of the descendants of the victims. These talks led to the publication of a “Joint Declaration by the Federal Republic of Germany and the Republic of Namibia” (Joint Declaration) in May 2021. In this declaration, the German government acknowledges the events that “from today’s perspective, would be called genocide” and “apologizes and bows before the descendants of the victims.” In addition to this acknowledgment, Germany agreed to pay a sum of 1.1 billion euros over a period of 30 years that would be dedicated to aid and development programs.

The Joint Declaration sparked fiercely negative reactions in Namibia. Many Ovaherero and Nama criticized the bilateral format of the negotiations from the start and then continued to demand that they be fully included in the process. A discussion concerning the Joint Declaration in the Namibian National Assembly ended without a resolution in September 2021. In January

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<sup>5</sup> Ibid; and: Köbler, Reinhart; Melber, Henning: Völkermord und was dann? Die Politik deutsch-namibischer Vergangenheitsbearbeitung (2017), p. 25 (in German), Köbler, Reinhart: Namibia and Germany: Negotiating the Past (2015), p. 20 f.

<sup>6</sup> See the still relevant Suzman, James: Minorities in Independent Namibia. Minority Rights Group International Report (2002), p. 6-7, available at: <https://minorityrights.org/wp-content/uploads/old-site-downloads/download-152-Minorities-in-Independent-Namibia.pdf>.

<sup>7</sup> See for example: Köbler, 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](https://www.rosalux.de/fileadmin/rls_uploads/pdfs/Standpunkte/Standpunkte_9-2018.pdf).

<sup>8</sup> 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.

2023, a national lawsuit against the Joint Declaration was filed in Namibia.<sup>9</sup> In April 2023, a letter sent to the Federal Republic of Germany and the Republic of Namibia by seven UN Special Rapporteurs. In this letter, the alleged lack of meaningful participation through self-elected representatives as well as the lack of effective reparatory measures were addressed.<sup>10</sup>

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<sup>9</sup> Case-Number: HC-MD-CIV-MOT-REV-2023/00023 at the High Court of Namibia, details available here: <https://ejustice.jud.na/ejustice/f/caseinfo/publicsearch>.

<sup>10</sup> Communication of 23 February 2023 to the Federal Republic of Germany by the Mandates of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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; the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on violence against women and girls, its causes and consequences (Ref.: AL DEU 1/2023). Communication of 23 February to the Republic of Namibia by the same Mandates (AL NAM 1/2023).