

Mandate of the Special Rapporteur on the rights of Indigenous Peoples

Ref.: OL DEU 4/2026

(Please use this reference in your reply)

13 October 2026

Excellency,

In this connection, I would like to bring to the attention of your Excellency's Government certain comments and **concerns regarding the Joint Declaration between the Federal Republic of Germany and the Republic of Namibia, addressing the colonial atrocities committed against the Ovaherero and Nama peoples between 1904 and 1908, and its compatibility with international human rights law, as it does not provide for comprehensive and victims-centred reparations, including restitution, and may be interpreted as limiting or extinguishing human rights and other claims of affected individuals and communities that did not consent to its terms.**

The Joint Declaration, exclusively negotiated and signed by the Federal Republic of Germany and the Republic of Namibia without participation of the Ovaherero and Nama Indigenous Peoples, was subject to previous communications, JAL NAM 1/2023 and JAL DEU 1/2023, sent to the Governments of Namibia and Germany.

According to the information received:

In 2021, the Governments of the Republic of Namibia and of the Federal Republic of Germany issued a Joint Declaration concerning mass atrocities perpetrated by German colonial forces between 1904 and 1908 against the Ovaherero and Nama Indigenous Peoples in the territory then known as German South West Africa (now Namibia). The Joint Declaration entitled “United in Remembrance of Our Colonial Past, United in Our Will to Reconcile, United in Our Vision for the Future”, recognises how atrocities included killings, forced displacement, starvation, confinement in concentration camps, forced labour, confiscation of land and livestock, and removal of human remains and cultural objects.

The Joint Declaration between the Federal Republic of Germany and the Republic of Namibia acknowledges that atrocities were committed and states that, from today's perspective, they would be called genocide. It records that colonial rule involved seizure of ancestral land, expulsion from communities, forced labour, internment, and removal of human remains and cultural artefacts. These are important and positive steps towards justice and reconciliation.

In this context, the Joint Declaration also recognises that the “the deep wounds inflicted on particular communities and other peoples of Namibia by the atrocities perpetrated during German colonial rule between 1904 and 1908, (...) echo down and through time and are still felt by Namibians today”.

The Joint Declaration was exclusively negotiated between Germany and

Namibia over approximately six years. It provides for a total of €1.1 billion from Germany to Namibia over 30 years, distributed as follows:

- €1.05 billion for reconstruction and development projects; and
- €50 million for reconciliation, remembrance, research and education.

The declaration contemplates “a separate and unique reconstruction and development support programme”, related to land acquisition, agriculture, water, energy, infrastructure and natural resources. It describes the funds as a “grant” and does not frame the commitment as legally owed compensation or reparations.

One the main reason for concern is clause 20 of the Joint Declaration. It states that Germany and Namibia share the understanding that the agreed amounts “settle all financial aspects of the issues relating to the past addressed in this Joint Declaration.”

The German Government described the declaration as a political agreement rather than a treaty under international law, which would have required ratification by the Bundestag. That characterisation, however, does not resolve the Declaration’s effects on the rights of affected Indigenous Peoples.

The Federal Republic of Germany and the Republic of Namibia chose not to ensure an effective participation of the Ovaherero and Nama Indigenous Peoples into the negotiations, despite international law standards, including on Indigenous Peoples’ rights.¹

Indigenous Peoples are entitled to the full range of rights established under international law, including equality and non-discrimination. The Ovaherero and Nama Indigenous Peoples must be treated as rights-holders when it comes to addressing the historical injustices they suffered, as the subject matter includes collective rights to land, culture, identity, representative decision-making, remedies and reparations.

Article 26 of the UN Declaration on the rights of Indigenous Peoples (UNDRIP) recognises Indigenous Peoples’ rights to lands, territories and resources traditionally owned, occupied or otherwise used or acquired. Article 28 provides for restitution or, where restitution is not possible, just, fair and equitable compensation for lands, territories and resources confiscated, taken, occupied, used or damaged without free, prior and informed consent. Under these provisions, unilateral monetary assistance should not be used to replace or avoid a good-faith inquiry into whether ancestral land, cultural sites, burial grounds, human remains, and cultural objects can be returned or restored.

The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation provide that victims of gross violations of international human-

¹ NAM 1/2023 and DEU 1/2023.

rights law and serious violations of international humanitarian law are entitled to adequate, effective and prompt reparation. They identify five recognised forms of reparations: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

The Basic Principles reflect the broader principle, formulated by the Permanent Court of International Justice in *Factory at Chorzów (Germany v. Poland)*, that reparation should, as far as possible, eliminate the consequences of the wrongful act and restore the situation that would likely have existed in its absence.

Reparation processes must not reproduce discrimination. A process that characterises a people harmed by colonial violence as passive beneficiaries of state-directed development, while excluding them from determining the legal meaning, structure and content of reparations, risks entrenching rather than remedying inequality. This risk is acute where the original violations were structured through racial hierarchy, colonial dispossession and denial of political agency.

The Joint Declaration should not be regarded as a complete and definitive resolution of the Ovaherero and Nama Indigenous Peoples' claims, as the two concerned States intentionally chose not to ensure the effective participation of the affected Indigenous Peoples. A settlement capable of affecting the rights of Indigenous Peoples requires, at minimum: legitimate representation, a clear mandate to negotiate and settle, informed participation, access to relevant information and advice, opportunity to influence substantive terms, agreement free from pressure or coercion, fairness in substance and procedure, and safeguards for claims that cannot lawfully or practically be settled.

Article 18 of the UNDRIP provides that Indigenous Peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures.

Article 19 of the UNDRIP provides that states shall consult and cooperate in good faith with Indigenous Peoples through their representative institutions to obtain free, prior and informed consent (FPIC) before adopting and implementing legislative or administrative measures that may affect them.

In this regard, the Joint Declaration states that “representatives of these communities will participate in this process in a decisive capacity.”, This does not meet the standards require by the UNDRIP. The reported exclusion of self-elected representatives means that the states cannot properly assert that the affected Indigenous Peoples accepted the Joint Declaration as a settlement of their claims.

Germany and Namibia may decide the terms of their diplomatic relationship. They cannot, however, by bilateral arrangement, dispose of rights held independently by people and communities who did not validly authorise the agreement.

Clause 20 of the joint-declaration states that the financial sums settle all financial aspects of the historical issues covered by it. This clause raises serious concern, given that it seems to create an appearance of conclusiveness, while the affected Indigenous Peoples dispute it.

In this context, the agreement refers to “financial aspects.” It does not expressly settle land restitution, return of cultural objects, return of human remains, access to archives, recognition of collective title, ongoing discrimination, participation rights or remedies for subsequent violations.

Under international law, any waiver of human-rights claims must be interpreted narrowly; it must be clear, free, informed, voluntary and based on legitimate representation. In this case, the settlement clause should not be understood as purported waiver, it cannot cease continuing violations or preclude appropriate remedies.

The financial settlement clause cannot be understood to extinguish claims arising from ongoing circumstances, including denial of participation, failure to provide access to ancestral land, retention of heritage, or discriminatory distribution and implementation of projects.

Clause 20 of the agreement may define an inter-State financial understanding between Germany and Namibia. It cannot, however, validly extinguish the individual or collective rights of Ovaherero and Nama Indigenous Peoples, who did not provide free, prior and informed consent.

In relation to the issue of intertemporality, it could be observed that the 1948 Genocide Convention cannot retroactively be applied as a treaty to events occurring in 1904–1908.

Nevertheless, the *Namibia Advisory Opinion* of the International Court of Justice can provide relevant guidance. The ICJ did not freeze the legal understanding of colonial governance at the time the mandate system was established. Rather, it interpreted obligations arising under that the system in light of the subsequent development of international law, including the principle of self-determination. As for the issue at hand regarding the Namibia-Germany joint declaration, colonial atrocities cannot be assessed in a manner that imports the discriminatory assumptions of the colonial legal order, or treats subsequent developments in human rights and self-determination as practices that are irrelevant to the present.

Moreover, at the *Western Sahara Advisory Opinion* the ICJ emphasised that colonial conduct must be assessed according to the customary international law during the relevant time of colonization. In this context, Germany’s responsibility for action of its security forces against the Ovaherero and Nama Indigenous Peoples between 1904 and 1908 can also be examined under customary international law at that time.

The joint declaration itself acknowledges continuing dispossession, uprooting, loss of land and removal of human remains and cultural artefacts. These facts

potentially engage contemporary obligations, irrespective of the historical classification of the original conduct under the Genocide Convention.

The jurisprudence of the African Commission and the African Court provides strong guidance. In the *Endorois Welfare Council v Kenya* decision, the African Commission recognized the Endorois' rights to ancestral land and emphasized meaningful participation and consent in decisions affecting their territory. Similarly, in the *African Commission on Human and Peoples' Rights v Kenya (Ogiek)* litigation, the African Court required Kenya to consult the Ogiek and/or their representatives in determining and securing ancestral land rights. The Court ordered collective land titling and other reparative measures. These cases are particularly relevant because they demonstrate that African regional human-rights law treats Indigenous Peoples participation as part of the substantive protection of collective rights.

The Joint Declaration addresses the historical recognition of genocide; an apology; remedies for mass atrocities; land and development projects; cultural heritage; allocation and governance of funds; and purported settlement of financial aspects. These issues affect the collective identity and rights of the peoples concerned.

The Joint Declaration should not have been signed, ratified or implemented as if it was a final human rights case settlement. Similarly, the €1.1 billion programme may be a significant political and financial commitment. However, it should not be considered, by its amount alone, adequate reparation.

Development assistance is generally prospective, state-directed and based on policy priorities. Reparation is directed to repairing an identified wrong and its consequences, is grounded in the rights of those harmed, and includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

The Joint Declaration describes the funds as a grant for reconstruction and development support. That formulation is inconsistent with a framework that recognises Germany's legal obligation to make full reparation. Reparation cannot be replaced by development assistance or a momentary claim alone. As recognised in the declaration, the consequences of the colonial atrocities committed against Nama and Ovaherero Indigenous Peoples, from 1904 to 1908, subjected these communities to:

- Loss of life;
- Loss of land;
- Loss of ancestral lands and burial grounds;
- Forced labour;
- Displacement;

- Destruction of the communities;
- Intergenerational consequences; and
- Continuing social and economic consequences.

A development programme may complement reparation; however, it cannot substitute for it. It is inadequate where it lacks: recognition of the rights-holders' entitlement to repair, collective ownership, enforceable land restitution, direct compensation for distinct harm; return of human remains and cultural property, independent oversight, a complaints mechanism, and a transparent criterion for beneficiary selection.

The international legal framework protecting Indigenous Peoples' rights requires a hierarchy of remedies. Restitution should be considered first. Compensation is appropriate where restitution is materially impossible or insufficient. For the Ovaherero and Nama Indigenous Peoples, restitution should include consideration of:

- ancestral lands;
- collective title and tenure security;
- access to traditional territories;
- sacred sites and burial grounds;
- cultural objects and archival materials;
- human remains; and
- restoration of community control over cultural memory and commemoration.

In *Moiwana Community v Suriname*, the Inter-American Court required measures connected to the community's traditional territory after massacre and displacement, together with investigation, recognition and compensation. In *Saramaka People v Suriname and Kaliña and Lokono Peoples v Suriname*, the Court emphasised collective property, participation, cultural survival and the need for practical remedies. Land-related harm cannot be reduced to individual monetary payments or general infrastructure projects.

A reconciliation process is incompatible with the object of reparation if it reproduces the original relationship of domination: states determine the historical narrative, define the remedy, control the resources and declare the matter settled, while affected victims are treated as beneficiaries.

This goes to the core of the notions underpinning the international human rights framework, such as equality, dignity, participation and the effectiveness of the

remedy. A process that seeks to close a colonial chapter denying the rights of those who endured the violence risks institutionalising a second wrong.

While I do not seek reach a final conclusion regarding these observations, I wish to express my grave concern that the Joint Declaration is not in line with international human rights law, and the State's obligations in that regard. In this context, I am concerned that any purported waiver via the settlement clause 20, could not extinguish the individual or collective claims of non-consenting rights-holders or bar claims concerning land, culture, human remains, archives, continuing violations, participation, equality or access to justice.

I am further concerned that the settlement clause cannot absolve Germany and Namibia of their present obligations in relation to continuing harm and effective remedy, and that the €1.1 billion programme, as presently structured and described, cannot be presumed to meet international standards of full and effective reparation. Development assistance may complement, but cannot replace, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition; a legitimate reparations process must therefore ensure meaningful decision-making power for the Ovaherero and Nama Indigenous Peoples through representatives chosen in accordance with their own procedures.

In light of the foregoing, I respectfully urge the Governments of Germany and Namibia not to characterise the Joint Declaration as a final settlement of the claims of the Ovaherero and Nama Indigenous Peoples. I also urge both Governments to suspend reliance on clause 20, and on any comparable finality provision, pending a renewed and participatory process. No individual, community or institution should be required to waive any right or claim in order to receive funding or participate in implementation.

I further recommend establishing a rights-based reparations process that recognises the Ovaherero and Nama Indigenous Peoples as rights-holders. The process should guarantee meaningful participation and substantial decision-making authority through their representative institutions and legitimate representatives chosen in accordance with their own procedures. It should include women, youth, rural communities and affected diaspora communities. It should clearly distinguish reparations from ordinary bilateral development assistance. An independent reparations commission or trust should be established, with affected communities exercising substantial decision-making authority. The process should provide accessible complaints, appeal and review mechanisms. It should also require public reporting, independent audits and regular human-rights impact assessments. Wherever feasible, it should ensure the restitution of land, human remains, cultural property and archives. It should also provide collective tenure security, protect sacred sites and ensure meaningful access to ancestral territories. In addition to restitution, it should provide compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Finally, I recommend replacing clause 20 or making it subject to a controlling interpretive provision. That provision should state that nothing in the Joint Declaration, or in any financial, administrative or implementation measure adopted under it, may be construed as waiving, extinguishing or limiting the individual or collective rights of the Ovaherero, Nama or other affected Indigenous Peoples. These rights include effective remedy and reparation; restitution of lands, territories, human remains, cultural property

and archival materials; compensation; rehabilitation; satisfaction; guarantees of non-repetition; meaningful participation through legitimate representatives chosen in accordance with their own procedures; and access to judicial, administrative, regional and international mechanisms.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.
2. Please explain the intended legal scope and effect of clause 20 of the Joint Declaration, including whether it may limit or extinguish any individual or collective claims of the Ovaherero and Nama Indigenous Peoples. Please clarify whether access to funding or participation in programme implementation is conditional upon the waiver of any rights or claims.
3. Please provide information on the nature, allocation and governance of the €1.1 billion programme, including the criteria for selecting projects and beneficiaries, the role of affected communities in decision-making, and the mechanisms established for transparency, independent oversight, complaints, appeals and human-rights impact assessment.
4. Please indicate how the measures contemplated under the Joint Declaration address applicable standards on effective remedy and full reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Please clarify how the programme is distinguished from ordinary bilateral development assistance.
5. Please provide information on measures taken or envisaged concerning the restitution of ancestral lands, human remains, cultural property and archival materials, as well as collective tenure security, protection of sacred sites and meaningful access to ancestral territories.
6. Please provide detailed information on the participation of the Ovaherero and Nama Indigenous Peoples in the negotiation of the Joint Declaration, including how their representatives were selected, the mandates they held, the stages at which they participated, and how their views influenced its terms. Please also indicate the measures taken to ensure the participation of women, youth, rural communities and affected diaspora communities.

This communication, as a comment on a bilateral international instrument (joint declaration), and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please be informed that a letter on this subject has also been sent to the Government of the Republic on Namibia.

Please accept, Excellency, the assurances of my highest consideration.

Albert K. Barume
Special Rapporteur on the rights of Indigenous Peoples