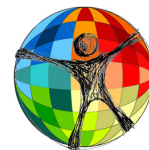


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# **Selective Forgetfulness: Decolonisation, Erasure, and Reconciliation in Post-Colonial Namibia**

*Joshua A Singer Johnson*

McGill Centre for  
Human Rights  
and Legal Pluralism



Centre sur les droits de la  
personne et le pluralisme  
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# ABSTRACT

Namibia is a land of contradiction. A country proud of its independence struggle, but in which monuments to the glory of the struggle for independence stand alongside monuments to colonial figures complicit in the darkest moment of Namibia's history: the genocide perpetrated by German colonial authorities against the Herero and Nama peoples in the first decade of the 20th century.

Based on the premise of texts like Adam Rieff's *In Praise of Forgetting*, which examines the political and ideological nature of memory and commemoration, this essay shall examine the ideology underpinning the commemoration of the 1905 genocide by the Government of Namibia today, and the effective erasure of the genocide from the public conversation on the grounds of decolonisation and nation-buildings. I shall examine the approach to reparations currently being undertaken by both the German and Namibian governments, and contrast with the potential of true reparations and the efforts of Herero and Nama activists pushing for recognition since independence. The paper shall ultimately conclude that the two approaches are fundamentally irreconcilable.

As the 2021 agreement is still subject to re-negotiation, and in the context of increasing international awareness of the 1905 genocide, this paper seems a timely addition to the academic discourse.

# CONTENTS

<b>I. INTRODUCTION</b>	<b>6</b>
<b>II. HISTORICAL BACKGROUND</b>	<b>6</b>
<b>III. POLITICS AND COMMEMORATION IN NAMIBIA</b>	<b>12</b>
<b>IV. CHALLENGING THE DOMINANT NARRATIVE: OVAHERERO AND NAMA COMMEMORATION, CALLS FOR REPARATIONS, AND CO-OPTING</b>	<b>19</b>
<b>V. 2021 JOINT-DECLARATION OF GERMANY AND NAMIBIA</b>	<b>23</b>
<b>VI. ANALYSING THE POTENTIAL IMPACT OF TRUE REPARATIONS</b>	<b>27</b>
<b>VII. CONCLUSIONS</b>	<b>31</b>
<b>WORKS CITED</b>	<b>34</b>

## **I. Introduction**

Namibia is a land of contradiction. It is a country proud of its independence struggle, but one in which monuments to colonial figures still dot the city centres and the countryside. It is a democratic country that proudly erects monuments to the glory of its struggle for independence, but simultaneously struggles to reconcile with the darkest moment of its history: the genocide perpetrated by German colonial authorities against the Ovaherero and Nama peoples in the first decade of the 20<sup>th</sup> century. This paper shall examine the social, legal, and historical context surrounding Namibia's colonial past, and manner by which it informs the modern-day divide between ethnic groups, the motivations of the government and the dominant political class, its reticence to engage in a restorative process with its former colonial power, and the way the Namibia privileges the aspects of history that fit its narrative, while repressing those that do not. Ultimately, the paper shall attempt to determine whether Namibia's commemorative strategy of selective forgetfulness can be reconciled with the darkest chapter of the country's past or whether the two are fundamentally irreconcilable.

## **II. Historical Background**

Namibia is an immense and desolate land. The driest country in sub-Saharan Africa, its valleys and dry savannah are nestled in the southwestern corner of the African continent, protected from the violent Atlantic coast by the centuries old Namib desert. As a consequence of its foreboding natural conditions, the human populations that occupied the Namibian landscape were primarily the nomadic cattle-herding Ovaherero and Nama peoples. Only in the far north of the modern-day nation did warmer, wetter conditions allow for permanent agricultural settlements, composed primarily of the Bantu-speaking Oshivambo people.

For similar reasons, 19<sup>th</sup> century European colonial powers were initially uninterested in the mysterious hinterlands guarded from the coast by a forbidding sea of sand. Consequently, when

## Selective Forgetfulness: Decolonisation, Erasure, and Reconciliation in Post-Colonial Namibia

colonial powers scrambled to obtain territory on the African continent, which they divided between themselves at the 1884 Berlin Conference, this apparently resource-less and undesirable territory was assigned to Germany. The modern German state had been created only a decade earlier, in 1871, and was intensely envious of the vast colonial empires of other European powers. Consequently, the fervently nationalist Germany colonists approached their newly acquired land with unrivalled expansionist zeal.<sup>1</sup>

### A. *The First Genocide of the 20<sup>th</sup> Century*

As David Olusoga and Casper Erichsen detail in their treatise on the subject, the German colonists established homesteads and confiscated land with vigor throughout the 1890s. Starting from their primary seaport at Swakopmund, German settlers primarily incurred on the territory traditionally occupied by the more southerly Ovaherero and Nama peoples. The task was made easier by the war waging between the Ovaherero and Nama that pre-dated the German arrival. By 1904, continued colonial encroachment became untenable, and with German forces acting increasingly provocative, the Ovaherero began to attack German colonists. The German armed forces became involved in the conflict, and Adrian von Trotha, the German military in South West Africa, considered the Ovaherero “unhuman”<sup>2</sup> and on October 3rd, 1904, issued an edict that amounted to an extermination order. It stated that all Ovaherero within German borders, armed or unarmed, man, woman, or child, would be executed.<sup>3</sup>

The Nama, repulsed by the attempted annihilation of their old foes, and concerned for their own survival after the defeat of the Ovaherero, joined the conflict in 1905. However, their entry was too late and their numbers too low to have a meaningful impact. By the following year both the Ovaherero and Nama

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<sup>1</sup> See e.g. David Olusoga & Casper W Erichsen, *The Kaiser's Holocaust: Germany's Forgotten Genocide and the Colonial Roots of Nazism* (London: Faber & Faber, 2010).

<sup>2</sup> *Ibid* at 140.

<sup>3</sup> See *ibid* at 150.

were soundly defeated and Germany had cemented its place as the dominant power.

In the aftermath of the war, the colonial government ordered that all Ovaherero and Nama be detained in *Konzentrationslager* – literally – ‘concentration camps.’ German forces were sent out to round up all Ovaherero and Nama, and having lost most of their cattle – and with it their source of food and livelihood – many were enticed to voluntarily submit in exchange for promises of food and work.<sup>4</sup> The internment and labour camps were located adjacent to important areas of German settlement, and conditions therein were atrocious. Inmates were forced to provide free labour to German settlers while living in crowded, unsanitary conditions, exposed to the elements, and suffering from severe malnutrition. Between 1904 to 1908, the overall mortality rates in these camps are estimated to be between 80 and 90 percent, of which a significant majority can be attributed to the pitiful living conditions in the camps.<sup>5</sup>

In her 2005 piece, Isabel Hull attributed the atrocities committed at these camps to “an imperial military culture with marked proclivities toward ‘absolute destruction’ in response to political insurrection.”<sup>6</sup> Olusoga and Erichsen detail how both the ideology of racial superiority and the practical methods employed by German colonial forces in their detention and extermination of the Ovaherero and Nama served as a structural guide for the atrocities committed by the Nazi regime against Jews and others three decades later. Indeed, the two scholars draw a direct link between the personnel and strategy involved in the planned extermination of Ovaherero and Nama in South West Africa, and that of Jews in Europe in the Holocaust.<sup>7</sup> Though not recognised as such under international law, the forced internment of Ovaherero and Nama is widely regarded by scholars as

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<sup>4</sup> See *ibid* at 161–216.

<sup>5</sup> See *ibid* at 229; see also Isabelle Hull, *Absolute Destruction: Military Culture and the Practices of War in Imperial Germany* (Ithaca, NY: Cornell University Press, 2005) at 88.

<sup>6</sup> Hull, *ibid* at 88–90.

<sup>7</sup> See Olusoga & Erichsen, *supra* note 1.



## Selective Forgetfulness: Decolonisation, Erasure, and Reconciliation in Post-Colonial Namibia

constituting a genocide in accordance with the genocide convention.<sup>8</sup>

It is worth noting that in 1907, German authorities established a 'police zone' which separated the northern third of the territory from the rest, and delineated the area fully under colonial control. While Germany reclaimed sovereignty over the entirety of the territory, its control was only exercised in full in the area to the south of the line, which had been almost entirely depopulated of indigenous people as a consequence of the internment of the Ovaherero and Nama.<sup>9</sup> In the same year, the colonial government issued an edict barring the indigenous inhabitants of South West Africa from owning land or cattle to the south of the line. This ensured that the dispossessed people would never be able to reclaim that which they lost.<sup>10</sup>

### *B. South African Rule, Apartheid, and the Struggle for Independence*

Less than a decade after the end of the genocide, the First World War erupted, and saw the Germans ousted as the colonial power by British forces. In the aftermath of the Treaty of Versailles, Germany's colonies were divided between the victorious powers, and Britain was granted a League of Nations mandate for South

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<sup>8</sup> The Genocide Convention, UN, 1948 approved by the General Assembly of the United Nations, defines genocide as:

"any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:  
(a) Killing members of the group;  
(b) Causing serious bodily or mental harm to members of the group;  
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;  
(d) Imposing measures intended to prevent births within the group;  
(e) Forcibly transferring children of the group to another group."

For information on scholarly consensus, see e.g. "Herero and Nama Genocide" (last visited 29 August 2023), online: *United States Holocaust Memorial Museum* <[ushmm.org/collections/bibliography/Herero-and-nama-genocide](https://ushmm.org/collections/bibliography/Herero-and-nama-genocide)>.

<sup>9</sup> See Giorgio Miescher, *Namibia's Red Line: The History of a Veterinary and Settlement Border* (New York: Palgrave, 2012) at 202.

<sup>10</sup> See Lynn Berat, "Genocide: The Namibian Case against Germany" (1993) 5:1 Pace Intl L Rev 165 at 188.

West Africa. While in theory the mandate guaranteed eventual independence for South West Africa, in practice it became a part of the British empire. British authorities delegated the administration of the territory to the newly-formed Union of South Africa, then a self-governing territory of the British Empire. South Africa maintained many of the German regulations, including the police zone. Indeed, one of South Africa's first acts in South West Africa was to prohibit white settlement to the North of the police zone boundary after 1916.<sup>11</sup>

In the aftermath of the Second World War, the creation of the United Nations reignited the push for the independence of the mandate states. But as the rest of Africa experienced a wave of decolonisation, the vehemently racist National Party took power in South Africa and in 1948 annexed South West Africa as a fifth province. It then proceeded to implement the segregationist policies of Apartheid across the territory, and granted the White population of South West Africa full citizenship and voting rights. As in the rest of South Africa, the African population of South West Africa was restricted in its ability to move about the country, and was forcibly relocated and relegated to 'settlements,' designated areas subdivided by ethnic groups.<sup>12</sup> According to the Minister of Justice, the separation of African people by ethnic groups, particularly in the Windhoek-adjacent settlement of Katutura, was a deliberate attempt by the South African authorities to sow discord, pit racial groups against each other, and prevent them from uniting against continued colonial rule.<sup>13</sup>

Nevertheless, numerous pro-independence groups took form across the country. Amongst the most prominent were SWANU, the South West Africa National Union, with a membership composed primarily of Ovaherero people, and SWAPO, the South West Africa People's Organisation, formed primarily by members of the Oshivambo ethnic group. Groups such as these conducted protest action in the country against

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<sup>11</sup> See Miescher, *supra* note 9 at 203.

<sup>12</sup> See Olusoga & Erichsen, *supra* note 1 at 349.

<sup>13</sup> While this is not an academic source, it represents the lived experience of Yvonne Dausab, who was raised in Katutura under apartheid, and subsequently rose to the rank of Minister of Justice. She explained to me the system of formal school segregation by ethnic group as a deliberate divisionary policy of the Apartheid government.

## Selective Forgetfulness: Decolonisation, Erasure, and Reconciliation in Post-Colonial Namibia

South African rule, and with the support of Angola and Cuba, and indirect aid from the Soviet Union, engaged in a protracted guerilla warfare from bases in southern Angola, from 1966 on. They fought primarily on the peripheries of South Africa-controlled territory, to the north of the police zone. Simultaneously, SWAPO fought an extensive international political battle, seeking recognition of the independence of South West Africa.<sup>14</sup>

Many political leaders, including the leadership of SWAPO, lived in exile. As Apartheid South Africa was almost completely isolated from the international community, they actively and successfully petitioned the UN to recognise Namibia's right to self-determination and political independence in 1968.<sup>15</sup>

Facing economic collapse and intense international political pressure, the Apartheid regime began to unravel in the 1980s, and Namibian activists seized the opportunity and declared independence in 1989. In the transition to political independence, SWAPO morphed from a resistance organisation to a dominant political party. Swapo, as it is now known, won the first elections in 1989 by a landslide and has remained in power ever since.

Since 1990, the democratic National Assembly has been elected by a closed-list national proportional vote, which centralises power by allowing the party to select its representatives, without any guarantee of local representation or representation of any communities.<sup>16</sup> In practice Swapo has never received less than 65% of the vote in National elections, guaranteeing the party full control of the legislative process.<sup>17</sup> Since independence, Swapo has run on an explicit policy of national unity. The party constitution, adopted in 1991, establishes among the party's primary objectives:

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<sup>14</sup> See Miescher, *supra* note 9 at 200.

<sup>15</sup> See United Nations General Assembly Resolution 2145 (XXI), Question of South West Africa.

<sup>16</sup> See *Constitution of the Republic of Namibia*, 1990, Schedule 4 [Constitution of Namibia].

<sup>17</sup> See "Previous Election Results" (last visited 29 August 2023), online: *Electoral Commission of Namibia* <[ecn.na/previous-election-results/](http://ecn.na/previous-election-results/)>.

- (1) to unite the people of Namibia, irrespective of race, religion, sex, or ethnic origin into a democratic, vibrant and peace-loving nation;

...

- (3) to foster a sense of common purpose and collective destiny among the Namibian people;
- (4) to combat retrogressive tendencies of tribalism, ethnicity, nepotism, racism, sexism, chauvinism, regionalism, personality cult, etc.;
- (5) to instill in the Namibian people a spirit of patriotism and to develop in them the consciousness that they are masters of the own destiny.<sup>18</sup>

In short, the explicit goals of the party, and by extension, of the Namibian government since the nation's independence have been to move beyond the past and foster a new sense of national identity. It is in this context of nation building, and of a governing party intent on looking forward, that one must analyse the efforts that have been made to commemorate the genocide of 1904-1908 and to compensate its victims.

### III. Politics and Commemoration in Namibia

#### A. *Namibia Today*

The decolonisation process in Southern Africa has seen a diversity of approaches that vary in both severity and aims. In Zimbabwe, the government of Robert Mugabe which took power in 1980 sought to aggressively combat economic inequality. Mugabe immediately mandated majority African ownership of business, and sought to aggressively confiscate the wealth accumulated by White Rhodesians under minority rule. Though premised on a notion of restitutive justice, the Zimbabwean project resulted in practice in the formation of a new oligarchic elite class, widespread corruption, hyperinflation, and economic decline.

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<sup>18</sup> "Constitution of Swapo Party" (last visited 29 August 2023), art 3(b), online (pdf): [politicalpartydb.org/wp-content/uploads/Statutes/Namibia/Namibia\\_Swapo\\_1998.pdf](http://politicalpartydb.org/wp-content/uploads/Statutes/Namibia/Namibia_Swapo_1998.pdf).

# Selective Forgetfulness: Decolonisation, Erasure, and Reconciliation in Post-Colonial Namibia

By contrast, in South Africa, the government of Nelson Mandela sought to include the entirety of its population in a so-called “Rainbow Nation.” The government began an extensive process of truth and reconciliation to expose the systemic injustices that occurred under Apartheid. The majority of reforms to occur in South African have prioritised democracy, political inclusivity, and rights. However, while South Africa’s economic performance has far exceeded that of Zimbabwe, it remains the most economically unequal country on earth, and successive governments have been mired in allegations of corruption.<sup>19</sup>

Namibia has walked a path of moderation between those two extremes. The Swapo-led government has refused to implement a truth and reconciliation commission.<sup>20</sup> It has equally been reticent to confiscate the land and wealth of White Namibians, who remain an immensely privileged group. In fact, Namibia remains the country with the second highest rate of income inequality in the world, after only South Africa.<sup>21</sup> However, the government has implemented significant political, economic, and societal reforms in the name of decolonisation.

The Namibian constitution, established in 1990, enshrines a guarantee of equality and freedom from discrimination.<sup>22</sup> A caveat to this guarantee allows for affirmative action programs to provide:

"the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices,

<sup>19</sup> Like in Namibia, a former freedom-fighting group has run South Africa's government since its first elections with universal suffrage in 1994. The most recent former president has been jailed for corruption and the current president is under pressure to resign. See e.g. "South Africa's President Ramaphosa 'is not resigning': Spokesman", *Al-Jazeera* (3 December 2022), online: <[aljazeera.com/news/2022/12/3/south-africas-president-ramaphosa-is-not-resigning-spokesman](https://www.aljazeera.com/news/2022/12/3/south-africas-president-ramaphosa-is-not-resigning-spokesman)>. For statistics on inequality, see "Gini Index" (last visited 29 August 2023), online: *World Bank* <[data.worldbank.org/indicator/SI.POV.GINI/?en](https://data.worldbank.org/indicator/SI.POV.GINI/?en)  
<[data.worldbank.org/indicator/SI.POV.GINI/?en](https://data.worldbank.org/indicator/SI.POV.GINI/?en)  
d=2021&most\_recent\_value\_desc=false&start=2021&vie w=bar> ["Gini Index"].

<sup>20</sup> See Paul Conway, "Truth and Reconciliation: The Road Not Taken in Namibia" (2003) 5:1 Online J Peace and Confl Resolution 66.

<sup>21</sup> See Gini Index, *supra* note 19.

<sup>22</sup> See Constitution of Namibia, *supra* note 16, art 10.

or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of past discriminatory laws or practices.”<sup>23</sup>

To that end, the Namibian government has implemented a framework for the economic empowerment of previously disadvantaged persons, and a land reform program.<sup>24</sup> The latter gives the government preferential access to all agricultural land put up for sale, which it then redistributes to previously disadvantaged Namibians at subsidised rates and with favourable loan conditions.<sup>25</sup> It also establishes communal land title that facilitates the shared use of land by traditional communities.<sup>26</sup>

### *B. The Decolonisation Process in Namibia*

One of the most significant aspects of Namibia’s decolonisation process is the narrative and aesthetic process of decolonisation that the government has strategically adopted over the last three decades. The government has systematically sought to strip important monuments and landmarks of their colonial names and connotations. Across the country, streets have been renamed to honour heroes of the independence struggle and Namibian political figures (there is significant overlap in those two categories). Windhoek’s main drag was renamed from Kaiser Straße (Emperor Street) to Independence Avenue. The parliament of Namibia is now located at the intersection of Fidel Castro Street and Robert Mugabe Avenue. The country’s primary airport was renamed Hosea Kutako International Airport, after the Ovaherero leader who frequently petitioned the UN for independence.

Some streets were also named after colonial-era indigenous leaders such as Paramount Chief of the Ovaherero Samuel Maharero and Nama leaders Cornelius Frederiks and Hendrik Witbooi, each of whom led armed uprisings against the German colonial authorities. However, while their names are recognised,

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<sup>23</sup> *Ibid*, art 23.

<sup>24</sup> See *National Economic Empowerment Act*, Government of Namibia, 2015.

<sup>25</sup> See *Agricultural (Commercial) Land Reform Act 6 of 1995*, Government of Namibia.

<sup>26</sup> See *Communal Land Reform Act 5 of 2002*, Government of Namibia.

## Selective Forgetfulness: Decolonisation, Erasure, and Reconciliation in Post-Colonial Namibia

their stories are regularly assimilated with those of the later freedom fighters to form a cohesive story of general independence.

This strategy of memorialisation and commemoration extends far further than street names. Namibia's national anthem, entitled *Namibia the Brave*, commemorates the freedom fighters, noting that "their blood waters our freedom." Additionally, the African Union anthem, the lyrics of which commemorate the continent's breaking of the grip of colonialism, is sung along with the Namibian anthem at all official events in Namibia.<sup>27</sup>

Multiple monuments have also been erected in the celebration of independence. In Windhoek, the city's skyline is dominated by the Independence Museum. Completed in 2014, the monument was built by a North Korean state-owned corporation atop a hill overlooking the centre of town. The brutalist design and socialist-realist style motifs inside tell a highly dramatized and, to a degree, fictionalised version of Namibia's anti-colonialist and independence struggle.

The museum's exhibits lean heavily on murals and other visual elements to present a very patriotic and historically inaccurate story. Christian Williams and Tichaona Mazarire describe how, in the first hall of the museum:

"the viewer encounters a large, colorful portrait of [first president Sam] Nujoma, clothed in military fatigues, affixed on top of an image of the Namibian flag, and surrounded by two raised flags and a plastic *Welwitschia mirabilis* (Namibia's national plant). On one side of him, under the title "Early Resistance Leaders," one finds much smaller golden engravings of regional leaders who are associated with contesting colonial rule during the late nineteenth and early twentieth centuries. On an adjacent wall, one encounters a mural of predominantly male soldiers from SWAPO's military wing, the People's Liberation Army of Namibia (PLAN), some of whose faces depict famous PLAN commanders and all of whom have assumed proud, defiant postures. In this manner,

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<sup>27</sup> See Michael Akuupa, *National Culture in Post-Apartheid Namibia: State-Sponsored Cultural Festivals and Their Histories* (Cape Town: Basler Afrika Bibliographien, 2015) at 164.

the gallery sews together over one hundred years of anticolonial resistance under SWAPO's, and more especially Nujoma's, heroic leadership."<sup>28</sup>

Williams and Mazarire further note that the museum makes no effort whatsoever to contextualise the images on display, not even by including the names of the 'early resistance leaders' such as Hendrik Witbooi, who are depicted as though they were led by Nujoma.<sup>29</sup> Consequently the Independence Museum is much more accurately described as a symbol of resistance and liberation than an accurate historical representation. Other monuments erected in the same style dot the landscape around the capital. These include a massive North Korean-style statue of Sam Nujoma holding a copy of the Namibian Constitution above his head, and the Heroes Acre, a gargantuan obelisk of a war memorial that dominates the hillside of a mountain on the outskirts of the capital.

Much can be gleaned from the decisions of the Namibian government with regards to the erecting of public monuments. An examination of the post-conflict monuments that exist reveal the elements of Namibia's history that the government wishes to commemorate, and how they intend that history to be remembered. Conversely, the elements of Namibia's past for which few monuments exist suggest a hesitancy on the part of the government to address certain matters. Ronald Niezen suggests that the form national monuments take is central to the nation-building process as they legitimise power structures and provides a literal 'concretisation' of a state's constitutional order.<sup>30</sup> He explains that since states tend to hold monopolies on the construction of such monuments, they can have significant political utility in the process of nation-building. He notes as an example how the most important monuments in France tend to glorify the French soldier and his victory in combat and "solidify the

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<sup>28</sup> Christian Williams & Tichaona Mazarire, "The Namibian Independence Memorial Museum, Windhoek, Namibia" (2019) 124:5 *Am Historical Rev* 1809 at 1810.

<sup>29</sup> See *ibid* at 1811.

<sup>30</sup> Ronald Niezen, "Speaking for the dead: the memorial politics of genocide in Namibia and Germany" (2018) 24:5 *Intl J Heritage Stud* 547 at 549–51.



## Selective Forgetfulness: Decolonisation, Erasure, and Reconciliation in Post-Colonial Namibia

legitimacy of conquest and the regimes on which it is founded.”<sup>31</sup> Conversely, Niezen notes that public Holocaust memorials in Germany mark a turning point. They are indicative of a state eager to recognise the evil of its past, and to build a nation premised on the notion of never returning thereto.

When examined through this lens, the choice of patriotic monuments erected in the North Korean style by Namibia are indicative of a country intent on sparking national pride, and of crafting a uniting narrative of victory over colonialism and oppression. Concurrently, the brutalism of the Independence Museum and other North Korean-built memorials indicate a turning point away from both the violence and oppression of the colonial period, and from its architectural style.

### C. *The Implications of Namibia’s Commemorative Strategy*

Before pronouncing definitively on the merits and shortcomings of Namibia’s commemorative strategy, it is worthwhile to examine the implications of commemoration more generally. All exercises of commemoration are inherently stylised, biased, and malleable. David Rieff notes that “it is actually quite easy for nations or groups to “revise” and “rewrite” their collective memories.”<sup>32</sup> As an example, Rieff notes that the Southern United States has completely rewritten the American Civil War, and through commemorative performances and statues transformed the Confederate cause from a deplorable and defeated defence of slavery to a noble and victorious assertion of the rights of states.<sup>33</sup> To a certain degree, Namibia has engaged in this exact process. By erecting monuments that tell of a unified, continuous anti-colonial struggle, the country is strategically rewriting its own history to include the entire population in its triumph over Western oppression.

The clear advantage of Namibia’s commemorative model is its potential for decolonisation. The forging of a national identity

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<sup>31</sup> *Ibid* at 550.

<sup>32</sup> David Rieff, *In Praise of Forgetting: Historical Memory and Its Ironies* (New Haven: Yale University Press, 2016) at 22.

<sup>33</sup> *Ibid* at 12.

centred on the independence struggle is a clear rebuke of Namibia's past colonisers, and a powerful assertion of sovereignty. Thus, the inattention to historical accuracy in certain monuments in commemoration can be attributed to a state embodying a forward-looking attitude and seeking to move away from the aspects of its past it hopes not to repeat.

In light of the lingering impact of Apartheid, it is unsurprising that the government would opt not to prominently commemorate the 1904-1908 genocide. Indeed, the monument that commemorates the genocide in Windhoek is typical of the state's forward-looking commemorative strategy. It features two emaciated figures breaking free of chains, and is captioned simply "Their Blood Waters Our Freedom," with no explicit mention of the genocide.<sup>34</sup> Furthermore, despite its clear embodiment of the government's commemorative objectives, the monument occupies a position of marginal importance when compared to those commemorating independence.

In this context, Namibia's project of building national unity can also be viewed as a project of erasure, both of the pre-colonial conflicts that existed between Namibia's indigenous groups, and of the unequal impact different stages of colonial violence had on certain of those groups, namely the Ovaherero and Nama. The unitary story of a glorious independence struggle ignores the fact that the German colonialism had a disproportionate impact on the south of the country. While northern groups maintained the vast majority of their territory and traditional governance structures throughout the periods of German and South African rule, the lands confiscated by German authorities following the evacuation of the Ovaherero and Nama were incorporated into South African Crown land and ultimately redistributed to White settlers, depriving Ovaherero and Nama people of their traditional homes and livelihoods.<sup>35</sup> Thus, while the political and economic injustice of Apartheid were felt uniformly across Namibia, the ongoing legacy of German policies in the south ensured that the ability of the Ovaherero and Nama to maintain their traditional practices and ways of life was more

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<sup>34</sup> Reinhart Kössler, *Namibia and Germany: Negotiating the Past* (Windhoek: University of Namibia Press, 2015) at 227-29.

<sup>35</sup> See Olusoga & Erichsen, *supra* note 1 at 347; see also Berat, *supra* note 10 at 190.

greatly inhibited that was that of more northerly peoples. Moreover, despite the fact that the bulk of the fighting in the Independence War took place in the north and the majority of the soldiers were of Oshivambo origin,<sup>36</sup> the war prioritised in the national conscience is presented as a multicultural struggle against colonial oppression. This presentation does not reflect the reality of the Ovaherero and Nama liberation struggle; the events of significance to those communities occurred almost a century earlier.<sup>37</sup> However, the fact remains that the commemoration of a genocide that targeted only certain Namibian communities is a direct challenge to the narrative of unity being pushed, irrespective of that narrative's accuracy.

#### **IV. Challenging the Dominant Narrative: Ovaherero and Nama Commemoration, Calls for Reparations, and Co-opting**

Despite efforts on the part of the Namibian government, it is clear that the Ovaherero and Nama have not 'bought in' to the government's forward-looking message of unity and national pride. Instead, both peoples have maintained commemoration of the genocide as an integral part of their cultural identities. Moreover, the attaining of political independence has instigated a resurgence of Ovaherero and Nama claims for restitution and compensation from Germany for the ongoing impacts of the genocide.

Within Ovaherero and Nama communities, a strong tradition of oral history, stories passed down through generations, is complemented by elaborate commemorative ceremonies. The Nama honour Hendrik Witbooi among others during an annual 'heroes' day celebration in August; the Ovaherero perform an annual military-style parade, replete with pomp and pageantry, in honour of Samuel Maherero's reburial. In the post-

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<sup>36</sup> See Niezen, *supra* note 30 at 555.

<sup>37</sup> See Kössler, *supra* note 34 at 285–86.

independence context, these ceremonies now offer an opportunity for speeches demanding reparations for colonial injustices.<sup>38</sup>

Both the Ovaherero and Nama have treated the burial places of important resistance leaders as monuments to the memory of the genocide. The Nama have erected a monument in the southern town of Bethanie dedicated to the memory of Cornelius Fredericks and his compatriots who died fighting the Germans. The monument is intentionally located adjacent to a German-era monument erected to commemorate the German soldiers who perished in the same conflict.<sup>39</sup>

This German-built monument is far from unique. Indeed, considering the non-prevalent location of monuments dedicated to commemorating the victims of the genocide, the degree to which German-era monuments—commemorating the perpetrators of genocide—remain prominently displayed is notable.<sup>40</sup> The most prominent example is the *Reiterdenkmal*, a 1912-build German memorial to the conflict with the Ovaherero and Nama. The statue of a soldier on horse-back, prominently displayed on a hill overlooking the city centre of Windhoek, became a symbol of colonial presence in South West Africa, and was even depicted the logo of South West's most prominent brewery.<sup>41</sup> The statue remained on prominent display at the site of what became the Independence Museum until its removal by Namibian authorities in 2009, much to the consternation of White Namibians.<sup>42</sup> However, it is notable that the removal of the statue was also opposed by Ovaherero and Nama activists; they sought to repurpose the monument as symbol of the historical injustice suffered by their ancestors, and for which restitution was still owed, and feared that the removal of the monument would serve only to

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<sup>38</sup> See Kössler, *supra* note 34 at 179–202. See also Niezen, *supra* note 30 at 558–59.

<sup>39</sup> See Niezen, *supra* note 30 at 558.

<sup>40</sup> See Elke Zuern, “Namibia’s Monuments to Genocide” (13 June 2017), online: *Dissent* <[dissentmagazine.org/blog/namibia-genocide-monuments-reparations-germany](http://dissentmagazine.org/blog/namibia-genocide-monuments-reparations-germany)>.

<sup>41</sup> See Kössler, *supra* note 34 at 147–48.

<sup>42</sup> See *ibid* at 156–57.

## Selective Forgetfulness: Decolonisation, Erasure, and Reconciliation in Post-Colonial Namibia

compound the erasure of their history.<sup>43</sup> This provides a clear example of the Ovaherero's and Nama's ongoing commitment to combatting the Namibian state's narrative of erasure and pursuing a compensatory claim.

The centrality of claims for reparations against Germany to the mission of Ovaherero and Nama community leaders and activists, as well as to their respective ethnic identities, cannot be understated. Indeed, the Ovaherero Genocide Foundation's stated foundational priority is:

"Through all possible available avenues and resources, advise, motivate, mobilize, urge, steer, compel the state of Germany to, in the context of the [Genocide Convention], agree to and effect reparations payments commensurate with the diabolical crimes she committed against Ovaherero and Nama people more than a century back."<sup>44</sup>

Dissatisfied with inaction on the part of the Namibian state, Ovaherero and Nama activists have for decades been making direct appeals to the German government and public. Initially rebuffed by Germany, and seemingly silenced by the Namibian government, then-Ovaherero Paramount Chief Kuaima Riruako launched claims against Germany at the ICJ and in the United States under the Alien Torts Claim Act in 1999 and 2001 respectively.<sup>45</sup> The undertaking of these cases was opposed by the Namibian government; Riruako was thus fighting for reparations against both the Namibian and German governments.

Nevertheless, the activism of Riruako and others began to gain traction following a 2004 speech by the German Development Minister at the centenary commemoration of the German-Ovaherero war. Therein, she accepted responsibility and issued an apology on behalf of the German government. As a result of this speech, both Niezen and Karie Morgan identify a

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<sup>43</sup> See Elke Zuern, "Memorial politics: challenging the dominant party's narrative in Namibia" (2012) 50:3 J Mod Afr Stud 493 at 506 [Zuern, "Memorial politics"].

<sup>44</sup> "Foundational Priorities" (last visited 29 August 2023), online: Ovaherero Genocide Foundation <ogfnamibia.org>.

<sup>45</sup> See Karie Morgan "Remembering against the nation-state: Hereros' pursuit of restorative justice" (2012) 21:1 Time & Soc'y 21 at 28.

strategic shift in the state's treatment of the question of genocide and reparations. Indeed, the government pivoted from opposing reparations due to the risk of tribalism, to co-opting Riruako's efforts and integrating the claims against Germany into Namibia's national identity, with the hope of downplaying the ethnic aspects thereof.<sup>46</sup>

In 2006, the Namibian parliament officially backed Riruako's motion calling for compensation. And, at the behest of activists, the Namibian government officially requested the repatriation of human skulls removed from concentration camp victims and taken to Germany for scientific experimentation. The skulls were returned to Namibia in 2011 and 2014, but the question of their ultimate resting place quickly became one of serious contention. While Ovaherero and Nama activists hoped the skulls would be commemorated in a genocide-specific museum, they were instead interred in the Independence Museum. The government viewed the skulls as an element of Namibia's liberation struggle, and their return to Namibia as "closure."<sup>47</sup> Ovaherero and Nama descendants of the victims viewed this decision as theft and erasure of their history, particularly since the Independence Museum was built on the site of the Windhoek concentration camp (though of course, there is no mention of that fact in the museum).<sup>48</sup>

In 2015, German officials recognised the 1904-1908 interment as being tantamount to a genocide. This recognition prompted a protracted series of negotiations between the German and Namibian governments concerning an official apology and compensation. No Ovaherero or Nama delegates participated in this process.<sup>49</sup> These negotiations culminated with the issuance of a joint-declaration on behalf of the two governments in June 2021.

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<sup>46</sup> See Kössler, *supra* note 34 at 267-68; Morgan, *supra* note 45 at 34-35.

<sup>47</sup> See Kössler, *ibid*; Morgan, *ibid*.

<sup>48</sup> See Zuern, "Memorial politics", *supra* note 43 at 513.

<sup>49</sup> See Henning Melber, "Germany and reparations: the reconciliation agreement with Namibia" (2022) 111:4 Round Table 475 at 478.

## V. 2021 Joint-Declaration of Germany and Namibia

The 2021 Joint-Declaration affirms the historical background surrounding the genocide, and recognises “Germany’s moral responsibility for the colonization of Namibia and for the historic developments that led to the genocidal conditions between 1904 and 1908.”<sup>50</sup> It contains a formal apology on behalf of the German state for the “sins of their forefathers.”<sup>51</sup> Immediately, thereafter, the statement affirms the Namibian government’s acceptance of Germany’s apology, and notes that the agreement “shall close the painful chapter of the past and mark a new dawn in the relationship...”<sup>52</sup>

The agreement provides for a fund 1.1 billion euros to be paid by the German government to the Namibian government as developmental aid, on the understanding that the bulk of that fund be used to aid descendants of particularly affected communities. The aid is envisaged to take the form of projects such as land reform and acquisition, agriculture, natural resources, energy and water supply, and vocational training. While the exact form of ‘development’ is to be determined with the participation of the affected communities, the funds are to be disbursed to the Namibian government who shall then allocate it to specific projects according to a to-be-determined implementation process.<sup>53</sup>

The portion of the declaration that most reveals the motivations behind Namibia’s signature of the agreement is perhaps the following: “Both Governments share the understanding that these amounts mentioned above settle all financial aspects of the issues relating to the past addressed in this Joint Declaration.”<sup>54</sup> In accepting Germany’s apology, moving

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<sup>50</sup> *Joint Declaration by the Federal Republic of Germany and the Republic of Namibia*, “United in Remembrance of our Colonial Past, United in our Will to Reconcile, United in our Vision of the Future” at para 11 [*Joint Declaration*].

<sup>51</sup> *Ibid* at para 13.

<sup>52</sup> *Ibid* at para 16.

<sup>53</sup> See *ibid* at paras 16, 19.

<sup>54</sup> *Ibid* at para 20.

forward, and forestalling any further financial claims, the Namibian government blatantly demonstrates its desire for finality, to set aside the matter of genocide and focus on the construction of a national multi-ethnic identity from which continued discussion of the genocide is an unwanted detraction. However, in their efforts to close the door on unpleasant historical events, this agreement falls far short of its stated reconciliatory aims.

Most notably, the agreement was conducted at an interstate level, between delegates of the German and Namibian governments, with no participation from Nama or Ovaherero community leaders. The notion that reconciliation for a serious crime committed can occur without the participation of the victims of that crime has been lambasted as both impractical and paternalistic, particularly given the fractured relationship and government's perceived indifference to the lasting impacts of the genocide. Indeed, many Nama and Ovaherero descendants of those victims responded in outrage to their exclusion from the process, not viewing the Namibian state as the legitimate representative of their interests. In their joint-repudiation of the joint-declaration, the Ovaherero Traditional Authority and Nama Traditional Leaders Association insist that the Namibian Government "has no legal standing to negotiate anything on [their] behalf."<sup>55</sup>

In addition to these notable procedural shortcomings, the substance of the agreement has raised the quasi-unanimous ire of opposition parliamentarians, international scholars, and the

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<sup>55</sup> "Our rejection of the Reconciliation and Reconstruction Agreement Between the Federal Republic of Germany and the Republic of Namibia" (7 September 2021), online (pdf): *Ovaherero Traditional Authority & Nama Traditional Leaders Association* <[ogfnamibia.org/wp-content/uploads/2021/09/DEMAND-FOR-RESTORATIVE-JUSTICE-7-Sept-2021-final-doc.pdf](https://ogfnamibia.org/wp-content/uploads/2021/09/DEMAND-FOR-RESTORATIVE-JUSTICE-7-Sept-2021-final-doc.pdf)> [Ovaherero Traditional Authority & Nama Traditional Leaders Association]; see also "Namibians protest as MPs to vote on German genocide deal", *Al-Jazeera* (21 September 2022), online: <[aljazeera.com/news/2021/9/21/namibians-protest-as-lawmakers-to-vote-german-genocide-deal](https://aljazeera.com/news/2021/9/21/namibians-protest-as-lawmakers-to-vote-german-genocide-deal)> [Al-Jazeera, "Namibians protest"]; "NO Bilateral Genocide Negotiations! WE DEMAND Global Herero & Nama Representation!" (22 May 2021), online: *Change.org* <[change.org/p/the-president-of-the-republic-of-namibia-no-bilateral-genocide-negotiations-we-demand-global-herero-nama-representation?redirect=false](https://change.org/p/the-president-of-the-republic-of-namibia-no-bilateral-genocide-negotiations-we-demand-global-herero-nama-representation?redirect=false)> [Change.org, "No Bilateral Negotiations"].



## Selective Forgetfulness: Decolonisation, Erasure, and Reconciliation in Post-Colonial Namibia

Ovaherero and Nama communities.<sup>56</sup> Though the declaration promised that the development fund will be used for the benefit of the communities disadvantaged by the genocide, it defines those communities only as the 7 regions of the country that contain significant populations of Ovaherero and Nama.<sup>57</sup> Notably, Khomas region, which is the most populous region in the country and the location of Windhoek, is included on the list. This is despite the fact that according to the most recent census data, only a combined 22% of the region's population spoke either Nama or Otjiherero at home.<sup>58</sup> Nevertheless, the agreement as written would appear to qualify any development project in Khomas region that adheres to the aforementioned categories, for funding in accordance with this agreement. Thus, a vocational training program, with no particular connection to the Nama or Otjiherero, could be funded by Germany in fulfillment of its stated goal of reconciliation.

While the precise content of 'reconciliation' is variable and highly dependent on the context in which it is sought, such a vast disconnect between the remedy offered and the actual population affected by a genocide does not seem to possibly qualify as reconciliation by even the loosest definition. Moreover, even if such programs were targeted exclusively towards the descendants of those interned by Germany between 1904-1908, the question must be posed whether the implementation of vocational training programs and other analogous projects is really a reasonable atonement for having the attempted extermination of two entire peoples.

Additionally, Melber contends that the 1.1 billion Euro amount proposed is grossly insufficient as a final reparative sum. Given Germany's perceived historical obligations towards its former colonies, Namibia was already the highest per capita

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<sup>56</sup> See Ovaherero Traditional Authority & Nama Traditional Leaders Association, *ibid*; Al-Jazeera, "Namibians protest", *ibid*; Change.org, "No Bilateral Negotiations", *ibid*.

<sup>57</sup> See *Joint Declaration*, *supra* note 50, at para 16.

<sup>58</sup> See Namibia Statistics Agency, *Namibia Population and Housing Census Main Report* (2011) at 14. Note that while the data for ethnic origin is not published, the approximate combined population of Herero and Nama can be extrapolated from the linguistics statistics. However, since Nama and Damara are very similar languages, and the census makes no distinction between the two, the true Herero/Nama population is very likely even lower than 22%.

recipient of German developmental aid. Indeed, the amount proposed by this declaration for disbursal over the next 30 years is roughly equivalent to the amount that Germany has already provided to Namibia as general development aid in the last 30 years, and thus represents almost no additional financial commitment on Germany's part.<sup>59</sup> While this does not undermine the symbolic value of the admission contained in the joint-declaration, it necessarily affects the practical impact thereof.

Finally, the joint-declaration is notable in its omissions. The text of the declaration refers to 'genocidal conditions' and states that the forced interment "from today's perspective, would be called genocide."<sup>60</sup> This mincing of words can be construed as a refusal to actually admit responsibility for having performed a genocide as defined by the Genocide Convention. In so doing, the German government can claim participation in a reconciliatory process, without opening itself up to liability.<sup>61</sup> The joint-declaration also omits any mention of the term reparations, instead framing the fund exclusively as aid. The framing of the payment as 'aid,' rather than reparations grounds this declaration and German-Namibian bilateral relations in Eurocentric notions of victimhood and the White saviourism,<sup>62</sup> and detracts from the reconciliatory framework it supposedly establishes.

As a consequence of this multitude of shortcomings, Nama and Ovaherero activists and opposition lawmakers have called for renegotiation of agreement, with a more explicit recognition of the genocide, more in-depth participation of non-state actors, and the payment of true reparations directly to the descendants of victims.<sup>63</sup> Despite the finality of the joint-declaration, the Namibian government has revealed itself to be at least somewhat open to renegotiating the agreement, particularly the financial amount. However, the challenges raised by the notion of true

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<sup>59</sup> See Melber, *supra* note 49 at 478.

<sup>60</sup> *Joint Declaration*, *supra* note 50 at para 10.

<sup>61</sup> See Genocide Convention, *supra* note 8, art 1.

<sup>62</sup> See e.g. Makau Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights" (2001) 42:1 Harv Intl LJ 201.

<sup>63</sup> See Ovaherero Traditional Authority & Nama Traditional Leaders Association, *supra* note 55.

reparations to both the German and Namibian governments are not insignificant.

## VI. Analysing the Potential Impact of True Reparations

Historically, the notion of reparations was a matter of international law reserved exclusively for states seeking remedies for the wrongful act of another state. Even when an individual sought remedies, they would have to engage a state to bring their claim against a state.<sup>64</sup> However, in the aftermath of the Second World War, Holocaust survivors, particularly those settled in Israel, sought direct compensation for their individual losses. Ultimately, reparations were paid both to the State of Israel, and to individual claimants.<sup>65</sup> For the individual claims, Germany paid into a fund held administered by the Claims Conference organisation, which claimed to represent the entirety of world Jewry. Direct victims of the Holocaust could make a claim based on their individual losses to the organisation, which would be assessed according to prescribed criteria and disbursed directly to the individual.<sup>66</sup> Ta-Nehisi Coates notes that payment of German reparations was an important moment of reckoning for the German population, which was previously reticent to accept any responsibility for the Holocaust. He suggests that this approach can be a model for nations like the United States, seeking to reconcile with their past.<sup>67</sup>

### A. *Impact of True Reparations on Germany*

As mentioned above, the political culture of atonement in Germany is relatively unique in an international context; a

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<sup>64</sup> See Rachel Blumenthal, *Right to Reparations: The Claims Conference and Holocaust Survivors, 1951–1964* (Lanham: Lexington Books, 2021) at 19.

<sup>65</sup> See *ibid* at 6.

<sup>66</sup> See *ibid*.

<sup>67</sup> See Ta-Nehisi Coates, "The Case for Reparations", *The Atlantic* (June 2014), online: [theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/](https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/).

voluntary admission of guilt and provision of reparations could be heralded by the international community and by Germany's population as a morally upstanding act. However, despite Germany's commendable willingness to engage with the consequences of the atrocities in its past, the implications of a full admission of genocide could be significant. Legally, it could open the door for a claim under the Genocide Convention. While retroactivity is typically impermissible under international law, genocide is considered a violation of *jus cogens*, and was thus prohibited by customary international law even before the Genocide Convention became operative in 1951.<sup>68</sup> In practice, the Nuremberg trials are an example of this: high-ranking Nazis were indicted for the perpetration of the Holocaust, which was retroactively criminalised.

While a full admission could require higher reparation payments to Namibia, it could also risk re-opening claims of compensation for descendants of Holocaust victims, most of whom did not personally receive any of the reparation paid to their ancestors. Moreover, a payment of reparations to Namibia for crimes committed in the context of colonialism risks upsetting the general consensus that reparations are not owed by colonial powers to their former colonies. It could expose Germany to claims from the descendants of the famine cause by Germany in retaliation for Maji Maji Rebellion in Tanganyika. It could also expose other former colonial powers such as Britain and Belgium to astronomical liability for the millions of people who suffered and died under their rule during the colonial period. Whether former colonies could and ought to pursue reparations from former imperial powers is matter that is beyond the scope of this paper, but Germany would likely be very reticent to risk re-litigating the entirety of colonial history and setting such a potentially expensive precedent.

## *B. Impact of True Reparations on Namibia*

The benefit of meaningful reparations to the Ovaherero and Nama communities seems to be quite straightforward. Basic principles of justice and dignity suggest that, as victims of a historical wrong, they ought to be owed restitution. Morally

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<sup>68</sup> See Berat, *supra* note 10 at 204–07.

## Selective Forgetfulness: Decolonisation, Erasure, and Reconciliation in Post-Colonial Namibia

speaking, the intangible value of a meaningful apology from the perpetrator is an important step in the reconciliatory process. Legally, as mentioned above in the discussion of retroactivity, they seem to be legally entitled to financial compensation. The disbursement of those funds by the Namibian state, as proposed in the 2021 Joint-Declaration, would make the Ovaherero and Nama dependent on an institution that they clearly mistrust, particularly with regards to the matter of reparations.<sup>69</sup> The payment of reparations directly to the Ovaherero and Nama would ensure that it is actually the affected communities who benefit from those funds.

In theory, the reparations paid could potentially provide restitution for the land and cattle confiscated or the value thereof. However, as Namibia has already established a land reclamation process for privately held land, a program that privileges Ovaherero or Nama land acquisition, could conflict with or nullify that process and the economic empowerment framework.

However, more than the practicalities of reparations inform Namibian government's clear desire to avoid discussion of direct reparation payments. The Swapo government's project, since the foundation of the nation, has been to assert sovereignty through the fostering of national unity and the erasure of ethnic divides that were exacerbated by Apartheid. The recognition of traditional authorities as the legitimate representatives of the Ovaherero and Nama people directly negates the sovereignty of the Namibian state apparatus and its deliberate attempt to be the sole voice of a united nation. Significant financial compensation to the Ovaherero and Nama could have the potential to further aggravate ethnic tensions, and have a seriously detrimental impact on society.

While the Oshivambo may have political dominance over the country today, poverty and economic inequality remain rampant in Namibia. The widest wealth gap by far is between descendants of white settler populations and indigenous groups. Despite the disproportionate dispossession of Ovaherero and Nama property during the colonial period, the modern day the

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<sup>69</sup> See e.g. Ovaherero Traditional Authority & Nama Traditional Leaders Association, *supra* note 55.

wealth gap between tribes is negligible.<sup>70</sup> Thus, the introduction of another dimension of inequity has the potential to negatively affect social cohesion and reignite ethnic conflict. Indeed, if the 1.1 billion Euros, roughly equivalent to \$20 billion NAD, were divided equally among the approximately 400 000 Ovaherero and Nama people in keeping with the model employed for Jewish victims of the Holocaust, each would receive approximately \$50 000 NAD per person.<sup>71</sup> As the average net wealth of an individual in Namibia is only \$14 802 NAD per person,<sup>72</sup> and the unemployment rate is 36.9 percent,<sup>73</sup> such an infusion of cash into the hands of the members of certain tribes seemingly has the potential to cause significant strife.

The same principle would apply if the funds were paid to traditional authorities rather than to individuals, as the impact of projects funded, if they are for the exclusive benefit of the Ovaherero and Nama could further inequality at the tribal level. Moreover, a renegotiation of the agreement resulting in true reparations would likely increase the amount paid significantly.

Another complication is the remoteness of the damages suffered. As mentioned above, Jewish claims of reparation were individualised to compensate individuals for their direct losses. Only living victims can apply for compensation via the Claims Conference; their descendants are ineligible.<sup>74</sup> Moreover, the absence of any living victims of the genocide could further lead to societal discord, as the accumulation of wealth by their descendants, a century removed viewed, could be viewed by other groups as unjust enrichment.

In all, the obstacle to the direct payment of reparations to the Ovaherero and Nama seems to always be the validity of Namibia's decolonisation project. In the context of a country

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<sup>70</sup> While a clear urban-rural wealth gap is visible in census data, the wealth of rural regions with higher Herero and Nama populations is not markedly different from that of other regions. See Namibia Statistics Agency, *supra* note 58.

<sup>71</sup> Population figures from Census, estimate is approximate, see *ibid*.

<sup>72</sup> See Ellaniem Smit, "Namibia 3<sup>rd</sup> Richest in Africa" (29 April 2022), online: Erongo <[erongo.com.na/society-ero/namibia-3rd-richest-in-africa2022-04-29](http://erongo.com.na/society-ero/namibia-3rd-richest-in-africa2022-04-29)>.

<sup>73</sup> See Namibia Statistics Agency, *supra* note 58 at 57.

<sup>74</sup> See "Frequently Asked Questions" (last visited 29 August 2023), online: Claims Conference <[claimscon.org/survivor-services/comp-faqs/](http://claimscon.org/survivor-services/comp-faqs/)>.

where the impact of the genocide has been blunted by half a century of divisive policies, the creation of further division in the interests of resolving the matter of genocide seems difficult to justify.

## **XII. Conclusions**

Namibia, like many other African nations, faces the unenviable task of having to reconcile groups with long adversarial histories in one territory, and under one flag. Though the nation-building process is challenging enough, the task was made all the more difficult by the ethnic divides actively stoked by South African authorities and the lasting impact of the long-departed German reign on some of those groups. Faced with such a daunting task, the Namibian project of crafting a single, national identity seems commendable.

In a sense, the 2021 Joint-Declaration represents a perfect compromise between the interests of the German state and those of the Namibian state. Germany is able to make amends for its past actions without opening itself up to liability, while Namibia gets vindication with the recognition of the atrocities of colonialism that underscore Namibia's history, and can make use of the funds it receives to further its own sovereign mission, while simultaneously minimizing tribalist sentiment.

However, this near-perfect accord sets aside the rights and reclamations of the Ovaherero and Nama for the atrocities done to their ancestors. For them, the Joint-Declaration is flawed, patronizing, and to a degree reinforces colonial attitudes that lead to disenfranchisement and resentment. This is problematic because the issue of reparations appears so central to Ovaherero and Nama identity that it seems unlikely to fade away unless they receive satisfactory recognition and compensation. Much of this stems from the incomplete nature of the government's project of unity. While monuments and museums across the country tell a story of national unity and multicultural harmony, the story does not reflect the experience of the Ovaherero and Nama, so it does not resonate in those communities.

The question that must be asked is whether the 2021 Joint-Declaration spells the end for the Ovaherero and Nama claims?

Perhaps. The restitution sought by the Ovaherero and Nama can broadly be divided into two distinct but related categories: financial 'reparations' and moral reparations. The Joint-Declaration as written addresses neither fully, but addresses both in part.

The lacking moral aspect stems primarily from lack of respect, and lack of inclusion in the negotiations. The solution, therefore, seems quite simple: a direct, meaningful, sincere apology, from the German Chancellor or President; a full acknowledgement of genocide, an admission of wrongdoing. This may or may not be sufficient to begin the reconciliation process. At the very least it fulfills the request of the Ovaherero Genocide Fund's request for a direct apology.<sup>75</sup> However, such an apology would be a clear affront to the sovereignty of the Namibian government, which would be bypassed entirely.

Regrettably, the economic question is even more of an imbroglio. Regardless of the outcome, it seems a party will lose out. If compensation is paid directly to the Ovaherero and Nama communities, the Namibian government loses its sovereign control over the process, and societal strife could well occur. Conversely, if the Ovaherero and Nama are not involved in the process, they will likely continue to feel marginalized by the Namibian government, as they were by the previous German and South African administrations.

At the outset, this paper asked whether the two divergent missions of genocide recognition and national unity are reconcilable. In short, the answer appears to be no. The erasure of ethnic identity simply does not square with recognizing the disproportionate impact of a policy that erased identity. A compromise may be reached, but given the content of the Joint-Declaration, the Namibian government seems to have the upper hand. Adam Rieff would suggest that the benefits of erasure outweigh potential for continued strife.<sup>76</sup> Certainly, the matter could be resolved easily if the Ovaherero and Nama simply abandoned their claims. Unfortunately, however, a convenient episode of amnesia experienced by two entire ethnic groups

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<sup>75</sup> See Ovaherero Traditional Authority & Nama Traditional Leaders Association, *supra* note 55.

<sup>76</sup> Rieff, *supra* note 32 at 91.



Selective Forgetfulness: Decolonisation, Erasure, and  
Reconciliation in Post-Colonial Namibia

regarding wounds that have been festering for over a century seems to be well beyond the purview of what can be achieved with the strategic use of monuments.

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