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## Case 20 Herero and Nama Skulls – Namibia and Charité Universitätsmedizin Berlin, Germany

*Namibia/Namibie – Charité Universitätsmedizin Berlin – Germany/Allemagne – Human remains/restes humains – Colonialism/colonialisme – Negotiation/négociation – Diplomatic channel/voie diplomatique – Settlement agreement/accord transactionnel – State responsibility/responsabilité internationale des Etats – Unconditional restitution/restitution sans condition*

*Immediately after proclaiming its independence, Namibia petitioned Germany to return several skulls of deceased members of Herero and Nama communities. The skulls had been brought to Germany after the mass killings committed by German authorities between 1904 and 1908 to quell the uprising against the colonial occupation. At the time of the restitution claim, the skulls were being held at the Charité Universitätsmedizin in Berlin. The Charité and German authorities agreed to conduct the necessary research on the remains and to return them to Namibia.*

*I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.*

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## I. Chronology

### Colonialism

- **1904 – 1908: Herero and Nama people** in the former German Southwest Africa colony (identifiable with the modern **Namibia**) were mercilessly “killed during their uprising against German colonial rule”<sup>1</sup>. The German repression, orchestrated by General Lothar von Trotha, lead to the killing of 80% of the Herero and 50% of the Nama people<sup>2</sup>. Their remains were brought to Germany for research purposes and stored in different scientific institutions in Berlin.
- **Until the 1990s: Charité Universitätsmedizin Berlin** (hereafter “Charité”), a public university hospital, obtained several skulls including those at issue in the present case: **eleven skulls from members of the Nama tribe and nine skulls from the Herero people**<sup>3</sup>. Extensive research funded by the German Research Foundation was conducted on the human remains to identify their origins<sup>4</sup>.
- **1990:** Namibia achieved independence.
- **14 August 2004:** At the commemoration ceremony for the genocide’s 100<sup>th</sup> anniversary, the German Minister for Economic Cooperation and Development, Heidemarie Wieczorek-Zeul, presented her apologies on behalf of all Germans to the Herero and Nama people, acknowledged Germany’s guilt, as well as moral, political, and historical responsibility<sup>5</sup>. However, the Minister did not mention legal responsibility, despite expressly stating that General von Trotha would have been accountable for crimes against humanity pursuant to current international criminal law<sup>6</sup>.
- **October 2006:** The governing party in Namibia, “South West Africa People’s Organization” (SWAPO), invited Germany to enter into negotiations regarding reconciliation and compensation for the genocide<sup>7</sup>.
- **2008:** The matter became a political issue in Namibia following the broadcast of a documentary in Germany on the existence of Namibian skulls in the collections of German

<sup>1</sup> Charité Universitätsmedizin Berlin Press Release, “Universitätsmedizin Berlin honours the victims,” September 30, 2009, accessed February 5, 2013,

[http://www.charite.de/index.php?id=35&L=1&tx\\_list\\_pi1\[mode\]=6&tx\\_list\\_pi1\[uid\]=2893&cHash=ea0b0b935a5db6df745514e485954521](http://www.charite.de/index.php?id=35&L=1&tx_list_pi1[mode]=6&tx_list_pi1[uid]=2893&cHash=ea0b0b935a5db6df745514e485954521).

<sup>2</sup> See Reinhart Kößler, “*Namibia, postkolonial ignoriert*,” *Blätter für deutsche und internationale Politik* 11 (2011), 37.

<sup>3</sup> Ibid.; David Knight, “There was Injustice – Skulls of Colonial Victims Returned to Namibia,” *Spiegel Online*, September 27, 2012, accessed February 5, 2013, <http://www.spiegel.de/international/germany/there-was-injustice-skulls-of-colonial-victims-returned-to-namibia-a-788601.html>.

<sup>4</sup> The research brought the following results: “skulls that had been stored in Charité mainly belonged to adults between 20 and 40 years of age. Among them were four women, 15 men and one little boy aged three or four” (Charité Universitätsmedizin Berlin Press Release, “Universitätsmedizin Berlin honours the victims.”).

<sup>5</sup> David Bargueño, “Cash for Genocide? The Politics of Memory in the Herero Case for Reparations,” *Holocaust and Genocide Studies* 26, no. 3 (Winter 2012): 397.

<sup>6</sup> See Kwame Opoku, “Return of Stolen Skulls by Germany to Namibia: Closure of a Horrible Chapter?” *Modern Ghana News* (November 21, 2011), accessed February 5, 2013, <http://www.modernghana.com/news/362016/1/return-of-stolen-skulls-by-germany-to-namibia-clos.html>.

<sup>7</sup> Reinhart Kößler, “*Namibia, postkolonial ignoriert*,” 39.

scientific institutions<sup>8</sup>. In October, representatives of the Nama and Herero tribes approached the Namibian government, petitioning the Government to reclaim the remains from Germany<sup>9</sup>. As a result, Namibia and Germany commenced discussions regarding the restitution of the remains<sup>10</sup>. To aid its effort, Namibia formed a delegation comprised of Government representatives from the National Heritage Council of Namibia<sup>11</sup> and Herero and Nama community members<sup>12</sup>.

- Since 2010: A research team of anthropologists at the Charité has been engaged in the study of the about 7,000 skulls the hospital possessed, including the remains of the Herero and Nama tribes.
- 30 September 2011: The 20 skulls were officially returned by the Charité to the Namibian delegation. An official ceremony was held in Namibia on 5 October 2011 to mark the repatriation of the skulls.

## II. Dispute Resolution Process

### Negotiation – Diplomatic Channel – Settlement agreement

- The most important issues during the dispute were negotiated between the German Government and the Namibian delegation<sup>13</sup>.
- During negotiations, the tribal authorities asked the Charité to conduct research on the remains to obtain as much information as possible<sup>14</sup>, which was necessary in order to adequately respond to the restitution claim. As a scientific institution, the Charité considered it its responsibility to administer extensive research on the remains to contribute to the understanding of the tribe's history<sup>15</sup>. Moreover, by agreeing to return the human remains, the Charité conceded its historical indifference ignoring the mistreatment of the Herero and Nama tribes<sup>16</sup>. The hospital's CEO, Karl Max Einhäupl, was quoted as saying that such a return would "express respect and contribute to the honorable remembrance of the victims"<sup>17</sup>. When

<sup>8</sup> See Godwin Kornes, "Nation building, nationale Erinnerungskultur und die Politik der Toten in Namibia," in *Beiträge zur 3. Kölner Afrikawissenschaftlichen Nachwuchstagung (KANT III)*, ed. Larissa Fuhrmann et al., accessed February 5, 2013, [http://www.uni-koeln.de/phil-fak/afrikanistik/kant/data/Kornes\\_KANT3.pdf](http://www.uni-koeln.de/phil-fak/afrikanistik/kant/data/Kornes_KANT3.pdf), 17-18.

<sup>9</sup> Ibid., 18; Reinhart Kößler, "Namibia, postkolonial ignoriert," 39; Mechthild Küpper, "Eine Geste des Bedauerns," *Frankfurter Allgemeine* (October 1, 2011), accessed February 5, 2013,

<http://www.faz.net/aktuell/gesellschaft/rueckgabe-einiger-schaedel-eine-geste-des-bedauerns-11447286.html>.

<sup>10</sup> See Kornes, "Nation building," 18.

<sup>11</sup> The National Heritage Council is a Namibian administrative body responsible for the protection of Namibia's natural and cultural heritage, see "About the National Heritage Council," National Heritage Council, accessed February 5, 2013, [http://www.nhc-nam.org/ab\\_aboutus.php](http://www.nhc-nam.org/ab_aboutus.php).

<sup>12</sup> Ibid.

<sup>13</sup> See Reinhart Kößler, "Namibia, postkolonial ignoriert," 39.

<sup>14</sup> See David Knight, "There was Injustice."

<sup>15</sup> See Charité Universitätsmedizin Berlin Press Release, "Universitätsmedizin Berlin honours the victims."

<sup>16</sup> Ibid.

<sup>17</sup> Charité Universitätsmedizin Berlin Press Release, "Universitätsmedizin Berlin honours the victims."; see also Küpper, "Eine Geste des Bedauerns."

the remains had been brought to Germany, they were not regarded as “human remains but as material with which to investigate and classify race”<sup>18</sup>. This shift in attitude shows that the Charité’s standards regarding the conservation, research, and exhibition of human remains have considerably changed in the past decades.

- The commemoration ceremony of 2004 was important in that the German State officially apologized to the Namibian tribes. However, Germany’s position regarding the return of the 20 skulls was criticized for failing to explicitly acknowledge the legal responsibility of the German State <sup>19</sup>. In turn, the Charité expressly recognized the crimes committed against Herero and Nama tribes “in the name of a perverted concept of scientific progress”<sup>20</sup> and conveyed its apologies for them<sup>21</sup>. However, tensions grew during the repatriation ceremony, when the German Minister of State at the Federal Foreign Office, Cornelia Pieper, did not speak of apology but of reconciliation, and left out any reference to the atrocious circumstances in which the tribal people died<sup>22</sup>. Further troubles were provoked by the fact that no representative of the German Government signed the official declaration document prepared to seal the restitution. As a result, the Namibian Minister for National Affairs similarly refused to offer his signature<sup>23</sup>. Instead, the document was signed by the Charité’s CEO and a representative of the Namibian Council of National Heritage<sup>24</sup>.

### III. Legal Issues

#### State responsibility

- In relation with the restitution of the 20 skulls from the Charité, the German Government refused to acknowledge any responsibility for the crimes committed against the indigenous communities during German colonial rule. Therefore, it therefore refrained from formulating any sort of compensation or formal apology, including defining the committed crimes as “genocide”.
- Three main explanations for Germany’s position may be articulated. First, the crime of genocide did not exist in international law until the 1948 Convention on the Prevention and Punishment of Genocide. Therefore, the killings of 1904-1908 could not be retroactively qualified as such a crime<sup>25</sup>, otherwise “there would be no end to the potential claims that could

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<sup>18</sup> David Knight, “There was Injustice.”

<sup>19</sup> See Opoku, “Return of Stolen Skulls by Germany to Namibia: Closure of a Horrible Chapter?”

<sup>20</sup> Charité Universitätsmedizin Berlin Press Release, “Universitätsmedizin Berlin honours the victims.”

<sup>21</sup> See Reinhart Kößler, “Namibia, postkolonial ignoriert,” 38; Opoku, “Return of Stolen Skulls by Germany to Namibia: Closure of a Horrible Chapter?”.

<sup>22</sup> See Küpper, “Eine Geste des Bedauerns.”

<sup>23</sup> See Dpa, “Berliner Charité: Rückgabe von Kolonialzeit-Schädeln endet im Streit.”

<sup>24</sup> See Reinhart Kößler, “Namibia, postkolonial ignoriert,” 38; Dpa, “Berliner Charité: Rückgabe von Kolonialzeit-Schädeln endet im Streit.”

<sup>25</sup> See Opoku, “Return of Stolen Skulls by Germany to Namibia: Closure of a Horrible Chapter?”; Bargueño, “Cash for Genocide? 397-398.

be made to remedy each genocide in history”<sup>26</sup>. Second, Germany may have intended to avoid comparisons linking its actions to those of the Nazi genocide from World War II, which led to the establishment of several compensation schemes. Despite this, the connection with the Holocaust has been made by scholars and the Herero leader, Mburumba Kerina<sup>27</sup>. Third, the German ambassador to Namibia explained during the 2004 memorial ceremony that the payment of compensation to one or two of these ethnic groups would “upset the policy of national reconciliation pursued by Namibia”<sup>28</sup>. Moreover, compensation to the Government of Namibia was already included in Germany’s development aid<sup>29</sup>.

#### **IV. Adopted Solution**

##### **Unconditional restitution**

- The Charité agreed to the unconditional restitution of the 20 skulls.
- Furthermore, at the request of the indigenous people, the researchers compiled extensive documentation on their results, which was also handed over to Namibia<sup>30</sup>.
- Along with the restitution, the Charité expressed its apologies for the cruelties suffered by the indigenous communities.

#### **V. Comment**

- Whether the outcome of this dispute was actually satisfactory for the Namibian indigenous communities remains questionable, especially considering Germany’s reluctance to apologize and formally and expressly take legal responsibility for the genocide. Some critics argue that an effective settlement can only be achieved above any material aspects, in the form of redress and recognition of the caused harm<sup>31</sup>. Adhering to this approach, the Charité stepped in to act in place of what should have been the German Government’s responsibility.
- This case is the first known example of a restitution of human remains from Germany<sup>32</sup>. It is believed that the return of the 20 skulls is only the first of further restitutions that will follow the conclusion of the researches at the Charité<sup>33</sup>. Moreover, it has motivated other institutions in Germany to study the indigenous remains in their possession and consider restitution<sup>34</sup>.

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<sup>26</sup> Bargueño, “Cash for Genocide? 398 (quoting the scholar Allan D. Cooper).

<sup>27</sup> Ibid., 402.

<sup>28</sup> Opoku, “Return of Stolen Skulls by Germany to Namibia: Closure of a Horrible Chapter?”

<sup>29</sup> Ibid.

<sup>30</sup> See Charité Universitätsmedizin Berlin Press Release, “Universitätsmedizin Berlin honours the victims.”

<sup>31</sup> See Opoku, “Return of Stolen Skulls by Germany to Namibia: Closure of a Horrible Chapter?”

<sup>32</sup> See Charité Universitätsmedizin Berlin Press Release, “Universitätsmedizin Berlin honours the victims.”

<sup>33</sup> See Knight, “There was injustice.”

<sup>34</sup> See Klaus Rieger, “Erbe des Rassenwahns,” *Der Sonntag* (October 2, 2011), 4; Knight, “There was injustice.”

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