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March 16, 2017

**Re: STATUS REPORT: For Public Release**  
Rukoro et al v. Germany  
United States District Court, S.D.N.Y.  
Civ. No. 17-0062

A court conference took place at 10 a.m. on Thursday, March 16, 2017 at the United States District Courthouse, 500 Pearl Street, New York, New York before Judge Laura Swain.

At the Conference, Attorney Kenneth McCallion introduced Paramount Chief Adv. Vekuui Rukoro and other members of an official delegation of the Ovaherero and Nama representatives who had travelled from Namibia to New York for the Court Conference with Judge Swain. In addition, U.S.-based representatives of the U.S. Association of the Ovaherero Genocide were present in the courtroom.

After Judge Swain welcomed the plaintiffs and representatives, Attorney McCallion answered some preliminary questions that the Court had regarding jurisdictional issues.

Judge Swain acknowledged that the Plaintiffs were seeking jurisdiction over Germany in this U.S. Court under the under the Alien Torts Statute (in the case of non-US citizen plaintiffs such as PC Rukoro, Chief David Frederick of the Nama Traditional Authority and others), which permits non-U.S. citizens the right to sue in U.S. courts for violations of international law, such as genocide and expropriation of property without compensation, directed at a particular ethnic and/or racial group.

Mr. McCallion confirmed to the Court that this was the basis for jurisdiction, plus the fact that, in the case of U.S. citizen plaintiffs (such as Barnabas Katuuu and members of the U.S. Association, Plaintiffs were also seeking jurisdiction under U.S. federal common law, which incorporates customary international law.

The Judge asked about for an explanation of how Plaintiffs were seeking personal jurisdiction over Germany under the Foreign Sovereign Immunities Act (FSIA). Attorney McCallion noted the two exceptions that Plaintiffs were relying on: (1) violations of international law, i.e., genocide by the state actor (Germany), and (2) expropriation of property on a discriminatory basis targeting a particular ethnic/racial group for which

there has been no compensation.

Plaintiffs' attorneys further advised the Court that one of the objectives of the litigation was to seek and obtain a declaratory judgment recognizing that the exclusion of the lawful representatives of the Herrero and Nama peoples is itself a violation of international law as reflected by UN treaties, resolutions, etc. In that regard, it was pointed out that a significant number of those in the plaintiff class, i.e. descendants of victims of the genocide, are now residing in the U.S. and are U.S. citizens seeking recourse to their own courts for these wrongs committed in violation of international law.

Plaintiffs' attorneys also advised the Court that service had been made as per the Court's original issued Summons, which directed service to the German Embassy in Washington. Personal service had been attempted, but the process server was told that the German Embassy only accepts service by mail. However, when plaintiffs' counsel repeatedly mailed the Summons and Complaint to the German Embassy, it was apparently ignored. Usually such service is sufficient to trigger the filing of a notice of appearance by US counsel representing Germany, but since they had not appeared, Plaintiffs' counsel had proceeded with service under The Hague Convention, requiring translation of the Summons and Complaint into German and the service of a new Summons on the German Foreign Office in Berlin giving them 60 days to answer or otherwise respond.

The Judge noted that Germany, through counsel, could appear at any time, but that if they did not decide to appear before Hague Convention service was completed, the Court set the date of July 21, 2017 as the next Conference date, at which counsel for Germany should appear.

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