



**Alternative Report Submission to the Review of the Combined 23rd to 26th State Reports of the Federal Republic of Germany at the 111th Session of the UN Committee on the Elimination of Racial Discrimination (CERD)**

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**By the coalition of Decolonize Berlin e.V., Berlin Postkolonial e.V., Flinn Works, Initiative Schwarze Menschen in Deutschland Bund e.V. (ISD) and the European Center for Constitutional and Human Rights e.V. (ECCHR)**

Executive Summary ..... 2

Alternative Report ..... 6

    A. Introductory Remarks ..... 6

    B. Background: Germany’s Colonial Legacy and the issue of Ancestors/Human Remains ..... 8

    C. Report on Compliance and Implementation of ICERD in Germany ..... 13

        I. Recognizing (post)colonial injustice as racial discrimination (Art. 1) ..... 13

        II. Implementing legislative measures to ensure just restitution processes (Art. 1, 2) ..... 17

        III. Ensure Rights of Affected Persons and Communities in the Restitution Processes (Art. 5 (1) (e) (vi)) ..... 22

        IV. Granting access to justice (Art. 6 and Art. 5 (1) (a)) ..... 27

ANNEX I ..... 35

## Executive Summary

*Redeeming colonial injustices is not a mere question of political negotiation leverage nor of morality.*

*The colonial crimes of expansion, extraction and exclusion require a constitutional and human rights-based approach to reparations, restitution and ‘restorative justice’*

The alternative report outlines a key lacuna in the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in the Federal Republic of Germany: **the legal reappraisal of colonialism, colonial crimes, of the historic colonial injustice and its lasting impact on racialized communities.** Paradigmatic for this lacuna is the German government’s as well as the respective institutions’ (museums’/collections’) **handling of human remains/Ancestors<sup>1</sup> from colonial contexts** in their archives and their position and praxis of repatriation.<sup>2</sup> The way human remains/Ancestors are treated by institutions and museums and how the question of restitution is handled by state officials represents a racial discrimination pursuant to Art. 1 ICERD. Furthermore, Germany does not abide by its obligations as laid out in particular in Arts. 2, 5, 6 ICERD. In particular, no efforts by the Federal Republic of Germany are apparent to enact legislation on the issue nor to provide necessary remedies for those (unsuccessfully) seeking restitution and thereby end the violation of the rights of the deceased and their descendants. Germany needs to ensure legal certainty, adequate participation and access to justice when tackling restitution. This inter alia includes providing necessary frameworks for the funding of restitution as well as provenance research and granting access to available information and research findings.

It is important to understand, that the acknowledgement of restitution claims is closely related to any form of legitimate redress for colonial wrongs. Restitution is one form of reparations. Restitution of human remains/Ancestors is essential in order to fully and genuinely acknowledge (legal) responsibility for colonial crimes and the establishment of colonial systems of injustice.

The fulfillment of ICERD obligations requires the meaningful redress and repair of historical injustice. Yet, the State Report submitted by the Federal Republic of Germany fails to address the intersection between the colonial past and current experiences of racist discrimination in the present. The coalition deems the CERD to be the right forum to address this missing link, recalling the postcolonial tradition of the ICERD, which states: *“that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist.”*<sup>3</sup>

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<sup>1</sup> We use the terminology ‘human remains/Ancestors’ to emphasize that to many people the human remains in public museums or private collections are actually ancestors, whose right to a human dignity have been violated. The terminology ‘Ancestors’ or ‘ancestral remains’ are moreover the most common terms used by claimants from former colonies to repatriate their community members and complete their burial rituals.

<sup>2</sup> Both the terminology ‘restitution’ and ‘repatriation’ are used by communities demanding the return of human remains/Ancestors. This report will focus on the term ‘restitution’ to emphasize the human rights based approach to the return of Ancestors rooted in demands for reparation for colonial wrongs and building on the transitional justice framework toward reparation as Restitution, Compensation, Rehabilitation and Satisfaction.

<sup>3</sup> ICERD preamble, which then refers to GA, Res. 1514 (XV). Declaration on the Granting of Independence to Colonial Countries and Peoples, UN Doc. A/RES/15/1514, 14 December 1960.

There is a considerable political struggle for the repatriation of human remains/Ancestors of the descendant communities of those killed and shipped to Germany during its colonial conquests as a result of colonial violence that in some case amounted to genocide.<sup>4</sup> Documented acts of brutal colonial subjugation that resulted in the forceful removal of human remains/Ancestors include the execution of Chagga leaders of Tanzanian resistance against German colonial forces – one of them Mangi Meli. Their remains were brought to Germany as trophies and/or for pseudo-scientific research. Their families are demanding the return of the remains to this day.<sup>5</sup> **Some of the surviving families have expressly joined this report to call on the Committee.**<sup>6</sup> They demand:

*“We want the [German] government to talk to the communities and to oblige with all human rights to end the discrimination of the community.  
It is now time for the ancestors from Tanzania and Africa to be returned; and the German government should have to tell the committee why they are not doing that.”*

Decades after the formal end of colonialism, the human remains/Ancestors of formerly colonized people continue to be held by museums, governmental institutions and private collections in Germany. Many of these human remains/Ancestors originate from the former colonies of the German Empire: Tanzania, Rwanda, Burundi, Namibia, Cameroon, Togo, Papua New Guinea, Kiauchau (China) and Islands in the Pacific such as Tonga and the Marshall Islands.<sup>7</sup> A recent report surveying museums and scientific institutions in the geographic area of Berlin showed that the collections of 12 state owned institutions contain at least 5,958 remains of people whose appropriation is assumed to be in a colonial context.<sup>8</sup> The number rises accordingly when considering all institutions holding human remains/Ancestors across the Federal Republic but data has yet to be collected. A comprehensive national inventory on the federal level does not exist or is not made publicly available yet.

We acknowledge and commend that after decades’ long struggle the conversation around the restitution of Human Remains/Ancestors seems to be finally moving forward. State institutions and government representatives no longer outright question the necessity to repatriate (**the ‘if’**), but rather affirm it: Katja Keul, Minister of State at the Federal Foreign Office, has publicly

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<sup>4</sup> S. Geiseb, ‘The Genocide Against the Ovaherero and Nama Peoples’ in ECCHR and Akademie der Künste (eds), *Colonial Repercussions: Namibia* (2019), at 8, available at: [https://www.ecchr.eu/fileadmin/Publikationen/ECCHR\\_NAMIBIA\\_DS.pdf](https://www.ecchr.eu/fileadmin/Publikationen/ECCHR_NAMIBIA_DS.pdf).

<sup>5</sup> As further elaborated: C. Chandler, ‘Skeletons from Kilimanjaro’, 28/3/2023, available at <https://www.thedial.world/issue-3/germany-reparations-tanzania-skeletons-maji-maji-rebellion>.

<sup>6</sup> On 9 September 2023 the coalition organized a workshop with the families Meli, Kaaya, Ndesamburo/Kiwelu, Ngalami, and Molelia and a representative of the Tanzania Chiefs Union in Moshi, Tanzania, to commemorate the Ancestors and jointly formulate demands for the CERD and the Federal German Republic respectively. Please find the families demands attached to this submission (ANNEX I).

<sup>7</sup> Lest forget also from colonies of other European powers, such as Hawaii or New Zealand. Germany built the third-largest colonial empire at the time, after the British and French and played a vital part in settling territorial claims of colonial powers as host of the Berlin Conference in 1884/85.

<sup>8</sup> I. Reimann/Decolonize Berlin e.V. (eds.), *We Want Them Back: Scientific report on the presence of human remains from colonial contexts in Berlin* (available at: [https://decolonize-berlin.de/wp-content/uploads/2022/02/We-Want-Them-Back\\_english-web.pdf](https://decolonize-berlin.de/wp-content/uploads/2022/02/We-Want-Them-Back_english-web.pdf)), 2022, at 25. This number might even be considerably higher since many institutions contributed only conservative estimates or no information at all toward the survey.

declared to work towards returning Human Remains/Ancestors, especially to Tanzania.<sup>9</sup> There is further movement in the restitution debate in Germany – also with regard to the restitution of cultural artefacts/belongings, another important field where colonial continuities inform the debate and the actual lifeworlds of the affected communities in a way that infringes upon their basic right to their cultural identity and their right to access their cultural heritage in a discriminatory way.<sup>10</sup> In Berlin, Prussian Cultural Heritage Foundation (SPK – *Stiftung Preußischer Kulturbesitz*) has published first research into their large holdings of African human remains/Ancestors and declared willingness to restitute.<sup>11</sup>

Yet, the ‘**how**’ to restitute, the decisive part for the actual implementation of these declarations, still remains unclear and government and public officials remain vague in their statements. Furthermore, there are known cases where repatriation is delayed due to lack of funding. This is worrisome, since everything should be done to not repeat the mistakes of past decades, where restitution efforts mostly stalled at a declaratory level.<sup>12</sup>

The same concerns apply to the fact that German authorities tend to continue using a language of comity and courtesy when addressing the realities of human remains/Ancestors in German institutions.<sup>13</sup> The German government as well as the responsible state institutions fail to address this **issue as a matter of legal obligations, human rights, and human dignity**. Restitution of human remains/Ancestors is considered a matter of (foreign) cultural policy only.<sup>14</sup> The federal government has declared willingness to restitute only through interstate negotiations/dialogues and instructed the involved institutions accordingly.<sup>15</sup> Thus, past and present violation of fundamental rights of the deceased and their descendants are neither recognized nor addressed. The Federal Republic of Germany has yet to offer any insurance to appropriately include the descendants, relatives and communities of origin in the restitution process.

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<sup>9</sup> Cf. Deutscher Bundestag, Drucksache 20/6943, 24 May 2023, at 2 (available at: <https://dserver.bundestag.de/btd/20/069/2006943.pdf>); see also: M. Schwikowski in DW, 22/3/2023, available at <https://www.dw.com/en/clarifying-german-colonial-era-atrocities-in-tanzania/a-65077397>.

<sup>10</sup> See below at III.1.

<sup>11</sup> Cf. SPK, 24/11/2022, available at [https://www.preussischer-kulturbesitz.de/en/newsroom/dossiers-und-nachrichten/dossiers/dossier-forschung/der-vergessenheit-entrissen.html?no\\_cache=1](https://www.preussischer-kulturbesitz.de/en/newsroom/dossiers-und-nachrichten/dossiers/dossier-forschung/der-vergessenheit-entrissen.html?no_cache=1). However, research on the many remains from Oceania has not even started yet.

<sup>12</sup> Cf. GA, Res. 3187 ( XXVIII). Restitution of works of art to countries victims of appropriation, UN Doc. A/RES/3187(XXVIII), 18 December 1973 (<https://digitallibrary.un.org/record/190996?ln=en>).

<sup>13</sup> Cf. especially comments of former cultural secretary Grütters before German parliament: Deutscher Bundestag (2021), *Stenografischer Bericht 213. Sitzung*, 26 February 2021, Plenarprotokoll 19/213, at 80 (<https://dserver.bundestag.de/btp/19/19213.pdf>).

<sup>14</sup> As apparent in the Government's statement in Deutscher Bundestag which continuously refer to the matter in context of cultural cooperation (‘kulturelle Zusammenarbeit’), supra note 9, at 2.

<sup>15</sup> Ibid.

**Against this background, these are the main demands/ recommendations of the report:**

1. The Federal Republic of Germany must assume a comprehensive understanding of its obligation under ICERD that takes into account the particular intersection between its colonial past and the racial discrimination in the present. This understanding shall be reflected in new concrete practices based on principles of 'restorative justice'. That entails an effective constitutional and human rights-based approach to restitution, with more decolonial provenance research and more and effective access to information in order to realize actual restitutions.
2. Germany must enact comprehensive and coherent legislation that fosters restitution, transparency and certainty based on the rule of law for descendants and affected communities claiming their rights to restitution.
3. The establishment of an Advisory Board or a commission is recommended to accompany the further provenance research and repatriation work, including the handling of the inventory information. The Advisory Board or commission should be made up of experienced repatriation practitioners as well as representatives of communities and indigenous organizations whose Ancestors are (likely to be) in the collections.

## Alternative Report

### A. Introductory Remarks

This alternative report submission is presented to the UN Committee on the Elimination of Racial Discrimination to assist the Committee's upcoming review of the Federal Republic of Germany by the *European Center for Constitutional and Human Rights* together with its partner organizations *Berlin Postkolonial e. V.*, *Decolonize Berlin e. V.*, *Flinn Works e.V.* and *Initiative Schwarze Menschen in Deutschland-Bund e.V.* (hereinafter 'the coalition').

The coalition seizes the opportunity of the state review procedures before the honorable CERD Committee in order to **raise awareness for the topic of human remains/ Ancestors** from colonial contexts in German archives and highlight why they matter, yet are often forgotten and neglected in their humanity. In the course of preparing this alternative report, consultations were held in Tanzania with descendants (of important leaders from the Kilimanjaro and Meru region who were hanged by the German colonial administration in 1900). On 9 September 2023 the families Meli, Kaaya, Ndesamburo/Kiwelu, Ngalami, and Molelia and a representative of the Tanzania Chiefs Union came together with the coalition to commemorate and jointly formulate demands for the CERD and the Federal German Republic respectively. Please find the families demands attached to this submission (**ANNEX I**).

The coalition wishes to emphasize that **racial discrimination in the present cannot be fully understood and overcome without tackling the German colonial past** and legacies omnipresent in all areas of society, especially in the lives of racialized and formerly colonized people. It pervades our political, social, cultural, and legal existence in Germany of today. Hence, this report ties in with the very beginning of the ICERD, namely the decolonization process of the 50s and 60s.<sup>16</sup> Decolonization is a process that includes a decolonization of the colonizer state as well. It remains unfinished as long as the German people and the German state fail to understand to what extent decolonization is as much about the land as it is about the mindset, knowledge and the law. Germany has yet to acknowledge the scope of its colonial heritage and legacies – nationally and internationally. In the latest German state report to CERD<sup>17</sup> these gaps in the German understanding of racial discrimination become painfully obvious. In the state report there is not a single mention of the German colonial legacy and how that relates to racial discrimination. Besides, merely one chapter addresses the racial discrimination of Black people and people of African descent, explicitly. Many argue that the process of decolonization is still incomplete as long as official recognition, reparation processes and restitution of artefacts and most urgently the return of human remains/Ancestors go undervalued in their meaning for racialized people and the impact still felt each day and within our identity.

Germany must be very well cognizant of this intersection, undeniably so, since the Namibia-Germany negotiations with regard to the German responsibility for the Genocide of 1904-1908

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<sup>16</sup> Cf. D. Angst and E. Lantschner (eds), *ICERD Internationales Übereinkommen zur Beseitigung jeder Form von Rassismus: Handkommentar* (1st ed., 2020), at § 1.3 para. 11 ff.

<sup>17</sup> Federal Republic of Germany, 23rd-26th Periodic Report Submitted by the Federal Republic of Germany Under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

in German South West Africa and other colonial crimes perpetrated by German troops and missions at the time have started.<sup>18</sup> Regarding the current restitution debate of human remains/Ancestors, German institutions are on the one hand very well aware that their position and handling of human remains/Ancestors in the past has been unacceptable.<sup>19</sup> In 2018 Berlin Postcolonial criticized actions of restitution as highly isolated incidents, politically strategized and state orchestrated events.<sup>20</sup> Yet, to date, we have not seen any systematic change or future-oriented acceleration to complete restitution procedures.

Against this background the coalition deems the CERD to be the right forum to address this gap, to reconnect the postcolonial tradition of the ICERD, which states: “*that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist.*”<sup>21</sup>

The report argues in favor of a decolonial reading of the law in order to tackle those colonial repercussions that manifest themselves in contemporary forms of racial discrimination as laid out under Arts. 1-7 ICERD.<sup>22</sup> What needs to be emphasized: the Federal Republic of Germany has applied a language of morality rather than the law, when it comes to tackling colonial injustices, when addressing the past and redressing harm and even building future relationships.<sup>23</sup> In the case of human remains/Ancestors this practice has resulted in the continued dehumanization of deceased persons. Negating their legal subjectivity has denied the deceased and their descendants access to justice.

The objective to participate in this upcoming state report review process before CERD is to make sure that the needs and participation of the descendants and affected communities have to be the baseline for any fruitful engagement on the topic. We offer our engagement and hope to enter into a constructive dialogue with the German government to broaden a better

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<sup>18</sup> Cf. Imani/Theurer/Kaleck, ‘The “reconciliation agreement” – a lost opportunity’, June 2021 (available at: [https://www.ecchr.eu/fileadmin/Hintergrundberichte/ECCHR\\_GER\\_NAM\\_Statement.pdf](https://www.ecchr.eu/fileadmin/Hintergrundberichte/ECCHR_GER_NAM_Statement.pdf)); Judith Hackmack, ‘Repairing the Irreparable’, February 2023, at 5 (available at: [https://www.ecchr.eu/fileadmin/user\\_upload/ECCHR\\_Tackling\\_the\\_long-term\\_effects\\_of\\_German\\_colonialism\\_in\\_Germany\\_Namibia.pdf](https://www.ecchr.eu/fileadmin/user_upload/ECCHR_Tackling_the_long-term_effects_of_German_colonialism_in_Germany_Namibia.pdf)).

<sup>19</sup> This show especially the Deutscher Museumsbund, *Guidelines Care of Human Remains in Museums and Collections*, firsts issued in 2013, revised in 2021, available at: <https://www.museumsbund.de/publikationen/care-of-human-remains-in-museums-and-collections/>.

<sup>20</sup> Cf. BBC, 29/8/2023, *Germany returns skulls of Namibian genocide victims*, available at <https://www.bbc.com/news/world-africa-45342586>; Mboro/Kopp, *Unter Kannibalen – Afrikanische Initiativen zur Rückführung der Ahnen*, in: Sandra Mühlenberend, Jakob Fusch, Vera Marušić (eds.), 2018, 35-46, in particular 41.

<sup>21</sup> ICERD preamble, which then refers to GA, Res. 1514 (XV). Declaration on the Granting of Independence to Colonial Countries and Peoples, UN Doc. A/RES/15/1514, 14 December 1960.

<sup>22</sup> As well as in light of the further European and international commitments in which Germany has entered, to name but a few: GA, Res. 1514 (XV). Declaration on the Granting of Independence to Colonial Countries and Peoples, UN Doc. A/RES/15/1514, 14 December 1960; The Durban Declaration and Programme of Action (World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, UN Doc. A/CONF.189/12, 8 September 2008.) and the follow up Resolutions (GA, Res. 66/144, 19 December 2011; GA, Res. 67/155, 20 December 2012; GA, Res. 74/137, 18 December 2019; GA, Res. 75/237, 31 December 2020); The International Decade of People of African Descent 2015-2024 (GA, Res. 68/237, 23 December 2013); and the European Parliament Resolution of 26 March 2019 on fundamental rights of people of African descent in Europe (2018/2899(RSP)).

<sup>23</sup> E.g. Text of the Joint Declaration between Namibia and Germany regarding the Genocide, para. 11, available at <https://mission-lifeline.de/auf-dem-weg-zu-einer-aussöhnung-mit-namibia/>.

understanding of the colonial past, the colonial injustices and their effects that are still reverberating in the present.

Important note:

In addition to this report for the consideration of the committee we recommend the publication ‘*We want them back – Scientific report on the presence of human remains from colonial contexts in Berlin*’ compiled by Isabelle Reimann and published by Decolonize Berlin e.V.<sup>24</sup> It gives an inventory of human remains/Ancestors in Berlin’s archives and a descriptive account about challenges in the request for return. It furthermore offers critique and gives recommendation what can be done better in order to initiate and conduct restitutions to the descendants and affected communities in a context and content sensitive, inclusive and result driven way. This report’s legal findings, conclusions and recommendation rely inter alia on the factual findings of that publication.

**B. Background: Germany’s Colonial Legacy and the issue of Ancestors/Human Remains**

Similarly to cultural artifacts, human remains/Ancestors were stolen and brought to Germany to be researched and exhibited.<sup>25</sup> The history of human remains/Ancestors is one of looting, exhibition and scientific exploration and therefor one of dehumanization of colonized people, brutal killings and shipment to Germany for racial ‘science’. The historical and contemporary realities are interwoven with the invention of race as a ‘scientific’ category that consequently served as basis for the Nazi ideology with its antisemitic justification of persecution and extermination of Jews, Sinti\*ze, Rom\*nja. and Black people. Human remains/Ancestors from colonial contexts continue to be held by Germany’s (public) institutions.

**Colonial Appropriation of Human Remains/Ancestors**

From 1871 to 1919 colonization efforts by the German Empire did not only come with militarized seizures of land and establishing of commerce but were accompanied by mostly violent and large-scale extraction of cultural belongings and knowledge from the colonies.<sup>26</sup> In the logic of the colonizer this included the seizing of human remains/Ancestors and their

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<sup>24</sup> Isabelle Reimann, *Scientific report on the presence of human remains from colonial contexts in Berlin* Commissioned by Decolonize Berlin e.V. as Co-ordination office for a city-wide concept for coming to terms with Berlin's colonial past (in the following cited as Reimann Report). With contributions by Jephtha U. Nguherimo, Mnyaka Sururu Mboro, Adetoun and Michael Küppers-Adebisi, Christian Kopp, Santi Hitorangi, Evelin Huki, Edward Halealoha Ayau (available at: [https://decolonize-berlin.de/wp-content/uploads/2022/02/We-Want-Them-Back\\_english-web.pdf](https://decolonize-berlin.de/wp-content/uploads/2022/02/We-Want-Them-Back_english-web.pdf)).

<sup>25</sup> Cf. Reimann Report (supra note 24), 2.2.1. the case study the search of the head of Manga Meli (at 32).

<sup>26</sup> In the last years a critical reappraisals of German colonial history has begun, recognizing a state of permanent war in the colonies. See for a recent comprehensive study on colonial looting in Cameroon: Assilkinga, Mikael et al.: *Atlas der Abwesenheit: Kameruns Kulturerbe in Deutschland*, , 2023, available at: <https://books.ub.uni-heidelberg.de/arthistoricum/catalog/book/1219> (English translation: [https://www.static.tu.berlin/fileadmin/www/10002011/Forschungsprojekte/Umgekehrte\\_Sammlungen/ATLAS\\_DER\\_ABWESENHEIT\\_EN\\_DeepL.pdf](https://www.static.tu.berlin/fileadmin/www/10002011/Forschungsprojekte/Umgekehrte_Sammlungen/ATLAS_DER_ABWESENHEIT_EN_DeepL.pdf)); for a general overview on German colonial history: Sebastian Conrad: *German Colonialism, A Short History*, 2011; Bundeszentrale für politische Bildung *Deutsche Kolonialgeschichte*, Aus Politik und Zeitgeschichte from 30 September 2019, available at (in German): [https://www.bpb.de/system/files/dokument\\_pdf/APuZ\\_2019-40-42\\_online\\_0.pdf](https://www.bpb.de/system/files/dokument_pdf/APuZ_2019-40-42_online_0.pdf)

transport to Europe into Museums and ‘scientific’ collections.<sup>27</sup> ‘Collection’ efforts in the colonies were pushed by scientists and museum officials in Berlin. In 1889 a resolution by the *Bundesrath* (Federal Council), a governmental body of the German Empire, declared Berlin museums as central collection points for ‘natural’ and cultural objects from the German colonies. It stated that all ‘scientific’ ‘collections’ received from the colonies, which participants acquired on state-financed ‘expeditions’ – including military campaigns known as ‘punitive exhibitions’ – were to be sent to the Royal Museum of Ethnology or the Museum of Natural History and the Botanical Museum in Berlin.<sup>28</sup> In this way, especially Felix von Luschan, then the director of the Museum of Ethnology as well as Rudolf Virchow, founder of the private institution *Berliner Gesellschaft für Anthropologie, Ethnologie und Urgeschichte* (BGAEU – Berlin society for Anthropology, Ethnology and Prehistory) established enormous ‘collections’ of human remains/Ancestors.

A stark incident, exemplifying the violent and unjust of human remains/Ancestors as well as the struggle for repatriation, has constituted itself around the killing of nineteen Chagga leaders in the colony of German-East-Africa and the abduction of their body parts by Germany.<sup>29</sup> The Chagga leaders known as Mangi ruled kingdoms in the area of Kilimanjaro and Meru, Tanzania, and fought in a coalition resisting occupation of their land by German troops. After defeating the Chagga the German troops ordered the public execution of Mangi Meli and further eighteen Mangi and Akida (counsels to the Mangi) on 2 February 1900.<sup>30</sup> After the public hanging in the town of Old Moshi those killed were beheaded. Oral history in the Chagga descendant community confirms the shipping of the heads as well as the royal belongings of the Mangi and any of the cultural heritage and knowledge attached to them to Germany. This correlates with newspaper articles, letters and pictures found in German colonial archives and the recorded existence of human remains/Ancestors labelled as Chagga, especially in the Berlin collections of the Prussian Cultural Heritage Foundation (*Stiftung Preußischer Kulturbesitz* – SPK) but also in other German collections.

### **Human Remains/Ancestors in German Archives**

Going forward from the large scale appropriation practiced during the German Empire’s colonial rule, human remains/Ancestors in unknown but immensely large numbers continue to be kept in the inventories of German institutions. This is not least the case, because restitution efforts and actual restitutions continue to remain sparse.

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<sup>27</sup> In detail on the violent German colonial collection practice of Human Remains see Reimann Report (supra note 24), at 54 ff.

<sup>28</sup> Resolution of Federal Council available at: <https://www.proveana.de/en/event/bundesratsbeschluss-von-1889>; On this background see also: <https://www.smb.museum/en/museums-institutions/ethnologisches-museum/collection-research/colonialism/>.

<sup>29</sup> See on the Mangi Meli Case: Reimann Report (supra note 24), at pp 32; Kathleen Stahl: History of the Chagga people of Kilimanjaro, Mouton & Co, London/The Hague/Paris 1964. P. 273f.

<sup>30</sup> As further elaborated: C. Chandler, ‘Skeletons from Kilimanjaro’, 28/3/2023, available at <https://www.thedial.world/issue-3/germany-reparations-tanzania-skeletons-maji-maji-rebellion> and K. Iken, ‘Wo steckt der Kopf des Mangi Meli in Der Spiegel’, 28/3/2021 <https://www.spiegel.de/geschichte/deutscher-kolonialismus-in-afrika-wo-steckt-der-kopf-des-mangi-meli-a-1e5ab093-222a-4453-93d3-597e8aea417c> and Navid Kermani in Die Zeit, 19/1/2023, available at <https://www.zeit.de/2023/04/kolonialismus-afrika-europa-skelette-raub>.

Only in Berlin across 12 institutions there continue to be at least 5,958 remains of people whose appropriation is assumed to be in a colonial context.<sup>31</sup> Including collections that refuse to hand out specific data on their inventories, like the so-called Rudolf Virchow collection held at the BGAEU, the number rises to around 13,500 Human Remains/Ancestors for which a colonial context cannot be excluded. As neither public nor private institutions are obliged to keep comprehensive inventories even with in-depth research practice like the one conducted by Reimann et. al. the overall number of human remains/Ancestors in German institutions continuous to be unknown. More than 2,000 Human Remains/Ancestors are thought to be in institutions in the federal state (*Bundesland*) of Baden-Württemberg.<sup>32</sup> Further institutions, e.g. the Saxon State Ethnographic Museums (SES),<sup>33</sup> the Georg August University in Göttingen,<sup>34</sup> as well as the *Überseemuseum* in Bremen hold Human Remains.<sup>35</sup> The SPK comprises the largest holding of human remains/Ancestors in Berlin, as they incorporated many museums and collections under the foundation. Such as the former Museum of Ethnology as well as the collection held formerly in the University Hospital *Charité*.

The storage conditions of the remains of the deceased have been largely deplorable, human remains/Ancestors disappeared so did proper documentation, collections were moved around.<sup>36</sup> Institutions keeping human remains/Ancestors in boxes, sometimes even in former food packaging, on shelves and depots, has and continues to cause incomprehension and profound psychological and spiritual injuries among relatives and people worldwide who reject the use of their Ancestors as research material.<sup>37</sup>

Despite the immense number of human remains/Ancestors from colonial contexts in Germany, there have so far only been few repatriations. Since the first restitution in 1954<sup>38</sup> not more than 20 instances of restitution (acts sometimes encompassing up to almost one hundred human

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<sup>31</sup> On these and the following figures see: Reimann Report (supra note 24), at 25 and 139.

<sup>32</sup> Especially in Freiburg, Stuttgart and Tübingen (, [https://www.zeit.de/news/2021-03/12/linden-museum-stellt-sich-eigener-vergangenheit?utm\\_referrer=https%3A%2F%2Fwww.google.com%2F,https://www.zeit.de/news/2021-03/12/museen-und-unis-besitzen-viele-knochen-aus-kolonialzeiten,https://www.unimuseum.uni-tuebingen.de/en/research-education/provenance-research/precarious-provenance](https://www.zeit.de/news/2021-03/12/linden-museum-stellt-sich-eigener-vergangenheit?utm_referrer=https%3A%2F%2Fwww.google.com%2F,https://www.zeit.de/news/2021-03/12/museen-und-unis-besitzen-viele-knochen-aus-kolonialzeiten,https://www.unimuseum.uni-tuebingen.de/en/research-education/provenance-research/precarious-provenance)).

<sup>33</sup> With around 2.500 human remains/Ancestors from non-European origin: Snoep, 'Wer darf sprechen und wessen Stimme wird gehört', in *Unmittelbarer Umgang mit menschlichen Überresten in Museen und Universitäten*, 2018, available at: <https://www.rewi.uni-jena.de/rewimedia/lektoren/schmidt-recla/schmidt-recla-unmittelbarer-umgang-mit-menschlichen-ueberresten-in-museen-und-universitaetssammlungen-hfbk-dresden.pdf>.

<sup>34</sup> Around 12000 human remains/Ancestors from the African continent and Oceania (<https://www.uni-goettingen.de/de/629688.html>); In Göttingen is further the 'Blumenbachsche Schädelammlung' (skull collection) with more than 200 non-European human remains/Ancestors.

<sup>35</sup> For Bremen see: Fründt, 'Die Menschen-Sammler: Über den Umgang mit menschlichen Überresten im Übersee-Museum Bremen, 2011. This is only a selection of institutions. There are many more institutions in Germany, like in Halle (Meckelsche Sammlung, <https://www.sammlungen.uni-halle.de/sammlung/meckelsche-sammlungen/>), Jena and Rostock (<https://anatomie.med.uni-rostock.de/anatomische-sammlung>). However, a comprehensive overview is neither available nor could be conducted in the making of this report.

<sup>36</sup> Cf. Reimann Report, at 158 ([https://decolonize-berlin.de/wp-content/uploads/2022/02/We-Want-Them-Back\\_english-web.pdf](https://decolonize-berlin.de/wp-content/uploads/2022/02/We-Want-Them-Back_english-web.pdf)).

<sup>37</sup> Reimann Report (supra note 24), at 34.

<sup>38</sup> This was believed to be the skull of Chief Mkwawa (cf. <https://www.bbc.com/news/world-africa-48754953>), more recent research comes to the conclusion that the returned remains were almost certainly not Mkwawa's, see Brockmeyer, Edwards, Stoecker, 'The Mkwawa complex: A Tanzanian-European history about provenance, restitution, and politics', *Journal of Modern European History*, 2020 (<https://opus4.kobv.de/opus4-fau/frontdoor/index/index/docId/21768>).

remains/Ancestors) have followed, most of them only in the last ten years.<sup>39</sup> Civil society actors and activists – like Mnyaka Sururu Mboro, Israel Kaunatjike and many others – have been demanding information and the returns of human remains/Ancestors for decades. They continue to face resistance and reluctance from institutions to engage in transparent dialogue and cooperation.

Only in the last few years has the stance of institutions as well as the German government moved from ignorance and denial toward verbal promises of returns. While we welcome these acknowledgements, too little has been done to put them into practice, especially by creating legal obligations that put the needs of the affected at the center. So far the German government has only issued the non-binding *Erste Eckpunkte zum Umgang mit Sammlungsgut aus kolonialen Kontexten* (Framework Principles for dealing with collections from colonial contexts) in 2019.<sup>40</sup> The thereafter established ‘contact point for collections from colonial context’ also has no decision making authority and success has remained limited.<sup>41</sup>

### **The descendant families in Kilimanjaro and Meru, Tanzania**

Meanwhile in the former communities of the racialized and colonized deceased the lived experience of the descendants is shaped by the poignant *absence presence* of their ancestors. In the case of killings of the Chagga Mangi the deaths and especially the missing ancestors as well as their belongings continue to be of lasting influence for the families of the descendants and the whole community. In Chagga culture the burial of a body after death is an essential ritual. Especially the leadership figures in the Chagga communities used to be buried first for a year wrapped in cowhide. Then, the bones were exhumed and kept above ground (sometimes in clay pots) in a spiritual place in the banana grove belonging to the family. An *isale*<sup>42</sup> was planted next to it. These resting places serve as place for encounter with the ancestors.<sup>43</sup> Without their heads, without a proper funeral and resting place the connection to the Ancestors was and continues to be severed. Neither the deceased nor the surviving family and community members can find peace. Rituals to commemorate the Ancestors and celebrations of important family events cannot be performed fully. The lasting absence of the Ancestors, their belongings and their knowledge has been felt as the root for illness, misfortune and continued suffering for the descendants.

Next to the urgent need to return their ancestors not least to enable proper mourning and burials, the families wish for recognition of the harm done by way of a formal apology by the German government. Both directly to the descendants as well as to the wider community.

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<sup>39</sup> See on the state practice of restitution below in detail at C.I.

<sup>40</sup> Commissioner for Culture and the Media, the Federal Foreign Office Minister of State for International Cultural Policy, the Cultural Affairs Ministers of the Länder and the municipal umbrella organisations issued on 13 March 2019, available at (English): <https://www.auswaertiges-amt.de/blob/2210152/b2731f8b59210c77c68177cdcd3d03de/190412-stm-m-sammlungsgut-kolonial-kontext-en-data.pdf>

<sup>41</sup> On the German state practice in detail, see below at C.I.

<sup>42</sup> Kiswahili for dracaena palm tree.

<sup>43</sup> These burial rites are no longer carried out in the same way today (due to Christianity or Islam), but the dead family members are still buried in graves on the family plots; Isale still play an important role in funerals.

## New developments and the need to act

In September 2023 there have been major developments that increase the urgency of establishing rights-centered and swift restitution processes. Building on the century-long effort of the Kilimanjaro and Meru communities and the work of members of this coalition – namely Mnyaka Sururu Mboro of Berlin Postkolonial and Konradin Kunze of Flinn Works–DNA samples were taken from some descendants of the victims of the mass execution in Old Moshi.<sup>44</sup> The SPK agreed to commission a survey by university of Göttingen to test the DNA against eight human remains/Ancestors in their possession that they had identified to be most likely related to the hangings in Old Moshi. The results came back with four matches.<sup>45</sup>

While we commend the compliance of the SPK in the testing, we regret that immediately on receiving the DNA test results the SPK issued a press release on the successful news, resulting in a number of news publications.<sup>46</sup> However, who was not informed first, were the descendants, namely the individuals who provided the DNA samples, as well as the wider network of affected families.<sup>47</sup>

The families were only informed because of the workshop organized by the undersigning coalition for a network of affected descendants in Moshi Tanzania on 9 September 2023. There the families also received the news about the DNA report, identifying the Ancestor Sindato Kiwelu (an Akida to Mangi Meli) and three Molelia Ancestors.<sup>48</sup> The families asked the coalition to convey their joy and thankfulness about the results and to finally have certainty on the location of their deceased ancestors. However, the fact that the media was informed of the news before the families themselves was seen as an affront and a sign of disrespect to the families. At the same time, they stress that they have been mourning their dead without closure for more than a century and mourning has now begun a new and intensified. Again – but hopefully not much longer – in absence.

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<sup>44</sup> They were given DNA samples by families while carrying out the Flinn Works ‘Marejesho’ exhibition in the Kilimanjaro and Meru Regions in Tanzania (cf. <https://www.flinnworks.de/en/project/marejesho>)

<sup>45</sup> Additionally in 2016 the ‘Marejesho’ project was already able to trace the remains of Ancestor Mangi Lobulu (Ancestor of the Kaaya family) to the American Museum of Natural History in New York City (cf. <https://www.thedial.world/issue-3/germany-reparations-tanzania-skeletons-maji-maji-rebellion>). The remains had come there from German collections. Due to the wide spread official colonial appropriation practice of the German Empire, human remains/Ancestors were ‘dispersed’ into institutions around the world. In these cases, too, the federal government must take responsibility.

<sup>46</sup> Like the Guardian on 5 September 2023: <https://www.theguardian.com/world/2023/sep/05/germany-links-skulls-stolen-from-african-colony-to-living-relatives>; and the Citizen, 6/9/2023: <https://www.thecitizen.co.tz/tanzania/news/international/germany-matches-dna-from-skulls-stolen-from-africa-to-relatives-in-tanzania-4359968>

<sup>47</sup> See press release by the coalition on 11 September 2021 <https://www.ecchr.eu/en/press-release/nach-dna-abgleich-angehoerige-am-kilimanjaro-fordern-baldige-rueckkehr-ihrer-identifizierten-ahnen-und-entschuldigung-von-deutschland/>.

<sup>48</sup> See further press on the recent developments: <https://www.dw.com/en/tanzanians-demand-return-of-ancestral-skulls/a-66897172>; <https://timesofoman.com/article/136409-tanzanians-demand-return-of-ancestral-skulls>; <https://taz.de/Restitution-nach-Tansania!/5958166/>; <https://www.spiegel.de/geschichte/kolonialzeit-der-schaedel-meines-grossvaters-muss-zurueck-nach-tansania-a-eb47098a-af82-4ff8-939a-aae87e02db4f>; <https://taz.de/Umgang-mit-menschlichen-Ueberresten!/5956616/>.

### C. Report on Compliance and Implementation of ICERD in Germany

The report highlights in detail how German state practice fails to address (indirect) racial discrimination and the consequences of German colonialism as per Art. 1 ICERD such as absence of returns of human remains/Ancestors (I.). How the Federal Republic of Germany, violates their obligation as per Art. 2 ICERD to address restitution through comprehensive legislation, that ensures German administrative and legal structure will recognize the violation of fundamental rights under German constitutional law at play (II.) and ensures the rights for affected persons and communities to be included in the restitution process (III.). And beyond these violations of substantial law, how procedural barriers prevent access to remedies (IV.).

#### I. Recognizing (post)colonial injustice as racial discrimination (Art. 1)

*“The German government should offer an official apology. The German government should take responsibility on discriminatory acts they committed during colonialism. They should return our ancestors and also cover the cost and give back the knowledge that was taken with and acquired from their royal belongings.”<sup>49</sup>*

The existing political and legal practice by the Federal Republic of Germany continues to disregard the colonial dimension inherent in many expressions and instantiations of racial discrimination to this day. Racist practices and perspectives that are informed by past colonial injustices are further upheld. This is especially apparent in the treatment of human remains/Ancestors where colonial continuities are neither recognized nor explored.

##### 1. *The German Legal and Political Practice and Understanding of the term Racial Discrimination under Art. 1*

We regret that the term ‘racial discrimination’ is interpreted very narrowly in German legal and political practice. This runs contrary to the committee’s understanding that has always emphasized a broad understanding of the concept of racial discrimination.<sup>50</sup> In refraining from implementing the broad interpretation of Art. 1 (1) that the Committee so rightly calls for, Germany fails to meet its obligations.

The interpretative practice of the Committee on Article 1 refrains from a narrow, overly literal understanding and takes on a rather inclusive and open reading regarding forms of discrimination not specifically accounted for in the original wording of the text. This means that Article 1 (1) also includes those acts which are not directly or even intentionally but factually and in their consequence discriminatory, i.e. acts of indirect discrimination. Notably, the Committee highlighted in General Recommendation 34 that **racism and racial discrimination against people of African descent are expressed in many forms, including structural and cultural.**<sup>51</sup> The notion of structural discrimination is entrenched deeply in the history of colonialism and the transatlantic trade of enslaved people. The Committee and other bodies have repeatedly emphasized the connection and continuities between racially discriminatory practices and colonial injustices – not least in the Durban Declaration (especially

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<sup>49</sup> Testimony by the descendant families in Kilimanjaro and Meru, on 9/9/2023; cf. demands ANNEX I.

<sup>50</sup> Cf. Gragl/ Angst/Lantschner ICERD, supra note 16, at Artikel 1 para. 16.

<sup>51</sup> CERD, General recommendation No. 34 adopted by the Committee - Racial discrimination against people of African descent, UN Doc. CERD/C/GC/34, 3 October 2001, para. 5.

No. 14 and No. 99)<sup>52</sup> and in the proclamations through the Permanent Forum of People of African Descent.<sup>53</sup>

It is against this background that Germany's legal and political acts and omissions regarding the restitution of human remains/Ancestors but also cultural artefacts/Belongings do not account for the broad understanding and historical context the Committee so rightly puts forward. The German government should be well aware of the scope of the definition of Art. 1 (1). We regret that implementation is lacking nevertheless.

## ***2. The German State report and National Plan of Action (NAP)***

This **inadequate and negligent understanding of “racial discrimination”** comes to light in Germany's latest Periodic Report, which declares: “Germany possesses a legal framework with a broad-based approach to combating racial discrimination in all forms. These provisions do not need to explicitly define racial discrimination since a definition is given in Article 1 (1) ICERD and is thus directly applicable law in Germany. All public authorities are therefore obliged to take account of the definition in Article 1 and implement it as directly applicable federal law.”<sup>54</sup>

While it is true that Article 1 is directly applicable in German law – by ratification it became federal law in Germany in 1969 – simply enshrining the text of ICERD into German law does not even come close to fulfilling the obligations of Art. 1 (1). Knowing the legal text as such only helps legal practitioners and state bodies to a limited extent and does not make them a legal reality –it needs to be interpreted. Beyond referring to the text of the Convention the German government has to integrate and acknowledge the definition of racial discrimination as it has grown under interpretation by the Committee in all its breadth. Neither the state report nor the NAP mentions the structural definition of racial discrimination under Art. 1 (1).

The insufficient implementation of Art. 1 (1) means that those institutional and structural dimensions of racial discrimination continue to be upheld and cannot be fully addressed in the fight against racial discrimination. Especially, Germany fails to put many acts and patterns of racial discrimination into sufficient context. In disregard of the decolonial origin of the Convention that highlights the structural background of many discrimination phenomena that continue to persist, Germany does not take its status and responsibilities as a former colonial power into account when implementing Art. 1 (1). Neither in the state report nor in the NAP, one can find an encounter with its colonial past that goes beyond a simple declaratory acknowledgement of its historical existence. The **German state report and NAP overall only briefly mention Germany's colonial past** and do not propose any measures to address or (re)examine its consequences in relation to ongoing expressions of racism today.

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<sup>52</sup> Durban Declaration, UN Doc. A/CONF.189/12, 8 September 2008 para. 14 and 99.

<sup>53</sup> Cf. Statement by United Nations Permanent Forum of People of African Descent, 30.8.2022, <https://www.ohchr.org/en/statements/2022/08/statement-united-nations-permanent-forum-people-african-descent>.

<sup>54</sup> 23rd-26th Periodic Report Submitted by the Federal Republic of Germany Under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), para. 9.

### 3. *Examples of Discriminatory Practices*

While we acknowledge the growing concern for the issue of human remains/Ancestors, not only in civil society and the science community but also in the German government,<sup>55</sup> the actual restitution practice and handling of human remains/Ancestors is still discriminatory.

Despite the immense number of human remains/Ancestors from colonial contexts in Germany, **there have so far only been few repatriations.** An incomplete enumeration of performed restitutions includes the following: human remains/Ancestors were returned to Tanzania by the *Überseemuseum Bremen* in 1954<sup>56</sup> and to New Zealand in 2006 and 2017.<sup>57</sup> However, it was the repatriations of the *Charité Berlin* (public university hospitals) to Namibia (2011, 2014 and 2018), Paraguay (2012) and Australia (2013 and 2014) that raised the issue of scientific, state and public awareness.<sup>58</sup> In February 2022, the *Überseemuseum Bremen* returned 8 iwi kupuna (ancestral remains) to a delegation from Hawaii.<sup>59</sup> Shortly afterwards, the SPK handed over 32 iwi kupuna (ancestral remains) to a representative of the Office of Hawaiian Affairs (OHA).<sup>60</sup> In June 2023, after 20 years of campaigning for repatriation, a delegation of Māori from New Zealand and Moriori from the Chatham Islands received 95 human remains/ Ancestors from institutions across Germany.<sup>61</sup> Given the large number of human remains/Ancestors from colonial contexts held in German state and private institutions, the number of undertaken repatriations continues to be extremely low.<sup>62</sup>

The low number is also due to the fact that the larger restitution environment – especially of human remains/Ancestors is characterized by inadequate and even racial discriminatory guidelines and practices. Hitherto, returns happened in a purported legal vacuum. There are essentially only three sets of guidelines or recommendations addressing the issue of human remains/Ancestors – all of these non-binding.

Only in 2013 the *Deutscher Museumsbund* (DMB)<sup>63</sup> took the first steps by publishing the guidelines ‘**Care of Human Remains in Museums and Collections**’.<sup>64</sup> As they were based

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<sup>55</sup> Cf. Debate in German Parliament: Deutscher Bundestag (2021), supra note 13; Deutscher Bundestag, Drucksache 20/6943, 24 May 2023, at 2 (available at: <https://dserver.bundestag.de/btd/20/069/2006943.pdf>); see also: M. Schwikowski in DW, 22/3/2023, available at <https://www.dw.com/en/clarifying-german-colonial-era-atrocities-in-tanzania/a-65077397>.

<sup>56</sup> This was believed to be the skull of Chief Mkwawa, cf. supra note 38.

<sup>57</sup> Cf. *Überseemuseum Bremen* <https://www.uebersee-museum.de/ueber-uns/projekte-positionen/provenienzforschung/>.

<sup>58</sup> cf. Reimann Report, supra note 24, at 46 in reference to Winkelmann 2020 (a full list of bibliography is included in the Reimann report).

<sup>59</sup> Cf. Statement OHA, 8/2/2022, available at <https://www.oha.org/news/ubersee-museum-bremen-returns-ancestral-remains-to-hawaii%CA%BBi/>.

<sup>60</sup> Cf. Statement OHA, 11/2/2022, available at <https://www.oha.org/news/spk-returns-ancestral-remains-from-hawaii/>.

<sup>61</sup> T. McClure in *The Guardian*, 13/6/2023, available at <https://www.theguardian.com/world/2023/jun/14/maori-ancestral-remains-and-mummified-heads-returned-to-new-zealand-from-germany>.

<sup>62</sup> For an overview of claims and restitutions see also: Gram/Schoofs, ‘Germany’s history of returning human remains and objects from colonial context’, Working Paper Deutsches Zentrum Kulturgutverluste 3/2022 (available at: [https://perspectivia.net/servlets/MCRFileNodeServlet/pnet\\_derivate\\_00005712/gram-schoofs\\_human\\_remains.pdf](https://perspectivia.net/servlets/MCRFileNodeServlet/pnet_derivate_00005712/gram-schoofs_human_remains.pdf))

<sup>63</sup> The German Museums Association is not a governmental body. It is a specialist association of museums in the Federal Republic of Germany. According to its statutes, it represents the interests of museums of all disciplines as collections and as institutes of science and research and education. The DMB’s guidelines are not legally binding.

<sup>64</sup> Deutscher Museumsbund, Guidelines *Care of Human Remains in Museums and Collections*, supra note 19.

on the British “Guidance for the Care of Human Remains” in Museums of 2005, they did not question Eurocentric assumptions about restitution recommended every institution develop a way of dealing with it on its own responsibility.<sup>65</sup> In 2018 the DMB issued further ‘**Guidelines for the Care of Collections from Colonial Contexts**’.<sup>66</sup> Now in their 3<sup>rd</sup> edition (2021) the guidelines still do not endorse unconditional returns but recommend possible returns on the basis of fully established provenance in individual cases and verifiable evidence of remains being acquired in contexts of injustice (*Unrechtskontext*).

We have to point out, neither is the language persistently respectful and sensible nor is the fundamental rights dimension sufficiently addressed. The ambivalent labeling and classification regarding human remains/Ancestors is especially apparent in the latter DMB Guidelines on “Collections from Colonial Contexts” which only now and then refer to the sensitivities of human remains but are classifying human remains/Ancestors overall as collection items, as objects. They do not fully recognize them as human and do not consequently distinguish between collection items/objects and human remains as inherently different.

The German government only got involved in 2019 when, the federal state ministers as well as the culture ministers of the federal states and municipal umbrella organizations adopted the *Erste Eckpunkte zum Umgang mit Sammlungsgut aus kolonialen Kontexten* (**Framework Principles for dealing with collections from colonial contexts**).<sup>67</sup> While thereby, the political will was declared to prioritize the processing of human remains from colonial contexts and to create the conditions for repatriations, a corresponding legal basis was and is not yet available or announced. This means the Framework Principles have not been followed up on and remain non-binding for four years now. Also in 2019 a *Bund-Länder-AG* (federal-state working group) ‘Dealing with Collection Items from Colonial Contexts’ was set up, in which several central associations, the Foreign Office and the federal states’ ministers of culture are organized. These are the central control and supervisory body for the ‘**German Contact Point for Collections from Colonial Contexts**’, which was set up on October 16, 2019.<sup>68</sup> It was established to be the point of contact for communities and countries of origin to address restitution inquiries and request to and receive information on inventories. However, success and corporation of the contact point has remains contentious.<sup>69</sup> The number of restitutions seems not to have significantly risen since establishing the contact point.<sup>70</sup> The contact point planned to set up a digital library on institutions’ inventories, where presentation of data was criticized and remains

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<sup>65</sup> cf. Reimann Report, supra note 24, in reference to DMB Guidelines Human Remains, 2013, supra note 19.

<sup>66</sup> Deutscher Museumsbund, *Guidelines for German Museums Care of Collections from Colonial Contexts* (3<sup>rd</sup> Edition, 2021), available at: <https://www.museumsbund.de/publikationen/guidelines-on-dealing-with-collections-from-colonial-contexts-2/>.

<sup>67</sup> Federal state ministers, the ministers of the federal states and municipal umbrella organizations, ‘Erste Eckpunkte zum Umgang mit Sammlungsgut aus kolonialen Kontexten’ (Framework Principles) 13 March 2019, available at (English): <https://www.auswaertiges-amt.de/blob/2210152/b2731f8b59210c77c68177cdcd3d03de/190412-stm-m-sammlungsgut-kolonial-kontext-en-data.pdf>

<sup>68</sup> Established on 16 October 2019 as follow up to the Framework Principles, website of the contact point: <https://www.cp3c.org/index.html>.

<sup>69</sup> More on lack of information provided through contact point, see below at IV.

<sup>70</sup> Data on this is not available, however.

incomplete.<sup>71</sup> For affected individuals and communities demanding information and restitution it remains unclear whom to direct requests to. Based on personal experience of some members of the undersigning coalition, the contact point only answered to request after repeated inquiries.<sup>72</sup> This is not least the case, because the contact point has no decision-making power.

In consequence when German state institutions write in their guidelines that they want to retribute, yet consequently and repeatedly fail to actually and fully support those demands and/or answer to letters asking for the where-about, **it might not be with the direct purpose to discriminate, however, the effect is nonetheless undeniably there.** The statements and debates about restitution of human remains in German politics remain empty semantics when they are made without clear concessions and a clear acknowledgement of legal obligations. The minimal and inadequate state practice does not any way do justices to the broad definition of racial discrimination as put forward in Article 1 ICERD

#### 4. Recommendations

**Germany must assume a comprehensive understanding of its obligation under ICERD that takes into account the particular intersection between its colonial past and racial discrimination in the present.**

**Germany must unconditionally recognize colonialism as a system of injustice and offer a form of recognition of its responsibility for past and present that is reflected in issuing apologies and in the practice of restitution of Human Remains/Ancestors as well as cultural artefacts.**

## II. Implementing legislative measures to ensure just restitution processes (Art. 1, 2)

*“We will not take remains as if they are luggage. How would you handle a King? That procedure must be followed. We need to perform rituals when we receive our loved ones and bring them back with dignity. We want to go where the remains are, perform our rituals and bring them home. For all the traditions need to be followed so the process can be meaningful.”*

**We are deeply concerned, that there is a lack of a consolidated legal basis to effectively initiate and formalize a constitutional and human rights-based restitution policy and practice.** Instead, what we have are single cases, based on individual, hence legally speaking

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<sup>71</sup> cf. Reimann Report, supra note 24, at 50; see also <https://www.kulturstiftung.de/auftakt-zur-umfassenden-digitalen-veroeffentlichung-von-sammlungsgut-aus-kolonialen-kontexten-in-deutschland/>; Information on human remains was already published in November 2021, after criticism of the presentation (e.g. without disclaimer, using uncommented colonial-racist terms and showing of human skulls together with animals skulls) removed again after a few days after a social media campaign initiated by Flinn Works. See e.g. the statement of the Colonial Contexts Network: <https://www.evifa.de/de/ueber-uns/fid-projects/network-colonial-contexts>

<sup>72</sup> And despite its practice to offer meetings and enter into dialogue this didn't happen in this of Berlin Postkolonial reaching out. The Contact point closed off contrary to own mandate. Based on exoeriences by members of this coalition the Contact point has reacted differently to requests depending on whether civil society or members of nobility issued them.

arbitrary decisions, on a case-by-case basis. Even after completed provenance research, the restitution of human remains/Ancestors continues to be stalled in political commitments and statements with no or very unspecified concrete next steps or coordination plans and efforts. Hence descendants and affected communities cannot rely on principles of the rule of law, when they ask for restitution. Not least because of the constitutional and human rights infringed by the status quo, the restitution of human remains/Ancestors goes beyond acts of *noblesse oblige*. The obligations laid down in Art. 2 (1) (a-d) ICERD rather demand the implementation of effective measures, which must here include enacting legislation.

**1. Violation of constitutional law and jurisprudential practice (Art. 2 (1) (a) ICERD)**

The ongoing (mis)treatment of Human Remains/Ancestors seized in colonial context and held in German (state) institutions exemplifies aptly that structural and institutional forms of discrimination are the result of a historical process that excludes certain racialized people and communities from the realization of fundamental rights.<sup>73</sup> The continued objectification of the deceased perpetuates a denial of the colonized subjects humanity and thus their human dignity.

**The current treatment of human remains/Ancestors in German (state) institutions violates rights guaranteed by the German Constitution (*Grundgesetz – GG*)<sup>74</sup>** as further spelled out in jurisprudence, especially by the Federal Constitutional Court (Bundesverfassungsgericht (BVerfG)). Of particular importance in this regard is the right to dignity, Art. 1(1) GG which states the inviolability of the dignity of every human person. The BVerfG in its jurisprudence has clearly outlined the extent to which the protective effect of human dignity under Article 1 (1) GG extends beyond the death of a human being. According to this jurisprudence Article 1 (1) (1) guarantees the general inherent worth of every human being by virtue of their being a person.<sup>75</sup> Human dignity forms the centerpiece of the system of values under the *Grundgesetz*.<sup>76</sup> It protects all human beings against attacks on their dignity. Such attacks can consist of humiliation, branding, persecution, ostracism and other forms of behavior that deny the person concerned their right to respect as a human being.<sup>77</sup> Article 1 (1) (2) GG obligates the state to positively protect human dignity. Importantly, in the view of the Federal Constitutional Court, human dignity does not end with death.<sup>78</sup> According to another ruling on the, this also concerns the protection of the honor of the deceased as well as the protection of their corpse as the shell of the deceased person, which may not be treated as in a derogatory or ridiculing manner matter.<sup>79</sup>

In detail the following constitutional rights are violated:

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<sup>73</sup> Cf. Gragl/Angst/Lantschner, supra note 16, at 116.

<sup>74</sup> Basic Law for the Federal Republic of Germany (Grundgesetz der Bundesrepublik Deutschland), English text available at [https://www.gesetze-im-internet.de/englisch\\_gg/](https://www.gesetze-im-internet.de/englisch_gg/).

<sup>75</sup> Bundesverfassungsgericht (Federal Constitutional Court), 15.12.1970, case no. 2 BvF 1/69, 2 BvR 629/68, 2 BvR 308/69, at 2.

<sup>76</sup> Bundesverfassungsgericht, 16.01.1957, case no.1 BvR 253/56, at 41.

<sup>77</sup> Bundesverfassungsgericht, 11.03.2003, case no. 1 BvR 426/02, at 284.

<sup>78</sup> Bundesverfassungsgericht, 24.02.1971, case no. 1 BvR 435/68, at 194; Bundesverfassungsgericht, 5.4. 2001, case no. 1 BvR 932/94.

<sup>79</sup> Verwaltungsgerichtshof (Higher Administrative Court) München, 21. 2. 2003, case no. 4 CS 03.462.

- The **post-mortal right to human dignity** (*postmortaler Achtungsanspruch / Würderecht*), pursuant to Art. 1 (1) GG.<sup>80</sup> This right is directly linked to the deceased himself, but can be claimed by either a person who has been appointed by the deceased in his life time or by family members (‘*next relatives*’) in both cases in representative action.
- The **right to peace in death** (*Recht auf Totenruhe*), pursuant to Art. 1 (1) GG is the deceased’s lawful right, but can be asserted by the claimant because of their right to care for the deceased.<sup>81</sup>
- The **right to commemoration** of those who have died (*Recht auf würdiges Totengedenken*) of the bereaved (*Hinterbliebene*) pursuant to Art. 2 (1) GG.
- The **right to care for the deceased** (*Totenfürsorgerecht*) which, depending on the competent court, has been understood to derive either from private custom, the law of inheritance, family law or post-mortal personal rights pursuant to Art. 2 (1) GG (*Postmortales Persönlichkeitsrecht*). According to case law and literature, the right can also be asserted e.g. by a close friend of the deceased, if this was his or her (last) will (either their expressed or even their presumed will) or, in case of the non-existence of such a will, by the ‘next relative’.

## 2. Examples of discriminatory practice

These constitutional rights, enumerated above, are denied to racialized and colonized humans in the state praxis. First, by factually being treated as objects in the archives and second by not acknowledging even in the slightest manner the restitution debates as a matter of German constitutional law and constitutional rights. This is especially apparent in in the current restitution framework consisting only of the *DMB Guidelines*<sup>82</sup> and the governmental ‘Framework Principles’.<sup>83</sup> The affected people were not considered legal subjects during their forceful appropriation to Germany and this continues into the present. **The bodies and human remains of the colonized were captured without any consent.**<sup>84</sup> This mistreatment based on race continues to be upheld to this day as human remains/Ancestors remain in dismal conditions in state institutions instead of being restituted to their descendants and allowed dignified burials. At the same time the rights of the descendants to bury commemorate, bury and care for the deceased are blatantly ignored.

Overall, German state officials and authorities continue to fail addressing the realities of ancestors/ human remains in German institutions **speaking of legal obligations, human rights, and human dignity.** The *DMB guidelines* “Collections from Colonial Contexts” address the

<sup>80</sup> According to the Federal Constitutional Court it is incompatible with the constitutionally guaranteed requirement of the inviolability of human dignity, which underlies all other fundamental rights, if a person, who is entitled to dignity by virtue of being a person, were allowed to be degraded or humiliated after their death, cf. Bundesverfassungsgericht, 24.02.1971, case no. 1 BvR 435/68, at 194.

<sup>81</sup> Bundesverfassungsgericht, 09.05.2016, case no. 1 BvR 2202/13; Further, as the Bavarian Higher Administrative Court Court clarified, human corpses may not be treated in a derogatory or ridiculing manner, Verwaltungsgerichtshof München, 21. 2. 2003, case no. 4 CS 03.462.

<sup>82</sup> See above; Deutscher Museumsbund, *Guidelines Care of Human Remains in Museums and Collections*, supra note 19; *DMB Guidelines Collections from Colonial Contexts*, supra note 66.

<sup>83</sup> See above; *Framework Principles*, supra note 67.

<sup>84</sup> Cf. J. Hackmack, *Law and the Challenge of Rehumanization*, 3/12/2022, <https://verfassungsblog.de/law-and-the-challenge-of-rehumanization/>.

legal ramifications of the treatment and restitution only as an annex and solely based on property rights, which do not apply per se to Human Remains/Ancestors.<sup>85</sup> The DMB Guidelines ‘Care of Human Remains’ only very superficially touch upon the fundamental rights dimension of human remains when they mentions the concept of ‘human dignity’ but discard its relevance promptly and in a very strategic, discouraging manner, e.g. stating ‘In practice, it is difficult to conceive of a court upholding such a claim’.<sup>86</sup> In the end it does not point to any legal consequences and obligations and cannot serve as a guide for legally sufficient addressment of the treatment and restitution of human remains/Ancestors.

While we welcome that the ‘Framework Principles’ call for ‘Human remains from colonial contexts [...] to be returned’ and Human Remains to be prioritized, four years later this has not materialized into state practice.<sup>87</sup> Beyond that, the ‘Framework Principles’ have failed to properly distinguish between inventories of cultural artefacts/belongings and human remains/Ancestors. The concern or acknowledgment of fundamental constitutional rights is completely absent.

Not acknowledging those commitments to their full extent is a colonial continuation of racial stereotyping and hence discrimination in life and death, an infringement of the deceased’s post-mortem rights to human dignity and right to rest in peace endures.

### **3. Need for comprehensive legislation (Art. 2 (1) (c-d) ICERD)**

The treatment of Human Remains/Ancestors stands in violation of the obligation under Art. 2 to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms. This includes taking special measures to ensure the full and equal enjoyment of rights, e.g. in form of legislation.<sup>88</sup> Art. 2 (1) (d) spells out the conviction that legislation is always appropriate to combat racial discrimination.<sup>89</sup> State parties thereby are obliged to review and enact or amend legislation, as appropriate, in order to eliminate, in line with the Convention, all forms of racial discrimination against people of African descent.<sup>90</sup> This especially entails for state parties to effectively acknowledge in their policies and actions the negative effects of the wrongs occasioned in the past, chief among which is colonialism, the effects of which continue to disadvantage people of African descent today.<sup>91</sup>

Thus **Germany is obliged to establish effective legislation** that enshrines unequivocally in law the rights of the deceased as well as the descendants to make identification as well as

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<sup>85</sup> DMB, Guideline Collections from Colonial Contexts, supra note 66, at 153 ff..

<sup>86</sup> Ibid, at 106.

<sup>87</sup> Framework Principles, supra note 67, at 6.

<sup>88</sup> Other countries have enacted laws on repatriation of Human Remains/Ancestors and/or cultural artefacts, one example being the US Native American Graves Protection and Repatriation Act of 1990 (<https://uscode.house.gov/view.xhtml?path=/prelim@title25/chapter32&edition=prelim>), which can provide guidance for legislative measures in Germany.

<sup>89</sup> P. Thornberry, *ICERD: A commentary* (1st ed., 2016), at 188.

<sup>90</sup> CERD, General recommendation No. 34 adopted by the Committee - Racial discrimination against people of African descent, UN Doc. CERD/C/GC/34, 3 October 2001, para. 10.

<sup>91</sup> CERD, General recommendation No. 34 adopted by the Committee - Racial discrimination against people of African descent, UN Doc. CERD/C/GC/34, 3 October 2001, para. 17.

restitution of human remains/ancestors possible.<sup>92</sup> Legislation is needed to create legal clarity, establish fair and effective procedures, and provide descendants with access to justice. With such legislation the German government must aim to establish legally secure claims for former colonized persons and the gesture and obligation for reparation of colonial injustice. In addition, such a law should also provide the (public as well as private) institutions concerned with a legal framework and a framework for action. Art. 2 (1) (d) makes clear that the state is not only obligated to combat the racial discrimination which persists to the detriment of the human remains/ancestors in state institutions. It explicitly calls to prohibit any racial discrimination by non-State “private” actors.<sup>93</sup> As mentioned above, in Berlin alone more than 3500 ancestral remains are kept by the private institution BGAEU. This fact underscores the importance of including the state's responsibility to address this issue as well.

The existing legal instruments regarding the handling of cultural assets after (racially motivated) forced dispossession, illegally gained property in armed conflict or other unlawful possession, like the ‘Kulturgutschutzgesetz’<sup>94</sup> do not apply to the handling of human remains/Ancestors from colonial context and are not able to address their special needs of protection. **Human remains/Ancestors are not objects. They cannot be handled like any other cultural asset of questionable origin.** This is not least the case because there is not so much a danger of illegal transaction with human remains /ancestors on the art market (which the Kulturgutschutzgesetz would be able to address). However, the existence of explicit laws governing the treatment of cultural assets *a fortiori* calls for comprehensive regulation regarding the treatment and restitution of human remains/Ancestors. Because of their subject position as a bearer of fundamental and human rights their vulnerability is many times greater than that of cultural objects, and the need for legal certainty is considerably greater.

Germany, as the successor state to the Nazi regime, has repeatedly emphasized that its obligated to restitute art which was forcefully disposed under racist Nazi rule according to the Principles of the Washington Conference.<sup>95</sup> The repeated commitment to the principles and the practice of the restitutions made through the so-called Advisory Commission<sup>96</sup> after adopting the Washington Principles constitute a state practice of restituting assets that were forcefully redistributed under racist regimes of injustice. Nevertheless, it is important to point out that also the Washington Principles and the installed Advisory Commission are not legally binding. Thus, the Advisory Commission has recently called on the Federal Government to enact a restitution law, not least to establish legally reliable grounds to demand restitution from private entities.<sup>97</sup> Further, they suggest the installment of a federal agency responsible for restitution

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<sup>92</sup> The Government has not yet committed to do so cf. Deutscher Bundestag, supra note 9, at 4; see also B. Lotze in Berliner Morgenpost, 24/4/2023, <https://www.morgenpost.de/berlin/article238232981/Ehepaar-will-Kopf-des-Urgrossvaters-nach-Hause-holen.html>.

<sup>93</sup> Thornberry, supra note 89, at 192.

<sup>94</sup> available at <http://www.gesetze-im-internet.de/kgsg/>.

<sup>95</sup> The Washington Conference on Holocaust Era Assets, *Washington Conference Principles on Nazi-Confiscated Art* (3 December 1998), available at <https://www.kulturgutverluste.de/Webs/EN/Foundation/Basic-principles/Washington-Principles/Index.html>

<sup>96</sup> “Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property” implemented after Art. 11 Washington principles (<https://www.beratende-kommission.de/en>).

<sup>97</sup> Advisory Commission, ‘Memorandum’, 4 September 2023 (available at (German only): <https://www.beratende-kommission.de/de/kommission#s-memorandum>).

claims and/or a compulsory arbitration body.<sup>98</sup> It makes sense to apply these principles and demands also to other regimes of injustices by the legal predecessors of the Federal Republic of Germany, especially the racist regime of colonial rule and to unite the efforts.<sup>99</sup>

#### 4. Recommendations

**Germany must enact comprehensive and coherent legislation that fosters restitution, transparency and certainty based on the rule of law for descendants and affected communities claiming their rights to restitution. Legislation must include full financial coverage of restitutions as well as provision of funds for provenance research in federal and state budgets.**

**Germany must work toward and support efforts of restitution worldwide especially concerning the return of Human Remains/Ancestors from their former colonies.**

### III. Ensure Rights of Affected Persons and Communities in the Restitution Processes (Art. 5 (1) (e) (vi))

Cultural Rights are not sufficiently taken into account in the Federal Republics handling of restitution. The German state practices does not resolutely acknowledge participatory rights in restitution processes (I.). Regarding the restitution of cultural artefacts/belongings, legal analyses of restitution requests continue to be based on questions of ownership/property law only and thus dismiss cultural rights (II.).

Participatory rights as well as the right of restitution of cultural heritage derive from the right to cultural identity as put forth in Art. 15 ICESCR spelled out in more detail in Art. 2 ILO Convention 169<sup>100</sup> as well as Art. 11 and 12 and 18 UNDRIP. These rights are supported by international jurisprudence<sup>101</sup> and endorsed in the restitution context by international committees.<sup>102</sup>

#### 1. Participation Rights

*“We want the German government to form a special committee that will come and meet the families and officially offer an apology to the families. The committee should also*

<sup>98</sup> Ibid; both would remove the existing barriers of access to justice (see below) and enable remedies.

<sup>99</sup> Having in mind that legislation on the restitution of human remains/Ancestors needs to take special account of the violation of the fundamental right of human dignity.

<sup>100</sup> Just recently ratified by Germany: <https://www.bundestag.de/dokumente/textarchiv/2021/kw15-de-rechte-indigener-voelker-830908>.

<sup>101</sup> Inter-American Court of Human Rights. Case of the Indigenous Communities of the Lhaka Honhat (our land) Association V. Argentina. Judgment of February 6, 2020 at 77 (233); Colombian Constitutional Court The ‘Quimbaya Treasure,’ Judgment SU-649/17. (available at <http://www.corteconstitucional.gov.co>). See also Mejía-Lemos, ‘The “Quimbaya Treasure,” Judgment SU-649/17’, American Journal of International Law, 2019, 122–130.

<sup>102</sup> Cf. International Law Association (ILA) Committee on Participation in Global Cultural Heritage Governance (Committee on Cultural Heritage Law), Final Report, 2022, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4220401](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4220401) and Campfens/European Parliament JURI Committee, ‘Cross Border Claims to Looted Art’, October 2023, [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/754126/IPOL\\_STU\(2023\)754126\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/754126/IPOL_STU(2023)754126_EN.pdf)

*include listening to the families about the procedure of return. To know what to include in reparations.”*<sup>103</sup>

Art. 5 (1) (e) (vi) obligates Germany to guarantee the enjoyment of the right to equal participation in cultural activities. As elaborated, the status quo of Human Remains/Ancestors kept by German (state) institutions violates the human and constitutional rights not only of the deceased but also of their relatives, descendants and the communities of origin. Current state practice is infringing on the cultural rights of racialized minorities and indigenous people by **not systematically ensuring community driven restitution processes but relying on interstate negotiations.**

The human rights guaranteed in Art 5 ICERD as well as other human rights it recalls obligate Germany to guarantee open and inclusive processes when addressing and redressing colonial wrongs generally and in matters of restitution specifically. Participatory rights as part of cultural rights and specific cultural heritage instruments call for processes which go beyond inter-state negotiations and offer possibilities for the participation of affected communities, families and descendants or other representative stakeholders like chief councils.<sup>104</sup> In further detail Art. 12 and 18 UNDRIP demand fair, transparent and effective mechanisms developed in conjunction with the affected and with representative chosen by themselves. The UNDRIP provisions have in large part developed to be binding,<sup>105</sup> not only for Indigenous People but more generally.<sup>106</sup> Centering affected communities in restitution processes does not interfere with any principle of non-intervention or the sovereignty of the postcolonial states, not least because the obligation to involve of affected communities does not amount to bilateral relations with a non-governmental entity in the corresponding state.<sup>107</sup>

The current German state practice does not meet these obligations. Germany had to be reprimanded in a recent communication issued by the UN Special Rapporteurs on the promotion of truth, justice, reparation and guarantees of non-recurrence et. al. for not ensuring meaningful participation of affected communities in their negotiations on remedying colonial injustices with Namibia.<sup>108</sup> **This is in danger to be repeated in the matter of restitution of human remains/Ancestors.** So far, the official course of action is to only pursue interstate negotiations.<sup>109</sup>

In the culture of the affected communities – such as the Chagga in Tanzania – the burial of a body after death is an essential ritual. Without a proper funeral and resting place, the soul cannot

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<sup>103</sup> Testimony by the descendant families in Kilimanjaro and Meru, on 9/9/2023; cf. demands ANNEX I.

<sup>104</sup> See enumeration of rights above, also Cf. Carsten Stehn, ‘Beyond “To Return or Not To Return” – The Benin Bronzes as a Game Changer?’, in Santander Art and Culture Law Review, issue on Colonial Loot and Its Restitution, 2/2022, at 85 available at <https://www.ejournals.eu/SAACLR/>; and ILA Committee on Cultural Heritage Law Report, supra note 102.

<sup>105</sup> Campfens/European Parliament, supra note 102, at 10, 30 and 37.

<sup>106</sup> UN Special Rapporteur on Cultural Rights Alexandra Xanthaki, in Santander Art and Culture Law Review, issue on Colonial Loot and Its Restitution, 2/2022, at 23.

<sup>107</sup> Cf. Judith Hackmack, ‘Repairing the Irreparable’, February 2023, at 5 (available at: [https://www.ecchr.eu/fileadmin/user\\_upload/ECCHR\\_Tackling\\_the\\_long-term\\_effects\\_of\\_German\\_colonialism\\_in\\_Germany\\_Namibia.pdf](https://www.ecchr.eu/fileadmin/user_upload/ECCHR_Tackling_the_long-term_effects_of_German_colonialism_in_Germany_Namibia.pdf)).

<sup>108</sup> Cf. Mandates of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence et. al.; AL DEU 1/2023, 23 February 2023 (available at: <https://spcommreports.ohchr.org/TmSearch/RelCom?code=NAM%201/2023>).

<sup>109</sup> cf. Deutscher Bundestag, supra note 9 at 2.

find peace. The preclusion of the chance to commemorate their ancestors according to their rituals, together with the dehumanizing effect of storing ancestral remains as if they were mere objects, in shelves, in boxes, negates the constitutional rights of the formerly colonized whose remains are within the jurisdiction of Germany. To be left out of claims and processes for restitution makes it impossible to the affected communities to bury, mourn and integrate their ancestors the way their cultural and religious practice demand. The relatives and descendants of the deceased are the ones legally entitled when seeking to remedy the post-mortal fundamental rights of the deceased. Furthermore, their own rights to mourn the dead are decisive when implementing just and culturally sensitive restitution processes.

## Recommendations

**Germany must ensure human rights conform restitution processes and thus include descendants and affected communities in the development of just restitution mechanisms as well as restitution itself. Germany must ensure restitutions are practiced in a dignified manner in accordance with rituals, customs and the culture of the originating communities.**

**The establishment of an Advisory Board or a commission is recommended to accompany the further provenance research and repatriation work, including the handling of the inventory information. The Advisory Board or commission should be made up of experienced repatriation practitioners as well as representatives of communities and indigenous organizations whose ancestors are likely to be in the collections.**

### *2. Restitution of Cultural Belongings*

*“The royal belongings of our Ancestors were not taken for household purposes or decoration. They were taken for ‘scientific’ reasons. Around their return there have to be discussions about knowledge about the past and about traditions. We need them for young people to be able to learn.”<sup>110</sup>*

The Committee has made clear, that the enjoyment of rights in conditions of equality and without discrimination as enshrined in Art. 5 entails the right to the protection of traditional knowledge and cultural and artistic heritage.<sup>111</sup> And pointed out that the preservation of culture and the historical identity of indigenous peoples has been and still is jeopardized by colonialism.<sup>112</sup> A prerequisite of the fulfillment of these rights is the accessibility of cultural heritage in form of artefacts/belongings. Through the colonial looting of the cultural heritage of the colonized and the continued holding of the loot, e.g. in German museums and institutions, the indiscriminate fulfillment of these rights is not secured. The cultural rights Art 5 (e) refers to are further secured and specified in multiple human rights conventions and instruments (see above). German state practice has to be in accordance with these international instruments also directly by ratification of these instruments and their implementation into German

<sup>110</sup> Testimony by the descendant families in Kilimanjaro and Meru, on 9/9/2023; cf. demands ANNEX I.

<sup>111</sup> Cf. CERD General Recommendation 34 para. 4.

<sup>112</sup> Cf. CERD General Recommendation 23 para. 3.

jurisprudence not least through the principle of commitment to international law (*‘Grundsatz der Völkerrechtsfreundlichkeit des Grundgesetzes’*) in the German constitution. In order for groups and individuals to access, participate, and contribute to cultural life without discrimination, as laid in article 5 (e) and (vi), they must be able to access, own, and obtain the recognition of their cultural heritage<sup>113</sup>. Art. 15 ICESCR in conjunction with Art. 11 and 12 UNDRIP exemplify the development of a right of access and control of cultural artefacts/belongings, often implying restitution, with regard to artefacts that people identify with on account of their intangible ‘heritage’ value.<sup>114</sup> UN Special Rapporteurs in the field of cultural rights have acknowledged the link between cultural heritage and group identity, that is, that the protection of cultural artifacts is deeply connected to the identity and development processes of individuals and communities and stressed the importance of UNDRIP to push forward standards of human rights, particularly on the right of groups to restitution of their lost cultural objects.<sup>115</sup> This is especially important since **the relationship between identity, development, and cultural artifacts also impacts future generations.**<sup>116</sup> This link is recognized under the German constitution under the right to know one’s (cultural) origins as a point of reference for understanding and developing one’s own identity freely.<sup>117</sup>

We acknowledge the recent German efforts in the field of restitution of cultural heritage as evident first and foremost through the return of the so-called Benin Bronzes in December 2022 to Nigeria.<sup>118</sup> While these efforts are laudable, they remain insufficient regarding the immense number of restitution claims. They are also exemplary that restitution is almost exclusively carried out in cases where from the German state’s perspective there is proven unlawfulness of the acquisition (*“Unrechtskontext”*).<sup>119</sup> Only in single outstanding cases have restitutions been agreed to without proven unlawfulness. We welcome the explicit reference of the UNDRIP obligations in this case<sup>120</sup> and expect German actors to be guided by these principles in the

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<sup>113</sup> Id, par. 11 and 13, at 6.

<sup>114</sup> Campfens/European Parliament, supra note 102, para 4.2.2. furthermore elaborating that “a clear example of a human rights’ law approach to restitution is the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) – which, as indicated in the previous chapter, was first introduced as a non-binding instrument. Today, the relevant provisions are considered to be part of the implementation of the (binding) right to culture in Article 15(1a) of the International Covenant on Economic, Social and Cultural Rights, insofar as it concerns Indigenous peoples’ cultural rights. That this comes with legal obligations is highlighted by the general acknowledgement that the provisions on cultural rights of Indigenous peoples in UNDRIP reflect evolving customary international law”.

<sup>115</sup> Human Rights Council. Report of the independent expert in the field of cultural rights, Farida Shaheed. A/HRC/17/38, par. 6, p. 4; and General Assembly. Cultural rights: Note by the Secretary-General. A/71/317, par. 6, p. 4; UN Special Rapporteur on Cultural Rights Alexandra Xanthaki, in Santander Art and Culture Law Review, issue on Colonial Loot and Its Resitution, 2/2022, at 23 (available at <https://www.ejournals.eu/SAACLR/>).

<sup>116</sup> Human Rights Council. Report of the independent expert in the field of cultural rights, Farida Shaheed. A/HRC/17/38, par. 5, p. 4: “*Cultural heritage links the past, the present and the future as it encompasses things inherited from the past that are considered to be of such value or significance today, that individuals and communities want to transmit them to future generations*”.

<sup>117</sup> Cf. Jurisprudence of the federal constitutional court on the right (*‘Recht auf Kenntnis der eigenen Abstammung’*): Bundesverfassungsgericht (Federal Constitutional Court), 31. Januar 1989, case no. 1 BvL 17/87, at 256-274 and Bundesverfassungsgericht, 26. April 1994, case no. 1 BvR 1299/89, at 263-277.

<sup>118</sup> Guardian, 20/12/2022, <https://www.theguardian.com/world/2022/dec/20/germany-returns-21-benin-bronzes-to-nigeria-amid-frustration-at-britain>

<sup>119</sup> Cf. DMB Guideline Collections from Colonial Contexts, supra note 66, at 76.

<sup>120</sup> <https://apnews.com/article/germany-colombia-indigenous-masks-restitution-kogi-4f5817923a6fa34c5bbc75ea585f5c79>; <https://www.preussischer-kulturbesitz.de/en/newsroom/press/press-releases/detail->

future. However, similarly to the handling of human remains/Ancestors, current state practice is led by case by case decisions which happen on a seemingly arbitrary basis. It lacks a concerted effort and legislation measures that ensure a rights centered process and legal clarity.

Current state practice is especially apparent in two cases that are but exemplary of many other ongoing processes. One refers to the continued restitution efforts by the Nso community in Cameroon to bring back the **Ngonnso** figure kept in the ‘Humboldt Forum’ run by the SPK in Berlin.<sup>121</sup> Ngonnso embodies the history and identity of the Nso people of Cameroon and had been taken during the German Empires colonial rule around 1900.<sup>122</sup> Ngonnso has a significant sacred importance to the Nso. She is a princess, a deity and seen as the ancestral mother and founder of the Nso people. The Nso King Sehm Mbinglo I first officially reached out to German institutions in 2011 to request restitution. However, significant progress was only made when Sylvie Njobati, a Cameroonian/Nso activist, initiated the (social) media campaign #BringBackNgonnso that gained traction.<sup>123</sup> Eventually communication between the Nso community and the SPK were established and on 27 June 2022 the SPK officially agreed to retribute Ngonnso.<sup>124</sup> However, more than a year later Ngonnso continues to be kept in the SPK and a date of restitution has yet to be set.

A similar conduct seems to be happening in the case of the return of figures from the Bangwa people, also from Cameroon. An undetermined number of **Bangwa belongings** were taken into German collections and institutions during the colonial rule in ‘Kamerun’.<sup>125</sup> In the effort of restitution Chief Charles Taku descendant of Fontem Asunganyi and mandated by His Majesty Fontem Asabaton Njifua, the King of the royal family of Fontem, and a representative of the Bangwa people has made requests to several German state institutions where Bangwa belongings are known to be,<sup>126</sup> specifically requesting the SPK to return a set of Bangwa *lefem* figures.<sup>127</sup> In Bangwa culture the *lefem* are of substantial spiritual importance to the Bangwa. The process continues to be stalled for months on end. Instead of explicit commitment to restitution the SPK responds with vague offers of cooperative research. Given the situation in the Ngonnso case, the well founded fear remains, that at the end the claimants’ rights disregarded and commitments to restitution end up empty promises. The declarations made by German state institutions have yet to turn into acts of return.

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<sup>121</sup> <https://www.bbc.com/news/world-africa-65746910>.

<sup>122</sup> <https://www.spiegel.de/international/germany/spotlight-on-germany-s-colonial-past-when-can-ngonnso-return-home-a-a2ab356d-538f-4ae7-b452-82060382e2c7>.

<sup>123</sup> <https://twitter.com/ngonnso>; Cf. also: <https://sisyhouseoffame.org/project/shf-records-major-milestone-in-the-restitution-request-for-ngonnso/>.

<sup>124</sup> <https://www.preussischer-kulturbesitz.de/en/news-detail/article/2022/06/27/ngonnso-stiftungsrat-macht-weg-fuer-die-rueckkehr-nach-kamerun-frei.html>.

<sup>125</sup> <https://verfassungsblog.de/provenance-research-and-claims-to-bangwa-collections/>.

<sup>126</sup> <https://retour.hypotheses.org/1641#sdfootnote8anc>.

<sup>127</sup> Of the undersigning coalition, ECCHR is supporting Chief Taku in his efforts to bring back especially those cultural belongings in the SPK and is mandated to accompany negotiations on this matter. Hence it gained first hand insights into the negotiation process, from submitting respective restitution claims to stalemates to reluctant responses.

In light of the significance of the return of these belongings must be initiated as part of **comprehensive reparations efforts** for colonial injustices, including issuing of apologies and installment of inclusive measures and processes.

### Recommendation

**Germany must restitute cultural artefacts/belongings in adherence to the obligations concerning Indigenous cultural property in UNDRIP, and, more generally, promote participation of source communities in decisions concerning their cultural objects, for example in cooperative provenance research projects and actual restitution processes.**

#### IV. Granting access to justice (Art. 6 and Art. 5 (1) (a))

There have been no cases tried in the German justice system regarding the restitution of human remains/Ancestors. The Committee emphasizes that a lack of complaints does not indicate an absence of racial discrimination and is generally not regarded as a positive sign.<sup>128</sup> On the contrary, it reveals a significant lack of regarding the legal recognition of human remains/Ancestors in the legislative framework and jurisprudence. This blank space is directly related to the **a-legal narrative regarding human remains/Ancestors** of colonial origin in Germany. German authorities continue to narrate restitution as a moral commitment only.<sup>129</sup> Structurally, the barriers that the current legislative framework and jurisprudence pose as well as the practice of German institutions regarding the restitution of human remains/Ancestors **prevent those affected from seeking effective protection and remedies in front of courts** for the ongoing violation of the fundamental rights of the deceased. This is especially the case since repatriations have been few and were carried out on arbitrary case by case basis only without legislative guidelines and without access to remedies in place. This is worrisome in light of rule of law principles such as access to justice. Furthermore, the current legislation and jurisprudence in Germany regarding anti-discrimination claims – especially when invoking post-mortal fundamental rights – do not meet the standards of effectiveness as set forth in the convention. Legal claims to address the persisting mistreatment of the racialized human remains/Ancestors are void when under current jurisprudence legal standing is disputed. Furthermore, remedies will not be granted when further procedural barriers are in place – like standards of proof.<sup>130</sup> At the same time, institutions fail to provide the necessary information about the location and origins of specific Human Remains/Ancestors. Thus, the affected are deprived of any adequate information concerning their rights and the prospect of success of even initiating legal proceedings.

Art. 6 encompasses the notion that any breach of the rights protected by the Convention must be remedied. The drafting process has shown that formulating Art. 6 to ‘seek’ reparation

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<sup>128</sup> CERD, General Recommendation 31, at 409.

<sup>129</sup> See above at I.

<sup>130</sup> I. Reimann and N. Samour, Vom individuellen Unrechtskontext zum systematischen Umgang mit kolonialem Unrecht, 7/12/2022, <https://verfassungsblog.de/vom-individuellen-unrechtskontext-zum-proaktiven-umgang-mit-kolonialem-unrecht/>.

emphasizes the importance of dismantling barriers for those who attempt to access remedies.<sup>131</sup> Thereby, the meaning of remedies is twofold: in one sense remedies are processes by which arguable claims of human right violations are heard whether by courts administrative agencies or other competent bodies.<sup>132</sup> The second notion refers to the outcome of the proceedings the relief afforded to the successful claimant. The obligation to afford remedies for violation of human rights requires in the first place the existence of remedial institutions and procedures to which victims may have access. Refusal of access to the tribunals of a country is considered a primary manifestation of the concept of denial of justice and access to justice implies that the procedures are effective, i.e. capable of redressing the harm that was inflicted.<sup>133</sup>

### *1. Procedural Law and Practice*

While there is no explicit legislation banning access to court when seeking to remedy the post-mortal fundamental rights of human remains/Ancestors, the legislative procedural framework and its interpretation by jurisprudence makes access to court almost impossible.<sup>134</sup>

First, **the affected cannot be certain which court to address their claims to.** And while this uncertainty is not unusual per se, it is significantly prevalent in these cases, with very high chances of retraumatization. In the German legal system civil courts have jurisdiction over claims arising from property while the administrative courts have jurisdiction over claims arising from the violation of fundamental rights, among other things. The DMB Guidelines continue to suggest to not treat the deceased as people but as property, legally.<sup>135</sup> However, such a legal classification continues to dehumanize human remains/Ancestors and masks the fundamental rights issues at stake. The descendants are left to the mercy of the courts with unpredictable outcomes, with fundamental questions like will the court admit jurisdiction, handle the Ancestors as humans or overall dismiss the case?

#### *a) Legal standing*

Access to court is denied most effectively when there is no one allowed to bring a claim to court. Unfortunately, the legislative framework and jurisprudence in Germany make it **nearly impossible to establish locus standi for descendants** and concerned parties from formerly colonized territories where human remains/Ancestors ail from. In the event of enforcing post-mortal fundamental rights before the administrative courts, the procedural codes offer no provision as to which persons might invoke those rights. The only prerequisite is that plaintiffs must demonstrate a legitimate interest. Thus, in the case of evoking post-mortal rights of deceased persons jurisprudence has developed the term of ‘next of kin’ (“nächster Angehöriger”) to grant standing. However, the courts tend to interpret this fuzzy concept conservatively and under a very traditionally Western perspective of kinship. Courts have accepted that ‘next of kin’ can include second-degree descendants (grandchildren) of the deceased.<sup>136</sup> However, a special personal relationship of proximity between the deceased and the descendant who asserts post-mortem protection was required and next of kin was denied

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<sup>131</sup> P. Thornberry, supra note 89, at 425

<sup>132</sup> Ibid., at 426.

<sup>133</sup> Ibid.

<sup>134</sup> Cf. Tomuschat/Angst/ Lantschner ICERD, supra note 16, at Artikel 5 lit. a-d, para. 5.

<sup>135</sup> See above.

<sup>136</sup> Bayerischer Verfassungsgerichtshof (Bavarian Constitutional Court), 25.9.2012, case no. Vf. 17-VI-11.

when the complainant did not know their ancestor because they were born after the ancestor had died.<sup>137</sup>

These very strict requirements render post-mortal fundamental rights useless for any deceased person who is not embedded in close, familial relationships of the Western tradition that defend their rights even after death. It is all the more important to protect the rights of those people - even beyond death - whose rights were already violated during their lifetime. And whose life stories and realities are still not respected under the legal realities in Germany. Since the human remains/Ancestors were killed and abducted often more than 100 years ago, it is simply not possible for the living descendants to have had a personal relationship with the ancestors.

*b) Statute of limitations*

We welcome the recommendation in the DMB Guideline urging institution not to apply statutes of limitations (*Verjährungseinrede*) in cases of restitution of cultural artefacts as well as the return of Human Remains/Ancestors.<sup>138</sup> While steps like these are commendable, words are not enough. As long as these recommendations are not legally binding. They depend on the ‘good-will’ of any single institutions and certainly do not remove the risk of claims being dismissed on grounds of statute of limitations.

*c) Evidentiary standards*

The committee has expressed concern regarding high standards of proof that inhibit the ability to secure recognition of the rights of the Convention.<sup>139</sup> Under German procedural law burden of proof generally lays on the claimant. This makes dismissal of claims on procedural grounds highly likely as descendants and affected communities regularly have (access to) little or no information about the remain of their Ancestors.

When bringing a claim for restitution of human remains/Ancestors before German courts the claimant bears the burden to prove not only the violation of rights of the deceased but also their legitimate interest to claim restitution. However, the **historical context** of the taking of the human remains/ancestors and the ensuing possession in European/German institutions and organizations has significantly weakened the position of descendants to comply with this burden of proof. Effectively, they are not only robbed of their ancestors but also of any accessibility to their ancestors. The possibility remains to establish connections to human remains/ancestors through the oral and written history of the affected descendants. However, especially oral testimony is considered as the weakest source of evidence in German procedural law, and it might not be sufficient to raise a claim above the threshold of the required standard of proof.<sup>140</sup> As a standard of proof courts demand claims to be established beyond reasonable doubt.<sup>141</sup> This can hardly be met when the human remains/Ancestors remain in the hands of the defendants who do not make sufficient efforts to archive them properly, and investigate their origins. **The burden of proof furthermore imposes on claimants the cost of obtaining**

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<sup>137</sup> Ibid.

<sup>138</sup> DMB Guidelines on Collections from Colonial Contexts, *supra* note 66, at 20 (

<sup>139</sup> P. Thornberry, *supra* note 89, at 320 and 408.

<sup>140</sup> Cf. S. Scheuch, V. Vorwerk and C. Wolf (eds.), *BeckOK ZPO* (40th ed. 2021), at § 373 para. 35.

<sup>141</sup> Standard of proof: What is required and sufficient is a degree of certainty that is useful for practical life and that silences doubts without eliminating them completely cf. Bundesgerichtshof (Federal Court), 19.7.2019, case no. V ZR 255/17, at para. 27; K. Bacher, V. Vorwerk and C. Wolf (eds.), *BeckOK ZPO* (40th ed. 2021), at § 286 para. 2.

**information.** Thus, the lack of information regarding the human remains/Ancestors in possession of German institutions and the accompanying problems in the presentation of evidence render any feasible claims for restitution void. It also means that claimants must have a full understanding of the German legal system and overcome colonial legacies, such as the restrictive visa requirements to enter Germany.

To offer effective remedies for the ongoing violation of rights the German Government and German courts must push towards a reversal of the burden of proof (*Beweislastumkehr*) in accordance with the rule of law.<sup>142</sup> They furthermore need to modify the evidentiary standards in cases involving Human Remains/Ancestors in order to address the apparent challenges in the collection, the presentation and the access to evidence in these cases. However, a reversal of the burden of proof always needs to go hand in hand with obligations to carry out further provenance research. Otherwise even a reversal would lead to the very circular frustrating situation, where this normally claimant-friendly jurisprudence would benefit the defendant. The institutions could continue to argue that they themselves do not know and provenance research is required, yet for them too expensive to conduct. That is an argument that perpetuates the current situation ad infinitum. This is how they divert necessary information claims as to the whereabouts of these objects and humans, outside the court on the one side and bar the claimants side from gathering necessary factual evidence for bringing a case, on the other.

## ***2. Need for Information and Research***

*“We want all the ancestral remains to be taken back to the family. For the remaining ancestors be more scientific research should be conducted.”*

**Collecting and making available information of Human Remains/Ancestors is the pre-requisite for any processes of restitution.** Correspondingly the immense lack of availability of concrete information regarding Human Remains/Ancestors is a decisive barrier from seeking remedies. This is the case both regarding the lack of comprehensive provenance research done on inventories as well as inaccessibility of information available within institutions. Only with complete and reliable information can members and representatives of indigenous communities know about the location of their missing Ancestors and make informed decisions about any further process. Gathering and providing this information requires cooperation between institutions in order to bring together different information and sources, for example on Human Remains from the same appropriation contexts that are stored in different institutions and archives, or on the same consignors.

We commend the efforts of institutions like the recent effort by the SPK which led to the publication "Human Remains from the Former German Colony of East Africa. Recontextualization and Approaches for Restitution".<sup>143</sup> First steps have been taken to identify the provenance of Human Remain inventories. However, provenance research has so far been carried out purely on a voluntary basis if the institutions themselves recognize the legitimacy of requests for information and repatriation requests, or due to moral and political pressure from outside. Promises of further research take place in a presumed legal vacuum and in some cases

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<sup>142</sup> As accepted for example in cases of Nazi looted Art.

<sup>143</sup> Cf. SPK, supra note 11.

fails to materialize In the German context, there is no research obligation resulting from inquiries from representatives of indigenous peoples or descendants neither is funding guaranteed.<sup>144</sup> Furthermore, conducted research such as the by the SPK is put out in scientific publications only and thus largely illegible and inaccessible for the affected. German authorities thereby disregard their obligation under ICERD. In order to facilitate access to justice for the victims of racism, States parties should strive to supply the requisite legal information to persons most vulnerable who are often unaware of their rights.<sup>145</sup>

The continuing discriminatory practice in Germany can be attributed to the following causes and shortcoming. For one, there is the problem of scattered competences between the federal and regional governments, and between the public, private and semi-private institutions add to a situation in which it is not clear, how many human remains are presently in Germany or if the provenance of all human remains in German museums, universities and private institutions, which were taken in colonial times, will be thoroughly researched.<sup>146</sup>

Furthermore, the establishment of the so-called ‘contact point’ has helped descendants and communities accessing information only with limited success.<sup>147</sup> Requests for restitution of cultural belongings as well as Human Remains/Ancestors were sometimes rejected. Given the fact that the contact point in its own assignment is meant to be low level access and open for affected communities, this is concerning. Overall, most of these processes are marked by intransparency, e.g when a claim is taken on or what are the criteria. Further, the contact point has no capacity or mandate to conduct research themselves and is dependent on the (regularly little) information the institutions forward.

Moreover, provenance research projects are usually externally funded. That might indicate that the institutions themselves are not fully committed to the repatriation of the Human Remains/Ancestors. In addition, the dependency on external funding also leads to the fact that there is no continuous work on the issue as well as staff shortage - if the project funds end, it depends on the staff members to finalize their research or follow up on the next steps, such as contacting the embassies or respective communities. Going forth **adequate funding for provenance research must be secured in federal and state budgets**. Funding must also be provided for spaces of education and commemoration in the descendant communities.

Beyond the loss of the remains of their Ancestors, descendants emphasize the **loss of transgenerational knowledge** embodied by the deceased, in the case of the Old Moshi hangings not least because of the prominent societal rank of the executed. Appropriation of human remains/Ancestors also went in tandem with taking their close belongings often ‘objects’ carrying knowledge and status that were lost to the historic community, current and future generations. Any return of information must include the knowledge gained from these

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<sup>144</sup> Cf. Reimann report, supra note 24, at 96.

<sup>145</sup> CERD, General Recommendation, para. 7.

<sup>146</sup> In fall 2019, a coalition of civil society actors, cultural workers and artists co-signed a plea for more transparency and the opening of the inventories of German institutions to the public as a pre-requisite for restitution requests: *Die Zeit, Öffnet die Inventare! Ein Appell, das vorhandene Wissen zu afrikanischen Objekten in deutschen Museen endlich frei zugänglich zu machen*, 17 October 2019, available at <https://www.zeit.de/2019/43/koloniale-vergangenheit-deutschland-afrikanische-objekte-museen>.

<sup>147</sup> As described above (at C.I.).

appropriations as well as satisfy the need of the descendant communities to know what happened to their Ancestors in the last 120 years.

The German legal system does offer some legal links to claim information, E.g. Freedom of information Act (*Informationsfreiheitsgesetz* –IFG) claims can be invoked toward the state funded museums and institutions believed to hold Human Remains or archival information.<sup>148</sup> However, IFG claims are in no way sufficient because they are not designed to accommodate such complex information and research requests: only available information may be retrieved (meaning institutions are not obligated to conduct any research) and there are possible grounds of rejection of the claims. Most importantly IFG claims cannot be invoked toward private institutions. Thus, there is a lack of legislation that constitutes adequate procedures to collect information regarding the Human Remains/Ancestors in governmental and private collections, and, consequently, to make that information available. Ultimately this undermines the ability of descendants to challenge restitution before the authorities and in court. In practice IFG claims addressed at institutions like the SPK regarding the whereabouts of one's ancestors or even artefacts for that matter, have generated elusive responses, decidedly relying on these technical excuses.<sup>149</sup>

The lack of information may be remedied by instituting the obligation of the institutions to draw up an inventory. The legal obligation in the USA since 1990 is exemplary. Under *NAGPRA* §3003<sup>239</sup>, the facilities with collections of Human Remains/Ancestors and related funeral objects by Native American people are obliged to take inventories within five years in consultation with the representatives of the indigenous self-governments and organizations, and to make them available to an examination board. In addition, at the request of indigenous organizations and authorities, American institutions are required to provide all additionally available documents for the purpose of determining geographical origin, cultural affiliation and the basic facts relating to the acquisition and reception of human remains of the Native American people and the associated funeral objects.

### 3. Recommendations

**Germany must comply with their positive obligation under Article 6 to introduce remedies that are available, adequate, and effective, that protect against racial discrimination and to recognize the right to restitution of Human Remains/Ancestors as just compensation and reparation for acts of racial discrimination. This must include appropriate amendments in procedural law.**

**Germany must ensure that institutions start and/or continue provenance research on their inventories in form of fully funded, cross-institutional, interdisciplinary and transnationally oriented research projects conducted in a timely manner.**

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<sup>148</sup> Federal Act Governing Access to Information held by the Federal Government (Freedom of Information Act), available in English at: [https://www.gesetze-im-internet.de/englisch\\_ifg/index.html](https://www.gesetze-im-internet.de/englisch_ifg/index.html)

<sup>149</sup> As experienced by members of this coalition.

<sup>239</sup> Cf. <https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg3048.pdf>

	<p><i>Decolonize Berlin e.V.</i> advocates for a critical examination of German colonialism and its continuities, such as current racism within contemporary German society, the recognition and critical reappraisal of colonial injustices, and decolonization of German for society as a whole. We call on the state of Berlin and its districts to embed decolonialization as a cross-cutting issue in education, science, research, business, urban planning, justice and culture, and to actively promote decolonization of the cityscape. The association Decolonize Berlin e.V. consists of several civil society organizations and is supported by many dedicated individual activists. <b>Contact: <a href="mailto:info@decolonize-berlin.de">info@decolonize-berlin.de</a></b></p>
	<p><i>Berlin Postkolonial e.V.</i> is an association that seeks to critically reappraise the colonial history of Berlin and the Federal Republic of Germany. The non-governmental organisation was founded in 2007. It organises cultural tours of the city, lectures, exhibitions, conferences and campaigns. Since Germany's first return of stolen ancestral remains to the Ovaherero and Nama in 2011, it has been involved in the campaign „No Amnesty on Genocide!“ Berlin Postkolonial is currently a cooperation partner in the joint project "Dekoloniale. Memory Culture in the City". <b>Contact: <a href="mailto:buero@berlin-postkolonial.de">buero@berlin-postkolonial.de</a></b></p>
	<p><i>Flinn Works</i> is a (performing) arts company based in Berlin/Kassel, Germany. It has independently produced and presented more than 20 productions in a wide range of different venues and festivals. Always engaging with current social and political issues and a focus on post-colonial and feminist themes, the company devises its work in collaboration with professional artists and performers. Flinn Works has expanded its activities beyond Europe, with the input of writers, performers and musicians from other countries, including India, Bangladesh, Tanzania, Rwanda and Nigeria. Employing multiperspectivity and a strong commitment to intensive research are the key aspects of Flinn Works' productions. Flinn Works also works closely with academics for their research based approach. <b>Contact: <a href="mailto:mail@flinn.works">mail@flinn.works</a></b></p>
	<p><i>The Initiative Schwarze Menschen in Deutschland Bund e.V.</i> (ISD) is a non-profit association. It aims is to represent the interests of Black people in Germany and promote justice for members of communities with migration backgrounds. It identifies racial discrimination, disadvantages and exploitation and fights against them. It furthermore offers</p>

	<p>spaces and activities for Black children and young adults. It also fosters political and Black projects. The ISD stands for an anti-racist position in all areas of society.</p>
<p>EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS</p> 	<p><i>The European Center for Constitutional and Human Rights e.V. (ECCHR)</i> is a non-governmental, non-profit organization dedicated to enforcing human rights in Europe and beyond through strategic human rights litigation and human rights education and advocacy. That entails classical litigation before national, European and international courts and tribunals. This case work is embedded in wider communication strategies and close collaborations with political and social activists in the respective fields of action as well as the academy and the arts. Founded in 2007 by a small group of lawyers in Berlin, its main objective is to hold state and non-state actors accountable for grave human rights abuses and international crimes and inform the public discourse beyond expert circles. <b>Contact:</b> <i>melchior@ecchr.eu, imani@ecchr.eu</i></p>

## ANNEX I

# **Demands from the descendants of the hanged leaders of Kilimanjaro and Meru (Meli, Molelia, Ngalami, Kiwelu, Lobulu)**

1. We demand a speedy repatriation of the identified ancestral remains to their respective families.
2. The unidentified ancestral remains who could be assigned to the Chagga or Meru communities should also be repatriated.
3. The descendants shall be involved in the repatriation process and their wishes shall be respected.
4. The costs of repatriation and burial are to be borne by the government of Germany.
5. We demand an official apology from the Federal Republic of Germany to the families and communities concerned for the colonial crimes and the displacement of the ancestors.
6. This is also expected from the museums and universities involved.
7. Personal belongings of the Mangis, which are kept in museums in Germany, are to be returned.
8. Following the repatriation, we demand talks with the German government for reparations.

We, the descendant families, have received the DNA results of our ancestors. We are thrilled to hear about the fate of our ancestors who died more than 100 years ago. We commend all the institutions and individuals responsible for achieving this vital milage. We urge the Tanzanian government to speed up the communication process with the German government so that the formal procedures for the return of our ancestors' remains can proceed faster. Our families are ready to receive them, and we have identified places for their final rest.

The demands are a result of a meeting organized by ECCHR (European Centre for Constitutional and Human Rights) in Moshi in September 2023. At this meeting, the descendants were also informed by the Marejesho team about the outcome of the DNA analysis.