

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

THE HERERO PEOPLE'S REPARATIONS CORPORATION, :  
a District of Columbia Corporation :  
1625 K Street, NW, #102 :  
Washington, D.C. 20006 :  
:  
THE HEREROS, :  
a Tribe and Ethnic and Racial Group, :  
by and through its Paramount Chief :  
By Paramount Chief Riruako :  
:  
Paramount Chief K. Riruako :  
P.O. Box 60991 Katutura :  
Windhoek, Republic of Namibia 9000 :  
:  
Mburumba Getzen Kerina :  
P.O. Box 24861 :  
Windhoek, Republic of Namibia 9000 :  
:  
Kurundiro Kapuuo : Case No. 01-0004447  
Box 24861 :  
Windhoek, Republic of Namibia 9000 : Judge Jackson  
Calendar 2  
Cornelia Tjaveondja : Next Scheduled Event:  
P.O. Box 24861 : Initial Scheduling Conference  
Windhoek, Republic of Namibia 9000 : September 18, 2001 at 9:30 a.m.  
:  
Moses Nguarambuka :  
P.O. Box 24861 :  
Windhoek, Republic of Namibia 9000 :  
:  
Hilde Kazakoka Kamberipa :  
SQ66 Genesis Street :  
P.O. Box 61831 :  
Windhoek, Republic of Namibia 9000 :  
:  
Festus Korukuve :  
P.O. Box 50 :  
Opuuo (Otuzemba), Namibia :  
:  
Uezuvanjo Tjihavgc :

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Opuuo, Namibia	:
Ujeuetu Tjihange	:
Box 27	:
Opuuo, Namibia	:
Moses Katuuu	:
P.O. Box 930	:
Gobabis, Namibia 9000	:
Levy K. O. Nganjone	:
P.O. Box 309	:
Gobabis, Namibia	:
Festus Ndjai	:
Opuuo, Namibia	:
Hoomajo Jjinge	:
Opuuo, Namibia	:
Uelembuia Tjinawba	:
Okandombo	:
Okunene Region, Namibia	:
Jararaihe Tjinge	:
Opuuo, Namibia	:
Hangekaoua Mbinge	:
Opuuo, Namibia	:
Ehrens Jeja	:
Box 210	:
Omaruru	:
Omatjete, Namibia	:
Nathanael Uakumbua	:
Box 211	:
Omaruru, Namibia	:
Rudolph Kauzuu	:
Box 210	:
Omatjete	:
Omaruru, Namibia	:

Jaendekua Kapika	:
Opuuo, Namibia	:
Ben Mbeuserua	:
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Okakarara, Namibia 9000	:
Felix Kokati	:
Box 47	:
Okakarara, Namibia 9000	:
Samuel Upendura	:
Oyinene	:
Omaheke Region, Namibia	:
Majoor Festus Kamburona	:
P.O. 1131	:
Windhoek, Republic of Namibia 9000	:
Uetavera Tjirambi	:
Okonmgo	:
Okanene Region, Namibia	:
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Nahason Kaahangoro	:
Box 913	:
Okotjituuo, Namibia	:
Gerson Ngetunie	:
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Niklaas Koujo	:
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Aminius GBS, Namibia	:
Esekiel Tjivikua	:

P/Saak 1007	:
Otjimbinge, Namibia	:
Puurijata Mgombe	:
Opuuo	:
Ondjele, Namibia	:
Muhonune Tjiauiiko	:
Omuangete	:
Opuuo	:
Regional - Okanene Region, Namibia	:
Elisa Muyahe	:
Box 60	:
Karibib, Namibia	:
Usiel Zajerues	:
Otjinarongo Pos 3	:
Epukino Pos 13,	:
Opuuo, Namibia	:
Vaundura Tjisuta	:
Opuuo, Namibia	:
Kapika Motjinduiko	:
Omuramba	:
Opuuo, Namibia	:
Katjimbatare Mbendura	:
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Kavari Hialonguru	:
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Christor Vezuvapi Kazohua	:
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Glamenots Mupurua	:
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Ngorera Languemuna	:
Outiongo	:
Okanene Regional	:
Opuuo, Namibia	:
Metheus Tjirdunda	:
Opuuo - Omungunda	:
Opuuo - Okkanene	:
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Tuatupukua Hepute	:
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Uakarenda Mbinge	:
Opuuo, Namibia	:
Uatundauka Ngumbi	:
Opuuo, Namibia	:
Vahenuna Tjिताura	:
Opuuo, Namibia	:
Kaisa Ngumbi	:
Opuuo, Namibia	:

Komuzara Ngombe	:
Opuuo, Namibia	:
Otto Tjituka	:
Okanene	:
Omaheke Region, Namibia	:
Paulus Ngombe	:
Opuuo	:
Obizoko Tjamuhanguze, Namibia	:
Tuakaako Tjinana	:
Okanguati	:
Opuuo, Namibia	:
Junias Tjituka	:
P/Bag 2115	:
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Jaas Tjimwine	:
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Kaivaka Ngumbi	:
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Ratjirambo Rutjindo	:
Oukongo	:
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Tjisuta Karukoro	:
Opuuo, Namibia	:
Hambeka Muharukua	:
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Sudduseer Str.	:
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Korridor 6 Aminuis Revsntaat	:
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Magdalena Karuombe	:
Bietfontein Tallismanus	:
Gobabis, Namibia	:
Gustav Rupingena	:
Oninahi, Okakarara Constituency	:
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Omaihi / Okakarara	:
Otjozondjupa Region, Namibia	:
Johannes Kamoruao	:
Omaihi / Okakarara	:
Otjozondjupa Region, Namibia	:
Grandson Peter Pomba	:
Omaihi / Okakarara	:
Otjozondjupa Region, Namibia	:
Simson Tjinape	:
Ozonduno	:
10 Kinderen	:
Omaheke Region, Namibia	:
Germans Toromba	:

Kinderen 9	:
Namibia	:
Phellepus Behnson Marine	:
Otumborombonga	:
Okakarara Constituency	:
Otjozondjupa Region, Namibia	:
Kamezun Usiel	:
P/Bag 2097 Gobabis	:
Aroams No. 1 Aminuis Constituency	:
Omaheke Region, Namibia	:
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P/Bag 2081	:
Grootfontein	:
Otjituuo / Okatjoruu, Namibia	:
Rudolph Windisch	:
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Elder Mbapupua	:
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Alaid Tjombonde	:
P/Bag 2081	:
Grootfontein	:
Otjituuo / Omboora 9000	:
Erna Mbetjiha	:

P/Bag 2081	:
Grootfontein, Namibia	:
Joël Mbetjiha	:
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Presley Tjizkpa	:
P.O. Box 1243	:
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Justophine Agnes Uetuzuva Tjiho	:
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Festus Tjikuvira	:
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Okakarara, Namibia	:
Else Kaesora Mortukania	:
Otjiteke	:
Otjinene Constituency	:
Omaheke Region, Namibia	:
Angel Inaerihhe Mboundje	:
Okei, Otjinene Constituency	:
Omaheke Region, Namibia	:
Joshua Kantjiteo	:
Ebukino Pos 12	:
Ohomumbonele, Namibia	:
M. K. Hevike	:
Ohamataponti	:
Omurambouiniru	:
Otjozondjupa Region, Namibia	:
Christofine Ujava	:
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Katutura	:
Windhoek, Republic of Namibia	:
Julia Tjipitua	:
P/Sak 2018 Okahandja	:
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Werner Mbetjiha	:
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Meriam Mbekumuna Mattenwodt	:
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Oscar Rukoro :  
Ozongarangombe :  
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Viceorine Tjiuer :  
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and

Alfons Kaijangua :  
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Okakarara, Namibia :

Plaintiffs :

v.

Deutsche Bank AG :  
1440 New York Avenue, N.W. :  
Suite 500 :  
Washington D.C. 20005 :

Terex Corporation a.k.a. :  
Orenstein-Koppel :  
5400 S. 49<sup>th</sup> West Avenue :  
Tulsa, OK 74107 :  
500 Port Road East, Suite 320 :  
Westport, CT 06880 :

and

Woermann Line :  
now known as :  
Deutsche Afrika-Linien Gmbh & Co. :  
c/o Rudiger Brakling :  
Deputy Chief Executive Officer :  
Palmaille 45 :

D-22767 Hamburg, Germany :

Defendants :

**FIRST AMENDED COMPLAINT**

**(Violations of International Law, Crimes Against Humanity Genocide, Slavery and Forced Labor)**

COME NOW plaintiffs, The Herero People’s Reparations Corporation (“HPRC”), Herero Tribe (the “Hereros”) and individual Herero, by and through undersigned counsel, pursuant to SCR CIV. 7, SCR CIV. 15 and SCR.CIV 23, and for a cause of action state and aver as follows.

**INTRODUCTION**

Defendants Deutsche Bank AG (“Deutsche Bank”), Terex Corporation, also known as Orenstein & Koppel (“Terex”) and Woermann Line, now known as Deutsche-Afrika-Linien (“Woermann” or “ DAL”), in a brutal alliance with Imperial Germany, relentlessly pursued the enslavement and the genocidal destruction of the Herero Tribe in Southwest Africa, now Namibia. Foreshadowing with chilling precision the irredeemable horror of the European Holocaust only decades later, the defendants and Imperial Germany formed a German commercial enterprise which cold-bloodedly employed explicitly-sanctioned extermination, the destruction of tribal culture and social organization, concentration camps, forced labor, medical experimentation and the exploitation of women and children in order to advance their common financial interests.

Well-recognized principles of District of Columbia law, United States law, and international law provide this Court with the jurisdiction to impose long-delayed remedies for the atrocities from which the defendants profited.

## **JURISDICTION**

1. Jurisdiction is founded on 11 D.C. Code § 921 and on principles of universal jurisdiction applicable to crimes against humanity, genocidal practices and human rights atrocities.

## **PARTIES**

2. Plaintiff HPRC is a corporation duly organized under the laws of the District of Columbia and it does, engages in and transacts business in the District of Columbia, including business out of which this claim arises.

3. Plaintiff Hereros is a duly constituted tribe in the Republic of Namibia and constitutes a recognized ethnic and racial group for purposes of the application of principles of international law.

- (a) Individual named plaintiffs: Paramount Chief K. Riruako, Mburumba Kerina, Kurundiro Kapuuo, Cornelia Tjaueondja, Moses Nguarambuka, Hilde Kazakoka Kamberipa, Festus Koruicline, Uezuwanjo Tjihavgc, Ujeutu Tjihange, Moses Katuuo, Levy K. O. Nganjone (Neuebeclc), Festus Ndjai, Hoomajo Jjingee, Uelembuia Tjinawba, Jararaihe Tjingee, Hangekaoua Mbinge, Ehrens Jeja, Nathanael Uakumbua, Rudolph Kauzoo, Jaendekua Kapika, Ben Mbeuserua, Felix Kokaki, Samuel Upenduna, Majoor Festus Kamburona, Uetavera Tjiramic, Julius Katjingisiua, Gebharid Muesee, Nahanson Kaahangoro, Gerson Ngetunic, Niklaas Koujo, Esekiel Tjivikua, Puurijata Mgombe, Muhonune Tjiauiko, Elisa Muyahere, Usiel Zajerues, Vaundura Tjisuta, Kapika Motjinduiko, Katjimbatare Mbendura, Uaraa

Mupeu, Kavari Hialonguru, Christor Vezuvapi Kazohua, Glamenots Mupurua, Ehrenfried Tjiputovandu, Ngorera Languemuna, Metheus Tjirdunda, Tuatupukua Hepute, Saulus Kasaona, Josef Tjivinde, Uakarenda Mbinge, Uatundauka Ngumbi, Vahenuna Tjिताura, Kaajsi Ngumbia, Komuzara Ngombe, Otto Tjituka, Paulus Ngombe, Tuakaako Tjinana, Junias Tjituka, Kazeire Tjiuma, Gabriel Mbeja, Ruhumba Leonard, Juen Kaetjavi, Jaas Tjimwine, Tjinae Tjingee, Jeturimba Hembinda, Ngorera Kapejatua, Ngunaihe Mbari, Mburura Matiti, Tjikuua Hkawite, Kaivaka Ngumbi, David Kavari, Katundu Inaauyova Matuvi, Uakamuina Tjiposa, Mbomi Ngumbi, Chief Hikuminue Kapika, Hepute Jonas Nezeturisa, Ueripanda Hepute, Mujazerire Tjambiru, Hondjera Veriunelika Alma, Tjiniaka Tjjjahura, Oliefarit Muhenje, Ratjirambo Rutjindo, Tjisuta Karukoro, Hambeka Muharukua, Urandaije Muharukua, Godfriedine Kamburona, Salinde Kamburona, Kavari Mahindiune, Tutjavi Ueritura, Chief Tjavara, Josef Japuhua, Benesius Hungua, Vekeura Ruhumba, Chief Tjipene Keja, James Zemburuka, Christopher Kaiko, Alex Hairo Kongootui, Chief Tjombe Fanuel, Tjindunda Muhuhamo, Elia Bautenna Tjiho Killon, Akahiko, Uavirikiza Tjihoto, Ngombe Hijakundi, Kawendisa Hevita, Kavebiu Tjituere, Elisa Bethuel Kariko, Tjisemo Tuiziua, Isaskar Rupingena, Tjitjaoro Mbinge, Bethlehem Maija, Tjanangombe Hembinda, John Tjakurupe, Adelheid Neueza Ndjahera-Tjjjorokisa, Chief Hosea Kutako Foundation, Mike Pack, Mbakamua Katjangura, Isak Karaerua, Daniel Katuve, Ottman Katjangua, Else

Matukarua, Christofine Kajangua, Tebulon Kaijangua, Elizabeth Kazohua, Gustaf Diekmam, Lucas Kaurora, Menesia Katjembua, Albertus (Kaapehi) Schmidt, Eunice Katjizambua, Arcelaus N. Kaijangua, Ewald Kamujuuige, Ismael Ngeke Katjangua, Helen Diekmama, Uemumuno Kertjari, Victoria Kahoro, Leonard Kamuinjo, Isaskar Tjamburo, Euen Kavisene Von Heybrecht Katuamba, Claud Katuamba, Ephraim K. Kauaka, Magdalena Karuuombe, Gustav Rupingena, G.H. Mbaukua, Robert Krems, Yvonne Karupa, Herman Kurangera, Johannes Kamoruao, Grandson Peter Pomba, Simson Tjinape, Germans Toromba, Phellepus Behnson Marine, Kamezun Usiel, Humairndu Ezzard Albert, Luciane Njandereeko Tjiramba, Willemine Nunuhe, Ester Muhaniue, Ewald Kenatjongo, Karl Kaitjizemine (Karumbu), Angel Tjahere, Frieda Kanta, Prieska Mbunga, Gottfried Mbunga, Alfons Tjiposa Mbaeva, Constanira Zatjinua, Menethe Murangi, Christotine Kanangure, Levi Jacobs Karita, Ernst Heii, Hiskia Raturua Mbaha, Andronikus Urmanaije Mazella, Elizabeth Muurua, Veronica Tjivikua, Erich Tjipeuja (Von Benningssen), Gotthardine Ngaizuvare, Martha Karurupara, Rudolph Windisch, Elder Mbapupua, Alaid Tjombonde, Erna Mbetjiha, Joel Mbetjiha, Presley Tjizkpa, Justophine Agnes Uetuzuva Tjiho, Festus Tjikuvira, Else Kaesora Mortukania, Angel Inaerihhe Mboundje, Josha Kantjiteo, M. K. Hevike, Christofine Ujava, Frieda Wamunika, Julia Tjipitua, Paul Kauatouojao, Toha Helele Keja, Werner Mbetjiha, Ebew-Ezer Rinatjike Kavindikiza, Joel Kombepe, Alexia Kandovazu Libbe, Nateus Kangen Maties,

Meriam Mbekumuna Mattenwodt, Meriarie Ruhr Muvangua, Oscar Rukoro, Viceorine Tjiuer, and Alfons Kaijangua seek relief as a consequence of the genocidal destruction of the Herero Tribe.

- (b) Individual named plaintiffs: Paramount Chief K. Riruako, Mburumba Kerina, Kurundiro Kapuuu, Cornelia Tjaueondja, Moses Nguarambuka, Hilde Kazakoka Kamberipa, Festus Koruicline, Uezuvanjo Tjihavgc, Ujeutu Tjihange, Moses Katuuu, Levy K. O. Nganjone (Neuebeclc), Festus Ndjai, Hoomajo Jjingee, Uelembuia Tjinawba, Jararaihe Tjingee, Hangekaoua Mbinge, Ehrens Jeja, Nathanael Uakumbua, Rudolph Kauzuu, Jaendekua Kapika, Ben Mbeuserua, Felix Kokaki, Samuel Upenduna, Majoor Festus Kamburona, Uetavera Tjiramic, Julius Katjingisiua, Gebharid Muesee, Nahanson Kaahangoro, Gerson Ngetunic, Niklaas Koujo, Esekiel Tjivikua, Puurijata Mgombe, Muhonune Tjiauiko, Elisa Muyahere, Usiel Zajerues, Vaundura Tjisuta, Kapika Motjinduiko, Katjimbaterere Mbendura, Uaraa Mupeu, Kavari Hialonguru, Christor Vezuvapi Kazohua, Glamenots Mupurua, Ehrenfried Tjiputovandu, Ngorera Languemuna, Metheus Tjirdunda, Tuatupukua Hepute, Saulus Kasaona, Josef Tjivinde, Uakarenda Mbinge, Uatundauka Ngumbi, Vahenuna Tjिताura, Kaajsi Ngumbia, Komuzara Ngombe, Otto Tjituka, Paulus Ngombe, Tuakaako Tjinana, Junias Tjituka, Kazeire Tjiuma, Gabriel Mbeja, Ruhumba Leonard, Juen Kaetjavi, Jaas Tjimwine, Tjinae Tjingee, Jeturimba Hembinda, Ngorera Kapejatua, Ngunaihe Mbari, Mburura Matiti, Tjikuua Hkawite, Kaivaka Ngumbi, David Kavari,

Katundu Inaauyova Matuvi, Uakamuina Tjiposa, Mbomi Ngumbi, Chief Hikuminue Kapika, Hepute Jonas Nezeturisa, Ueripanda Hepute, Mujazerire Tjambiru, Hondjera Veriunelika Alma, Tjiniaka Tjjjahura, Oliefarit Muhenje, Ratjirambo Rutjindo, Tjisuta Karukoro, Hambeka Muharukua, Urandaije Muharukua, Godfriedine Kamburona, Salinde Kamburona, Kavari Mahindiune, Tutjavi Ueritura, Chief Tjavara, Josef Japuhua, Benesius Hungua, Vekeura Ruhumba, Chief Tjipene Keja, James Zemburuka, Christopher Kaiko, Alex Hairo Kongootui, Chief Tjombe Fanuel, Tjindunda Muhuhamo, Elia Bautenna Tjiho Killon, Akahiko, Uavirikiza Tjihoto, Ngombe Hijakundi, Kawendis Hevita, Kavebiu Tjituere, Elisa Bethuel Kariko, Tjisemo Tuiziua, Isaskar Rupingena, Tjitjaoro Mbinge, Bethlehem Maija, Tjanangombe Hembinda, John Tjakurupe, Adelheid Neueza Ndjahera-Tjjjorokisa, Chief Hosea Kutako Foundation, Mike Pack, Mbakamua Katjangura, Isak Karaerua, Daniel Katuve, Ottman Katjangua, Else Matukarua, Christofine Kajangua, Tebulon Kaijangua, Elizabeth Kazohua, Gustaf Diekmam, Lucas Kaurora, Menesia Katjzembua, Albertus (Kaapehi) Schmidt, Eunice Katjizambua, Arcelaus N. Kaijangua, Ewald Kamujuuige, Ismael Ngeke Katjangua, Helen Diekmama, Uemumuno Kertjari, Victoria Kahoro, Leonard Kamuinjo, Isaskar Tjamburo, Euen Kavisene Von Heybrecht Katuamba, Claud Katuamba, Ephraim K. Kauaka, Magdalena Karuumbe, Gustav Rupingena, G.H. Mbaukua, Robert Krems, Yvonne Karupa, Herman Kurangera, Johannes Kamoruao, Grandson Peter Pomba,

Simson Tjinape, Germans Toromba, Phellepus Behnson Marine, Kamezun Uziel, Humairndu Ezzard Albert, Luciane Njandereeko Tjiramba, Willemine Nunuhe, Ester Muhaniue, Ewald Kenatjongo, Karl Kaitjizemine (Karumbu), Angel Tjahere, Frieda Kanta, Prieska Mbunga, Gottfried Mbunga, Alfons Tjiposa Mbaeva, Constanira Zatjinua, Menethe Murangi, Christotine Kanangure, Levi Jacobs Karita, Ernst Heii, Hiskia Raturua Mbaha, Andronikus Urmanaije Mazella, Elizabeth Muurua, Veronica Tjivikua, Erich Tjipeuja (Von Benningssen), Gotthardine Ngaizuvare, Martha Karurupara, Rudolph Windisch, Elder Mbapupua, Alaid Tjombonde, Erna Mbetjiha, Joel Mbetjiha, Presley Tjizkpa, Justophine Agnes Uetuzuva Tjiho, Festus Tjikuvira, Else Kaesora Mortukania, Angel Inaerihhe Mboundje, Josha Kantjiteo, M. K. Hevike, Christofine Ujava, Frieda Wamunika, Julia Tjipitua, Paul Kauatouojao, Toha Helele Keja, Werner Mbetjiha, Ebew-Ezer Rinatjike Kavindikiza, Joel Kombepe, Alexia Kandovazu Libbe, Nateus Kangen Maties, Meriam Mbekumuna Mattenwodt, Meriarie Ruhr Muvangua, Oscar Rukoro, Viceorine Tjiuer, and Alfons Kaijangua seek relief as a consequence of the genocidal destruction of the Herero Tribe and as consequence of defendants' participation in Imperial Germany's compulsory abuse of Herero women or "comfort women."

4. Defendant Deutsche Bank is a German corporation, and it engages in and transacts business in the District of Columbia. Deutsche Bank was the principal financial and banking entity

in German South West Africa from 1890 to 1915. Disconto-Gesellschaft, acquired by Deutsche Bank in 1929, combined with Deutsche Bank to control virtually all financial and banking operations in German South West Africa from 1890 to 1915. These entities were major and controlling investors and shareholders in and directors of the largest mining and railway operations in German South West Africa from 1890 to 1915. Deutsche Bank, itself and through Disconto-Gesellschaft, was a critical participant in German colonial enterprise. Deutsche Bank is directly responsible for and committed crimes against humanity perpetrated against the Hereros.

5. Defendant Terex is a corporation organized under the law of Delaware, and it engages in and transacts business in the District of Columbia. It is the successor in interest to or merger partner of Orenstein-Koppel Co. Orenstein-Koppel Co. was the principal railway construction entity in German South West Africa from 1890 to 1915. Arthur Koppel, the principal of Orenstein-Koppel, was a powerful German businessman; his business specialized in earth-moving technology and had contracts all over the world at the beginning of the twentieth century. His firm had been in an earlier partnership with Benno Orenstein since 1876, but later in the century had split with Orenstein in order to pursue a different avenue of development. Koppel searched for construction projects and Orenstein concentrated on the development of narrow gauge rail technology, but after a few years they recombined. They controlled railway and mining operations in German South West Africa from 1890 to 1915. Terex and its predecessors prospered over the 125 years of its existence to a remarkable degree because it was organized, participated in and took advantage of a slave labor system that did not recoil from working people, even women and children, to death. Further, Terex's predecessor never expressed the slightest degree of remorse or suffered the merest punishment for workers who were slaves, who were abused, or who died under their care. The firm profited

enormously from the slave labor system. Terex, by and through its predecessor in interest, was a critical participant in the German colonial enterprise. Individually and as a member of that enterprise, Terex is directly responsible for and committed crimes against humanity perpetrated against the Hereros.

6. Defendant Woermann Line (“DAL”), now known, on information and belief, as Deutsche Afrika-Linien, is a German corporation. DAL Transport is responsible for operations in the United States.

DAL acquired the Woermann Shipping Line (“Woermann”) of Hamburg Germany. Woermann was the principal shipping and port activities entity in German South West Africa. Woermann controlled virtually all of the shipping into and out of German South West Africa from 1890 to 1915. Woermann also controlled virtually all harbor construction, entrance and permitting fees, and dock and harbor labor. Imperial Germany leased to Woermann the landing business and the shipping business at each end of German South West Africa’s principal ports. Harbor dues were payable directly to Woermann. Woermann also obtained shipping and navigation concessions from the original lessees.

Woermann brutally employed slave labor and ran its own concentration camp. Woermann was a critical participant in the German colonial enterprise. Individually and as a member of that enterprise, Woermann is directly responsible for and committed crimes against humanity perpetrated against the Hereros.

#### **FACTS COMMON TO ALL CLAIMS**

7. Plaintiffs adopt and incorporate by reference as if specifically set forth herein the

averments of paragraphs one through six of the Complaint.

(a) The Demography Of South West Africa From  
The Nineteenth Century To The Present

8. The Herero people, historically known as the Ovaherero, lived predominantly on the highlands or plateaus of what is now Central Namibia. Namibia, which obtained its independence in 1990, is bordered on the south by South Africa and the north by Angola. Namibia's current population is 1,800,000. Approximately 25,000 German farmers now own the millions of hectares that comprised Herero land before the tribe's genocidal destruction by Imperial Germany and the defendants at the turn of the last century. The Herero population in Namibia, which had been the second largest tribe in Namibia at the turn of the last century, is 123,970.

9. South West Africa is bordered by two deserts; in the east by the Kalahari desert, and in the west by the Namibia desert. The average width of the Namibia desert is seventy-five miles. The two deserts merge in the south.

10. Rainfall has averaged less than 500 millimeters per year. There are no perennial rivers except on the northern and southern boundaries. Agriculture was limited. Indigenous people engaged in pastoralism, horticulture and hunter-gathering.

11. The central plateau was excellent for grazing but too arid for dry farming. The indigenous people in the areas favored by more rainfall -- including the central plateau -- exploited the water resources so that they could maintain sizable herds of cattle.

(b) The History and The Development of the Herero People  
Invoke the Protection Of International Law

12. "The indigenous societies of South West Africa are related to two main ethnolinguistic stocks: The Bantu-speaking groups of the north and central regions, and the Khoisan-

derived peoples of the southern and more arid districts. Within these broad categories many small-scale kinship groupings and several larger units, called Tribes, can be identified.” Bridgman, JM, the *Revolt of The Herero* (University of California Press 1981) (“Bridgman”), at p. 14.

13. “The Bantu tribes, though closely related linguistically, are culturally separated into two groups, the Ovambo and the Herero.” *Id.* at p. 14.

14. “...(B)y 1100 A.D., pastoralists, who were probably the Bantu-speaking ancestors of the Herero, had established themselves in (what is now Central Namibia).” Gewald, J. *Herero Heroes, A Socio-Political History of the Herero of Namibia* (Ohio University Press 1999) (“Gewald”), at p. 12.

15. “In Southwest Africa the people who speak dialects of the Bantu language *Otjiherero* have been glossed as Ovaherero, Ovambanderu, Ovahimba, Ovatjimba, Ovazemba and Vakwander.... (T)hese people speak dialects of a common language (and) share a number of cultural elements that relate to social organization, preferred economy, cosmology, epistemology and spatio-political organization. Historically there have been three broad divisions within Otjiherero-speaking society: the Ovaherero, the Ovambanderu and the Ovahimba. These divisions, which appear to be historically true and significant, correlated roughly with environmental determinants and geographical distribution. Thus, the Ovambanderu were a section of Otjiherero-speaking society engaged in pastoralism on the Sandveld of the Kalahari; the Ovaherero engaged in pastoralism on the Namibian highveld; and the Ovahimba engaged in pastoralism in the Kavkoveld.” Gewald, at p. 12.

16. The classification “Herero” includes all Otjiherero-speaking people.

17. “Pre-colonial Herero society was decentralized. Prior to the latter half of the nineteenth century no centralized leadership, except of a patri-clan head, the *Omukuru*, who was seen

to be the living embodiment of the clan's ancestors, existed amongst Herero groups." Gewald, at p.13.

18. "Before about 1870... the Herero's socio-political organization was a complex system of paternal and maternal groupings. The tribe was divided into about 20 different "oruzo" or paternal derivations groups. Each oruzo was headed by a chief who normally... acquired his position through inheritance." Bridgman, *supra*, at p. 18.

19. "Parallel to the oruzo groups were the 'eanda' groups, which were maternal." *Id.* at pp. 18-19.

20. Pre-colonial Herero society was documented in almost all areas by the ownership, herding and grazing of cattle. "The Herero language... contains more than a thousand words for the colors and markings of cattle." *Id.* at p. 17.

21. The increase and the preservation of herds of cattle was a central object of Herero life.

22. "The oruzo held in trust a number of sacred cattle which were inalienable and which were only used for sacrifice... (T)he cattle of the eanda could be used for paying debts and were often lent out to poorer members of the group.... The power of a Herero Chief was in large measure determined by the number of cattle he owned." *Id.* at pp. 19-20.

23. By the second half of the nineteenth century, the Hereros were emerging politically from a purely tribal state into (a system occasionally called) "Nomadic Early Feudalism." *Id.* at p. 17. "From being a society characterized by an endless series of loosely linked kinship groups centered around patri-clan heads, Herero society became a society characterized by strongly centralized chieftancies centered upon specific geographical areas". Gewald, at p. 28.

"The process of social differentiation had advanced so far that the outlines of a class

structure were already beginning to appear. The basis of this structure was the possession of cattle, which were the principal means of production in private hands... Property rights to cattle were protected by a well organized juridical system.” *Heinrich Loth, Die Christlich Mission in Sudwestafrika* (Berlin 1963) at pp. 23-24, cited by Bridgman, at p. 18.

24. Land was held communally.

25. “The Hereros had a reasonably well-developed sense of orderly international relations and they regulated their affairs with other tribes on the basis of treaties.” Bridgman, at p. 20.

26. “The Hereros system of law (evinced) an elementary sense of equity and justice.” *Id.* at pp. 20-21.

27. “By 1876 the Herero of Central Namibia were living in what can only be described as an age of plenty,” Gewalt, at p. 27, under four principal Herero Chiefs who “...were all closely related, not only in kinship terms... to create a new form of centralized Herero polity”. *Id.* at p. 28.

Major groupings such as the Herero, Hottentot and Ovambo are and were identifiable groups to which the term ‘tribe’ is properly applied. *See Bridgman*, at p. 28.

28. The Herero tribe was and is a tribe of racial social, cultural and political distinctiveness, and as such was and is entitled to the protection of international law.

29. By 1877, according to the British Commissioner, the South West African indigenous population of 235,850 people included 85,000 Hereros and 98,000 Ovambos.

30. By 1894, according to the German Governor, the South West African indigenous population of 244,000 people included 80,000 Hereros and 109,000 Ovambos.

31. In 1904, the Hereros population -- one of the three major groupings in South West Africa -- was estimated at 80,000.

(c) The German Commercial Colonial Enterprise  
Pierces South West Africa

32. Imperial Germany and its commercial allies formed a *de jure* and a *de facto* German commercial enterprise in South West Africa after observing the extraction of enormous wealth from Africa by other European powers and commercial interests; the Belgians in the Congo, the French in their colonies, the Portuguese in Angola, Mozambique and Cape Verde, and Spain in Equatoria Guinea.

33. German missionaries had established a presence in South West Africa in the 1840's. By 1870, the missionaries had become commercial agents for the German commercial enterprise. "In 1870, the German missionaries in Southwest Africa formed the Missions-Aktiengesellschaft ("Mission Company") with a capital of 708,000 <sup>DM</sup> (marks); they used this base to become, by the end of the 1880's, virtual monopolists of the firearms trade to the colony.... (T)he missionaries appeared to act as agents of the German colonial administration by recruiting African labor for domestic or agricultural service..." Bridgman, at pp. 35-36.

34. Imperial Germany's nineteenth century extra-European policy mandated coordination with commercial entities that was so complete that the interests of Imperial Germany and of the commercial interests were indistinguishable.

35. Otto Von Bismarck, the Chancellor of the German Empire, enunciated that policy as follows:

"The German Empire cannot carry on a system of colonization like that of France.... It cannot send out warships to conquer territories overseas, that is, it will not take the initiative; but it will protect the German merchant even in the land, which he acquires. Germany will... establish Charter Companies, so that the responsibility always rests with them... I would (grant) to these merchants something like Royal Charters... I do not wish to found provinces, but to protect

commercial establishments in their own development.... (T)he whole responsibility rests with (the merchant)". Townsend, M., The Rise and Fall of Germany's Colonial Empire 1884-1918, (New York 1930), at p. 119, quoted in Bridgman, at p. 92.

36. "In the early 1880's German influence in Southwest Africa was stronger than that of any other European power, but for all that it was still miniscule. A few dozen traders, a handful of missionaries and a prospector or two in a land half again as large as Germany constituted the whole of German influence." Bridgman, at p. 39.

37. In 1883, a German merchant from Bremen -- Adolf Luderitz -- sought assistance from Imperial Germany for a plan to establish commercial interests in South West Africa. He received contingent assurances from Imperial Germany, and, as a consequence, in May 1883 he purported to purchase the harbor of Angra Pequena, later named Luderitz Bay, and 25 square miles surrounding the harbor, from an Orlam Chief. Bridgman, at p. 40. Both Luderitz and Imperial Germany knew the purchase was obtained by fraud. Gewalt, at p. 31. In August 1883, Luderitz fraudulently obtained a strip of coast 50 miles long and 20 miles wide, north of the harbor.

38. In April 1884, Imperial Germany declared that Luderitz and his territory "... are under the protection of the Reich. During the next two years agents of Luderitz as well as those of the German government expanded the initial holding so that by 1886 the whole of Southwest Africa was in someway in the German sphere of interest." Bridgman, at p. 41.

39. Imperial Germany's intrusion in Southwest Africa was ratified by European powers at the Berlin Conference in late 1884. At the conference, Germany acknowledged its duties of preserving the "aboriginal" races of Africa, of watching over their interests, and of cultivating their moral and material advancement and development. In return, Germany received from European

conferes jurisdiction over 322,450 square miles of territory in South West Africa. German control of Togo, Cameroon and Tanzania was approved in that year.

40. In the 1880's, the European demand for indigenous labor increased. "Throughout the 1880's, as the mines of Kimberley (and after 1884 the mines of the Witwatersrand) consumed all available labor, farms in the Western Cape were... short of labor. The Public Works Department of the Cape Colony sought ways to alleviate this labor shortage and attempted to increase the import of labor from Central Namibia. The resident magistrate in Walvisbay... noted that substantial amounts of money would be necessary if he were to induce the Herero not to 'put a stop to the efflux of their Helots'." *Gewald*, at p. 67. That "efflux," in fact, "... was essentially seen as a process of capture." *Id.* at p. 66.

"Luderitz began negotiations with an English company to sell his holdings... Prodded by Bismarck, a group of prominent German businessmen, including the bankers Bleichroder and Von Hanseemann, formed the Deutsche Sudwestafrika Gesellschaft and bought out Luderitz for 500,000<sup>DM</sup> (marks)." *Bridgman*, at p. 53. Defendant Deutschesbank was a principal investor in the new venture, took a leading and active role in the venture's activities, took a leading and active role in the German colonial enterprise.

41. The new company at first found no evidence of mineral wealth and concluded that stock-raising was limited to the central plateau, which it did not control. As a result, it sustained losses in its initial year and declined to participate with Imperial Germany as a charter company, "... which would have saddled them with the expense and responsibility of ruling the area." *Bridgman*, at p. 53. Nonetheless, on April 2, 1885, in Berlin, defendant Deutsche Bank obtained a corporate commitment to "... take over the exercise of state sovereignty, as far as that can be transferred to the

company on behalf of its territories.”

42. In April 1885, Bismarck sent Dr. Heinrich Ernst Goering, the father of the Reichsfeld Marshall, to administer Imperial Germany’s commercial interests in German South West Africa.

43. By 1886, the Deutsche Kolonialgesellschaft for Sudwestafrika informed the German government that it was near bankruptcy. Both the directors and the missionaries sought Imperial Germany’s intervention to protect their commercial interests. As Bismarck often stated, “the missionary and the trader must precede the soldier.”

44. “On June 25, 1889, Bismarck sent 21 men commanded by Captain Curt Von Francois to the colony...

With the arrival of Von Francois, the German commitment in South West Africa assumed new dimensions. For better as for worse, South West Africa became a German colony and a direct responsibility of the German government and the German colonial enterprise as a whole. After the arrival of Von Francois, German authority was dependent on military force and not on treaties. The people of South West Africa were to obey the Germans not because they had agreed to, but because the Germans had the force to coerce them. Von Francois’ first act was to establish his headquarters at Windhoek, partly because it was strategically located in the center of the colony... and partly because the lands around the town were the most promising for white settlement.” Bridgman, at pp. 42-43. The German commercial enterprise was formalized.

45. The overriding objectives and demands of the German commercial enterprise were tragically and inalterably fixed by 1890. Because Imperial Germany wished to avoid reliance on access through Portuguese Angola, British Bechuanaland or the Cape Colony, and because the German commercial enterprise did not wish to rely on non-German merchants, access to German

South West Africa was pursued through the coast. The construction of a railroad from Swakopmund to Windhoek, and a second Otavi railroad through the heart of Herero territory, became priorities. Labor pools had to be obtained by force from the indigenous populations. Grazing lands had to be given to white settlers. The large tribes had to be controlled and, eventually, reduced to mere pools for labor.

46. “As the colonial propagandist and former German government colonial official Paul Rohrbach argued: The decision to colonize... means nothing less than that the Native tribes must withdraw from the lands on which they have pastured their cattle and so let the white man pasture his cattle on the self same lands. If the moral right of this standpoint is questioned, the answer is that for people of the cultural standard of South African natives, the loss of their free national barbarism and the development of a class of workers in the service of and dependent on the whites is primarily a law of existence in the highest degree.” Bridgman, at p. 51.

(d) The German Colonial Enterprise Rejects Cooperation and Conciliation with The Indigenous Peoples of South West Africa and Willingly Embarks on A Brutal Course Leading to the Enslavement and Extermination of the Hereros

47. In the final decade before the turn of last century, the German commercial enterprise in South West Africa deliberately rejected a policy of cooperation and conciliation with the indigenous people of South West Africa. Instead, the enterprise embarked on a brutal course leading to the enslavement and the virtual extermination of the Herero tribe and its culture.

48. In July 1890, at the Anti-Slavery Conference in Brussels, Germany pledged and resolved to protect the native races of Africa from slavery and oppression. In German South West Africa, that pledge evaporated in the face of the brutal demands of the German commercial enterprise.

49. In May 1891, the Kolonialgesellschaft, at a meeting in Berlin, re-affirmed its

commercial association with and its reliance on Imperial Germany resolving:

“That this meeting regards the Colony of South-West Africa as one of the most valuable German dependencies. Owing to its situation that colony is destined to secure to Germany its decisive position in South Africa.... In order to promote the development of the colony in the right direction and to utilise for the benefit of the mother-country all the advantages to be there derived, the Imperial Colonial Administration should come to the help of the spirit of German enterprise.... (T)he costs of an established government... will very soon be covered by the revenue of the colony.” Report on the Natives of South-West Africa and Their Treatment by Germany. Presented to Both Houses of Parliament By Command of His Majesty (August 1918) (“The Blue Book”), at p. 23.

50. “The German government, which was anxious to lessen the costs of its colonial venture, sold concessions to land companies for extensive tracts of land in Namibia, and encouraged settlers to move to Namibia. There, in 1892 the German government granted land, earmarked for settlement by homesteaders in the Windhoek area, to the Deutschen Kolonialgesellschaft.” *Gewald*, at p. 48.

51. “Settlement terms were very generous. Each homesteader was granted three to four Morgen of irrigable land and grazing rights to further land. After five years’ ownership, the land reverted to the settler who, in turn, had to pay a small fee for water and grazing rights and was obliged to build a house and grow crops.” *Id.* at p. 48.

52. By September 1892, pursuant to those agreements, traders had established various companies. By that time, each of the defendants, or their predecessors, had established themselves in German South West Africa, and each of the defendants, or their predecessors, had assumed active, significant, influential and profitable roles in the German commercial enterprise and participated fully in all decisions and actions undertaken by the German commercial enterprise in Southwest Africa.

53. The Imperial German government formed the South West Africa Company (“SWACO”) and “...unable to entice capital from the German market, floated the SWACO with capital from the London stock market. The newly-founded company was given extensive mineral and mining rights in northern Namibia.” Gewalt, at p. 70. German colonists arrived in large numbers in 1892.

54. By 1892, the defendants, as part of the German commercial enterprise, had commenced a comprehensive policy of territorial acquisition and control, and forced labor.

55. By the end of 1892, the indigenous people of South West Africa began to challenge forced relocation and forced labor. As reports from an 1892 SWACO survey stated:

“Manasse and his Raad continuously ask if we were involved with the Governor... and I knew if he got in any way to understand that we were with the Germans, we would go no further. This is *our* country! We are *owners* of it! We do not want war! We are for peace. We have been cheated many times before; but now our eyes are opened, and when once you could buy our land with a bottle of whiskey or a suit of clothes, that time is all gone by....

...(T)he councillors would only allow them to proceed: as an English company from London acknowledging... the Herero... right as owners of the country through which we will pass and accepting the protection of the chief Manasse while in his country....

(T)he feeling in the Raad and of the natives generally appears to be very bitter against the German authority....

(I)t is not possible to do any work here without the protection of an armed force (internal ellipses and brackets omitted, emphasis in original).” Gewalt, at pp. 70-71.

56. “Speaking in the Reichstag on March 1, 1893, the German chancellor Count von Caprivi (declared): ‘We have South West Africa... I shall avoid retrospective consideration as to how we got it.... Now it is a German land and must remain a German land.’ Bridgman, at p. 43. Von Francois received 250 additional troops from Germany.

58. At that time, Chief Hendrik Witbooi wrote to the English magistrate at Walris Bay, and reported:

“The German himself (von Francois) makes no requests according to truth and justice and asks no permission of a chief. He introduces laws into the land which are entirely impossible, untenable, unbelievable, unbearable, unmerciful and unfeeling.... He personally punishes our people at Windhoek and has already beaten people to death for debt. It is not just and right to beat people to death for that. He flogs people in a shameful and cruel manner. We stupid and unintelligent people, for so he thinks us to be, we have never yet punished a human being in such a cruel and improper way....”  
Bridgman, at p. 45.

59. On April 12, 1893, the German colonial enterprise, through von Francois, surrounded Witbooi’s camp at Hoornkrans. Von Francois issued the following order: “The troops have the task of annihilating the Withbooi tribe.” Without warning, “the Germans attacked, killing 150, including 78 women and children.” Bridgman, at p. 45. As Hendrik Witbooi later wrote:

“I knew of no war... therefore I was completely at peace.... (I)n this way (von Francois) captured our place, and destroyed the place in the most terrible manner, as I had never imagined from a white civilised nation, which knows the laws and conduct of war, but he robbed me, and small children, which still keep at their mother’s breast, and bigger children and women he shot them dead, and many corpses, which he had already shot dead, he placed in grass houses which he lit and burnt the bodies to ash....”  
Gewald, at pp. 54-55.

60. Despite brief criticism in the Reichstag over the slaughter of women and children, the German colonial enterprise resisted the removal of von Francois. Instead, Imperial Germany sent Major Theodor Leutwein, a professional soldier with a legal background and a classical education, to investigate means to preserve the power of the German colonial enterprise in South West Africa. He arrived in January 1894 and was made governor and military commander in the spring of that year.  
Bridgman, at pp. 46-47.

61. Leutwein "... was determined to create in South West Africa... an extension of the German state, inhabited by Germans and governed by German laws,... realizing that such a policy would result in the destruction of the existing tribal society and reduce the native population to the level of serfdom." Bridgman, at p. 47.

62. Leutwein identified two major problems: the supply of labor and the resistance of Chief Manasse. Gewalt, at p. 79. Though "... the best grazing land belonged to the Hereros...," Leutwein "... encouraged the whites to become cattle ranchers." Bridgman, at p. 49. The German settler and the German trader were, in fact, not distinct or separate occupations. Blue Book, at p. 47.

63. The German colonial enterprise imposed new boundaries on the indigenous people of South West Africa by force of arms, by threat of force of arms, and by exorbitant commercial pressure, including fraud, unconscionable debt collection practices and withholding medicines and vaccines.

64. "As the newly-delineated boundaries were enforced and the expulsion continued, Herero attempted to escape the ever encroaching boundaries and withdrew away from the German threat of dispossession. There was but one way in which they could move, northwards ever deeper into the newly-delineated Hereroland.... (A)s Leutwein noted: It is certain that throughout Hereroland a certain spirit has emerged. The people see themselves and their means of existence as being under threat from all sides, and they no longer know where to turn with their enormous cattle herds. Leutwein expressed the hope that once the population pressure became acute, the Herero would be forced to sell their huge herds to the European settlers." Gewalt, at p. 101.

65. By 1895, Imperial Germany had awarded to concessionary companies, including some defendants or their predecessors, the land rights, and the mining rights, to virtually all of Southwest

Africa. SWACO, the German Colonial Company for South West Africa, the Damaraland Guano Company for South West Africa, The Kaoko Land and Mining Company, and the Hanseatic Land, Mining and Trading Company obtained concessions in which defendants held interests, and in which Imperial Germany held interests. The German colonial enterprise, including the defendants, was a land hungry and a labor hungry institution.

66. On the demands of the German colonial enterprise, including but not limited to defendants, the land companies and German settlers, Leutwein enforced the new boundaries by force. When the Khaves Khoi tribe resisted, the German colonial enterprise brutally attacked. “The Khaves Khoi ceased to exist as a political entity. In a policy of genocide all Khaves Khoi survivors were captured and take to Windhoek, where they were placed in a concentration camp, and used as forced labor by the German colonial state.” Gewalt, at p. 108.

67. Even Leutwein’s policies were insufficient to meet the increasingly brutal demands of the German colonial enterprise. “In late 1895 and early 1896, German settlers held stormy meetings in Windhoek calling for the immediate dismissal and replacement of Theodor Leutwein with a more forceful colonialist. Settler representative Carl Weiss submitted petitions to the Imperial German government complaining about Leutwein’s all to mild an *Eeingeborenen politik*, in particular regard to the Hereros.” Gewalt, at p. 106.

68. “From 1896 to 1903 the Herero saw much of their best lands and a good portion of their cattle pass into the hands of the white man.” Bridgman, at p. 50. “Up to 1900 only a minor portion of the Herero hereditary lands had been alienated, but with the completion of the railroad to Windhoek the pace of alienation accelerated rapidly, so that by the end of 1903 three-and-one-half million hectares out of a total of thirteen million hectares had been lost, and the day when the Hereros

would not have enough land to continue their traditional way of life was fast approaching.” *Id.* at p. 57.

69. Defendants, as part of the German colonial enterprise, fomented racial hatred, which led to genocide. “The newer arrivals saw the black Africans at best as nothing but a potential source of cheap labor, and some even raised the question whether the colony would not be better off if the black population were completely eliminated.” Bridgman, at p. 60.

70. “White settlers normally referred to black Africans as ‘baboons’ and treated them accordingly.... (T)he average German... holds that the native has a right to exist only in so far as he is useful to the whiteman. It follows that the whites value their horses and even their oxen more than they value the natives.” Bridgman, at p. 62.

71. “The consciousness of being white, which had no doubt played a major role in German actions from the very beginning, became a dominant factor for those colonists who came with wives and children. In 1903 there were about 4000 white males in South West Africa and only 700 white women. The inevitable result... (f)rom the perspective of the natives (was) that the German men took their women, peacefully if possible, but otherwise by force.” *Id.* at p. 61.

72. Imperial Germany shared those racist views. “When Matthias Erzberger, speaking in the Reichstag, pointed out that black men had immortal souls just as the Germans did, he was hooted down by the whole right side of the house.” *Id.* at p. 63.

73. From 1899 to 1903, Leutwein attempted to limit the rapidity of the expulsion of the Hereros by the German colonial enterprise. He proposed credit regulations, and the creation of reserves of Herero land. Following a torrent of opposition from the German colonial enterprise, the Imperial German government rejected those proposals.

74. The German colonial enterprise imposed increasingly racist and oppressive conditions. The German Colonial Federation demanded that: (a) “every coloured person must regard a white man as a superior being;” and (b) “in court, the evidence of one white man can only be outweighed by the statements of seven coloured persons.” Blue Book, at p. 33.

75. Over protests, the Germans desecrated the burial place of the great chiefs Tjamuaha and Kamaherero, turning the sites into vegetable gardens.

76. The German colonial enterprise, including the defendants, the Imperial government, the Director of the Land Syndicates, the director of the Trading Syndicates, and the traders and settlers in South West Africa described as “monstrous” and “unheard of” every attempt to avoid land confiscation, cattle confiscation, forced labor, and extermination. Blue Book, at p. 50.

77. The German colonial enterprise, including the defendants, the Imperial government, and the white settlers, soldiers, traders, and policemen adopted as policy the brutal aphorism that “leniency towards the native is cruelty to the whites.” *Id.* at p. 53. “During the period 1890-1904 very many Hereros were done to death in one way or another or died as a result of brutal floggings and ill-treatment.” *Id.* at p. 53.

78. By 1900, the German colonial enterprise, including defendants, exercised complete control over all of German activities in South West Africa.

79. The Otavi Mines and Railway Company (“OMEG”) was founded on April 6, 1900, with the legal status of a “German Colonial Company.” Its stated purposes were the exploitation of copper deposits in Southwest Africa and the construction of a rail system in South West Africa. Arthur Koppel was the OMEG official charged with responsibility for the construction of the railway lines.

80. Deutsche Bank was a member of the OMEG governing board from 1900 to 1938. Disconto-Gesellschaft (“Disconto”), one of Germany’s largest banks by 1903, which merged with Deutsche Bank in 1929, was a principal investor in OMEG. Adolph von Hansemann of Disconto was OMEG chairman from 1900 to 1903. Alexander Schoeller of Disconto was OMEG chairman from 1903 to 1911.

81. The Woermann Shipping Line had, by 1900, established complete control of the shipping and harbor enterprises in South West Africa. All materials for the OMEG railway were shipped by and through Woermann on a monthly schedule. Woermann employed slave and forced labor of over 1000 people to load and unload ships at Swakopmund.

82. By 1903, SWACO, still a wholly-owned company of Imperial Germany, was a principal shareholder in OMEG.

83. In order to obtain their extravagant financial objectives, the German colonial enterprise, including the defendants, required slave labor, forced labor, land, and the elimination of the Herero as a racial, political, ethnic and tribal entity.

84. By 1903, OMEG commenced construction of a railway line from Swakopmund to Tsumeb. Mining operations in Tsumeb commenced no later than 1905.

85. By 1903, Leutwein’s minimal efforts to restrain the German colonial enterprise’s attempts to confiscate all Herero land and cattle had brief and limited success, but his efforts “... ensured (the enterprise’s) undying opposition when his actions effectively cut them off from cheap land and their envisaged dream of living as a colonial landed gentry.” Gewalt, at p. 144.

86. In 1903 and 1904, under pressure from the German colonial enterprise, Imperial Germany unilaterally, and through forgeries, removed more territory from the Hereros. “It was in this

aggressive atmosphere of crude disregard for Herero rights, on the part of the settlers and their *Schutztruppe* allies, that rumors of an impending Herero uprising started.” *Id.* at p. 148.

87. “The newer arrivals saw the black Africans at best as nothing but a potential source of cheap labor, and some even raised the question whether the colony would not be better off if the black population were completely eliminated. Indeed, when the rebellion broke out, a number of settlers voiced the opinion that the uprising was a positive advantage since it gave the Germans a chance to annihilate the natives.” Bridgman, at p. 60.

88. “... (T)he settlers began pushing the natives, hoping to drive them to some desperate act which would permit a final solution to the ‘black problem.’” *Id.* at p. 64.

89. On January 19, 1904, the military commander of Swakopmund recommended to the German Foreign Office that “the Hereros be disarmed, ruthlessly punished, and made to do forced labor on the railroads.” *Id.* at p. 86. “One hears nothing but talk of ‘cleaning up,’ ‘executing,’ ‘shooting down to the last man.’” *Id.* at p. 86.

(e) The German Colonial Enterprise Deliberately Exterminates the Herero

90. The German colonial enterprise, in 1904, consciously and in violation of fundamental principles of international law in existence at that time, contrived to engage in a “... phoney war...,” Gewalt, at p. 178, leading to the destruction, and enslavement, of the Herero.

91. Between January 12, 1904 and April 13, 1904, the Germans suffered approximately 210 losses, and the Herero suffered 250 losses, in seven military skirmishes. Bridgman, at p. 108.

92. Leutwein made a final attempt to forestall the approaching extermination. He sought to respond to the Hereros’ desire to reach a settlement, and wrote to Imperial Germany that:

“I do not concur with those (fanatics) (strident voices) who want to

see the Herero destroyed altogether. Apart from the fact that a people of 60,000 or 70,000 is not so easy to annihilate, I would consider such a move a grave mistake from an economic point of view. We need the Herero as cattle breeders, though on a small scale, and especially as labourers. It will be quite sufficient if they are politically dead.” Gewalt, at 169, and see Bridgman, at pp. 85-86.

93. The German colonial enterprise responded brutally, forcing Leutwein’s replacement as military commander with General Lothar von Trotha. “It was about this time (Summer, 1904) that Leutwein, having been declared too lenient, was superseded by von Trotha. This new commander was noted in Berlin for his merciless severity in dealing with natives. In the Chinese Boxer rebellion, he had carried out his Imperial master’s instructions to the letter; and no more worthy son of Attila could have been elected for the work in hand. He had just suppressed the Arab rebellion in German East Africa by bathing that country in the blood of thousands of its inhabitants, men women and children; and his butchery there ended, he was ordered by Wilhelm II to proceed to German South-West Africa and deal with the rebel natives.” Blue Book, at p. 59.

Many of the soldiers under General Lotha von Trotha in China were sent to German South West Africa. On the occasion of their departure for China, the Kaiser in his famous speech on the docks stated that “We should take no prisoners.” This policy was repeated in German South West Africa.

94. By the time of von Trotha’s arrival in June 1904, Herero military challenges had ceased. “The bulk of the Herero nation however clinging to their remaining cattle and small stock, had withdrawn into the mountains of the Waterberg and the bushwell north of Gobabis.” Blue Book, at p. 59.

95. Leutwein’s appeal to “preserve the Herero nation,” Gewalt, at p. 170, was rejected by

the German colonial enterprise and by von Trotha. Leutwein was ordered to refrain from interference with von Trotha. Von Trotha declared to Leutwein:

“I know the tribes of Africa... They are all alike. They only respond to force. It was and is my policy to use force with terrorism and even brutality (gruesomeness). I shall annihilate the African tribes with streams of blood and streams of gold.” Bridgman, at pp. 111-112, Gewalt, at p. 174.

96. The German colonial enterprise selected von Trotha to implement a genocidal extermination of the Herero tribe.

97. By August 1904, the German colonial enterprise embarked on a policy of extermination. The policy was clear: “... that this dealt with the extermination of a whole tribe, nothing living was to be spared... (T)he orders were an extermination... with no turning back.” Gewalt, at p. 174.

98. In August 1904, at Ouparakane, after shooting a Herero husband and wife searching for food, the German officer said: “These swine must all be killed; we are not going to spare a single one.” Blue Book, at p. 66.

As Major Ludwig von Estorff wrote, in September 1904:

“... I followed their spoor and found numerous wells which presented a terrifying sight. Cattle which had died of thirst lay scattered around wells. These cattle had reached the wells but there had not been enough time to water them. The Herero fled ahead of us into Sandveld. Again and again this terrible scene kept repeating itself. With feverish energy the men had worked at opening the wells, however the water became ever sparser, and wells evermore rare. They fled from one well to the next and lost virtually all their cattle and a large number of their people. The people shrunk into small remnants who continually fell into our hands..., sections of people escaped now and later through the Sandveld into English territory [present-day Botswana]. It was a policy which was equally gruesome as senseless, to hammer the people so much, we could have still saved many of them and their rich herds, if we had pardoned and taken them

up again, they had been punished enough. I suggested this to von Trotha but he wanted their total extermination.” Gewalt, at p. 174.

99. In October 1904, the German colonial enterprise, with a wicked and depraved disregard of the fundamental tenets of international law, humanity and decency, publicly decreed its policy of genocide.

100. Von Trotha, as agent for the German colonial enterprise, including the defendants, and with their actual and constructive knowledge, acquiescence and consent, on October 2, 1904, at Osombo-Windimbe in South West Africa, issued his infamous “*Shrecklichkeit*,” or extermination order, which decreed:

“Any Herero found within the German borders with or without a gun, with or without cattle, will be shot. I shall no longer receive any women and children. I will drive them back to their people or I will shoot them. This is my decision for the Herero people. The Great General of the Mighty Kaiser.” Bridgman, at p. 129, Gewalt, at pp. 172-173.

101. On the same day, von Trotha wrote: “I believe that the nation as such should be annihilated.... I find it most appropriate that the nation perishes instead of infecting our soldiers and diminishing their supplies of water and food.... They have to perish in the Sandveld or try to cross the Bechuanaland border.” Gewalt, at p. 173, Bridgman at pp. 128-129.

102. Leutwein immediately raised with the Foreign Office a jurisdictional question about the extermination order. “When the Foreign Office answered that von Trotha alone had authority to deal with the natives, Leutwein asked to be relieved of his duties (as governor).” Bridgman, at p. 129.

103. By October 1904, the German colonial enterprise had plunged Southwest Africa into a blood bath of unrelenting crimes against humanity.

104. Bushmen allied with Germans “... refused to kill Herero women and children, but the

Germans spared none. They killed thousands and thousands. (They) saw this bloody work for days and days and every day. Often... the young Herero women and girls were violated by the German soldiers before being killed.” Blue Book, at p. 65.

105. “The Germans... killed thousands and thousands of women and children along the roadsides. They bayoneted them and hit them to death with the butt ends of their guns. Words cannot be found to relate what happened; it was too terrible. They were lying exhausted and harmless along the roads, and as the soldiers passed they simply slaughtered them in cold blood. Mothers holding babies at their breasts, little boys and little girls; old people too old to fight and old grandmothers, none received mercy, they were killed, all of them, and left to die and rot on the veld for the vultures and wild animals to eat. They slaughtered until there were no more Hereros left to kill.” Blue Book, at p. 65.

106. At a water hole beyond Hamakari, “... a German soldier found a little Herero baby boy about nine months old lying in the bush. The child was crying. He brought it into the camp.... The soldiers formed a ring and started throwing the child to one another and catching it as if it were a ball.... After a time they got tired of this and one of the soldiers fixed his bayonet on his rifle and said he would catch the baby. The child was tossed into the air towards him and as it fell he caught it and transfixed the body with the bayonet. The child died in a few minutes and the incident was greeted with roars of laughter by the Germans....” Blue Book, at pp. 64-65.

107. At Katjura, the Germans “... discovered eight or nine Herero women who had been left behind. Some of them were blind. Water and food had been left with them. The German soldiers burnt them alive in the hut in which they were lying.” Blue Book, at p. 65.

108. At the Waterberg, 25 Herero were placed in a small enclosure of thorn bushes. “They

were confined in a very small space, and the soldiers cut dry branches and piled dry logs all round them- men, women and children and little girls were there- when dry branches had been thickly piled up all round them the soldiers threw branches also on the top of them. The prisoners were all alive and unwounded, but half starved. Having piled up the branches, lamp oil was sprinkled on the heap and it was set on fire. The prisoners were burnt to a cinder.... The Germans said: ‘we should burn all these dogs and baboons in this fashion.’” Blue Book, at pp. 66-77.

109. “...(T)he hanging of native was a common occurrence. A German officer had the right to order a native to be hanged. No trial or court was necessary. Many were hanged merely on suspicion.... The Germans did not worry about rope. They used ordinary fencing wire, and the unfortunate native was hoisted up by the neck and allowed to die of slow strangulation.... Natives who were placed in (jail) at that time never came out alive. Many died of sheer starvation and brutal treatment.... The Hereros... were once a fine race. Now we have only a miserable remnant left.” Blue Book, at p. 66.

110. The atrocities set out in paragraphs 104 to 109 were gruesomely typical examples of the conduct of the German colonial enterprise throughout 1904 to 1905. Blue Book, at p. 67. “Evidence of violation of women and girls is overwhelming, but so full of filthy and atrocious details as to render publication undesirable.” *Id.* at p. 67.

111. Throughout this period the Hereros were not fighting. They were merely “... fugitives in the bush. All the water-holes on the desert border were poisoned by the Germans before they returned. The result was that fugitives who came to drink the water either died of poisoning or, if they did not taste the water, they died of thirst.” Blue Book, at p. 67.

112. In November 1904, Imperial Germany reiterated its position:

“One can agree with his plan of annihilating the whole people of driving them from the land. The possibility of white living peacefully together is very slight unless at first the blacks are reduced to forced labor, that is, a sort of slavery. An enflamed racial war can be ended only through the annihilation or complete subjugation of one of the parties.” Bridgman, at p. 130.

113. In late December 1904, the extermination order was modified as follows, “Those Hereros who surrendered would not be shot... but they were to be chained, used for forced labor, branded with the letters GH (*gefangene Herero*) and any who refused to reveal the whereabouts of weapons caches were to be shot out of hand.” Bridgman, at p. 131.

114. By the end of September 1905, “... there could hardly have been more than a few dozen free Herero in all of Hereroland. In the German camps there were 10,632 women and children and 4,137 men.” Bridgman, at p. 131. By order of the German Reichskanzler, “those Herero who surrendered were placed in concentration camps (*Konzentrationslagern*) in various parts of the country where, under guard, they could then be used for labors.” Gewalt, at p. 186. Out of 80,000 men, women and children, the German colonial enterprise had exterminated all but 15,000.

115. Not content with decimating the tribe, the German colonial enterprise was determined to reduce the handful of survivors to slavery, impoverishment and hopelessness.

116. “So demoralized were the survivors that it did not seem possible that the tribe as such would ever recover from the catastrophe.” Bridgman, at p. 131.

117. “The death-rattle of the dying and the shrieks of the mad.... So one German soldier described the end of the Hereros. The German official historians were blunter: The Hereros ceased to exist as a tribe (internal quotations omitted).” Bridgman, at p. 131.

118. “When the labor of the black man was no longer needed, the Germans were quite

frank in admitting that the best, and indeed perhaps the only solution, would be ‘extirpation.’  
...(T)he work of extirpation was going on, limited only by the colony’s need for sufficient  
manpower.... (T)he bureaucrats knew all the revolting details of the slaughter....” Bridgman, at pp.  
167-168.

119. By 1905, the German colonial enterprise was brutally employing concentration camps,  
forced labor, medical experimentation and abuse of women against the remnants of the Herero.

(f) The German Colonial Enterprise Subjects the Remnants  
of the Herero to Slavery, Forced Labor, Abuse of Women  
and Medical Experimentation

120. “Between 1905 and 1908 the majority of the Herero survivors were incarcerated in  
concentration camps and allocated as forced labourers to civilian, administrative and military  
enterprises alike. The majority of the camp inhabitants were women.” Gewalt, at p. 288.

121. “...(S)ettlers and colonial businesses demanded captured Herero for labour purposes.”  
Gewald, at p. 187. In 1905 the German colonial enterprise decided that civilians and civilian colonial  
businesses would be permitted to use captured Herero for labor purposes.

122. “Civilians could collect their daily allotments from various camps, whilst large civilian  
companies, such as the Woermann shipping company, maintained their own camps.” Gewalt, at p.  
187.

123. The Woermann Line, OMEG, SWACO and Orenstein-Koppel, with the financial  
support of Deutschesbank, brutally used the concentration camp system for their economic benefit.

124. The prisoners were used for the building of railway lines between Usakos and Otavi  
and later between Luderitz and Keetmanshoop. No less than 45 percent of those transported to  
Luderitz as forced labor on the railway died. Imperial Germany estimated a death rate above sixty-

seven percent. High priority was given to activities that directly supported the military establishment, such as the construction of port facilities and railways. High priority was also given to the vital commercial interests of the German colonial enterprise, particularly OMEG, Orenstein-Koppel and Woermann. “(T)he Woermann shipping line (was) a major recipient of the forced labour.” Gewalt, at p. 190.

125. Conditions in the camp were horrendous. Gewalt, at p. 188.

126. “Prisoners of war... were placed behind double rows of barbed wire fencing, which surrounded all the buildings of the harbour department quarters and housed in pathetic structures constructed out of simple sacking and planks, in such a manner that in one structure 30-50 people were forced to stay without distinction as to age and sex. From early morning until late at night, on weekdays as well as Sundays and holidays, they had to work under the clubs of raw overseers, until they broke down. Added to this the food was extremely scarce.... Like cattle hundreds were driven to death and like cattle they were buried. This opinion may appear hard or exaggerated,... but the chronicles are not permitted to suppress that such a remorseless rawness, randy sensuality, brutish overlordship was to be found amongst the troops and civilians here that a full description is hardly possible.” Missionary Vedder, quoted in Gewalt, at p. 188.

127. “Herero prisoners were subjected to extreme forms of exploitation, abuse and mistreatment.... (T)he missionaries were unable to prevent women and girls from being subjected to sexually degrading (behavior and) rape....” Gewalt, at pp. 200-201. “... (T)his mistreatment of Herero was not merely incidental but structured....” Gewalt, at p. 195.

128. “In their bare cells, which were filthy and full of vermin of all sorts, the prisoners were horded together. They got no blankets, and had to sleep in their sack uniform on the cold stone

floors even throughout the winter. No clothing was given to them.... (A)n empty sack (a grain bag) in which a slit had been made for his head to pass through and two holes cut for the arms was all he was allowed to wear.” Blue Book, at p. 117.

129. In 1906, in Luderitzbucht, one observer testified: “I perceived nearly 500 native women lying on the beach, all bearing indication of being slowly starved to death.... (Between) Kubub and Aus... I discovered bodies of native women.... Some bore signs of having been beaten to death.... Germans are absolutely unfit to colonize, as their atrocious crimes and cold-blooded murders were committed with one object- to extinguish the native race.” Blue Book, at p. 100.

130. One observer of the Swakopmund concentration camp testified: “The women were made to do hard labour just like the men.... The women were put in spans of eight to each Scotch-cart and were made to pull like draught animals. Many were half-starved and weak, and died of sheer exhaustion. Those who did not work well were brutally flogged.... The soldiers used the young Herero girls to satisfy their passions.” Blue Book, at p. 100.

131. One observer at the Tsumeb testified: “I was made to work on the Otavi line which was being built. We were not paid for our work.... Whether they worked or were lazy they were repeatedly (flogged) by the German overseers.... I had 528 people, all Hereros, in my work party. Of those 148 died while working on the line.... Young girls were raped and very badly used.” Blue Book, at pp. 101-102.

132. One observer at Keetmanshoop testified: “...(N)atives... were dying from sheer starvation.” Blue Book, at p. 102.

133. One observer on a railway observed: “When the railway from Luderitzbucht to Keetmanshoop was started gangs of prisoners, mostly women, scarcely able to walk from weakness

and starvation, were employed as labourers. They were brutally treated.” Blue Book, at p. 102.

134. An estimated 4000 prisoners passed through the Swakopmund concentration camp. Between 2500 and 2750 of these people died from brutal treatment. Throughout the concentration camp system, no fewer than 7,682 Hereros, nearly half of those condemned to the camps, died due to brutal treatment.

135. German geneticist Eugene Fischer commenced his racial medical experiments in the concentration camps in South West Africa. He used the Herero and mulattos-- the offspring of the German settlers and Herero women-- as guinea pigs.

Fischer tortured Herero men and women to explore his horrific theories about race. A book he wrote about his findings, The Principle of Human Heredity and Race Hygiene, was a favorite of Adolf Hitler. Fischer later became chancellor of the University of Berlin, where he taught medicine to Nazi physicians, including Josef Mengele.

136. The unimaginable brutality of the concentration camp system was not limited to the camps themselves, but was consistently applied by the commercial interests which profited from the slavery and forced labor. The system of assignment of forced labor was administered by the police, whose ranks were filled by the soldiers who implemented the 1904 extermination order.

137. One observer at Tsumelo testified:

“The German Government was very severe and harsh. We got no protection from the law. We were forced to work for harsh masters who ill-treated us, and for whom we would not willingly work. We were not allowed to select our own masters. We were simply ordered to go and work for a man. If we did not go or tried to get permission to work for a more humane master, the only reply was a kicking or flogging. Our masters had the right to flog us; the police could flog us if our masters complained. Cases like this never came to court. The police dealt with such matters summarily. If our masters did not pay us for our work, or if they underfed us or ill-treated us and we

complained, we got no consideration. We were not believed, and any excuse or explanation was accepted from a white man. If we left our masters' farms to complain to the authorities, the result was that we were either flogged and sent back to the master or we were imprisoned for desertion. Many people died in prison." Blue Book, at p. 118.

138. Another observer testified: "We had no protection for our lives and property. We had no courts to which to go for redress, we were not allowed to speak; the only people we saw were police sergeants, who thrashed and ill-treated our people all the time, just as if there was a war between us. It never looked like peace. They were always like savage roaring lions. We trembled in their presence, and they spoke to us as if we were lower than dogs. We were too afraid to open our mouths." Blue Book, at p. 118.

139. Another observer testified: "German masters practically had power of life and death over their native servants. They could thrash and ill-use them as they pleased. If the native complained to the police he got another thrashing and was sent back to his master. No native was allowed to leave his master's service unless and until the master consented to release him. If he ran away the police went after him, thrashed him, and returned him to his master, where he generally received another thrashing." Blue Book, at p. 118.

140. "Instances of cruelty, injustice, and barbarism might be multiplied almost indefinitely. Instances of gross and bestial conduct, which for sheer depravity and immorality are well-nigh unbelievable, are also contained in the files of affidavits, but they are hardly fit for publication." Blue Book, at p. 119.

141. In August 1907, after having exterminated virtually all of the Herero, and after having imprisoned, brutalized and tortured the few survivors, and after having appropriated all of their land,

cattle and possessions, the German colonial enterprise passed three ordinances: a Pass Law; a Control Law; and a Labour Contracts Law.

142. “To all intents and purposes, these laws had one main object,... a permanent and forced slavery of the natives of South-West Africa, with a view to ensuring their perpetual degradation into a class of pauperized labourers.” Blue Book, at p. 112.

143. The Pass Law required all natives over the age of seven to carry and display a numbered metal badge. Every white person was authorized to arrest any native without a badge. Every native with a badge was liable for and compellable to work for the German colonial enterprise.

144. The Labor Contracts Law, administered by the Police, provided for corporal punishment, fines, imprisonment with hard labor, imprisonment in chains, and death, and was repeatedly used by the German colonial enterprise to enforce forced labor and slavery.

145. By 1907, for a Herero, “(h)is present was slavery and misery, his past was, to most, no doubt, a horrible nightmare of death and bloodshed, and his future- he had no future.” Blue Book, at p. 113.

146. “Herero society, and the world it had created, had collapsed.... The Germans made sure that the Herero were widely dispersed, that all tribal connections, both political and cultural, were destroyed, and that their symbols, the oxen, the insignia, and chiefs were also destroyed. Towns and settlements which had carries Herero names were renamed.” Gewalt, at p. 221.

147. The German colonial enterprise, including defendants, ruthlessly continued their atrocities until the onset of World War I led to the elimination of their control of South West Africa.

148. Defendant Deutsche Bank individually and jointly with its co-defendants and with Imperial Germany was an active and responsible participant in the German colonial enterprise, and

willfully engaged in the conduct described in this complaint, and willfully violated fundamental principles of international law, and willfully engaged in crimes against humanity, including, but not limited to:

- (a) initiation of and implementation of a race war against the Hereros;
- (b) initiation of and implementation of an implicit and explicit campaign of genocide, extermination and extirpation of the Hereros;
- (c) the brutalization and enslavement of the Hereros, and the systematic use of forced labor;
- (d) the systematic forced degradation of Herero women held as captives; and
- (e) the systematic destruction of the Herero culture.

149. Defendant Terex individually and jointly with its co-defendants and with Imperial Germany was an active and responsible participant in the German colonial enterprise, and willfully engaged in the conduct described in this complaint, and willfully violated fundamental principles of international law, and willfully engaged in crimes against humanity, including, but not limited to:

- (a) initiation of and implementation of a race war against the Hereros;
- (b) initiation of and implementation of an implicit and explicit campaign of genocide, extermination and extirpation of the Hereros;
- (c) the brutalization and enslavement of the Hereros, and the systematic use of forced labor;
- (d) the systematic forced degradation of Herero women held as captives; and
- (e) the systematic destruction of the Herero culture.

150. Defendant Woermann individually and jointly with its co-defendants and with Imperial

Germany was an active and responsible participant in the German colonial enterprise, and willfully engaged in the conduct described in this complaint, and willfully violated fundamental principles of international law, and willfully engaged in crimes against humanity, including, but not limited to:

- (a) initiation of and implementation of a race war against the Hereros;
- (b) initiation of and implementation of an implicit and explicit campaign of genocide, extermination and extirpation of the Hereros;
- (c) the brutalization and enslavement of the Hereros, and the systematic use of forced labor;
- (d) the systematic forced degradation of Herero women held as captives; and
- (e) the systematic destruction of the Herero culture.

151. The intentional destruction of a tribe is a crime against humanity and was a crime against humanity from 1890 to 1915.

152. The genocide of a tribe is a crime against humanity and was a crime against humanity from 1890 to 1915.

153. The intentional destruction or genocide of a tribe, or racial or ethnic group, or its culture, is a crime against humanity and was a crime against humanity from 1890 to 1915.

154. Slavery is a crime against humanity and was a crime against humanity from 1890 to 1915.

155. Forced labor is a crime against humanity and was a crime against humanity from 1890 to 1915.

156. Systematic abuse of women, including their use as comfort women, is a crime against humanity and was a crime against humanity from 1890 to 1915.

157. The intentional destruction of a tribe is a violation of international law and was a violation of international law from 1890 to 1915.

158. The genocide of a tribe is a violation of international law and was a violation of international law from 1890 to 1915.

159. The intentional destruction or genocide of a tribe, or racial or ethnic group, or its culture, is a violation of international law and was a violation of international law from 1890 to 1915.

160. Slavery is a violation of international law and was a violation of international law from 1890 to 1915.

161. Forced labor is a violation of international law and was a violation of international law from 1890 to 1915.

162. Systematic abuse of women, including their use as comfort women, is a violation of international law and was a violation of international law from 1890 to 1915.

163. The Herero tribe is an ethnic, racial, political and cultural group entitled to the protection of international law.

164. The defendants, and each of them, with Imperial Germany, committed crimes against humanity and violated fundamental principles of international law by committing genocide of the Herero tribe, participating in the intentional extermination and destruction of the Herero tribe, enslaving the Herero tribe, subjecting the Herero tribe to forced labor, and participating in the systematic abuse of Herero women.

165. The defendants, individually and jointly, are liable to plaintiffs for violations of international law and crimes against humanity.

### **CLASS ACTION ALLEGATIONS**

166. Plaintiffs adopt and incorporate herein by reference as if specifically set forth herein the averments of paragraphs 1 through 165 of the complaint.

167. The class of Plaintiffs is or will be comprised of all members of the Herero tribe in or outside of Namibia. That class—and any sub-classes—consists of approximately 125,000 members. Joinder is impracticable.

168. Virtually all questions of law and of fact will be common to all class members. The conduct or status of each member will be irrelevant to the claims themselves. All of the material and factual issues in this action will be directed at the actions and inactions of the defendants, and each component of those actions and inactions will be equally pertinent to each class member. Plaintiffs can envision no affirmative defense the applicability of which will vary among class members.

169. The claims of the plaintiffs are typical of the claims of the class.

170. The named plaintiffs will fairly and adequately protect the interests of the class. The retainer agreement into which the named plaintiffs have entered ensures that decision-making will accord with elemental principles of fairness. Moreover, the team assembled to represent the plaintiffs and the class members assures the class members of fair, ethical and competent representation. The representation team consists of an American law firm and an international support corporation with offices in the United States.

171. In contrast, the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for defendants. At the same time, because of the multiplicity of prospective international and American forums, determinations adverse to one or more prospective class members

would, as a practical matter, adversely dispose of the interests of other prospective class members.

172. As noted above, common questions of law and fact predominate over any questions affecting only individual members. Members of the class have no practical interest in individually controlling the prosecution of separate actions. Costs and expenses alone are prohibitive. No such litigation is pending. Though the issues to be litigated are intricate and complex, and are most effectively resolved in a single forum, the management of the class will entail no significant difficulties. Though large, the class size is not unmanageable, and the representation team is fully prepared to fulfill its obligations to the class and to the court.

173. Thus, a class action is superior to other available methods for the fair and efficient adjudication of the controversy, and is, in fact, the only judicial mechanism by which the plaintiffs can pursue their claims.

WHEREFORE, by all these presents, counsel for plaintiffs prays for the following relief:

1. Judgment in favor of plaintiffs, and against defendants, jointly and severally, in the amount of two billion dollars (\$2,000,000,000) or such other amount as may be proven at trial;
2. An award of attorneys fees, costs, and interest; and
3. Such other relief as the court may deem just and proper.

**JURY DEMAND**

Plaintiffs demand trial by jury on all issues so triable.

Respectfully submitted,

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