

On the Discrimination of the Rehoboth Basters

**an
Indigenous people**

**in the Republic of Namibia
1990-1999**

**Ten years of independence
Ten years of struggle for survival**

A fact file prepared by

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for the 17th Session
of the Working Group on Indigenous Populations and the 51st Session of the
Subcommission on Prevention of Discrimination and Protection of Minorities of the United
Nations Commission on Human Rights.

Geneva, July-August 1999

This fact file is dedicated to the Memory of Kaptein JGA (Hans) Diergaard
 Kaptein of Rehoboth
 (°16-9-1927 - +12-2-1998)
 who relentlessly defended the rights of his people against
 the aggression of the Namibian Government.



The Kaptein, Kaptein's Council
 and the Assembly

The Rehoboth Baster's Declaration as an Autochthonous and Indigenous People

On this day, the 10th day of October 1992 and during the Assembly held at Rehoboth, and in coherence with the resolution and election of the members of the abovementioned on 22 June 1991, we, the Baster people, declare ourselves as an indigenous people of the Republic of Namibia and we herewith demand all rights to which autochthonous and indigenous peoples are entitled to according to international practice and conventions, and we shall, from Columbus-day, Monday the 12th of October 1992, act accordingly.

Dated and signed by the Kaptein and the members of the Kaptein's Council at Rehoboth on the 10th day of October 1992.

Signed: *J.G.A. Diergaardt*

Kaptein: *J.G.A. Diergaardt*

Kaptein's Council:

1. signed: *D.J. Isaaks*
2. signed: *P.J. Diergaardt*

Assembly:

1. signed: *W. Van Wyk*
2. signed: *J.E. Sumpfe*

Speaker of the Assembly:

signed: *A.J. Brendell*



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REHOBOTH BASTER
GEMEENTE - GEMEINDE - COMMUNITY
Republic of Namibia

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An Indigenous people in the Republic of Namibia
1990-1999

Independence of multi-ethnic societies does not necessarily bring benefits to all the ethnic groups in these societies. A very relevant case for this phenomenon is the newly established state of Namibia where small nomadic peoples like the Bushmen are now in great danger of being swamped by the immigration of settlers from other regions.

Another threatened group is the Community of Rehoboth Basters. This community numbers some 35,000 people, living in an area of 14.216 square kilometres south of Windhoek, the capital of Namibia. They settled in their lands in the early 1870's. They developed their own legislation, years before the Germans installed their colonial rule over Namibia in 1885 and as such they constitute an indigenous people in present-day Namibia.

The first Baster communities emerged between the Cape Colony's northwestern frontier and the lower course of the Orange River at the end of the eighteenth century. In the beginning of the nineteenth century, missionary organizations, such as the "London Missionary Society" and the "Rheinische Missionsgesellschaft" established congregations in the territory of the Basters and supported the local communities (gemeentes) in developing written forms of regulations that were already in custom for a long period. Several of these political institutions were adopted from the neighbouring Khoi tribes, in particular the offices of "Chief" (Kaptein) and "Sub-chief" (Onderkaptein) and the annual tribal gathering. The regulation of public life depended largely on the introduction of written congregational constitutions (or "gemeenteordenings"), not only for the christianized people within the community but also for the Heathen, who were treated on equal footing. All community-members were liable to pay taxes and levies, to attend church services, to send their children to school from the age of seven and to have births and deaths within their families registered with the authorities. Every community elected yearly between their members a "Council" (Raad), responsible for the control of the civil and ecclesiastical order, the settlement of disputes between the community members, the punishment of offences and the distribution of garden-plots and arable land. During such meeting, the community decided also about the acceptance of new members. At their public gathering on the 24th of March 1868, the community of Basters of Tuin decided to emigrate beyond the borders of the Cape Colony. In order to find new places for settlement on the northern banks of the Orange River, the Council of Tuin sent out an advance party under the leadership of "kaptein" Hermanus van Wyk. He conducted several negotiations with the tribal governments in Nama- and Hereroland and he participated in a common Peace Conference at Okahandja in 1870. At the beginning of the people's "Great Trek" from de Tuin to Rehoboth, the Basters drafted a Provisional Constitution during the trekkers' sojourn in Warmbad on the 15th December 1868.

A revised form of this Constitution was promulgated on the 31st of January 1872 at Rehoboth and it was again renewed and amended on the first of January 1874. This legislation became known as the "Vaderlike Wette" (Parental Laws). These laws did not only restrict themselves to constitutional matters (such as the election of a Chief and of a Council, citizenship....) but included at the same time civil and criminal laws and regulations.

The German colonial administration concluded a "Schutz- und Freundschaftsvertrag" (Treaty of Protection and Friendship) with the Rehoboth Basters on the 15th of September 1885. According to this Treaty, "the German Emperor recognized the rights and freedoms acquired by the Basters at Rehoboth for themselves.. ". Further, the Treaty mentions that all disputes between Rehoboth community members "will be tried by their own judges and according to their own laws". An important passage in the Treaty is Paragraph 7, which reads as follows "if there should be any other matters to be settled between the German Empire and the Kaptein of the Basters at Rehoboth, these will later be solved by agreements between the two Governments". Despite the efforts of the German administration and legislation to increase their influence in the Basters community, the Council of the community continued to enact new laws. The Councillors also played a leading part in the rebellion of April 1915 against the Germans.

The form of local self government remained unchanged during the period of military occupation of South West Africa by Union forces (1915-1919) and in the first years of the mandatory system. On the 17th of August 1923, two members of the Executive Council of the Basters (the Government) and seven members of the "Raad" (the Parliament) signed an Agreement with the South West Africa Administration. But a majority of the Rehoboth Basters rejected the Agreement because "it limited their rights to self-determination and it failed to restore rights to land filched under German regime." Finally, this opposition led to an open rebellion in 1925 and the formation of an oppositional "Nuwe Raad" (New Council). The S W.A. Administration reacted with Proclamation 31 of 1924, whereby the "Kaptein", the traditional courts and officials appointed by the "Raad" were *temporarily* dispensed with and their powers transferred to the Magistrate and his Court. It is important to notice that Proclamation 31 did not repeal the Agreement of 1923; it only suspended a number of provisions. Local self-government of the Rehoboth Baster community was partly restored with the Proclamation 9 of 1928, whereby an "Advisory Council" was introduced. In a first period, the Council consisted of three elected members and three members appointed by the S W.A. Administration. According to a Proclamation in 1935, the three appointed members of the Council were to be elected. The "Advisory Council" governed the community in all "internal matters", such as the approval of loans to citizens, buying and selling of land, village affairs, ... The oppositional "New Council" continued to function in the period between 1925 and the early thirties. On their initiative, a number of petitions were sent to the "League of Nations", requesting the restoration of full selfgovernment. Finally, on the 11th of April 1933, there came an end to the division of the community and a new "Advisory Council" was elected by all members of the community.

In 1946 the mandate of the League of Nations was transformed into the Trusteeship system of the United Nations and the Republic of South-Africa continued to be the administrating power. In 1966 the General Assembly, by resolution 2145 (XXI) terminated South-Africa's mandate and legally took over the responsibility of the territory. However factually the Republic of South Africa continued to administer the territory under various forms until the installation of the United Nations Transitional Assistance Group (UNTAG). In all this period, the Rehoboth Baster community safeguarded its ancestral institutions and organisation.

In 1976, the South-African parliament voted a law No 56-(1976) which created a formal type of institutions which fitted in the traditional existing ones. This Law in no way replaced the so-called Paternal Laws but merely tried to insert them into the South African administrative structure for the territory. The UNTAG suspended the Act in 1989 without making reference to the Paternal Laws, which were not repealed as they formed in no way part of the South African legal system. By virtue of schedules to the Namibian constitution, all so-called discriminative South-African law ceased to have effect. This applied also to law 56-(1976). It seems obvious that the repeal of the above mentioned law recreated the "status quo ante" i.e. the Paternal Laws and eventual dispositions of the Treaty of 1885.

Under the excuse of eliminating all so-called "remnants" of the South African Administration, the government of Namibia has since Independence set out on a path of total destruction for the small Rehoboth-Baster People. By virtue of the Constitution which declares English to be the only official language, they have forcefully switched the whole administration and schooling of Rehoboth to English from Afrikaans, the *mother-tongue* of all the Baster People. Massive immigration, mainly from northern Owambo people has been promoted to try to destabilise the demographic and social structure of the area. The government of Namibia has tried to destroy the century old system of selfgovernment and taken away all assets of the previously recognised authorities. The communal land has been illegally transferred to the Namibian State, under pretext that it was "public property", under the South African rule. The Namibian government got also hold of the assets of the Rehoboth Development and Investment Corporation, worth 10 000 000 N\$ but sold to government allies and friends for next to nothing. Even property, such as the Community Hall and Library, completely realised with personal donations of the members of the community was illegally seized. By abolishing the traditional administration jobs were lost and combined with the undermining of traditional farming, unemployment soared. The division of Namibia in regions, represented in a second Chamber of Parliament worsened the situation. Indeed, Rehoboth was purposely fractured and divided over two regions, so that the citizens of Rehoboth have to go either 100 km north or 150 km south to discharge even the most simple administrative duties. The touristic infrastructure was nationalised and consequently neglected, small businesses, shops and craft crumbled and slowly the social and economic fabric of the area collapsed. More and more citizens could not pay the mortgages on their houses anymore and a huge number of families were expelled from their property by the banks.

Once a thriving community, second only to the white farmers, Rehoboth has now, ten years after independence sunk into despair. The only positive point in the last years were the municipal elections of 1998. Whilst the Rehoboth Community had decided not to participate in the first elections which resulted in a Swapo-DTA council majority, now the interim Kaptein organised an ad hoc "electors union" through which the traditional authorities won the majority in the council. At this time Mr. Freygang, a former member of the traditional council is the mayor. This positive development was however overshadowed by the fact that the new council discovered that for years the previous city council had collected service-dues, without paying them on to the providers (Namwater e.g.). When the new council took office, suddenly Namwater claimed huge sums of money and completely closed down the watersupply of Rehoboth (including schools and hospital) thus creating an unbearable situation, so as to discredit the current authorities. This behaviour of the central authorities is in line with a decade of harassment of the Rehoboth community, which seems to come to no end.

Rehoboth's only perspective at this stage is the United Nations.

The Namibian government's policy against its indigenous populations in general and Rehoboth in particular infringes on every and all articles of the U.N. Declaration on the rights of Indigenous Peoples and most of the provisions of the ILO-Convention on Indigenous Peoples in Independent Republics. Today, the very existence and survival of the Rehoboth Baster People is in danger.

We appeal to the U.N. Subcommittee on Prevention of Discrimination and Protection of Minorities to pay the necessary attention to this case and to use its influence to halt this unacceptable situation by making its concern known to the Namibian government and to the relevant bodies of the U.N. system.

On behalf of the captain, council and assembly of the Rehoboth Baster community.

**Dr Yvo J. D. Peeters
International Legal Counsel**

Annex I

The economic destruction of Rehoboth

Rehoboth had developed during the seventies and eighties under the leadership of Kaptein. J.G.A. (Hans) Diergaard into the second most wealthy community of Namibia after the white farmers. This was achieved through a very judicious use of the available means in close interaction with all the components of the community. It put parts of the communal land at disposal of local economic initiatives and combined this with a loans and incentives policy. In this way one can give the following economic picture of Rehoboth in the course of 1990: Rehoboth is a overwhelmingly farming community of approximate 37 000 inhabitants, where agriculture is the spine of the economy.

There are a large number of independent farmers having today only few heads of cattle. This means that in its over 30 years of activity Rekor has essentially built up an agro-industrial network, lately also extending into ecotourism.

It has to be noted that all these initiatives were located on communal land held in trust from the traditional authorities.

This is corroborated by the fact that after the seizure of Rekor assets. Only the "movable" property and the working capital were sold, not the land and neither the buildings which the Namibian government considered state property at the time.

A brief description of the assets follows.

I Economic assets directly under Rehoboth Government

- 1.1 **Leather factory:** Private company (not related to Rekor) on communal land and building.

Est.Value (1990) Building:	200.000 N\$
Machinery:	400.000 N\$
Total:	600.000 N\$

Actual status: derelict.

- 1.2 **Tsumis breeding station** for cattle, goats, sheep (Karakoul) and indigenous animals, with an agricultural college attached.

Est.value (1990):. Cattle:	967.000 N\$
Land and buildings	880.000 N\$
Total	1.847.000 N\$

Actual status- College closed, animals slaughtered and sold. Possible squatters in buildings.

- 1.3 **Game Reserve of Arovlei**

Natural Reserve on which Rehoboth government set out a wide array of wild animals purpose-bought, such as giraffes, rhinos, gemsbok, etc. Management offices:

Est.value (1990): Land	600.000 N\$
Game	700.000 N\$
Total	1.300.000 N\$

Actual status: derelict. Animals stolen or killed or starved. Squatters in administration buildings

- 1.4 **Rehoboth Spa**

Resort in centre of town. A number of detached houses, caravan site, outdoor and indoor-swimming pools and service buildings.

Est.value (1990): Land and buildings 1.800.000 N\$

Actual status: In possession and management of Department of Tourism. Severely downgraded and almost out of use.

1.5 Oanab Water Dam and scheme.

Water reservoir build by Rehoboth Government. Seized by Namibian Government , and transferred to Namwater. (State company)

In 1993 a 99 year concession was given by the Namibian government to Acacia Ltd Company for touristic development on the lake shore. Some investments have been done and site is operating, however without community involvement. Est value (1999): 30.000.000 N\$

II. Rekor-held Companies

II.1 Administration business and office buildings

Various buildings in town-centre: (Sakesentrum I, Markplein, Woonhuis, agra;, Sakesentrum II, 2 woonerven) and 2 buildings in Windhoek (Pionierspark, Klein-Windhoek)

Est.Value (1990): 1.614.000 N\$

Actual status: Illegally sold for 1.000.000 N\$ by central government. Most of the properties are derelict.

II.2 Swartmodder milkfarm and fodderstation.

Fodderstation grew Lucerne in irrigated system connected to Sewage water draining. Milkfarm had up to 400 cows of "Stamboek"-breeding. Produced up tot 2500 lit. milk/day in eighties.

Est. Value (1990): 923.770 N\$

Actual status: Liquidated.

Fodderstation collapsed through lack of maintenance of pumps. Cows were gradually sold to pay debts. Premises derelict

II.3 Dairy-company.

Diary-cy processed the milk of 11.2 and also bottled juices. When 11.2 collapsed, situation of Dairy became precarious. Through monopolising juice-sector was also forced out of market. Had ±120 employees. Activity stopped 1994 (milk) 1998 (juice). Est. Value (1990) 500.000 N\$

Sold for: 400.000 N\$

Actual status: Plant guarded by owner to keep it from destruction.

II.4 Poultry farm

Largest egg/poultry farm of the country. Went out of business partly due to dumping prices on eggs from S. Africa in 1996.

Est.Value (1990): 2.111.500 N\$

Actual status: derelict. Foreclosed by NDC.

II.5 Wholesale Company

A distribution centre for goods to the Local shopkeepers. Closed in 199....

Est.value (1990):

Actual status: Unused. In reasonable condition.

III GENERAL TOTAL OF COMMUNITY ASSETS HELD: 10.700.000 N\$ (without dam)

40.700.000 N\$ (with Dam) (1 N\$ = 0,152 EURO, 40.700.000 N\$ = 6.186.400 EURO)

Annex II

Rehoboth People's motion in the 'wake of Namibian Independence

20/3/1990 (summary and translation from Afrikaans)

Taking into consideration that:

- the Rehoboth Basters settled in their beloved territory "Rehoboth Gebiet" in the former century, in order to achieve political autonomy and the international recognition of its territorial integrity.
- the Rehoboth Basters confirmed their independence and sovereignty with the elaboration of the Paternal Laws in 1872.
- the Rehoboth Gebiet has never been annexed to a larger territory.
- neither the Germans nor the Government of South Africa suspended the institutions and the legislation of the Rehoboth Basters. On the contrary, they confirmed them in agreements and treaties.
- the Rehoboth Basters never agreed or accepted to give up their self-determination and self-government. Moreover, the international community never contested these principles in relation to the Rehoboth Community.

the Rehoboth Basters agreed, for the peace and the cooperation in former SWA, to participate in the Resolution 435 independence process; without, however, giving up their autonomy and self-determination.

- the Government of the territory of South West Africa, known as the Republic of Namibia since 21/03/1990, suspended all rights of the Rehoboth community for self-determination and expropriated their property.
- the citizens of Rehoboth realise now that they have been cheated and sold out with false promises.
- the people of Rehoboth is not willing to give up its identity, their self-determination and autonomy and refuses to accept the loss of parts of its territory after the Independence.
- the people of Rehoboth believe that the Government of the RSA did not respect agreements in relation to the negotiations concerning the Rehoboth territory and its future. Consequently, the Rehoboth Community decided to withdraw its participation to the Resolution 435 elections and the Constitutional Council.

For these reasons, the People of Rehoboth order their leaders, (the Captain, his council and the Legislative Council), to act as follows:

- with the knowledge that they are the only elected leaders of the Rehoboth People
- that the Captain, his Council and the Legislative Council take up again all their former functions
- that the Captain, his Council and the Legislative Council take immediate steps for the Independence of the Rehoboth Gebiet
- that the Captain, his Council and the Legislative Council elaborate a new constitution for the Rehoboth Gebiet, in accordance to the Paternal Laws of 1872
- that the People of Rehoboth should be governed by the Captain, his Council and the Legislative Council; and in no way subordinate to the Government of the RSA or the Parliament of Namibia
- that the leaders take up their authority over the administration
- that the leaders of Rehoboth can only be bound by the will of the people and to the regulations of the Paternal Laws of 1872.