

Grazing land dispute between vaKwangali and Ovakwanyama and Ovandonga speaking people in Mpungu constituency in the Kavango Region

“Murulirankore Mezimo Gakara” (One who can wage war for the contemporary problem affecting his people is still yet to be born – The late Karl Kasiki December 2005)



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CHAPTER 1

1.1 Introduction

Land is the most important asset. Without it there can be no houses, food, clothes, roads, there will be nowhere to hold water, in short no life at all (Muendance quoted in Nyanto 2006). The last quarter of 2005 has witnessed a serious land dispute between the vaKwangali and Ovakwanyama/Ovandonga groups of the Kavango, Ohangwena and Oshikoto regions. According to media reports over 50 cattle farmers from Ohangwena and Oshikoto regions entered unlawfully into the Ukwangali communal land, which falls under the jurisdiction of Chief Daniel Sitemu Mpasu.

It is obvious that no development can take place in a vacuum. To this end, land is the necessary prerequisite for all developmental endeavours. “The denial of freedom and access to the land necessitated the African people Namibia included and other oppressed people in the world to take up arms in order to fight for their rights and to regain their lands, which were seized by colonial powers. The liberation wars in the region (Africa) and elsewhere were thus for the right to control our own resources, including land. The anti-colonial wars started with our forefathers who resisted against the expropriation of their land and wealth by the colonial settlers” (Sam Nujoma, 2000, the founding president of Namibia).

The history of conflicts over land in Namibia is characterized by both ancient (pre-colonial) and modern (colonial and post-colonial) land grabbing. The expansion of Bantu-speaking communities limited the economic territories of hunter/gather communities in the pre-colonial time, and also Herero-Nama wars in the pre-colonial, and more so, colonial wars were waged about land (Fuller, 1992). The Namibia war of independence was over land question (Fuller, 1992, and Hangula 1995).

It is against these historical imbalances that access to land is one of the most pressing social issues in Namibia (Communal Land Reform Act 2002: xi). People need land for different use; some need urban land for housing or businesses, while others need land for residence, grazing or farming purposes – these people want access to ‘rural’ land. According to Hamata, (1996) and his associates, rural land is the backbone of the human living, because it produces the fodder for animals and the bread for the humans. Namibia is no exceptions as between 60–70% of the inhabitants live in the rural area (NDP2). The fact that communal land is where the majority of the population live, fencing in the communal land is prohibited in order to allow equal access to natural resources, land included for the people in those areas. However, Fuller and Nghikemba (1996) in their study on the enclosure of communal land in the eastern Oshikoto region (which is a neighbouring region to Kavango) recorded that signs of potential conflict over the land issue was high. In their study Fuller and Nghikemba stated that “simmering resentments between those who are closed out, who perceive decreasing option for their survival and those who see themselves defending a peace of land which they believe is rightfully ‘theirs’ have already taken the first steps towards violence”.

In view of the historical, significance of land and the recent dispute over grazing land in Mpungu constituency in the Kavango Region, it was fashionable for the Land Programme of Social Science Division (SSD) in the Multidisciplinary Research Centre (MRCC) at the University of Namibia (UNAM) to embark up a study to collect information on the current grazing dispute between the vaKwangali and Ovakwanyama/Ovandonga cattle farmers in the Mpungu Constituency in the Kavango Region.

1.2 Objective of the study

The overall objective of the study is to study and analyze the underlying cause of the current grazing dispute between the three groups. This prime objective was realized by carrying out the following specific objective:

1. Determine the origin of the disputes
2. Assess the future potential social rife

1.3 Methodology

Since this issue was first learned or heard by the researcher in the media an exploratory trip was carried out in order to familiarize with the area and people to gain first hand information. The fieldwork was carried out between February 8 – 15 2006. Data collection was facilitated by the fact that the researcher was from the same region and Rukwangali being his home language it put him in a better position for the community to trust him and speak out their mind. Several desk studies were done to get what was already done.

Limited Key informants' interviews with elder people (60 years old and lived in the area for the past 20 year) were carried out in the disputed area. Also interview with the farmers from vaKwangali was conducted. Unfortunately, the Ovakwanyama/Ovandonga cattle herders were not interviewed due to availability of water in the study area during data collection time. It was reported that during this time the herders retreated away from the villages, as water was available in ponds everywhere.

CHAPTER 2

2.1 The history of tribal land

The earliest form of continuous social organisation was the clan – a group of related families occupying a common tract of land, having the same totem and governed by the same customs or laws, Durant 1954 quoted in (Hangula, 1998: 9). Through primary and continuous settlement or use of an area by individuals or a group of people and their consequent primitive acquisition of the area, their descendants are entitled to the area in question through derivative acquisition. It is for this reason for example in the multi-lingual country or territory speakers of specific languages feel special attached to specific area of the country (Hangula, 1998).

Therefore, it is hard to imagine the existence of a tribe without land. As a result, a strong correlation between tribal and land exist in Africa in general and Namibia in particular.

Historically, a landless tribe presents a potential political problem. Hangula 1998: 9 states that ‘prior to national unification in Europe, or in the pre-colonial period in Africa and other parts of the world, a tribe was identical to a nation’. Mothling 1989, in Hangula 1998, asserts that ‘a tribe is defined as a social group bound together by kin and duty and associated with a particular territory’.

The Crack of the Matter here is that statutory communal land is state owned common property, but administratively, allocation and control is entirely vested in the tribal chiefs and traditional authority as they are recognised by the supreme law of the country the Namibia Constitution article 21.

2.2 Communal Land

The communal land in Namibia constitutes about 41% of the total land mass and is the home to the two third of the country’s population. Whereas, commercial land constitutes approximately 44% of land surface and home to only 10% of the population. The rest of the percentages constitute the diamond concession areas and proclaimed nature conservation areas, 1.5% and 13.5% respectively (NDP 2: 142 and Vision 2030).

According to the Communal Land Act, communal land is defined as “land that belongs to the state (Communal Land Reform Act 2002). Individual cannot own communal land, but may have customary land rights or rights of leasehold with regard to certain areas of land”. Furthermore, section 16 in the same Act provides the establishment of new communal land areas and addition to or subtraction from communal land areas. With the approval of the National Assembly the President may by proclamation:

- declare any defined State land to be communal land,
- add any State land to an existing communal land area or,
- withdraw a defined area from communal land, provided that the state has
 - acquired all the rights of people affected by the withdrawal (such as customary land rights and rights of leasehold, and

- paid just compensation for these rights.

However, apart from the Acts definition, communal land areas have historical past. Namibia inherited dual system of land tenure; the freehold and communal tenure systems, which dates back to 1892 during German colonial authority. During this time German formulated the first land policy for the country and passed by proclamation demarcating 'Crown Land' and the 'native reserves' of South West Africa (Hangula 1995).

When South Africa came to power he pursued what the German started and Native Reserve Commission was appointed to work out the regulations for the establishment, management and control of the 'native reserves' in rural areas. Legislation on these reserves was promulgated in 1922 and 1928, known respectively as the Native Reserves Proclamation (11 of 1922) and Native Administrative Proclamation (15 of 1928) (ibid).

According to these proclamations and subsequent regulations, 'native or homeland areas' for the natives were created. Furthermore, Proclamation 15 of 1928 gave South African Administrator in South West Africa mandate to define the boundary of the area of any tribes or ethnic group, the power to divide and amalgamate tribes or to create new tribes in the interest of the good government of the natives, and the power to order the removal of any tribe or any portion of any tribe or native from one place to another within the country (ibid).

In Namibia most of the communal land areas are in the north and some patches can be observed in the south, central, west and east. This is the case because in the north the colonizers did not grab the land there whereas in the south, central, west and to a lesser extend in the east much of the land was taken by the white settlers and converted to commercial farming unit (Hangula 1995, and Pankhurts 1995).

2.3 Communal Land Reform Act and access to grazing land

Section 29, of the Communal Land Reform Act no. 5 of 2002; gives the provision of who should have access to communal grazing land and what procedures to be followed. Under the same section limitation to grazing land is stipulated, and equally so, under what circumstance may the chief or traditional authority withdraw a resident's or non-resident's grazing rights. This is explained below.

Section 29: 'grazing rights'. "The Act has provision on grazing rights and use of commonage. The commonage of a traditional community is available for the use by the *lawful residents* for the grazing of their stock. This right belongs to any resident of the community and is a right that comes with no restrictions".

Grazing rights on the commonage may be limited or even withdrawn under certain situations. Under the following circumstances the grazing rights may be limited. The right to use the commonage may be limited by:

1. The condition that the Chief or Traditional Authority may impose, including conditions regarding:
 - the kind and the number of stock that may graze on the commonage. In terms of the regulation 10, lawful resident may not have more than 300 large livestock or more than 1800 small livestock grazing on the commonage at any time.

- the area or areas of the commonage where the stock may be grazed, as well as the rotation of grazing over different areas.
2. The right of Chief, Traditional Authority or Communal Land Board to use any part of the commonage for the allocation of a right under this Act.
 3. Regulation 10 prohibits a lawful resident of community who owns or hires any agricultural land from the grazing livestock on the commonage.
 4. The right of the president to withdraw and reserve any portion of the commonage for any purpose in the public interest.

The Act further provided the conditions under which the Chief or Traditional Authority withdraw resident's grazing rights. A Chief or Traditional Authority may withdraw a resident's grazing rights when:

1. He or she fails to '*observe*' the conditions imposed regarding the use of the commonage, for example when a resident has more than the prescribed number of cattle grazing on the commonage.
2. He or she has a right to any other land, whether communal or not, which is of the same size or larger than the maximum size prescribed by the Minister under section 23. The Chief or traditional Authority must also make sure that this other land has enough grazing for the person's stock.
3. She or he does any of the following prohibited acts, unless the Chief or Traditional Authority has given their written permission and the Communal Land Board ratified this permission.
 - erects or occupies any building or structure on the commonage.
 - Ploughs or cultivates any part of the commonage
 - Lives on or occupies any part of the commonage
 - Obstructs the ways to any watering place on the commonage, or somehow interferes with the use of watering places or damages them.
 - Does something other than allowing lawful grazing on the commonage that prevents or restricts the other residents' rights to grazing.

Whether a person who was not a resident of the traditional community could be granted a grazing right? The Act had this to say: "Yes, but non-residents *must apply* for a grazing right to the Chief or Traditional Authority. Once granted, the grazing right will be '*subject to the conditions*' imposed by the Chief or Traditional Authority. The Chief or Traditional Authority may also withdraw this right at any time if this is in the interest of the residents, for example because of drought or other reasonable cause".

2.4 Common-pool Resource Theory

At a general level most natural resources can be classified as common-pool resources and Land is one of them. Common-pool resources are natural or human-made facilities or stocks that generate flows of usable resources unit over time (Ostrom and Schlager, 1996). An irrigation system, mainframe computer, a bridge or rangelands are example of natural or human-made resources (ibid). Common-pool resources may be renewable and non-renewable. The two main characteristics of common-pool resources are: i) it is costly to develop institutions to exclude potential beneficiaries from them, and ii) at least one of the valued resource unit obtained from a common pool resource that are harvested by one individual are not available to others. The first characteristic is what is referred to as public goods and services in economic literature, and the second as private goods and services. The fact that it is costly to design institutions that successfully exclude potential beneficiaries from access to common-pool resources, many common-pool resources are *de facto* open-access resources: anyone who wishes can access and appropriate resource unit (ibid).

In order to sustain a common-pool resource, both its stock and flow must be governed. For irrigation system to continue to produce irrigation water, the system must be maintained. For the irrigators to receive adequate amount of water in a timely fashion, use must be coordinated (ibid).

2.5 Rightful property acquisition

The lawfulness possession of a property depends on the mode of acquisition (Hangula 1998). There are two schools of thoughts about possession, which seem to be unanimously accepted in law schools. The first of these asserts that; in order to acquire rightful possession of a thing, the thing that is being taken possession of has to have no previous owner. The second one states that 'a person may acquire rightful possession of a thing of which a previous owner has renounced possession; either relatively in his favour by cession, or absolutely to the first comer by abandonment' (Hangula 1998: 3). Consequently, rightful property acquisition is the foundation of entitlement of the right to the property in individuals. According to Twiss 1884, quoted in Hangula 1998, this is either *primitive* or *derivative*.

According to Hangula 'primitive' acquisition, is also known as occupation designates primary occupation of a thing. This principle is among others which state that mankind has an equal right to things that have not yet fallen into the hands of anyone, and those things belongs to the person who first take possession of them (Hangula 1998:4). After its acquisition the rights of a property which was common in theory to all mankind gets restricted to individual or a group of people, who henceforth rightfully possess it.

In contrast, derivative acquisition encompasses the forms of secondary acquisition that arise from any act of acquisition through finding, usurpation, transaction and or purchase, cession or transfer, or by means of inheritance or donation.

In the case of Ukwangali land, primitive acquisition is applied as this will mean that the vaKwangali are the primary immigrants into and settlers in a territory of the today Ukwangali land. In that case, it would mean that derivative entitlement or acquisition of land by right of settlement primacy of their forefathers. As a result, the presumption is that the settlement of a territory must have been established in a previously, physically unoccupied territory to constitute 'finder's title or right.

With regard to land rights through primary and derivative acquisition, there seem to be fundamental differences between western and African cultures in their comprehension and application of the concept. In western view, land is a commodity, which an individual can absolutely own and market like any disposable property. Whereas, in Africa, especially in the rural areas, land is a 'common' private property for the group (Hangula 1998:5), and Ukwangali land is no exception.

CHAPTER 3.

3.1 Results:

“I saw and realized that the land of Ukwangali had a crack. The Ukwangali land was thin as if it was experiencing severe drought period. Nothing else that we want, but for the Oshiwambo speaking farmers to move out of Ukwangali land. Each and every one of us has his or her motherland – they also do – therefore, they should leave our place. God created people with different languages and cultures then put them on a specific piece of land, meaning it is their land, where they should practice their culture, norms and values. Even when Namibians were fighting for freedom in exile when they came back they were saying they were going back to their land Namibia. But still within Namibia some said Owamboland, Kavangoland, Capriviland, Hereroland, Namaland etc. When the situation was hostile here my subjects were ready to take arms against Kwanyama over their land, but I spoke and said Vakwangali litureni (Kwangalis cool down), the matter is in the hands of our GRN all what we need is peaceful solution” (Daniel Sientu Mpasí – Vakwangali Chief, 13 February 2006).

3.1.1 The causes of current land dispute

There are many factors that have contributed to the current disputes over grazing land dispute in the Mpungu constituency in the Kavango region. Most of those factors are social, historical and to a lesser extent political. In his own words the Vakwangali chief narrated the historical factor as follows: “Well, we have problem with our neighbouring Kwanyamas. But, we regard them as our brothers and sisters. They are not strangers. If you go back in the history we gave them a portion of land for them to graze their cattle. The land we gave them is big enough, it is 120km from Magetti - this is like from Rundu to Marema (a village between Kahenge and Nankudu Health Centre) this is the land we gave them to graze their cattle there. In breath, this land is 50km. So, if one looks at it, this is a big land given to them, but still the Kwanyamas do not appreciate, they crossed illegally into Ukwangali land without asking permission. When we react they say we are nothing”. Mendelsohn and Obeid 2003 argued that land resources available to subsistence, small-scale farmers have declined due to the following three factors: First, the growing population has simply used more and more land for crop cultivation, livestock pastures and other natural resources. This is demonstrated by the population growth and increase in private household numbers in figure 1 & 2 as from 1991. Figure 1 shows that since 1991 to 2001 the population of Kavango witnessed over 70% increase. Whereas, figure 2 shows that private household numbers in Kavango also increased over 70% from 1991 to 2001.

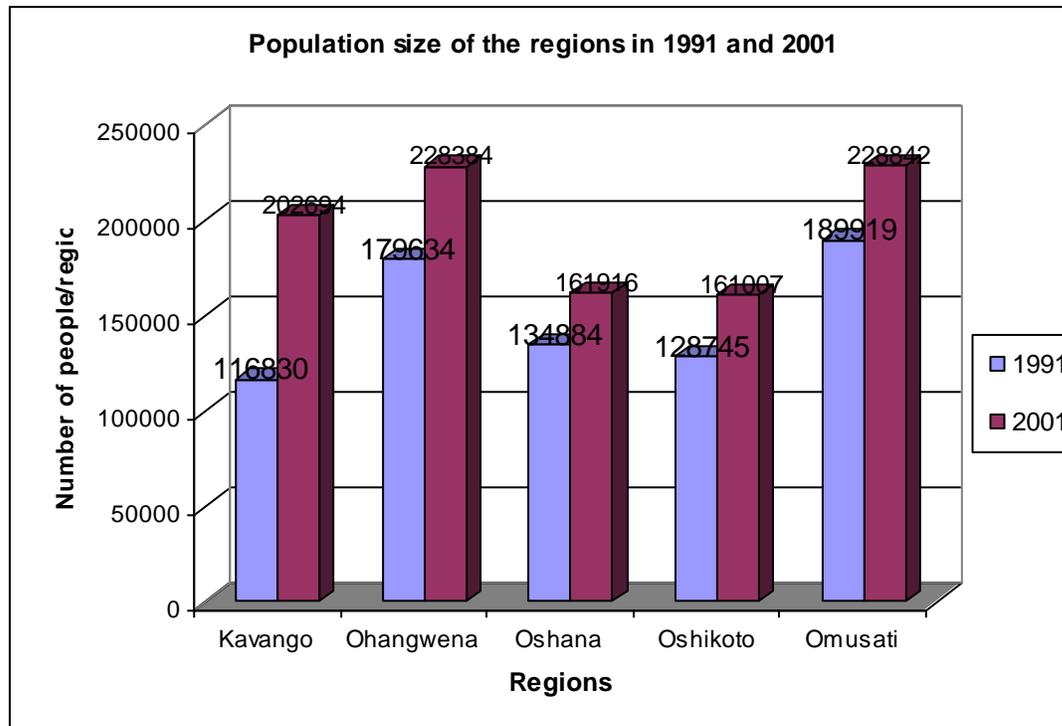


Figure: 1 Population increase in the regions after 1991 Census.
 Source: Population census 1991 and 2001, NPC

In comparison to other four north central regions the population increase was less than 30% in each region, and whereas increase in private households in the same regions was less than 35% for the period under review.

Second, as soil nutrients have been depleted farmers have cleared new fields, leaving old fields abandoned and of little use to anyone. Thirdly the increasing areas taken for large-scale commercial farms have further limited the amount of land available for smaller farmers. In addition, to Mendelsohn and Obeid’s observations, land shortage in Kavango has come as a result of more people moving into inland. Initially, settlement in Kavango was primarily confined along Kavango River. As Mendelsohn and Obeid indicated when the soil nutrients slowly but sure got depleted along the river more people opted to practice slash and burn farming in the interior. People were mainly confined along the river due to unavailability of water in the interior. As for now, even though not many people can access financial resources to enable them to have boreholes drilled, few are able. And when one person drills a borehole, it usually caters many people provide they comply with the borehole owner’s requirements, e.g help in diesel purchase etc.

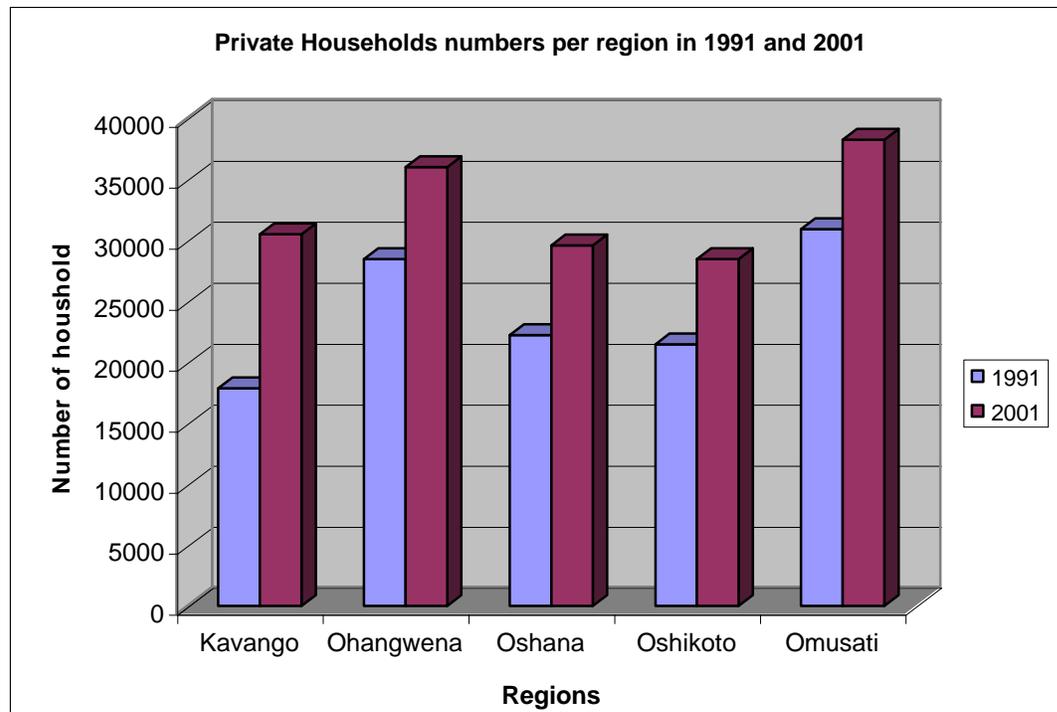


Figure: 2 Private Households number per in the region
 Source: Population census 1991 and 2001, NPC

With regard to social factors; several issues emanated. All people interviewed, the chief included indicated that the Oshiwambo speaking cattle farmers entered Ukwangali Tribal Land illegally. Other than entering the area illegal the farmers indulged in other things that are against the Vakwangali tradition. The respondents reported that the Ukwangali Tribal Authority governs the Vakwangali tradition and as a result, any person enters the Ukwangali Authority should observe the Tribal Authority rules and regulations.

The Ukwangali tradition and practice dictate that if someone's cattle enter your field and destroy your crops the owner of the cattle has to pay one cow or more depending on the damage, as compensation to damage caused to the field. This according to the interviewed residents, the Oshiwambo herders did not want to comply to. If they (herders) pay then they will have to come back later and take the cow or cows paid back without the knowledge of the person whom the cow or cows was/were paid to (see box 1). It was also reported that most of the cattle owners do not come and see the damage their cattle caused if they are requested to do so. The herders were reported to be arrogant when they come to residents' houses. They usual come well armed, with swords, knife, sticks and guns, and they do not sit if they are in someone's house. They ask what they want while standing and sometimes if one argues with them they can fight you (see box 2). If there is nobody in the house while they are passing and dogs bark at them they shoot them. This according to Kwangalis is against the culture it is an insult and can cause bad lucky. The farmers insult people, more importantly, if a Kavango woman reacts on Kwanyamas cattle farmers in her field the herders will insult her by

saying “*Munashinufu ove eengobe detu otadili peni? Iinda kwi iinda ukawelele kwii!* You beach where should our cattle graze go and make noise somewhere” said the chief. The Vakwangali residents also indicated that the herders are stealing their cattle and this made them not to be compatible with them (see box 3).

The residents further indicated that during the dry season there is no peace at the water point. The practice is that the community buys diesel for the machine and water their cattle on first come first served. This according to the residents, the oshiwambo herders do not adhere to. They usual come and bull those they will find on the water point. In cases when the public borehole is not function, people use (*nondjombo*) wells. The residents said sometimes the herders water their cattle in their *nondjombo* and when the residents come they find no water. When the residents decide to go fetch or water their cattle at their (the herders) *nondjombo* they (herders) will not allow them (residents). The residents see this as lack of cooperation and respect committed by the outsiders.

The Vakwangali residents reported that the herders and the cattle farmers do not want to obey and respect the procedure in place. Procedures such as if one comes in someone’s area has to ask the locals first and the locals will take him/her to the headman and headman will take him/her to the chief. Instead they just come and do whatever they want. Some of the herders and cattle farmer was accused of fabricating things, which were not said by the headman, and even accusing the chief that he (Chief) was given a car in exchange of allowing them to live there (see box 4). The way the herders and some farmers fabricate thing make an outsider convinced that they are telling the truth while it was not true at all claimed the residents.

Box 1

Researcher: Do the cattle owners come see the damage their cattle and herder cause when cattle enter your fields or you only fight with the herders?

Haruwodi: We only speak with their herders, the herders will tell you ok let me go bring my boss. I am going to my boss to bring money to pay. Some go to their boss and bring money to pay some you will wait until their confiscated cattle for them to bring money will be stolen and you will not see him back. Sometimes the cattle can stay up to 6 months in your kraal, but when he (herder) will come and still he will steal it while it destroyed your field. Later, the same person will come and ask you where is my cow I left with you? While he had come back and took it himself he will say no, I didn't take it.

Researcher: I am just coming from the farms, and was told by the people there that when the cattle of the herders enter the fields and the field owner detained them to wait the herders to come and agree on what to do next in terms of compensation, the herders do not cooperate, and sometimes they might even come take the cattle in the night from the kraal. Do you have evidence of such happenings?

Chief: Well, my farm is also there, many people come to me and report that the cattle the Kwanyamas paid as compensation for damage to their field they came and took them or rather took the cattle by force sometimes they even fight about it. Well, in fact if you look at the thing we don't have a say! Our say is the GRN, the GRN was supposed to help us if it is fair enough. The fact is and it is a well known one is that the cattle farmers here in Ukwangali came illegal and it is against the law anywhere you go.

Mandindi and Haindere: "What we want is, if cattle get in the field better we take one and sell it. Because the herders are not good he might pay a cow for the damage cause by his cattle, but will come back take it (a cow), and then later come and say he has money to pay so that he gets his cow, while he has stolen the cow back already".

Box 2

Researcher: At zigizi we were told some cattle herders grazed in Tauno's field and in his response to that he was beaten; do you have some information on that?

Haruwodi: Yes! There is one resident whom the herders cattle entered his field and graze there. He took the cattle out. When the cattle herder came he found the cattle in the field and he checked and observed how the cattle destroyed the field and the cattle were 30. Then the owner of the field said come near, how come you let all these cattle to enter my field? The field owner then threaten the herder by saying if in my old days I could step you with a sword. The herder did not hesitate after he heard about the threats he beat the field owner with a stick on the eye brow and the field owner fell and the herder fled. The herder ran to me and told me that he had beaten Tauno. I asked him what happened, why did you beat him? He said I beat him because he was threatening to kill me by saying if it was in his old days he could have stepped me with a sword that was why I beat him. I told him, now you made mistake, it was your cattle entered in his field and you beat him again on top of that, now with what did you beat him? He said with a stick and I ran. That is why you ran? I asked Yes! He replied. I said it is wrong. I told him because the Ukwangali Traditional Authority has given these issues to the national government, now you were suppose to report to the police. Because it serve no purpose to come to me while you have beaten the owner of the destroyed food already. He said well, I am going to call my boss. I said ok go call him, but even if when you bring him go report to the police. So that the police see it what you are doing to us. You graze in my field and you beat me again because you undermined us.

He went to bring his boss after a day they came and the boss saw how the cattle destroyed crops and concluded that the herder was wrong by beating the field owner. The victim did not say anything but said well you go to the headman with your cattle so that he will see what to do with my shirt full of blood. I am unable, and there is no car here I could have gone to the hospital. Then they brought the cattle, so that the headman decides two cattle remain to wait until the issue is resolved and penalty is paid. They came with their cattle. Then I told them no, this issue we cannot discuss it now, even if we call all elders in the area we cannot discuss this here. This should go to the police because the case is with the national government so that they see our problem and suffering we are experiencing with you Vambos. Return these cattle and you the boss leave two cattle in Tauno's kraal until the police comes, and also the TA secretary was around and Tauno could tell him so that the secretary could informed the police to come attend to the problem and witness how the field was destroyed. Now when they went back they didn't go to Tauno anymore both the cattle owner and the herder drove their cattle back to wamboland till today. Now Tauno did not get anything - his crops were destroyed, he was wounded, he lost his shirt due to blood, the wood was not treated and now he has a big scare but did not get anything. That was how Tauno story happened the herder disappeared and he will not be traced. This is how we are suffering in our independent Namibia – we are beaten for our food.

Sikongo: We are so fearful because they are always with swords, bows and sticks.

Box3

Researcher: There are also talks that not only grazing problems but cattle of vaKwangali are also getting lost due to the presence of the herders in the area, how true is this?

Haruwodi: That is true, our cattle are getting disappeared; and recently my bull got disappeared. First their cattle entered in my field and I confiscated them so that they could come for us to talk. When they came I told them your cattle are there in my kraal do something. He (the herder) said ok, but now I have to go tell my boss and then we will come and agree as to what should be done because I cannot decide alone. When the herder went I also release the cattle in the rangeland together with my cattle. When he came back after two day he started saying well the cattle owner was not at home and he only came today. Then I asked him where is he now? “Well, they told me that just go to Haruwodi and hear what he will say and you will tell us. I told him ok your cattle are released in the rangeland, go discuss and come see how they destroyed my field and then you will tell me what you decided. The same day, my bull was also with their cattle. They took them all and when they passed at some houses villagers saw my bull among their cattle. When I went where they were, I discovered that they have moved, my bull was taken along. And people at Kasera said they saw the bull it was with their cattle. I tried as there was one herder whose cow also entered in my friend I told him I will not charge you but instead I will give you a letter to take to the owambo headman **Shitumbureni** that has my bull arrived there? They should return it till now I did not hear anything and also the herder I sent, his cow is here he did not come back. I am still looking for my bull. It is stolen. There is also another cow at Nandeu village, it was stolen and taken to owamboland. There are many cases it is difficult to count, but many cattle are being stolen.

Djanambase: About cattle theft they are stealing. As for now since last year I lost 7 cattle. Out of the seven one came back and the other one they (farmers) paid it to my fellow Kwangali as their cow but later we recognized it then I took it back. The rest I didn't get them back. This happened because I confiscated one of their oxen, which entered in my field and waited them to come pay, but instead they came and took my cattle too. If I could have sold their ox they would have come back and said where is it. We just left it to bring the money and you have sold it already. Now to wait them, my cattle also were taken together with theirs. Now, once I get their cattle in my field I will sell one or use it to something else (e.g *nzambi*) than waiting.

Sikongo: Ten (10) cattle got lost in their kraal. These people they will not tell even if they saw it in their friends' kraal. Once your cattle sleep outside it is gone to owamboland. Now people are afraid to leave their cattle outside or unattended.

Haindere: We are afraid of leaving our cattle outside the kraal as in January a bull of headman Haruwodi Mpasi was stolen as the bull was with their cattle.

On political issue people interviewed reported that the herders often say that it is Kwanyamas who liberated the country, therefore no need for somebody to say they should not graze here. “But if one looks well, not only Kwanyamas who died for this country, Kwangalis too, fought for this country – the Alex them did not come back etc. needless to mention their names they were many. Many Kwangalis who did not come back from exile, because they went also to support the fight for Namibia’s independence. But now Kwanyamas are saying it was them who fought for this country. They are boosting that the country is theirs, President is theirs, the police are theirs, ministers are them. Well, one can say it true what they say because if one looks in the government it is only them in high positions. There are very few Kwangalis in big positions; senior minister is a Kwanyama, so do the deputy, senior minister is a Kwambi and deputy is a Ndonga and very few Kwangali ministers and deputy ministers who could have a look and see what is what is happening here” said Chief Mipasi.

Box 4

Researcher: Ok can you continue the issue of accusing the chief?

Djanambase: Yes, why I am saying some of cattle farmers accuses the chief, one of them accused me at times. First the one called John waKalunga. This man works in Windhoek. He came and chose the place for himself and asked people to clear it for him. He erected the huts and went back to WHK. When he came for the second time he came to me and said I need also a place in Ukwangali. I told him that no I am not authorized to accept people other than Vakwangali, if you were a Kwangali I would have taken you to the chief. He went back. He came back again and asked me to take him to the chief. I said no, unless I give you a letter to go with to the chief. I gave him a letter to take to the along to the chief. When he got at the chief 's palace, the chief read it and he was told to stay for a night and wait for his reply the next day. The next day the chief told the massager that he (the chief) declined his (John waKalunga) request. When he came back he reported to me that the chief approved his request. I went to the chief to confirm and learned that he was not accepted, while he started building his homestead before going to see the chief, till now he is still there. He came build and said the chief and I accepted me in the area. We had a meeting here in Kwaki village (date not remembered), which was attended by the two leaders, our Chief and King Kauluma. In this meeting I told the chief that John waKalunga is also here. Then the chief asked him where did he give him right to live there? He could not say it. The chief told him go and remove your huts and go back. But he did not do so he is still there till now. He is also affected he was told to leave.

Even Phill ya Nangola from human rights was here at my place. We went to John's house. He asked him "is this Ukwanyama side or Ukwangali"? He said Ukwangali. Who accepted you here? He said the same headman you came with. How did he accept you, because now the cattle farmers and their herders are told to leave while Djanambase is the one who gave you land is here and you even build your house? He said, well I went there (don't know where). First I asked people to clear my place and I went back to WHK. When I came I asked the headman to give me the land he refused and said unless I should go to the chief. The third time I asked him to take me to the chief he refuse and wrote me a letter. When I went to the chief, the chief asked me to sleep and give me feedback the next day. The next day the chief send someone to tell me that the chief said go. Then ya Nangola asked him so does that mean the chief told you to come settle? He said no. Did djanambase tell you just settle, ya Nangola continued? He said no. Then ya Nangolo said if that is the case then you should leave. Then John said if I to leave unless headman Djanambase should pack my belongings. Then ya Nangolo said djanambase do you hear that? If it was you who brought him here then you should pack his belongings and take him back where you picked him, but if he came himself, then he should pack himself and leave. Even ya Nangolo spoke to him, but still he is there, he planted the illegal fields he cleared. That is why I am saying those people can accuse you things that you did not do. Somebody who was not there will definitely be convinced that it is true what they are saying and can easily say; Kwangalis are stubborn is themselves who accepted the Kwanyamas in their area because they are being bribed with milk and butter, while it is not the case! Milk and butter has been our tradition from our forefathers, it is not Kwanyama cattle where we first seen milk and butter – we had our own cattle all along. It is just that they (Kwanyamas) know how to fabricate things and convince people out there that it is true what they say. I don't know where he came from, and today he is saying unless I should take him back, where should I take him back? I don't know Uukwanyama! That is why I am saying those people they know how to fabricate things.

3.1.2 Why oshiwambo speaking cattle farmers moved into Ukwangali Land?

It can be seen from figure 1 that the population of the neighbouring regions, namely Ohangwena, Oshikoto and Oshana increased 27%, 25% and 20% respectively, from 1991 to 2001. As a result of population increase, the demand for land increased, and consequently land speculation increased too. This manifested through land shortage due to the illegal fencing in the neighbouring regions especially in Oshikoto and Ohangwena. Much of the lands in these regions are illegally fenced. Table 1 & 2 shed some light with regard to the issue of illegal fencing in the neighbouring regions. The 2004/5 statistic was not segregated as how many for illegal fences, but was reported that the disputes were on illegal fences, double allocation and eviction of windows by the diseased relatives.

Table 1: Land dispute in the regions during 2003/4

Disputes Region	Fencing	PTO forgery	Claim of PTO certificate/Land ownership	Eviction	Illegal Occupants	Water Dispute	Totals
Ohangwena	28	-	-	-	-	-	28
Oshana	17	-	-	-	-	-	17
Oshikoto	7	-	-	-	-	1	7
Omusati	1	-	-	-	-	-	1
Kavango	3	-	-	-	-	-	3

Source: *Ministry of Land and resettlement*

Table 2: Land dispute in the regions during 2004/5

Disputes Region	Number of reported disputes	Number of resolved disputes
Ohangwena	1	1
Oshana	22	2
Oshikoto	11	3
Omusati	15	0
Kavango	7	0

Source: *Ministry of Land and resettlement*

“The Land” newsletter March 2006 of the Ministry of Land and Resettlement reported, “many well-off people in the areas under their jurisdiction have fenced off large portions of land without the headman’s consent and are refusing to remove the illegal fences. The newsletter further reported that some of the wealthy people are said to bribe the headman to occupy large area of land. To support the argument further, one of the headmen in Ukwangali area said the following: ‘we Vakwangalis took care of our land and we do not erect illegal fences on it. But for them (oshiwambo) right from Ondangwa to the border here with us, just illegal fences all over. The wealth people fence all the land, which was given to them by our forefather, and the poors like us are astray they have no land to graze as it is now. The farms in the land that was given to them (Oshiwambos) by our forefather should be removed so that every one of them have grazing land’. Furthermore,

the Namibian October 25, 2005 quoted Hamunyela who was one of the cattle farmers in western Kavango saying: "Oshiwambo speaking farmers were forced to go into Kavango because rich farmers, including senior government officials, had fenced off large area in the eastern part of former owambo. You cannot even drive your animals inland of former owambo from Kavango, because the whole eastern part has been fenced off of land, from the Angolan border to Tsintsabis in the Oshikoto region". The fenced of area in the eastern part of the former Owambo was said to be 50km by 200km (The Namibian 31, 2005.)

Another aspects to consider in this regard is the issue of Etosha National park and the Andoni area and the extension of commercial farms east of Oshivelo. These were the grazing areas, which the Aandonga cattle herders used for grazing. But then things changed after access to those areas were ceased. This contributed to the diminishing of land resource that was at the disposal of Ndongas. This movement, resulted according to Fuller and Nghikembua 1996, in large sections of what appears to be empty land in Namibia's communal areas are today fenced or occupied.

3.1.3 Was the Reaction of Ukwangali Traditional Authority in order?

Namibia is a unitary and sovereign state in diversity, in terms of culture, norms and value. As a result, the supreme law of the country – 'the Constitution of Namibia' in its article 21 (h) gives provision to every Namibian to 'reside and settle in any part of Namibia'. The same supreme law in its article 102 (5) states that "there shall be a Council of Traditional Leaders to be established in terms of an Act of Parliament in order to advise the President on the control and utilization of the communal land and on all such other matters as may referred to it by the President for advice". This will was realized with the enactment of the Traditional Authority Act No 13 of 1997. In addition, article 66 (1) of the Namibian Constitution states further that "the customary law and the common law of Namibia in force on the date of Independence shall remain valid to the extend that such customary or common law does not conflict with this Constitution or any other statutory law'.

Furthermore, the Communal Land Reform Act No 5 of 2002 was primarily enacted to deal with access to rural land in communal areas. This Act regulates the allocation of land rights and the establishment of Communal Land boards in all communal areas of the country. The Act clearly states the power of the Chief, traditional Authority and the Land Boards with regard to the allocation of land rights in the communal areas. The rights allocated through this Act are as follows: customary land rights and rights of leasehold. The rights allocated at the first category are rights of residential and farming units. The Chief or Traditional authorities allocate the customary rights and the Land Board verifying them before they become legally effective. The second rights, being rights of leasehold for agricultural purposes, vest in the Land Board of the designated area (CLRA no 5 of 2003).

Section 29 of the Communal Land Act clearly stipulates the procedures one need to fulfill in order to get grazing land rights in any communal area in the country (see chapter 2).

Hinz 2003 argued that the important point of reference for customary and common law is the constitution and other statutory law. Common law is not a reference for customary law, nor is the customary law for common law. Both branches of the law enjoy the same level of recognition.

With the above piece of legislation referred to, it then come out clear that Traditional Authorities are statutory bodies passed by the Act of parliament. Therefore, it was in order with what the Honorable Minister of Safety and Security said that; “although the Namibia Constitution has said that we can live everywhere in Namibia, we have to apply to the local authorities for permission to live where we want to settle or live (the Namibian, October 24, 2005”.

The Ukwangali traditional Authority was customary and legally entrusted with the rights for allocation and management of the land resources of Ukwangali. It means then the property rights regime is bestowed upon the traditional authority. This in property rights literature is said that a property right is enforceable authority to undertake particular action related to a specific domain (Ostrom and Schlager 1996 in Hanna, 1996 ed). For every right an individual or a group holds, rules exist that authorize or require particular actions in exercising that property right. Because rights define actions that an individual can take in relation to other individuals as regards some ‘things’ if one individual has a right, someone else has a commensurate duty to observe that right. The duty that an individual owes another defines the actions the individual may, must or must not take in relation to another and that other’s property.

In as much as the Ukwangali Traditiona Authority was concerned it had the right, which the rules existed which authorized or require a particular action in exercising that property right. The rule is that one has to apply from the traditional authority for a grazing land which most of the farmers did not do. As such, the most relevant operational-level property rights are “access” and “withdrawal” rights. These are defined as:

Access: The right to enter a defined physical area and enjoy non-subtractive benefits.

Withdrawal: The right to obtain the resource units or products of a resource (e.g fish, timber, grass, water).

If some one pays the entry fee into a park, they have purchased the temporary rights to enter that park so long they observe the rules defining what the entry fee allows them to do or not to do. In turn other park users face a duty not to interfere with the rights of others to enjoy the park. If a group of fishers hold the right of access they also have the authority to enter the fishing ground. There should be rules specifying the requirements the fishers must meet in order to exercise the rights of access. For example a fisher must

be in the jurisdiction and buy a license before entering the fishing ground (Ostrom and Schlager 1996 in Hanna, 1996 ed).

Let us briefly relate these rights with the cattle farmers in this case. Article 21 (h) of the Namibian Constitution gives the farmers access right, but in this case at no cost. Which means that a farmer can live anywhere s/he wants provided right channels are followed like what is stipulated in Section 29 of the Communal Land Reform Act. Once he or she is accepted then she or he has been automatically granted withdrawal rights meaning that he or she can graze in the commonage. However, the cattle farmers could be told where to graze and at what time of the year. This process results in a withdrawal rights.

The individuals who have access and withdrawal rights may or may not have more extensive rights authorizing participation in collective choice decision. According to Ostrom and Schlager 1996, the distinction between rights at operational level, and rights at collective choice-level is important. It is the difference between exercising and participating in the decision of future rights to be exercised. The authority to devise future operational-level rights is what makes collective-choice rights powerful (Ibid). In this regard collective-choice property rights include management, exclusion and alienation. They are as follows:

Management: The right to regulate internal use patterns and transform the resource by making improvements.

Exclusion: The right to determine who will have an access rights, and how that right may be transferred.

Alienation: the right to sell or lease either or both of the above collective-choice rights.

The right of management is a collective-choice right authorizing its holders to devise operational-level withdrawal rights governing the use of resources. These individual have the authority to determine how, when and where harvesting from a resource may occur; and how will this change the structure of the resources.

The right of exclusion is a collective choice right authorizing its holders to devise operational-level rights of access. Individuals who hold rights of exclusion have the authority to define the qualifications that individuals must meet in order to access a resources. Alienation right is a collective-choice right permitting its holder to transfer part or all of its collective choice rights to another individual or group (ibid).

Again lets briefly look the rights at the collective-choice decision level. This translates that the Ukwangali authority has the management and exclusion rights. At management level the Authority (Ukwangali TA) after realizing that: “the land of Ukwangali had a crack. The Ukwangali land was thin as if it was experiencing severe drought period. It is just this time, during dry season our land becomes depleted like a desert. We don’t want to see our grazing area wiped out everything until it becomes a desert” said the respondents. Together with the number of cattle being estimated at 60,000 cattle for the farmers (the Namibia October 24, 2005), this promoted the Authority to exercise

management right in order to decide on the future resource use. And when one exercises management rights at the same time he or she is exercising exclusion rights.

CHAPTER 4

4.1 Conclusion and recommendations

4.1.1 Conclusions

It transpired that grazing dispute between the three ethnic groups started way back in mid 1990. The main cause of conflict centers on the illegal entry of the Oshiwambo speaking farmers in Ukwangali land and their way of living while in Ukwangali jurisdiction. Some of the uncalled for behaviours of Oshiwambo speaking herders such as letting the cattle to enter the residents' fields, insulting them or even beating them, accusing the residents especially headman and the chief that they allowed them to live and graze there, cattle thefts etc are major issues that made the residents of Ukwangali unhappy with the Oshiwambo cattle farmers. This can be seen how the residents put it;

“I am not educated and I don't work. My education and employment is my field. It is my field where I get money through mahangu selling. I sell mahangu and get money to pay my children's education. Now how can then someone graze in my field? No, the kwanyamas are not good” a female resident

“Us villages we are not employed, our employment is our fields. If you harvest one can take two bags and pay children's school fees or sell the bags to the teachers and then you will pay your children's school fees. Now that the cattle destroy our fields when my child goes to school I have no money to pay school fees, while the school will ask me that I should pay for my child's education. I don't have money. I get money in my fields but now the Vakwanyama's cattle are ever in my field – since the crops are young. When I confiscate one they (herders) will say we are taking their livestock by force. We pay our children school fees from our sweats in the field, now their cattle eat our crops. But here in our village, this year was the first time for people to get drought food. We feed ourselves. The field is my mother and father. How can someone graze there? I will kill him” a male resident.

Land scarcity in view of population growth as it is seen that Kavango population has doubled since 1991 census is also a crucial contributing factor to the current land dispute. The current zoning of new commercial farmers in the area is another factor.

Other than social issues mentioned above political conflict also added to the grazing dispute. In addition to the illegal entry and unruly behaviours of Oshiwambo speaking farmers, their daily boasting that it was them who liberated the country also fueled the grazing dispute. The Ukwangali thought the herders were stepping on their toes by not adhering to the traditional practices and at the same time boasting of being liberated

the country. The Vakwangali feel everybody who was in and outside the country during liberation struggle, contributed equally to the independence of Namibia. Therefore it was not proper for one ethnic group to claim reward over others.

The most Oshiwambo speaking cattle farmers who have their cattle in Kavango in the Ukwangali land moved in due to higher prevalence of illegal fencing in the neighboring regions. This resulted in a shortage of common grazing land in the central regions.

4.1.2 Recommendations

Section 44 of the Communal Land Act states that the Act prohibits the erection of new fences and the retention of fences without the proper authorization under the Act. According to the Act if a person erects a new fence or retains a fence for 30 days after his or her application for permission to retain a fence has been refused, that person commits criminal offence. To date the Act has been in force for more than 3 years and statistics from the Ministry of Land and Resettlement show that a handful number of fencing disputes were recorded in 2003/4 financial years in the Ohangwena, Oshana and Oshikoto (table 1). The same can be said for the financial year 2004/5 year for the region of Oshana, Oshikoto, Omusati and Kavango, although data was not desegregated based on the types of dispute.

It might be to early but to date the statistics from the Ministry show that very little has been taken place in terms of registering existing and new customary land rights in exception of Oshikoto and Ohangwena for existing and new rights respectively (see table 3). Even for Oshikoto and Ohangwena are very little if one looks at it in comparison to the populations, which are rural, based.

Table 3. Approved land rights since the enactment of the Communal Land Act of 2002

Communal land Board	Approved existing customary rights	Approved new customary rights	Approved existing leaseholds (PTOs) rights	Approved new leaseholds rights
Ohangwena	0	91	0	2
Oshana	0	23	0	0
Oshikoto	95	0	0	6
Omusati	7	45	0	2
Kavango	0	0	0	0

Against this it is recommended that the Ministry and its development partners are requested to look into the issue of registering existing customary land rights as a matter of urgency as this will resolve some of illegal fences which could pave or make communal grazing land available to the needy. Equally so it will also resolve the issue of one person having more than one customary land rights.

The Kavango dispute is a wake-up call for the future land dispute. Ten year after independence in South Africa it was reported that 1,600 white farmers were murdered. This figure was out of 8,000 farm attacks that took place over the period under review.

The commission of enquiry reports presented to the government (South Africa) in 2003 indicated that the vast majority of such murders were crime motivated, but 2% and 3% were political and disgruntled farmer workers motives respectively (Nyanto, 2006). This is where a need in current land reform in Namibia is required. For instance why an Affirmative Action Loan Scheme beneficiary should have to sell his or her 150 cattle in the communal area first if s/he wants to go farm in commercial? This makes the large-scale farmers into communal areas not encouraged to move into commercial farms so that they free out space for the small-scale farmers in the communal areas. We know that cattle from northern parts are not allowed in the commercial areas due to diseases in those areas but mechanism could be found and be put in place. Why cannot we say for a communal farmer from the north who meets Affirmative Action Loan Scheme could come with his or her stock into the commercial areas. Those who want to come with their stocks can just quarantine their stocks and once proven health then they can move in the commercial farm areas with their stock. We know also the EU market requirements that the meat should reach a certain standard. This also can be guaranteed by traceability of the product.

Opening up access to commercial land for the large-scale farmers will help immensely resolve land dispute in the future in the communal land as land these areas is not privatized and as a result when population continue growing this can easily cause intra land conflicts.

Land short will not only manifest between Vakwangali and Ovakwanyama/Ondonga people of Namibia, this can also erupt between other ethnic groups due to land shortage and in search of sustainable livelihood for the ones in need. Therefore, there should be a sound and respective working relationship between different traditional authorities, because when one is in need we usually run to our neighbours.

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