

Grazing rights in Namibia's communal areas: A case study of a local land grabbing dispute in Western Kavango region

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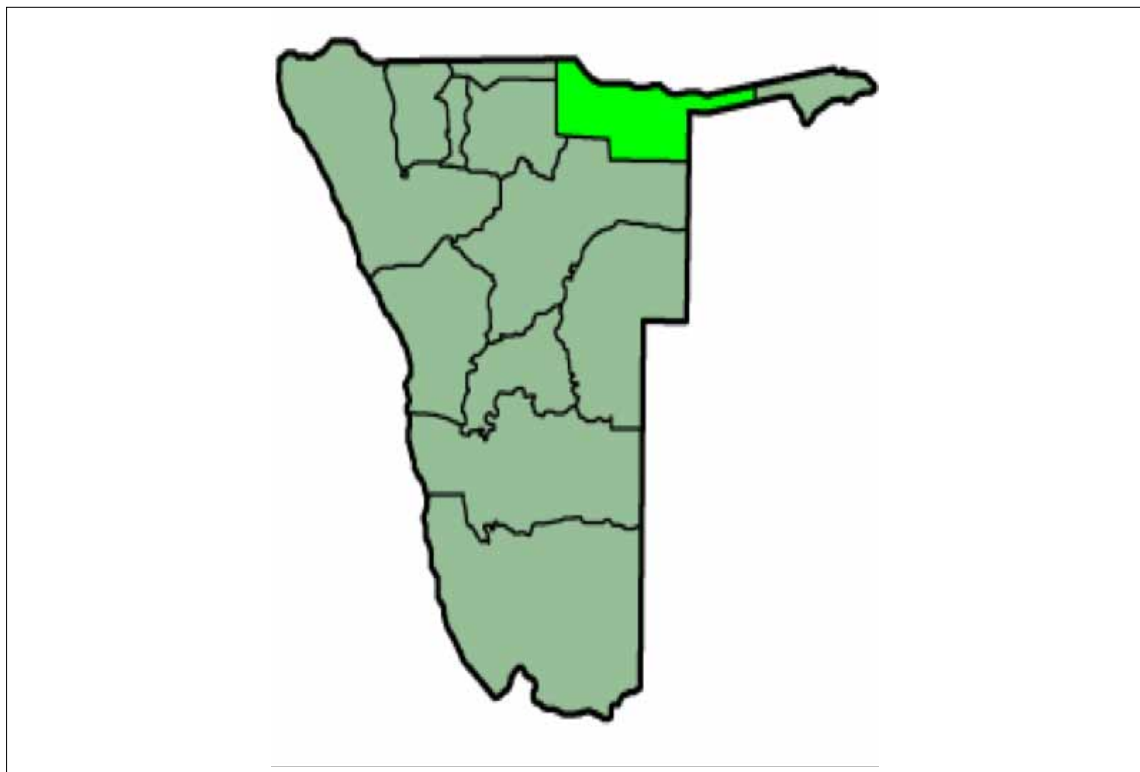
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Acronyms

CLRA	Communal Land Reform Act
NDC	Namibia Development Corporation
UKTA	Ukwangali Traditional Authority
KavCLB	Kavango Communal Land Board
MRLGHRD	Ministry of Regional and Local Government, Housing and Rural Development

Figure 1. Shows the location of Kavango region (bright green shade) in Namibia



Introduction

While conflict and competition over land is a major trend in Africa, and there are allegations of 'land grabbing' of large areas of land from local people, usually by foreign companies, other more localised forms of competition over land are less well understood. This paper presents the case of disputes over grazing land between local communities in Northern Namibia and pastoralists/herders who entered the area and engage in alleged illegal grazing and fencing of communal land for their large herds of cattle. Fencing off of communal land (without authorisation) is forbidden in Namibia by the Communal Land Reform Act.

Land is a very important asset, because all developmental endeavours take place on land and no development can take place in a vacuum. African people and other oppressed people of the world took up arms to fight for their rights and regain their land which was seized by the colonial powers, and Namibia was no exception (Shapi 2005: 3). Namibia became an independent state from more than a century of colonial rule on 21 March 1990, but before independence rights in communal lands were managed by local traditional leaders. The Namibian Constitution in 1990 declared all communal land in Namibia state property, and power over those lands was vested in the president (Fuller 2006: 4). This was a situation which left many traditional leaders and authorities in confusion, as many were not sure anymore of their role in communal land management. Legal clarity only arrived in 1997 with the passage of the Traditional Authority Act, which made provision for the

recognition of local Traditional Leaders (Fuller 2006: 4). This act was later repealed and replaced by the Traditional Authority Act, 2000 (Act No.25 of 2000). In addition to that was the passage of the Communal Land Reform Act, 2002 (Act No. 5 of 2002), which was enacted in 2003 to deal with the administration and management of communal land. The rights which may be allocated with respect to communal land are customary land rights and rights to leasehold. These rights may be allocated (granted) under the CLRA. Section 20 of the CLRA grants the Chief or Traditional Authority primary powers to allocate or cancel any customary land rights. This means that the Chief or Traditional Authority first decides whether or not to grant an application for customary land rights, and these include grazing rights. Only once this decision has been made will the matter be referred to the Communal Land Board for ratification (acceptance) of the decision of the Chief or Traditional Authority (Malan, 2003: 20).

Section 29 of the CLRA has provisions on grazing rights and the use of the commonage. The commonage of a traditional community is available for use by 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. However, it is important to note that sometimes grazing rights on the commonage can be limited or even withdrawn (Malan, 2003: 33). The Traditional Authority are empowered by the Act to impose conditions for a grazing right, such as the kind and number of livestock that may graze on the commonage or the area(s) of the commonage to be used for grazing. The Chief or Traditional Authority can withdraw the grazing rights if set conditions are violated, such as not observing the conditions imposed

by having more livestock numbers than prescribed in a particular commonage (Malan, 2003: 33-34). A more relevant example is the fact that the Chief or Traditional Authority can grant a grazing right to a non-resident provided they make an application. Once granted, the grazing right will be subject to the conditions imposed by the Chief or Traditional Authority. The Chief or Traditional Authority may withdraw this right at any time if this is in the interest of the residents, because of drought or for any other good reason (Malan, 2003: 34).

The issue of illegal grazing in the western corner of Kavango region by the Ovawambo communal farmers has been a bone of contention since 1992. Kavango region¹ (see figure 1) is located in the north-eastern part of Namibia and shares common borders with neighbouring Angola and Botswana. To the north-east the region borders Caprivi region and to the west it borders Ohangwena and part of Oshikoto regions. The region is divided into nine constituencies, covering a total area of 48,463km² and accounting for 5.88 percent of the total land area of Namibia according to the Kavango regional poverty profile (National Planning Commission/NPC, 2007a: 6). Surface soils across the Kavango region are completely dominated by sand, but there are also small scale variations of soil types. However, all soils in Kavango generally have low fertility (National Planning Commission/NPC, 2007a:6).

The Ukwangali² territory borders Mbunza to the east. To the west are the Ovakwanyama and OvaNdonga people. Angola is to the north and the Otjozondjupa³ region lies to the south (Hinz 2010: 287). In October 2004, the Ukwangali Traditional Authority (UKTA) ordered the Owambo communal farmers with their cattle to leave western Kavango immediately, stating that their cattle were destroying the agricultural crops belonging to Kavango subsistence farmers. Different sources have estimated the number of cattle involved to be between 7,000 and 60,000. Fuller (2006: 12) reports that 60,000 head of cattle were brought in by the herders. In 1999 more Owambo herders mainly Oshikoto and Ohangwena Regions started crossing into western Kavango due to a shortage of grazing caused by the fencing off of large portions of communal land by the wealthy Owambo farmers for their own use (NSHR 2005). Eventually the matter went to court, involving 40 cattle herders/owners, and the court ruled in favour of the UKTA. As a result an eviction order was passed to the herders in November 2005 (The Namibian 2005). The illegal herders were occupying an area of 6,750km² when the government, the UKTA and the Kavango Communal Land Board (KavCLB) sought to evict them in 2007 with their cattle. The cattle herders have since been temporarily resettled in Namibia Development Corporation (NDC) farms collectively called 'Farm 6' in Mangetti area (Shivute 2009).

The key question the study is intended to answer is the role of legislation in regulating and governing grazing conflict. It asks what impact the court order had on the parties most affected by the dispute: the cattle herders, the concerned Ukwangali communities and the UKTA.

Article 16 of The Namibian constitution deals with access to land for all in any part of Namibia, provided that proper procedures are followed. Section 18 of the Communal Land Reform Act deals with the prohibition of fences in communal areas of Namibia. And section 29 of the same Act also deals with grazing rights and conditions for withdrawal of such rights.

Objectives of the study

This court order is the first of its kind in the history of Namibia. The study should establish whether the issue has been resolved. It will also examine if the court order was realistic and whether it has set precedence for addressing similar cases in future. This study should also be able to uncover other factors which are generating the conflicts over grazing. It will help to understand the role of institutions and the capacity of local people to use the law and these institutions to defend their rights.

The main objective of the study is to understand the impact of the court order on the affected parties. The specific objectives of the study were as follows:

- To develop a case study and document this particular communal grazing/land conflict and establish whether it sets a precedent for future cases
- To understand the causes of the dispute and how it was resolved
- To understand the impact of the eviction on livelihood of the cattle herders and surrounding communities
- To establish the link to the enclosure (fencing) of communal land in the northern parts of Namibia
- To articulate the policy implications in relation to grazing rights and fencing
- To understand the grazing practices and systems in the area in question (pre and post-independence)

The reason for conducting the study was to contribute to the sparse existing literature on land and grazing conflicts in Namibia. If the findings of this case study show that the way the conflict was handled was successful, it could set precedence for future related conflicts in Namibia, the Southern African Development Community (SADC), Africa as a whole and elsewhere. Evidence shows that these types of conflicts have began to escalate in recent years, and therefore useful lessons could be learnt from this study by practitioners and researchers alike. The study drew on available literature on related matters from other countries and thus the findings greatly contribute to scientific knowledge.

Methodology

The study made use of both quantitative and qualitative methods of data collection, with emphasis on the latter. Qualitative methodology was necessary in this study, as it involved capturing the feelings and opinions of the respondents, and these views were analysed and elaborated. The methods used were key informant interviews, focus group discussions and individual interviews. The sample of interviewees was also increased in order to achieve a certain level of triangulation. The researcher also made use of literature review to enhance his knowledge on the matter. Print, radio and television media data provided insights into the grazing dispute.

In 2011 the researcher conducted key informant interviews in Windhoek with relevant stakeholders to find out more about involved actors and their locations for subsequent interviews.

The researcher then conducted a preliminary one-week field trip from 6 -12 March 2011 to the affected area to get familiar with the community and to visit the Owambo cattle owners and their herders on their newly allocated farms and find out about their situation.

Main fieldwork was carried out in October 2011 through to April 2012. During these field trips detailed interviews and discussions were conducted with relevant stakeholders in different regions and villages in Namibia. Among these were the affected community, the cattle owners/herders, the UKTA, the KavCLB and the Namibian police (NAMPOL). Interviews were also conducted in Rundu, Mpungu, Nkure-nkuru and Ntopa villages of Kavango region, as well as Ondangwa in Oshana region and Tsumeb and Bravo in Oshikoto region.

Data collection went very well because the researcher hails from Kavango region and he can speak Rukwangali, which is the local language spoken by the affected communities. In fact, Rukwangali is spoken by all the people who live in the affected areas, including the Owambo cattle owners/herders from Ohangwena and Oshikoto region, who have lived in the area for a long time. The shared language put the researcher in an advantageous position for the involved communities to trust him and speak out freely.

Data was then transcribed and manually analysed for responses in line with the objective of the study using variables that had been developed. This process also involved comparing the different responses to the same questions to find consensus.

2 Land in Namibia

2.1 *The history of tribal land*

The earliest structure or form of continuous social organisation in the African context was the clan. The clan is defined as a group of related families occupying a piece of land, governed by the same customs or laws. 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 could claim entitlement to the area in question. It is for this reason, for example, that in a multi-lingual country speakers of specific languages feel special attachment to a specific area of the country (Shapi 2005: 5).

Northern Namibia is also the most densely populated region in the country, and home to almost 80 percent of the total Namibian population. As a developing country, Namibia faces increasingly complex, fast-moving, interacting natural resource scarcities. Environmental pressure and depletion is a result of environmental activities (Claasen 2010: 306-307). A study done by Mendelssohn et al (2000) reveals that roughly 70 percent of the region is used for agriculture. Small-scale farmers, also often called subsistence farmers in the Cuvelai (former Owambo land), make up the majority of all farmers. The term subsistence farmers in this context refer to those households that obtain most of their food and income from their crops and livestock (Mendelssohn et al. 2000: 70). This in itself limits other land uses such as grazing. Mendelssohn et al. also discuss the other two groups of farmers, namely the elites (politicians, businessmen and government officials) and the commercial farmers, who are mainly whites. They point out that these elites tend to fence off large chunks of communal land for themselves. They are a small number of people, perhaps a few hundred, but these farms make up about 11 percent of the total area of the region, or about one-fifth of the former Owambo land (Ibid.). Mendelssohn et al. also reveal that 55-60 percent of all households in the Cuvelai do not own cattle; about 80 percent of all cattle are owned by some 20 percent of the households. The Cuvelai is also where the majority of poor people live, and this also means less grazing for their few cattle. The authors further recommend that instead of attempting to increase numbers of stock, limits must be imposed on the number of livestock that can be kept in the Cuvelai. This will reduce grazing pressure and provide opportunities for poor households to improve their herds (Mendelssohn et al. 2000: 10).

Claasen (2010: 308) reiterates the views of a certain historian who 'provide evidence that violent conflict has always been an integral part of the ever shifting social relationships between stationary farmers and those with nomadic lifestyles, based on the availability of natural resources.' Claasen reports that 'the dry season constitutes the most critical time, as migrant Ovakwanyama farmers need to move their herds in search of greener pastures and water, frequently clashing over scarce resources with resident Rukwangali farmers' (Claasen (2010: 310).

2.2 History of land conflict in Namibia

Namibia, with a land area of about 824,000km, is one of the least populated countries in sub-Saharan Africa. This translates to two persons per square kilometre (NPC 2001). It appears therefore that Namibia does not face the population pressures that trouble so many developing countries and which often negatively affect socio-economic development efforts. However, Mendelsohn and el Obeid (2003) argue that 'this impression (low population density), is deceptive, as it is accompanied by low environmental carrying capacity for sustaining human livelihood, because Namibia is also the driest country south of the Sahara.' Its aridity is therefore coupled with relatively low primary and secondary production of food.

Apart from the country's harsh geographical environment, Namibia's 116 years of colonial history—first under German colonial rule (since 1884) and thereafter under South African Apartheid rule in 1920 – affected the environment adversely (Claasen 2010: 306). Under South Africa, Namibia's settlements in the region were affected which left the country fragmented, incoherent, disintegrated and unequal. As acknowledged by Mendelsohn and el Obeid (2003), the colonial domination, and in particular the liberation war, affected northern Namibia negatively. However, very little information is available on the impacts the liberation war had on natural resource depletion. Mendelsohn et al. state that perspectives on current conditions in former Owambo land are often coloured with the assumptions that the liberation war had massive effects on settlement patterns, economic activities, migration and demographic patterns and environmental conditions – since tens of thousands of people left Namibia, and many lost their lives. Some of the impacts of this are obvious and have a bearing on the use of natural resources. The war clearly hindered the development of commercial farms and the expansion of settlements into unoccupied areas. Development was slow during the war, but many development projects have focused their activities there since independence, and the same is true for provision of services (Mendelsohn et al. 2000: 1).

As a developing nation, Namibia faces increasingly complex natural resource scarcities. Various analysts agree that these scarcities can engulf or overwhelm community efforts to cope with environmental changes and can actually reduce a country's ability to deliver democratic reform. Consequently, natural resource scarcity sometimes helps to steer communities into social conflict, and in severe cases, into a spiral of violence, institutional dysfunction and social fragmentation which entrenches existing ethnic cleavages (Claasen 2010: 306-307).

2.3 Communal land

Communal land in Namibia constitutes about 41 percent of the total land mass and is home to two-third of the country's population, whereas commercial land constitutes approximately 44 percent of land surface and is home to only 10 percent of the population (NPC 2001: 142). The remaining land area consists of the diamond concession areas and proclaimed nature conservation areas, about 1.5 percent and 13.5 percent respectively (NPC 2001: 142).

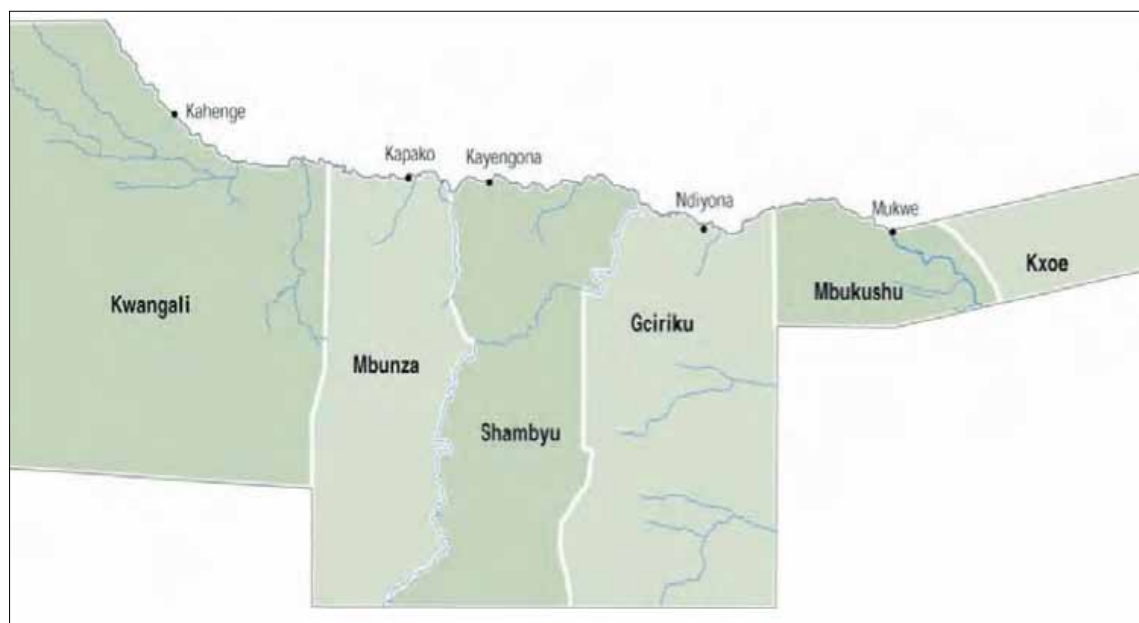
Communal land is defined as land that belongs to the state (CLRA 2002). This means that an individual cannot own communal land, but may have customary land rights or rights of leasehold with regard to certain areas of land (Shapi 2005: 5).

In Namibia most of the communal land areas are in the north and only patches can be observed in the south, central, west and east. This is the case because in the north the colonisers did not occupy the land, whereas in the south, central, west and to a lesser extent in the east much of the land was taken by the white settlers and converted to commercial farming units (Shapi 2005: 5).

2.4 Common-pool resource theory

Generally most natural resources can be classified as common-pool resources, and land is not an exception. Common-pool resources are natural or human-made facilities or stocks that generate flows of usable resource units over time (Hanna et al. 1996). One of the main characteristics of common-pool resources is that it is costly to develop institutions to exclude potential beneficiaries from them. The fact that it is costly to design institutions that successfully exclude potential beneficiaries from access to common-pool resources make many of them de facto open-access resources. This implies that anyone who wishes can access and appropriate this resource. Therefore, in order to sustain a common-pool resource, both its stock and flow must be governed (Shapi 2005: 7-8).

Figure 2. Kavango Region is divided into six (6) tribal authority areas; Kwangali, Shامbyu, Mbunza, Gciriku, Mbukushu and Kxoe; only the first five authorities are officially recognised by the government (Mendelsohn, 2009:12).



3 Grazing Land

3.1 Customary grazing practices of the Ukwangali traditional community

The Kwangali territory (see figure 2) borders the Mbunza (sister tribe) to the east; to the west are the Ovakwanyama and Oondonga people. Angola is to the north, and the Otjozondjopa region lies to the south (Hinz 2010: 287). Historically in the Ukwangali traditional system, the Chief has the power to rule and hence the land was in his hands and that of his Traditional Authority (Hinz 2010: 288). In fact the Kavango people, including the Ukwangali tribe, have long embraced the concept of the commonage. According to the customary law of the Kavango people, no person is allowed to sell land, because it vests in the hands of the Chief or Traditional Authority on behalf of their communities. Section 17 of the CLRA states that all communal land areas vest in (belong to) the state. The state keeps the land in trust for the benefit of the traditional communities living in those areas. The state therefore has put systems in place to make sure that communal lands are administered and managed in the interests of people living in those areas. The Act has done this by including the Chief or Traditional Authority in the administration process as well as the Communal Land Boards. These two parties work together to ensure better communal land administration.

3.2 Enclosures of the Northern Communal Areas and the grazing dispute

The fencing boom began in the mid 1990s, when large tracts of land were enclosed in the communal areas in northern Namibia. In fact, in some areas this practice was reported to have started as early as 1975 (Werner 2011: 1). There are various reasons why people engage in illegal fencing of communal land. After independence in 1990, the practice increased rapidly, probably due to the absence of clear legislation; the CLRA only became operational in 2003, although it was passed in 2002 (Werner 2011: 28). Werner argues that before independence, some people felt that since they did not have access to commercial land, it was their turn to commercialise communal land (Werner 2011: 29). Current local discourses on the topic stress the slow pace of land redistribution as a contributing factor, although many people do it out of pure greed and self enrichment. Just before the Land Conference of 1991, which gave birth to most land legislation including the CLRA, the government pronounced that illegal fencing in communal areas would no longer be tolerated (Werner 2011: 28). These enclosures took away crucial resources like water from other residents – even government boreholes, in certain cases. Evidence has shown that those who did the fencing were the rich and politically well connected (Fuller 2006: 11).

As a result of these enclosures, poor farmers from certain parts of the Northern Communal Areas (NCA) (largely members of the Uukwanyama and Ondonga ethnic groups) who were also moving in these areas to seek permanent settlements found themselves squeezed between fences and they were reduced to living in corridors of these enclosures (Fuller, 2006:11). In 1991, these farmers moved east across the Kavango border into the southern areas of the UKTA (Menges 2007). Initially, this was done with permission from the UKTA with the understanding that this was a temporary arrangement (Fuller 2006). By 2003, temporary had become permanent and the herders had brought in an estimated 60,000 head of cattle. This led to sporadic violence between the Uukwangali residents and the Owambo herders/cattle owners (Fuller 2006: 12).

3.3 *The economic dynamics of enclosures*

The population of the neighbouring regions of Ohangwena, Oshikoto and Oshana increased by 27 percent, 25 percent and 20 percent respectively from 1991 to 2001. As a result of the population increases, the demand for land in these communal areas also increased and consequently land speculation increased too. This situation then led to the illegal fencing of communal areas, mainly in two of the regions, Ohangwena and Oshikoto (Shapi 2005: 18). The Land Newsletter of March 2006 from the Ministry of Lands and Resettlement reported that 'many well-off people in the areas under their jurisdiction have fenced off large portions of land without the headmen's consent and are refusing to remove the illegal fences' (MLR 2006). These allegations have been confirmed by many herders who had moved to Kavango in search of grazing.

The proposals to introduce reforms of 'native policy' in the mid-1960s to establish a modern commercial farming class resonate with the more recent growth of a small but growing middle class in the region. Werner (2011: 24) argues that the 'growing middle class exerted pressure on traditional leaders to authorise the enclosures of communal land for private use, thus contributing towards a change in customary land tenure'. Werner continues that 'the reforms which brought about the establishment of a homeland government in Owamboland then provided this "modernising elite" with a platform to articulate their interests and create a framework that would facilitate the accumulation of capital by individuals'. The gradual trend of wealth accumulation on an individual basis impacted negatively on the community at large and in particular its structures of accountability. The result was that the individual accumulation of wealth became more widespread and the dependence of communities on livelihoods through the allocation of rights to resources decreased (Werner 2011: 25). It must be emphasised that the objectives of building such a class (e.g. class differentiation) that were embodied in 'native policy'

now seem to be getting realised, through processes of narrow accumulation by an elite – a process which is rather ironic. Basically, independent Namibia is realising the development plans of its colonial masters.

3.4 *Legislation pertaining to grazing and fencing in the commonage*

3.4.1 *The Constitution of Namibia*

Article 16 of the Namibian Constitution states that 'All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others...'

3.4.2 *The Communal Land Reform Act and access to grazing land*

The CLRA, which came into operation in 1 March 2003, prohibits fences in communal land. Section 18⁴ of the Act states that 'No new fences may be erected without proper authorisation obtained in line with the Act'. The Act further states that 'fences that existed at the time that the Act came into operation have to be taken down, unless the people who erected those fences applied for and were given permission to keep the fences on the land'. The Traditional Authority and the Communal Land Board are empowered to authorise a new or existing fence if the Board is satisfied that⁵:

- the fence was erected in line with customary law or any other statute law;
- the fence will not unreasonably interfere with or restrict the use and enjoyment of the commonage by the other members of the community; and
- there are good reasons why the applicant should be allowed to keep the fence

The CLRA also determines the circumstances under which a grazing rights can be withdrawn. The Chief or Traditional Authority may withdraw a resident's grazing rights when⁶;

- s/he does not observe the conditions imposed when it comes to the use of the commonage, for example, when the resident has more than the prescribed number of cattle grazing on the commonage;
- s/he 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, and;

- s/he does any of the following prohibited acts, unless the Chief or Traditional Authority has given their written permission for such an act and this permission was ratified by the Communal Land Board: erects any building structure in the commonage, ploughs or cultivate therein, obstructs the ways to any watering place etc. (CLRA 2002)

The Act has provisions on grazing rights and the use of the commonage. The Act defines the commonage as the common grazing area for the livestock of the members of a traditional community. In other words, this grazing is available for use by lawful residents for the grazing of their stock.

4 Research Findings

"I saw and realised 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 Owambo land, Kavango land, Caprivi land, Herero land, Nama land etc. When the situation was hostile here my subjects were ready to take up arms against Kwanyama over their land, but I spoke and said Vakwangali litureni (Kwangalis cool down), the matter is in the hands of our Government all what we need is a peaceful solution." - Daniel Sitentu Mpasi, Vakwangali Chief, quoted in (Shapi 2005: 9)

4.1 The causes of the grazing dispute

The Owambo-Kwangali grazing feud dates back to 1982, but received more attention again in 1992 when the farmers from neighbouring regions such as Ohangwena and Oshikoto started illegally grazing their animals in the western Kavango region (New Era 2012a). Immediately after independence in 1990 the border fence between Kavango and Ohangwena regions was removed. As a result most herders started entering Ukwangali area between 1991 and 1992. The herders started to settle in Ukwangali area without seeking permission from the Ukwangali Traditional Authority. A member of UKTA who was interviewed stated that the herders probably misinterpreted article 16 of the Namibian Constitution which states that any person can settle in any part of Namibia.

About 70 cattle owners and herders came from the Oukwanyama and Oondonga areas in search of grazing. The areas where they came from were heavily fenced, and they found open grazing in Kavango region. Some herders admitted that they entered Ukwangali area without the knowledge of the local Chief, Sitentu Mpasi of the UKTA. As their numbers and those of their animals increased, conflicts with local people started to escalate. Some of the local people who were interviewed indicated that overgrazing became a problem in the area. The cattle of the herders were destroying their crop fields and as such food production was going down because some local people started to abandon their crop fields. Another affected community member said that there was no mutual understanding in regards to grazing practices.

"They just leave their cattle to graze without looking after them and they ended up destroying crop fields and when confronted they would always say that they (Owambo people) fought for this country. The herders did not respect the local traditions and customs" (affected Mukwangali farmer, 8 March 2011)

For instance, when a herder's cattle were confiscated for destroying crop fields, they would steal the cattle back or engage in a physical fight with the owner of the crop field. There were also instances when they would refuse to pay a fine administered by the Traditional Authority for destroying another person's crop field. The local people interviewed said that it is customary among all the Kavango communities, including the Vakwangali people, not to fence off their crop fields. They understand and have embraced the concept of commonage and as such other people in the community are expected to look after their livestock after the planting season, which is not a very common practice in most Owambo communities. Other local people complained that the Owambo herders were cutting their fences to let their cattle into their farms for grazing. Other concerns were the increase in livestock diseases, hunting of wild animals and cattle theft.

As a result of the complains from the local Vakwangali community members the Ukwangali Traditional Authority started to investigate these complains of crop fields being destroyed by the herders' cattle. They found out that most of these allegations were true and also that the herders did not obtain permission from the Traditional Authority to graze and settle in the area. The Traditional Authority then alerted the police. The local people were getting impatient and violence between the local people and the herders erupted. It was reported and confirmed during the study, that the local people started burning the huts of the herders. There are also allegations that a well was poisoned and a herder lost a number of cattle. The study found that a case was opened over this incident, but it lacked merit and was cancelled by the local magistrate.

4.2 Why the herders came to western Kavango

"Even the police do not like the Vakwanyama people, because the kraals and homes of the herders were burned by the locals in the presence of the police." (Owambo cattle owner, 14 December 2011)

"Later the conflict started and I asked the police and the Councilor why we were being chased out of the area. Our lives were disturbed and up to now we do not see a valued reason why we had to leave. At the time we went in the area there was no Communal Land Reform Act and the land was vested in the Traditional Authority then and they allowed us in." (Owambo cattle owner, 14 December 2011)

"This was unfair because we already built houses and have our livestock in the area. The community members started burning our kraals in front of the police. The smoke of the fire also killed our pregnant cows and cattle." (Owambo cattle owner, 14 December 2011)

Most of the Owambo herders who were interviewed by the researcher entered Ukwangali area from 1991 onwards. None of them admitted that they entered Ukwangali area illegally. The herders gave different reasons why they left Owambo areas of Ohangwena and Oshikoto regions for Ukwangali. Some said that they left due to lack of grazing and drought. Another said that he was grazing on a certain piece of land with others, but as his cattle increased in number he was ordered to leave; he then headed for Ukwangali because he heard of the good grazing conditions there. Many herders told

Case study

A cattle owner/ herder recounted that his brother was already living in a village called Oshashi in western Kavango, but when his brother died in 2002, he decided to go and continue running the affairs of the family and relatives who were already living there. His family was very helpful to the local headman and he decided to allocate land to them. The headman even gave them land to cultivate in Mahangu and things only changed when the conflict began. He continued that:

"After two or three years the conflict started and my homestead was burned and a number of cows died. The local people burned the area in the presence of the police and thus I believe the police were biased and were on the side of the local people. This conflict hurt me so much and that's why I decided to go to court. Initially the court ordered us to go back to Ukwangali. We appeared at the Rundu Magistrates Court and were released on bail. I feel that we are just still in custody, I do not feel free because I even dream that I'm in prison and this has affected me psychologically." (Owambo cattle owner, 14 December 2011)

the researcher that the reason they left was because of fencing by other individuals, through which grazing land had become limited.

"I left my area because the headman of the area at the time gave the land we were also grazing in to other people who fenced it off and we did not have grazing land anymore." (Owambo cattle owner, 14 December 2011)

Members of the UKTA also confirmed that some herders whom they consulted informed them that they came to Ukwangali in search of good grazing, because their area in Owambo did not have enough grazing.

When the researcher asked the Owambo herders whether they got permission to enter and graze in Ukwangali area and whether they had some kind of agreement, most said that they got permission, but there was no written agreement.

"The agreement was just verbal, in fact the headmen do not even have a pen and paper in their house and this is the same even in Owambo land." (Owambo cattle owner, 14 December 2011)

Many herders said that they followed the right procedures in terms of the custom at that time to enter Ukwangali area. Some herders said that they would always arrange a meeting with the local headman of the village in which they wished to graze their cattle. They said in most cases they were granted grazing rights, but not to put up any permanent structures for fencing or homesteads. Others were given rights to cultivate crops as well by some local headmen. Another herder said that upon his arrival at Mukekete village he consulted the headman of the village at the time about his situation. The headman then referred him to Chief Mipasi of the UKTA who also accepted his request to graze in the area.

Some herders told the researcher that they were introduced to the local headman by fellow herders who had come earlier and in some instances by a local Mukwangali person. A member of the UKTA also confirmed that some of the herders said that they got permission from certain headmen, but when these headmen were asked by the Senior Traditional Councilors they all denied giving any permission to these people. Other herders admitted that they just came into Ukwangali on their own accord.

4.3 Eviction order and the court case

The researcher encountered difficulties in differentiating between cattle herders and cattle owners, as most of the herders were not cattle owners. They were just employed to look after cattle which belonged to others. The police arrested some of these people who were just herders and not owners, although the eviction notices were served or should have been served to the owners. The wealthy cattle owners were benefiting from the illegal grazing, while the herders who are their employees were in a more vulnerable position

caught between the interest of the cattle owners and the 'landholders' (Ukwangali communities and TA). Therefore it is important to ensure that the right people are prosecuted

"This government is just encouraging laziness. Where are we going to get money to send our kids to school? People are becoming poor due to a lack of education. They chased us out and now they have given the land to the so called local people who do not have anything and now they are selling the land to people with money." (Owambo cattle owner, 14 December 2011)

The grazing dispute issue was brought to the KavCLB by the UKTA in 2003 after the UKTA claimed that they had exhausted all available avenues of intervention. 2003 was also the year the Kavango Communal Land Board came into operation as per the enactment of the CLRA. A former member of the KavCLB who was interviewed by the researcher confirmed that the Board received a request from the UKTA to look into the matter of the Owambo cattle herders. In 2005 the Communal Land Board issued an eviction order to all the known herders on the list, although the list was not reliable, because some owners/herders who were on the list had already voluntarily left the area. Whereas others where in the area, but their names might not have appeared on the list. This eviction order was challenged by the herders in the high court in 2005/6 and was found to be illegal because it was not issued by a court of law, but by the KavCLB.

The Traditional Authority had already started reaching out to other stakeholders in the early 1990s to try and address the problem. The first meeting was held in 1992 with the Ondonga and the UKTA; subsequent meetings were held with the Minister of Lands and Resettlement (Hon. Richard Kabajani), Minister of Agriculture, Water and Forestry (Hon. Helmut Angula) and other ministers and deputy ministers (including Hon. Hadino Hishongwa, Hon. Hidipo Hamutenya and Hon. Hifikepunye Pohamba), but there were claims that nothing concrete came out of any of these meetings. There was also a meeting with eight Traditional Authorities from the former Owambo land which took place on 20 September 2002. This meeting was held at Kwaki village in western Kavango and was attended by about 100 herders. The Governor of Kavango (Hon. Reinhold Muremi) was present together with the Councillor for Mpungu constituency (Hon. Johannes Hambyuka).

Finally, Chief Mpasi of the UKTA opened a case against the herders in 2006 and the accused farmers made their first court appearance on 3 December 2006. The Owambo cattle owners and herder were charged with illegal grazing and trespassing in western Kavango. The farmers were said to have violated national laws such as Article 102 (subsection 5) and Article 10 (subsection 1) of the Namibian Constitution, the Traditional Authority Act and the CLRA (New Era 2012a). Some of the illegal herders at some point were said to be occupying an area of 6,750km² when the government, UKTA and KCLB sought

to evict them in 2007 with their 1,600 cattle from the jurisdiction of the UKTA in Kavango (New Era 2012a). In 2005, Cabinet decided that all Owambo-speaking farmers and their 60,000 cattle should leave western Kavango. In November 2006 the Owambo farmers and their cattle were evicted, after which they approached the High Court to have their cattle returned to Kavango. In 2008, some of the Owambo cattle owners and herders returned with their livestock to Kavango, reigniting the tension between them and the UKTA. They now face criminal charges for illegal grazing and trespassing (The Namibian 2011b). To date the Owambo cattle owners have not been prosecuted and they are out on bail.

"We were viewed and considered as criminals and are seen as enemies of the government and we don't know why." (Owambo cattle owner, 14 December 2011)

4.4 Small-scale farms in affected areas of western Kavango region

A member of the UKTA informed the researcher that when the Traditional Authority heard about the presence of the herders in Ukwangali in the 1990's, they launched an investigation. Their investigation found that they were indeed present and that they had started digging wells and building homes and kraals. They also found that the numbers of herders and their livestock had increased and they continued bringing in other herders. As a result the Senior UKTA Council advised the UKTA to request the government to subdivide the area into small-scale farms (5km x 5km) and allocate these to the local people as a way of stopping herders from remaining in or entering the area again, as most of these farms would be located at the border between Ohangwena and Ukwangali. Eventually the government surveyed the farms and these were gazetted and allocated. Deeds of leasehold were issued, although some farmers are still waiting for these.

4.5 Relocation of cattle herders from western Kavango

- The Technical Committee on the Removal of Illegal Grazers from Western Kavango

After the eviction notices were served on the herders, the Technical Committee on the Removal of Illegal Grazers from Western Kavango was established. The aim of the Committee was to facilitate the removal of herders and their cattle from western Kavango and generally to come up with a solution to the grazing dispute. The Committee could then advise the political principles and the police as well as other stakeholders on steps to be taken to address the problem. The Committee was also to act as a mediator between the UKTA and the government as well as the illegal cattle herders/owners. The Committee Secretariat sits in the Ministry of Regional, Local Government, Housing and Rural Development under the chairmanship of the Permanent Secretary of that

Ministry. The composition of this technical committee is as follows: Ministry of Regional, Local Government, Housing and Rural Development (MRLGHRD), Ministry of Agriculture, Water and Forestry (MAWF), Ministry of Lands and Resettlement (MLR), Ministry of Safety and Security (MoSS), Ministry of Defence (MoD), Ministry of Works and Transport (MWT), Ministry of Trade and Industry (MTI), Kavango Regional Council, Ohangwena Regional Council, Oshikoto Regional Council, Ukwangali Traditional Authority, Oukwanyama Traditional Authority and Oondonga Traditional Authority

A member of the above mentioned Committee who was interviewed highlighted some of the activities of the committee since its inception. He said the Committee held meetings with the UKTA two or three times on the issue. They also consulted with the other concerned Traditional Authorities of Oukwanyama and Oondonga. At one particular meeting with all three Traditional Authorities, Chief Daniel Sientu Mipasi of the UKTA made it clear that he had no problem with the Owambo herders staying in his area as long as they sought permission from his Traditional Authority. In response the Owambo Traditional Authorities collectively argued that this was a free Namibia and their subjects were free to live wherever they wished. They further asked whether they should also chase out the Ukwangali people living their areas of jurisdiction.

- The agreement between the government and Namibia Development Corporation (NDC)

"We will now take care of things ourselves, we do not know now if these boreholes are ours or they still belong to NDC. It looks like the government is pulling out, because even my borehole has a problem." (Owambo cattle owner, 14 December 2011)

The consultations with various stakeholders started in 2008. The Ministry of Trade and Industry approached its parastatal, the NDC, to offer some of its farms to the herders who were facing eviction. The NDC availed some of its quarantine farms (farms built with a game fence to prevent diseases from spreading to other animals) at Mangetti, collectively known as 'Farm six', in the Bravo area in Oshikoto region, about 80km north of Tsumeb on the Tsitsabis road. The government on behalf of the Owambo herders entered into a lease agreement with the NDC. The 12 month lease initially ran from June 2009 to July 2010, and when that period lapsed the contract was renewed to run from July 2010 to August 2011. Meanwhile the Cabinet gave direction to the Ministry of Lands and Resettlement to seek permanent land for herders, as the NDC arrangement was just a temporary one. Initially the NDC was concerned that the herders' animals coming from rural areas would spread diseases to cattle on the other side of the cordon fence, which could affect the meat market. This issue was addressed by doubling the fence (changing it into a game fence) so that the herders' cattle could not cross over to the

other camps to mingle with the NDC cattle. After the agreement the government gave the committee N\$7.4m for upgrading the farms, of which N\$4.7m was transferred to the NDC for rehabilitation of farm infrastructure such as boreholes, fences, water pumps/engines and to build additional crush panes and do other necessary renovations. The balance of N\$2.5m remained with the Technical Committee for operational expenses.

- The actual relocation of the Owambo cattle owners and herders from western Kavango to Mangetti

"The government must give us these farms permanently, because this will bring healing to our lives. We do not want a situation where they will again evict us from these farms as this will destroy our lives and cause chaos and could even lead to civil war in this country." (Owambo cattle owner, 14 December 2011)

The consultations between the Technical Committee and the herders were held at Oluno Community Hall in Ondangwa and Leo Shoopala Hall in Oshakati. The main mode of communication for inviting the herders and other stakeholders for these meetings was through the radio.

The committee member further informed the researcher that before the actual relocation could take place the herders refused to load their cattle into trucks provided by the government. They argued that the trucks were not suitable for that purpose and that their cattle could die of stress. A decision was made that the herders could drive their animals by foot and that mobile water tanks would be placed along the way to water their livestock, and this was done. He felt that 'the government had been too good to people who violated the law in the first place. These people knew where they came from, they were just suppose to go back. What a waste of government money'. He further stated that the government provided a conducive environment despite the fact that these people were wrong in the first place. Another land expert at the Legal Assistance Centre said that, 'the government would rather keep peace than punish people who violate the law.'

- The registration process of Owambo herders and their livestock

The 57 cattle owners had 7630 cattle at the time of relocation, but the number of their livestock had to be reduced to 3466 to comply with the carrying capacity at farm six. The Namibian Police and veterinary officials under the Ministry of Agriculture, Water and Forestry played a crucial role in controlling the numbers of livestock and ensuring that the correct numbers came into the NDC farms. The police were there to ensure that there is peace and order in the entire process. The first registration process was done in August 2008, and during the process the herders were divided into two

groups. According to reliable sources this decision was based on political lines. One group was registered by the Committee itself and the other group by the leader of the herders (Comm.Pers, 2011). The registration process entailed recoding the herders' names, their ID numbers, number and brand of cattle and the place in Kavango where they were grazing illegally. There was also a verifying process to ensure the information was correct (Comm. Pers, 2011).

- The carrying capacity of the NDC farms

The NDC indicated that the carrying capacity of the farms was just 4,000 Large Stock Units (LSUs) for one year only. The 57 registered herders at the time of relocation had 7,630 cattle (Comm. Pers, 2011). When it was realised that the herders' cattle had exceeded the carrying capacity of the NDC farms, the Technical Committee decided to convince the herders to reduce their cattle accordingly. The committee also suggested other options to the herders. The first option was that the herders could return some of their cattle to their areas of origin, as it was understood that some of the cattle belonged to herders' relatives and friends. The other option was that herders could sell some of their cattle through MEATCO at high prices as per an agreement with the government to encourage the herders to reduce the number of livestock (Comm. Pers, 2011). The second verification process took place on 24 December 2008 when the actual reduction of the livestock was done. The number of cattle came down to 3,466 head, and these were then earmarked to be taken to the NDC farms. By April 2009, the herders were moved to the NDC farms (Comm. Pers, 2011).

- The current situation at the NDC farms

The researcher visited the NDC farms to familiarise himself with the situation there. It was during the rainy season and the vegetation on the farms looked very green, the cattle of the Owambo farmers looked well nourished. A few months later the researcher had a chance to interview the cattle owners about their situation at the NDC farms. Most of them complained about a poisonous plant which was killing their livestock. They said some farmers were losing up to six cattle in a day, but this was only happening occasionally, and some farmers have actually left the area because of this problem. The farmers also believe that the NDC is not honouring its obligations as per the agreement. NDC agreed to rehabilitate and maintain the boreholes and fences, but they were not doing so. As a result some herders had to bear the cost of maintaining the farm infrastructure themselves to keep their farming activities running.

When asked about their future at the NDC farms, the herders said that their future was not promising and that they were still reminiscing about the good times they had in Kavango region. They said the difference between west Kavango and the NDC farms is that they were now

fenced in. One herder said, 'we will never vacate this area again unless the government finds a better alternative for us. They can kill us, it is better for them to kill us'. Another said that the future is dark because it seemed like the government was not going to find another land for them, despite their complaints on the problems they were facing. He continued that their livestock had not yet fully adapted to the new environment and that they might continue losing their cattle until there was nothing left.

Local people in the Mangetti area have also expressed complaints regarding the presence of the cattle owners and herders in the NDC farms. There is a group resettlement scheme in Mangetti area called Bravo Resettlement Farm, where San people are resettled by the Ministry of Lands and Resettlement. The San said that Owambo cattle owners or farmers moved into their area or surroundings ("ancestral land") about two years ago, when they were chased away from western Kavango region. They said that they were never informed beforehand about this move. However, some Hai||om San people were later employed to put up the fences for the Owambo cattle owners/farmers. At that time they were told that the Owambo farmers would only stay there for about nine months, but it has been two years already. The NDC informed them that this was just a temporary fence for eight to nine months to provide grazing land to the farmers. The San people said that there was no real conflict between them and the Owambo farmers, but they are now restricted from using the area they previously used for temporary camping and gathering veld food (like Mangetti). When they have tried to go there, the Owambo farmers feared that they would steal their cattle. They related that Owambo farmers had guns and are powerful. They informed a staff member from the Office of the Prime Minister about this issue, but no intervention has come forth (Odendaal and Dieckmann 2012).

4.6 The ongoing court case

During his two day testimony, Sientu said, "I do not want any Oshiwambo speaking person in Ukwangali area. They are grazing here illegally". Sientu maintained that society should be homogenous. "Damaras and Herero's must live with Herero ... and so on," he said when pressed further by the defence council of the herders. (Confidante, 05 July 2012)

Initially, 33 herders from Ohangwena and Oshikoto regions made their first court appearance on 3 December 2006 after Chief Mpasu opened a court case against them in the same year (The Namibian 2011a). The case has dragged on since then, and trial resumed on 25 June 2012 when all the 43 accused pleaded not guilty. The Chief testified on 26 and 27 June 2012, after which the trial was postponed to 28 August 2012 (The Namibian, 29 August 2012). The reason for the postponement was because the accused had received information that the magistrate had visited the complainant in the matter, the

UKTA's Chief Sitemu Mipasi, with the Public Prosecutor on 25 June 2012, which was the first day of their trial, in an effort to convince the apparently reluctant leader to testify in court. The accused claimed that they feared they would not be able to receive a fair trial after the Magistrate had been involved in an attempt to secure the complainant's testimony (The Namibian, 29 August 2012).

The Chief threatened to leave the courtroom during his testimony when he felt he was being humiliated by some questions which the defence lawyer who was representing the accused farmers put to him during his cross-examination (The Namibian 29 August 2012). The accused faced charges under the Communal Land Reform Act. The charges included counts of illegally setting up homesteads in a communal area and illegally grazing livestock in a communal area. During the trial the defence lawyer told state witnesses that his clients indeed had permission from the UKTA to live and farm on the land under the Traditional Authority's control. The Chief initially denied that he had given any Oshiwambo-speaking farmers permission to graze their cattle in the area, but after two days of cross-examination, he admitted that he had given land to some political heavyweights (The Namibian, 29 August 2012).

The defence council who represents the 43⁷ herders was reported to have requested copies of the records of the proceedings at the Rundu court and contents of the police dockets, which were not forthcoming. He said that these documents were necessary to advise his clients on further conduct of the matter, including an intended application with the high court for permanent stay of prosecution in the matter. He continued that at that particular time he could not even establish who the witnesses were. The lawyer wrote a letter to the prosecutor of the Rundu Magistrate Court to say that he would advise his clients not to attend future court sessions unless they had been personally served with the summons and he expressed his disappointment on how the court was handling the matter. He maintained that it is unfair for his clients to appear before the court after it failed to prosecute them for over six years on a 'relatively simple charge of trespassing'. He continued that the court intended to frustrate his clients and financially impoverish them to the extent that a guilty plea may be extracted from them (The Namibian, 2011b). He made this statement 3 years after the Owambo cattle owners were found guilty for illegally occupying and grazing in western Kavango region in 2008.

The long awaited court case had been scheduled for plea and trial from 16-20 May 2011. The defendants were again to reappear in court on 26 July 2011 (The Namibian 2011a). Twenty-five of the 29 people accused of allowing their cattle to graze illegally in the UKTA area appeared on 2 July 2012 before the Kahenge District Court, where they pleaded not guilty to the charges brought against them by the Traditional Authority. On the same day Chief Mipasi denied availing land for grazing to the group of illegal grazers. The accused were released on bail of N\$500 until further notice (New Era 2012b). Things might have played

out this way due to the political influence which has been alluded to earlier.

5 Conclusions and Lessons Learned

This dispute – which was between the Owambo farmers from Ohangwena and Oshikoto regions and the local Vakwangali community members and represented by their local Ukwangali Traditional Authority (UKTA) – was reported as early as 1992 (other reports points to as early as the 1980's), when it was said that the Owambo herders with their hundreds of cattle had entered into western Kavango "illegally" in search of grazing. The UKTA was relentless in seeking solutions with regard to the grazing dispute. They persistently sought government's attention and intervention in this matter, even though it would seem that government was reluctant from the beginning. In the process the UKTA also got the attention of other stakeholders who came on board. Between 2005-2008 some of these Owambo cattle owners and herders were charged and eviction orders were eventually issued. By 2009 most of the cattle owners and herders were driven out of western Kavango and were relocated to farm six in Oshikoto region.

Many respondents including the affected local people, herders and even the police felt that the dispute had the potential to result in deadly tribal clashes and could have led to civil war. One police officer remarked, 'people could have died if the police had not intervened'. I had meetings with the different headmen in the area and some of them pronounced themselves clearly that they were ready to take the law into their own hands, because the government was not doing anything even after many consultations. Therefore, the government should be commended for intervening in this dispute before it got out of hand, and the same can be said of other stakeholders.

The government's intervention was long overdue, though, and many people argued that it was politically motivated. One local news paper reported that the protracted court case was said to be fuelling ethnic, tribal and political conflict between the contending parties. The article continued that the Chief of the UKTA and his followers are devoted supporters of the ruling party and that political motives were said to have caused the grazing feud as some prominent Owambo cattle owners were known supporters of the main and official opposition party, the Rally for Democracy and Progress (RDP) (New Era, 27th June, 2012). Further confusion was caused by recent revelations by the media about land which has been allocated to political heavyweights and publically well connected individuals by the same Traditional Authorities. The question lingering in people's minds is the legitimacy of those allocations. This is in light of the fact that there were some herders who are known opposition party members, who could have been evicted because of their political affiliations (as reported in New Era 2012a).

"This is a political issue and we know the Owambo tribe which is responsible for this, because they do not like the Ovakwanyama people. These are the people who have told the Ukwangali Traditional Authority and subjects to chase us out. Chief Mpasi was happy with us in the past and he even sent gifts to us (cattle owners/herders) to reward us for hard work. He even acknowledged that we helped to build schools by making water available to the communities from the wells which we had dug." (Owambo cattle owner, 14 December 2011)

In addition, the eviction order seems to have had some positive impacts on the lives of local people in the affected area. Many respondents informed the researcher that their view of the government changed when the eviction order was implemented. Some members of the UKTA said that the Traditional Authority was happy that at last justice had been done. One stated that 'this will send a strong message to those to have been contravening the Communal Land Reform Act and those who are planning to do so'.

On the other hand, there were affected local farmers who were not impressed by the eviction. They felt that the eviction was selective, because some herders are still in the area despite the calls from the UTA to remove them. The eviction order could have been more effective if the state had also dealt with the root cause of the conflict – the illegal fencing that had displaced the cattle owners with their herders in the first place – rather than only dealing with the indirect consequences (Fuller, 2006:12). The state was able to apply the CLRA to evict the herders from grazing illegally in western Kavango Region but failed to apply the same law to remove illegal fences in north western Namibia.

There are also herders who were evicted and have started coming back into the area, having seen that nothing happened to their fellow herders who remained. In fact, the researcher witnessed this when he visited the area in year 2012. The court order could also have been more effective if all the herders who were found to have violated the law were evicted, which was not the case. There were herders who did not move an inch during the eviction and others started to return after the eviction took place. Again, this points to the ineffectiveness with which the law was implemented – there was no monitoring, control or, importantly, follow-up mechanism to ensure that everybody who was evicted had left and that no one was coming back into the area.

The Owambo cattle owners were also getting frustrated by the delayed and extended court proceedings. There were cattle owners who thought that they had a genuine case, but eventually felt like they were being treated like criminals. The prolonged and frequent court appearances are draining them of their energy and finances. They were also worried about the fact that they did not have

long-term tenure right at farm six and this may point to the inability of the land laws and policy to provide secure tenure rights and reasonable access to resources. The government and other stakeholders should also pay more attention to the NDC farms where the herders were relocated. There are complaints about cattle deaths due to poisonous plants and water problems due to lack of maintenance of the boreholes. There is a need to revisit the agreement to ensure that parties stick to their obligations as per the agreement. There is also a need to educate the herders about the agreement, because there seems to be a lack of understanding thereof. The herders also seem to be in the dark in regards to their future at these new farms, and the government should reassure the herders and encourage them to maximise the opportunity while a new alternative is still being sought.

In addition, it is clear from the findings that the government did not do sufficient consultations with the inhabitants of the Mangetti area when the Owambo farmers were brought in. There is currently dissatisfaction among some of the Hai||om San inhabitants who claim that the area is their ancestral land. Most of them have been resettled by the Ministry of Lands and Resettlement at Bravo Resettlement Farms just opposite the NDC farms. The San people have said that their access to veld food is limited because they are viewed as a threat by the herders, who fear that the San people might steal their cattle. The government must clarify the situation to bring the two communities together to prevent suspicion and hostility from both sides. Ultimately, the Namibian government could be seen as disregarding the principle of free and prior informed consent (FPIC) which is provided for in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The affected Ukwangali communities and their Traditional Authority (TA) have, on the other hand, clearly demonstrated that local people can use the legislation to protect or defend their land rights provided that they work in unison. This case also demonstrated that it takes an organised TA, one that is consistent in regards to applying pressure on government and other stakeholders, to play their role in order for progress to be made. In sum, another lesson is that local communities can use the law to defend their rights with support from their local leadership or TA in persistently and actively engaging relevant stakeholders.

This grazing dispute was the first of its kind in Namibia and the government with other stakeholders succeeded in bringing the conflict under control. Namibia has demonstrated that its legislation has the potential to somewhat deal with lawlessness and promote peace. Therefore if this dispute is addressed it has a great potential to set a precedence for resolving similar conflicts in Namibia and beyond.

End Notes

- ¹ At the time of editing this paper in May 2014, Kavango Region was split to form two regions namely; Kavango East and Kavango West. Since this research was conducted before these developments, I have retained all references to a single Kavango Region.
- ² Kwangali is a tribal group in west Kavango region. Therefore in this dissertation the use of the word will vary according to the context; (Ukwangali Traditional Authority/territory/area/communities, Vakwangali people, Mukwangali person [Lusakalalu/ (Nordic Journal of African Studies 12(1):92-104 (2003)].
- ³ Ovakwanyama and OvaNdonga are two sub tribes under the Owambo people which is the largest tribal group in Namibia. The use of this words will also vary according to context; Uukwanyama and Oondonga Traditional Authority/area, Ovakwanyama and OvaNdonga people, communities etc
- ⁴ Communal Land Reform Act, 2002 (Act No.5 of 2002)
- ⁵ Guide to the Communal Land Reform Act, 2002 (Act No.5 of 2002)
- ⁶ Guide to the Communal Land Reform Act, 2002 (Act No. 5 of 2002)
- ⁷ The number of the accused keeps changing (29,33,43,57 etc) during different court appearances because some do not show up, hence the inconsistencies by the media reports

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Appendix 1

Legislation

Government of the Republic of Namibia, The Constitution of Namibia

Government of the Republic of Namibia, Traditional Authority Act, 2000 (Act No. 25 of 2000)

Government of the Republic of Namibia, Communal Land Reform Act, 2002 (Act No.5 of 2002)

Government of the Republic of Namibia, Guide to the Communal Land Reform Act, 2002 (Act No. 5 of 2002)

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