

LAND GRABBING FROM WITHIN: LEARNING FROM GRAZING DISPUTES IN WESTERN KAVANGO, NAMIBIA

KEY ISSUES

- While international investments in farmland have been criticised as 'land grabbing' in parts of Africa, in Namibia most land disputes arise from competing demand for land between poor rural communities and domestic elites.
- Rising pressure on Namibia's rangelands has seen some large-scale livestock owners illegally fencing portions of land for their exclusive use. Invoking the Communal Land Act of 2002, local communities were able to get state authorities to intervene and a court order for the eviction of the illegal occupiers of communal land.
- The eviction order was not fully implemented, and state authorities and the Communal Land Board failed to adequately monitor and follow up on its implementation.
- While Namibia's legal framework provides for robust governance of communal land rights held by people living under customary tenure, the rights confirmed in law are not fully realised in practice.
- Slow responses from the state, uneven application of the law and failure to monitor implementation are some of the shortcomings in this case.
- Further work is needed to ensure compliance in practice with international covenants, guidelines and declarations on land rights, land governance and the rights of indigenous peoples.

1. PRESSURE ON AND COMPETITION OVER RESOURCES


In recent years Namibia has received a number of proposals from multinational agricultural corporations to develop large-scale irrigation projects, mainly in the country's water-rich, north-eastern regions (Odendaal 2011). However, only a few of these proposed large-scale projects have materialised (Sulle, Thiem and Muduva 2014), and other more localised forms of competition over land and its natural resources are having a significant impact on affected communities (Muduva 2014: 1).

A dispute over grazing land arose between established traditional communities in Western Kavango Region¹ and Owambo cattle owners and herders², mainly from the Ohangwena and Oshikoto regions. It was alleged that the Vakwanyama and Aandonga cattle owners and their herders entered a neighbouring traditional communal area to graze 60 000 head of cattle, despite no authority to do so in terms of local customary laws and the Communal Land Reform Act (Act No. 5, 2002). This dispute started in the early 1980s, but gained prominence in 1992 when the Ukwangali Traditional Authority (UKTA), due to complaints from their communities, began to engage the Namibian government and other stakeholders to resolve the dispute (see Table

1 Muduva (2014) alludes to the split of Kavango Region into two regions.

2 The words 'herders' and 'cattle owners' are used here (sometimes interchangeably) because some cattle owners were part-time farmers ('week-end farmers') – in other words, they were not based in the affected area and their cattle were therefore looked after by herders – while other cattle owners were full-time farmers and pastoralists and were also involved in herding their own cattle. Nevertheless, in both cases they made use of the assistance of herders or 'caretakers'.

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1 p. 3). It was reported that 153 Owambo cattle herders entered Ukwangali area (Mushimba 2006: 60). However, only 73 Owambo cattle owners and herders³ were charged in 2005 and about 50 were issued with eviction notices. Eventually judgement was passed in favour of the UKTA and an eviction order was issued in 2008⁴. By April 2009 the herders were relocated from Ukwangali area in Western Kavango Region to Farm Six in Oshikoto Region, fuelling another conflict involving the resident Ha||om San community, who are based at the Bravo Resettlement Project (see Table 1 p. 3).

2. THE LEGAL FRAMEWORK FOR TENURE REFORM

Namibia is one of the few African countries with a progressive legal and institutional framework governing natural resources (Sulle, Thiem and Muduva 2014). Article 66 of the Constitution of Namibia recognises and protects customary laws, and customary leaders were formally given the opportunity for statutory recognition as traditional leaders in 1995 and 1997 respectively with the promulgation of the Traditional Authorities Act (TAA), (Act No. 17, 1995) and the Traditional Authority Act (Act No. 8, 1997). These were later repealed and replaced by the Traditional Authorities Act (Act No. 25, 2000) (Fuller 2006: 4). Accordingly, the traditional authority (TA) has the primary powers to manage the commonage to ensure sustainable resource use (including grazing areas, distribution and carrying capacities of a particular area).

The Communal Land Reform Act (CLRA), (Act No. 5, 2002), was aimed at dealing with the administration and management of communal land (Muduva 2014: 4). The CLRA defines the roles and responsibilities of all the actors, such as the CLBs and TAs. Their functions and powers are clearly stipulated and follow a system of checks and balances (Sulle, Thiem and Muduva 2014). Section 29 of the CLRA deals with 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 livestock, restricted only in accordance with the management prerogative of the chief or TA, and subject to the CLRA and its accompanying regulations. As such, grazing rights on the commonage can be limited (or even withdrawn) by the chief or TA for purposes of proper management (Malan 2003: 33). The CLRA also regulates fencing of communal land areas (section 44) and creates exemptions regarding certain types of fences (regulation 26).

While the Act aims to promote tenure security, it also contains several flaws, as acknowledged by government:

i) The Act does not provide security for commonage areas, which have been faced with a high rate of fencing off in recent years.

³ Notice of Motion/Case No. 7325/06.

⁴ High Court judgement/Case No. (P) A325/2006.

ii) The Act does not take the different land use practices found in Namibia into account, e.g. pastoralism, shifting agriculture, seasonal crop fields and shifting cattle posts which use grazing areas communally. The Ministry of Land Reform (MLR) is currently busy looking into options of how groups could be enabled to register their land.

The persistence of these challenges facing communities, which were supposed to be addressed by the Communal Land Reform Act of 2002, calls for urgent action from government and other stakeholders (Sulle Thiem and Muduva 2014).

3. THE CAUSE OF THE GRAZING DISPUTE

Northern Namibia is said to face potential resource scarcity due to the high population density in that part of the country and by the minority elite grabbing large tracts of land at the expense of the poor majority (Mendelsohn, El Obeid and Roberts 2000 and Claasen 2009). Namibia, being one of the most arid countries in Southern Africa, has a low environmental-carrying capacity to sustain livelihoods and yet the majority of the rural population depends on agriculture (Mendelsohn, El Obeid and Roberts 2000). These scarcities can overwhelm community efforts to cope with environmental changes, consequently steering communities into dispute over natural resources – including grazing land, as is the situation in this particular case study (Claasen 2009). Proper, equitable management and administration of communal land is essential to ensure the sustainability of common resource use and to prevent sources of conflict.

Before Independence, the Owambo Administration of South West Africa, through the Commissioner of Kavango Administration, requested a piece of land⁵ from the UKTA to be allocated to the Oukwanyama TA for grazing purposes. Initially this was done with permission from the UKTA, but with the understanding that this was a temporary arrangement (Fuller 2006: 12). 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 Kwangali residents and the immigrant Ovawambo cattle owners and herders (Fuller 2006: 12).

In addition, from 1991 to 2001 the population of the neighbouring regions (Ohangwena, Oshikoto and Oshana) increased by 27, 25 and 20 percent respectively. As a result of the population increases, the demand for land in the Northern Communal Areas (NCA) also increased and consequently land speculation increased too. A fencing boom in northern Namibia, mainly by rich and politically well-connected individuals, began in the mid-1990s (Fuller 2006: 11).

⁵ The request went through and a parcel of land measuring 50km by 200km was said to have been donated to the Oukwanyama TA by the UKTA in the early 1960s (NSHR, 11 December 2005).

Large tracts of land were enclosed in the NCA; in fact, in some areas this practice was reported to have started as early as 1975 (Werner 2011b: 1). These enclosures took away crucial resources (such as grazing, water etc.) from other residents, as even government boreholes were fenced off in some areas. There are various reasons why people engage in illegal fencing of communal land but after Independence in 1990, the practice increased rapidly, probably due to the absence of clear legislation – the Communal Land Reform Act only became operational in 2003, although it was passed in 2002 (Werner 2011b: 28). This resulted in narrow accumulation of wealth by black elite at the expense of the poor communities who depend on commonage resources for their livelihoods. Werner (2011b: 25) concluded that class differentiation, as embodied in the ‘Native Policy’, was finally being realised. Basically, independent Namibia is realising the development plans of its colonial masters, albeit not in ways originally intended.

4. CONCLUSION

The government’s intervention suffered delays and the Communal Land Reform Act (Act No. 5, 2002) was tested as a result of this grazing dispute matter. The root cause of this dispute is the fencing of communal areas in former

Ovamboland, especially in Ohangwena and Oshikoto regions from where the case study cattle owners and herders came. The law should have been applied to remove illegal fences to ensure that the cattle owners and their herders returned to their areas of origin after eviction from Western Kavango Region. The government has also been accused of not prosecuting high-profile individuals while acting swiftly to bring low-profile cases – and particularly the poor – to book (Muduva 2014). This has been widely reported by the local media against the background of the public outcry that the Anti-Corruption Commission (ACC) seems to avoid high-profile individuals but seems to be relentless in pursuing low-profile cases.

The situation at Farm Six is not the only case where outsiders took or tried to take the land of San people. A further example is the case of the Gams farmers at the Nyae Nyae Conservancy in Otjozondjupa Region, where Herero farmers entered the conservancy with their herds of cattle without authorisation in 2009 (anonymous interviewee, pers. comm. 13 February 2013). Another one is the development of small-scale farms by the MLR at Xeidang village in Eastern Kavango Region, where San people were living beforehand (Dieckmann et al. 2014: 337). The government could be seen as disregarding various international conventions (and their principles and practices) which protect the rights of the indigenous minority, among

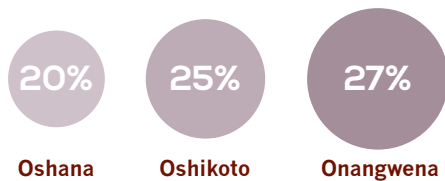
TABLE 1: EVENTS RELATED TO THE GRAZING DISPUTE

Source: Muduva 2014: 45

DATE	PARTIES INVOLVED
1960s	The Ukwangali Traditional Authority (UKTA) donated land to the Oukwanyama TA measuring 50km x 200km.
1980s, 1990s (1992–2000)	Ovawambo cattle owners and herders started entering Western Kavango Region with their cattle (7 000–60 000) [†] to seek grazing, and continued to do so.
1992–2004	The UKTA held consultative meetings with various TAs including Ondonga, Uukwambi, Oukwanyama and Ombalantu. They also met with various ministers and political office bearers of the Namibian government to ensure that cattle owners and herders who had illegally entered the communal area would move out.
2003	The UKTA brought the grazing dispute matter to the Kavango Communal Land Board (KavCLB).
4 Oct 2005	The UKTA and Chief sent a letter dated 4 October 2005 to the KavCLB to seek assistance to resolve the long-standing matter.
18–23 Nov 2005	The KavCLB issued eviction notices to 50–53 herders/cattle owners with the assistance of the police.
3 March 2006	The UKTA, Chief and the government (MLR) laid criminal charges with the Namibian Police Force (NAMPOL) against all the herders who did not heed the eviction notices. At this point only one cattle owner out of 50/52 notified the KavCLB that he had vacated the area after being served with the eviction notice.
3 December 2006	The accused farmers made their first court appearance.
14 December 2006	A court order dated 14 December 2006 was granted following the founding affidavit of the herders to remain in the area.
13–23 Feb 2007	The applicants – UKTA, Chief Mpasi, KavCLB and MLR – made an application or founding affidavit (Notice of Motion) for hearing on 13 February 2007.
28 Nov 2007	The application (Notice of Motion) was heard.
11 Feb 2008	Judgement was delivered in favour of the applicants (UTKA and others).
2008	Allegations of some cattle owners and herders returning to Western Kavango Region.
2008	Consultations regarding the relocation of Ovawambo cattle owners along with their cattle to Farm Six commenced.
2009 (April)	The Ovawambo cattle owners were moved to Farm Six with their animals.
2011 (May)	Subsequent court appearances.

which are the African Commission on Human and Peoples Rights (ACHPR), African charter, Universal Periodic Review (UPR) of the Human Rights Council (HRC), African Commission on Human and Peoples Rights and, most importantly, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which emphasises the principal of Free and Prior Informed Consent (FPIC) (Muduva 2014).

It can therefore be concluded that communities can arguably use the legislation to protect or defend their land rights, provided that relevant stakeholders are brought on board. This was clearly demonstrated by the Vakwangali communities and their Traditional Authority, with the help of government and other stakeholders.



Population increases between 1991 and 2001

5. RECOMMENDATIONS

- 1 **Speedy responses:** This dispute arose because of delays in responding to illegal grazing. As the saying goes, ‘justice delayed is justice denied’. Government should have acted promptly because initially there were only a few illegal herders and prompt action could have removed them or at least reduced the impact of their presence and that of their cattle on the resident communities.
- 2 **Effectiveness and sustainability of the court order:** Lack of follow-up on the eviction order rendered it partly ineffective and therefore government could have followed up to ensure that all the herders had left the area. Relevant stakeholders should also hold government accountable in this regard, as it was in their interest to ensure that the eviction order was effective.
- 3 **Selective application of the law:** Government should have addressed the root cause of the grazing dispute, which was illegal fencing in communal areas where the Owambo cattle owners and herders came from, instead of just treating the symptom. The government should have used the same legislation (Communal Land Reform Act, 2002) to remove illegal fences, which it used to evict herders who came to Western Kavango predominantly because of enclosures in their areas.
- 4 **Stakeholder consultation:** The fundamental principle of Prior and Free Informed Consent (FPIC) seems to have been disregarded (although it is generally embedded in the relevant national law(s), but specified in some

international conventions to which Namibia is party) when translocation of the Owambo cattle owners and herders to an area inhabited by the minority San people occurred. Government should observe international conventions to that effect, especially the United National Declaration on the Rights of Indigenous People (UNDRIP). It is also the responsibility of stakeholders, especially human rights organisations and practitioners, to remind and hold government accountable for observing and complying with these instruments.

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Footnotes

- 1 Different sources have estimated the number of cattle involved to be between 7 000 and 60 000 head. For example, Fuller (2006: 12) reports that 60 000 head of cattle were brought in by the owners and herders.