

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

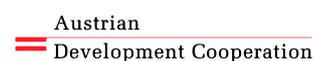
KEY ISSUES

- 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.

SUMMARY

A long-standing grazing dispute in Western Kavango Region in northern Namibia provides critical lessons on the challenges that people living in communal areas face to secure their land rights. In this case, several large livestock owners illegally enclosed community rangelands in order to secure grazing for their own commercial cattle herds. This brief shows how affected communities used legislation to defend their land rights: they mobilised relevant government and traditional authorities to intervene. This intervention included the issuing of an eviction order as provided for by the Communal Land Reform Act (Act No. 5 2002), which resulted in the removal of most of the illegal cattle owners from the affected area. This policy brief assesses the extent to which the dispute has been resolved, following this eviction order. It is argued that, while the eviction order was a victory for local people, in order for it to have been effective, the Ministry of Land Reform and the Communal Land Board should have followed up to ensure that all the alleged illegal herders had left the area, but this did not happen, with the result that the order was never fully enforced and some of the communal grazing land remains illegally enclosed.

SUPPORTED BY:



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,

While the Act portrays many good intentions 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.
- 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 et al., 2014).

2. 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 et al., 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 et al., 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 Uukwanyama 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

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

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 Uukwanyama 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) ¹ 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 Mpsi, 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 back 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.

the Kwangali residents and the immigrant Ovambo cattle owners and herders (Fuller, 2006: 12).



Population increases between 1991 and 2001

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). 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.

3. CONCLUSION

The government’s intervention suffered delays and some respondents argued that the government’s delayed intervention was politically motivated, although they could not give sufficient justification for this assertion. The Communal Land Reform Act (Act No. 5, 2002) was tested as a result of this grazing dispute matter. The shortcoming in this case does not lie in the imperfection of the law but in the way the law was implemented. The root cause of this dispute is the fencing of communal areas in former Owamboland, 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 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).

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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.

4. ACTION POINTS

Recommendations and lessons for policymakers, implementers, landholders and practitioners, such as the government and/or Ministry of Lands and Resettlement, Kavango Communal Land Board, Ukwangali Traditional Authorities, Human Rights Organisations and practitioners and other stakeholders:

- 1 Delayed justice:** 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

- 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.