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

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.

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 (Thiem and Muduva, 2014). While conflict and competition over land is a major trend in Africa – with numerous protests over ‘land grabbing’ by foreign companies that seize it from local people – other more localised forms of competition over land and its natural resources are often less documented and analysed, despite 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 the lack of authority to do so in terms of local customary laws and the Communal Land Reform Act (Act No. 5, 2002). This dispute has been a bone of contention since 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). It was reported that 153 Owambo cattle herders entered Uukwangali 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).

2.1 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 et al., 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), 1995 (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 in terms of the TAA to manage the commonage to ensure sustainable use of the resources (including grazing areas, distribution and carrying capacities of a particular area).

The Communal Land Reform Act (CLRA), 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 et al., 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. This right belongs to any resident of the community and is an inherent right that is 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).

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1 Muduva, T., 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 (‘weekend 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’.

3 Notice of Motion/Case No. 7325/06.

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

<table>
<thead>
<tr>
<th>DATE</th>
<th>EVENTS RELATED TO THE GRAZING DISPUTE</th>
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<tbody>
<tr>
<td>1960s</td>
<td>The Ukwangali Traditional Authority (UKTA) donated land to the Uukwanyama TA measuring 50km x 200km.</td>
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<tr>
<td>1980s, 1990s (1992-2000)</td>
<td>Ovambo cattle owners and herders started entering Western Kavango Region with their cattle (7,000-60,000) to seek grazing, and continued to do so.</td>
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<tr>
<td>1992-2004</td>
<td>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.</td>
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<tr>
<td>2003</td>
<td>The UKTA brought the grazing dispute matter to the Kavango Communal Land Board (KavCLB).</td>
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<tr>
<td>4 Oct 2005</td>
<td>The UKTA and Chief sent a letter dated 4 October 2005 to the KavCLB to seek assistance to resolve the long-standing matter.</td>
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<tr>
<td>18-23 Nov 2005</td>
<td>The KavCLB issued eviction notices to 50-53 herders/cattle owners with the assistance of the police.</td>
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<tr>
<td>3 March 2006</td>
<td>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.</td>
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<tr>
<td>3 December 2006</td>
<td>The accused farmers made their first court appearance.</td>
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<td>14 December 2006</td>
<td>A court order dated 14 December 2006 was granted following the founding affidavit of the herders to remain in the area.</td>
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<td>13-23 Feb 2007</td>
<td>The applicants – UKTA, Chief Mpasi, KavCLB and MLR – made an application or founding affidavit/Notice of Motion for hearing on 13 February 2007.</td>
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<tr>
<td>28 Nov 2007</td>
<td>The application (Notice of Motion) was heard.</td>
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<td>11 Feb 2008</td>
<td>Judgement was delivered in favour of the applicants (UTKA and others).</td>
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<tr>
<td>2008</td>
<td>Allegations of some cattle owners and herders returning back to Western Kavango Region.</td>
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<tr>
<td>2008</td>
<td>consultations regarding the relocation of Ovambo cattle owners along with their cattle to Farm Six commenced.</td>
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<tr>
<td>2009 (April)</td>
<td>The Ovambo cattle owners were moved to Farm Six with their animals.</td>
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<tr>
<td>2011 (May)</td>
<td>Subsequent court appearances.</td>
</tr>
</tbody>
</table>

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).

Source: Muduva, 2014: 45
3. CONCLUSION

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.

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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:

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.
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.

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.

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.

5. REFERENCES


NAMIBIAN LEGISLATION AND INTERNATIONAL CONVENTIONS


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.