















## ACRONYMS

<b>CLB</b>	Communal Land Board
<b>CLRA</b>	<i>Communal Land Reform Act, 2002</i> (Act No.5 of 2002)
<b>FGD</b>	Focus group discussion
<b>KavCLB</b>	Kavango Communal Land Board
<b>LAC</b>	Legal Assistance Centre
<b>LBTA</b>	Land Board Tenure and Advice
<b>LEAD</b>	Land, Environment & Development Project, LAC
<b>MAWF</b>	Ministry of Agriculture, Water and Forestry
<b>MLR</b>	Ministry of Lands and Resettlement
<b>MRLGHRD</b>	Ministry of Regional and Local Government, Housing and Rural Development
<b>MTI</b>	Ministry of Trade and Industry
<b>Nampol</b>	Namibian Police Force
<b>NCAs</b>	Northern Communal Areas
<b>NDC</b>	Namibia Development Corporation
<b>NDP2</b>	<i>Second National Development Plan (NDP2) 2001/2-2005/6 (Volume 2)</i>
<b>NNDFN</b>	Nyae Nyae Development Foundation of Namibia
<b>NPC</b>	National Planning Commission
<b>NSHR</b>	National Society for Human Rights (now NAMRIGHTS)
<b>TA</b>	Traditional Authority
<b>TAA</b>	<i>Traditional Authorities Act, 2000</i> (Act No. 25 of 2000)
<b>UKTA</b>	Ukwangali Traditional Authority
<b>UNDRIP</b>	The United Nations <i>Declaration on the Rights of Indigenous Peoples</i> (2007)
<b>UPR</b>	Universal Periodic Review (a mechanism of the UN Human Rights Council)

## CHAPTER 1: BACKGROUND TO THE CASE STUDY

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### 1.1 Introduction

A dispute over grazing land arose between established traditional communities in western Kavango Region and outsider pastoralists, cattle owners or herders, mainly from the Ohangwena and Oshikoto regions.<sup>1</sup> It was alleged that these owners and their herders entered a neighbouring traditional communal area to graze their large herds of cattle, despite the lack of authority to do so in terms of the local customary laws and the *Communal Land Reform Act, 2002* (Act No.5 of 2002).

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 well-documented and analysed, despite having a significant impact on locally affected communities. This dissertation presents one such case. Analysis of this (ongoing) case is interesting and useful because it does not involve any foreign interests. It involves locally established traditional authorities (TAs) and communities and offers an opportunity to test the 12-year old *Communal Land Reform Act* (CLRA) that would stimulate confidence in terms of its effectiveness to deal with complicated land disputes.

### 1.2 Background to the dispute

Kavango Region is located in the north-eastern part of Namibia and shares common borders with Angola and Botswana.<sup>2</sup> To the north-east, the region shares borders with Caprivi Region (now Zambezi Region) and to the west it borders the Ohangwena Region and part of Oshikoto Region. Kavango Region is divided into nine constituencies and it covers a total area of 48,463 km<sup>2</sup>, accounting for 5.88 per cent of the total land area of Namibia according to the *Kavango Regional Poverty Profile* (NPC, 2007a: 6). Surface soils across the Kavango Region are completely dominated by sand although there are also small-scale variations in soil types; all soils in Kavango Region generally have low fertility (NPC, 2007a: 6). The Ukwangali Traditional Authority is bordered by the following traditional authorities; the Mbunza to the east; to the west are the Oukwanyama and Ondonga. Angola is to the north and the Otjozondjupa Region lies to the south (Hinz, 2010: 287).

Illegal grazing in the western corner of Kavango Region by the animals of Ovawambo cattle owners and herders has been a bone of contention since 1992. In October 2004, the Ukwangali Traditional Authority (UKTA) ordered the Ovawambo cattle owners and herders (along with their initially estimated 60 000 cattle) to leave western Kavango Region immediately, stating that the cattle were destroying the agricultural crops belonging to subsistence Kavango farmers. The cattle owners and herders refused to leave the area, resulting in the TA charging up to 73 Ovawambo cattle owners and herders under the CLRA. The charges included counts of illegally setting up

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<sup>1</sup> 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 fulltime 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’.

<sup>2</sup> By the time of finalising this report in May 2014, Kavango Region had been formally split into two new regions, namely Kavango East and Kavango West (the case study area). Since the research was conducted before this development, I have retained all references to a single Kavango Region (Dieckmann et al, 2014: 329).

homesteads in a communal area and illegally grazing livestock in a communal area. They were first charged near the end of 2005 and their case has dragged on since then. The Ukwangali Traditional Authority applied to the High Court for an eviction order against the nine<sup>3</sup> respondents in 2007 and the court ruled in favour of the Ukwangali Traditional Authority, resulting in an eviction order issued against the herders in November 2008. (Anonymous interviewee, 11 October 2011)

The illegal cattle owners and herders were occupying an area of 6,750 km<sup>2</sup> when the government, Ukwangali Traditional Authority (UKTA), and the Kavango Communal Land Board (KavCLB) sought to evict them, along with their about 7,000 cattle in 2007.<sup>4</sup> The cattle owners and herders have since been temporarily resettled in the National Development Corporation (NDC) quarantine farm called 'Farm Six' in the Mangetti area (*The Namibian*, 19 May, 2009). However, some cattle owners and herders have remained in western Kavango Region with their cattle.

The impacts of the eviction order on all parties affected by the dispute – including the nine cattle owners who were the main respondents (those who challenged the eviction in court), the rest of the cattle owners and herders, the Vakwangali<sup>5</sup> communities, and the Ukwangali Traditional Authority – appeared to be mixed, with the different parties reporting negative or positive consequences. However, there was an established understanding that the resolution of this dispute seemed unattainable despite the strong customary law and statutory law provisions. In addition, the criminal proceedings have been dragging on for five years now without having been set down for plea or trial.

### 1.3 Objectives of the study

This dissertation will examine the impact of the court order. It will also attempt to uncover other factors that were generating conflicts over grazing generally in certain parts of Namibia. It will seek 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 this study is therefore to evaluate the effectiveness of the relevant legislation and customary law in solving grazing disputes in northern Namibia. To this end the dissertation will examine whether the legislation helped to resolve the grazing dispute or not.

In order to reach these objectives, this dissertation will try to answer the following research questions:

- What were the causes of the grazing dispute in western Kavango Region?
- What specific legislation was applied to try and resolve the dispute?
- What roles did various institutions play in this regard?
- Can local people use the legislation to address similar disputes?

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<sup>3</sup> *High Court judgement in a matter between Ukwangali Traditional Authority and others v. Vilho Tilyaameni Hamunyela and others (Case No. (P) A325/2006).*

<sup>4</sup> 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.

<sup>5</sup> In this dissertation words or expressions such as Kwangali, Ukwangali, Vakwangali, Mukwangali, Owambo, Ovawambo, Ondonga, Ovandonga, Aandongga, Oukwanyama has been used according to context. This is done to move away from the use of English ethnonyms such as Owambos, Kwangalis to their African equivalents such as Ovawambo and Vakwangali (Lusakalalu, 2003:94)

- Why could most cattle owners and herders not return to their areas of origin?
- What were the effects of the decisions taken on the affected parties and on other communities?

#### **1.4 Limitations of the study**

There was limited direct literature on this particular case study, I had to heavily and primarily rely on the local newspapers. The newspaper reports were very inconsistent in certain respects, especially when it comes to; numbers of cattle owners and herders (the distinction was not clear), numbers of cattle and the size of the land involved as well as numbers of cattle owners who appeared before court and court dates. The information about current court proceedings were/are sketchy and sometimes very difficult to follow by a lay person. Again due to time and resources constraints, I was not able to attend any court sessions to obtain first hand information.

The study did not seek to obtain the total number of people who were affected by the grazing dispute, as well as the total number of livestock involved. I had an idea about the number of livestock belonging to the Ovawambo cattle herders, but there was no attempt to find out about the numbers of livestock belonging to the affected Vakwangali communities. This exercise could not be undertaken because of time and resource constraints. The study did not look at other social groups which could have been affected by the grazing dispute especially women. This is partly because of the customs and cultural practices of the disputing parties. Many Ovawambo and Vakavango people in rural areas continue to observe some of their cultural practices and amongst these are separate roles for men and women. Primarily, issues that have to do with livestock and grazing are reserved for men only, and boys to a certain extent. All the known Ovambo cattle owners and herders are men and most of the affected Vakwangali residents and or farmers who were identified for interviews were also male. As a result it was difficult to determine the impact of this dispute on women, youth and children, although such information was not necessarily required as per the research/study objectives.

The timing of the study was also another issue as much of the field work was conducted during the rainy season (March, October and December 2011) and this made roads worse especially those under construction at the time and this limited access to some villages.

It was particularly difficult to secure appointments with the affected Vakwangali communities and members of their traditional authority. This is because of network problems and or poor cellphone reception in some villages. The main challenge is that during the rainy season people tend to be occupied (and rightly so) with activities related to cultivation and farming in general. Many are constantly on the move, either to their crop fields, in the bush to gather and collect other natural resources or to town to buy supplies including agricultural inputs. It was also not easy to secure appointments with government officials (and the relevant legal authorities) due to their many other commitments and others refused to be interviewed as they felt that the subject was too sensitive politically, and were not risking any implications. This called for a great deal of patience on my part, because sometimes interviews had to be rescheduled and as a result there was success sometimes and other times things did not work according to plan.

In addition, the disputed area alone is quite large (part of Western Kavango), in addition to other regions where consultations were done such as Oshikoto, Khomas and Oshana regions. Generally, due to time and resources constraints it was not possible to consult all the relevant stakeholders in order to fully understand the impact of this dispute on all the involved parties. This includes the impact of the relocation on the San communities at the Bravo area, as I had to depend on recent literature.

Many respondents were not in favour of having their pictures taken due to the sensitive nature of this dispute and I had to depend mostly on photos taken by other people, just to familiarize myself

with certain events. I managed to take a few photos showing the affected areas just for internal use, but for ethical reasons none of the photos are placed in the report.

However, in spite of all this limitations, the study went ahead and eventually almost all the key stakeholders/respondents were consulted.



## CHAPTER 2: THE HISTORY OF COMMUNAL LAND CONFLICTS IN NAMIBIA

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### 2.1 The history of the tribal lands

Land generally is a very valuable and scarce resource; people need land to grow food, build houses, establish cities, and for investment as well as for grazing. Therefore access to rights over land, the management and administration of land, and the settling of conflicts over land are all crucial to humankind. The earliest structure or form of social organisation in most (if not all) African societies was the clan (Shapi, 2005: 5). The 'clan' is defined as a group of people related through either patrilineal or matrilineal descent occupying a piece of land that is governed by the same customs or laws. Through primary and continuous settlement or use of an area by individuals or a group of people, their descendants could claim entitlement to the area in question. It is for this reason that a specific community of people would develop a special attachment to a specific area in a given country (Shapi, 2005: 5).

The scenario discussed above also applies to the five tribes (Kwangali, Mbukushu, Gciriku, Sambyu and Mbunza) in Kavango Region and how they came to settle along the Kavango River. They originally came from areas known as Mashi/Masi<sup>6</sup> and Makuzu gaMuntenda around 1300-1400 (Hinz, 2010: 287). The Mashi/Masi area is located in what is now modern-day south-western Zambia and the south-eastern part of Angola, alongside the Kwando River (Hinz, 2010: 345). In McKittrick (2008), many respondents described Mashi as a "sort of a paradise". This is to imply that the area had abundance of natural resources. McKittrick (2008) further observes that some tribe (s) or "royalist's traditions" seem to assert the absence of the other upon arrival in the Kavango, to render themselves first-comers. Other(s) claimed to have discovered the Kavango river while tracking elephants and found it uninhabited and then returned home to persuade others to follow them on an expedition of settlement (McKittrick, 2008).

The origins of the Kwangali and Mbunza can be traced back to east and central Africa. The Kwangali and Mbunza comprise one of the closely related ethnic groups now inhabiting the Kavango Region. They are 'sister' groupings that came from Makuzu and they honoured Mate as the Mbunza Chief and Kapango as the Chief of the Vakwangali. Due to the internal and external conflicts with neighbouring communities, however, the Kwangali and Mbunza looked for a suitable, peaceful place where they could settle without tensions. According to oral history the two groups later divided and continued to move to Makuzu gaMuntenda, discovering the Kavango River in the process. This is the area the two tribes thought was suitably peaceful and it became their permanent settlement (and has remained so to date). They have since depended on crop cultivation, hunting and cattle herding for subsistence use (Hinz, 2010: 287).

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<sup>6</sup> Mashi or Masi refers to the same place pronounced differently among the five communities "tribes" in Kavango region. For example the Gciriku people would say Mashi, but the Kwangali/Mbunza will pronounce it as Masi

**Figure 1: Map of the tribal lands in Kavango Region**



Source: John Mendelsohn, 2009: 12

Northern Namibia is the most densely populated region in the country and home to almost 80 per cent of the total Namibian population. As a developing country, Namibia faces increasingly complex and interacting natural resources scarcities. The prevailing environmental pressure and depletion of natural resources result from unsustainable environmental activities (Claasen, 2010: 306-307). The Mendelsohn et al (2000:70) study revealed that roughly 70 per cent of the region is used for agriculture and small-scale farmers – also often called ‘subsistence farmers’ in the North Central-Regions (four ‘O’ regions<sup>7</sup>) – make up the majority of farmers. The term ‘subsistence farmer’ in this context refers to those households that obtain most of their food and income from their crops and livestock (Mendelsohn et al, 2000: 70). This activity in itself limits other land uses such as grazing.

Mendelsohn et al. (2000:70) also discuss other two groups of farmers, namely the ‘elites’ (politicians, businesspeople and government officials) and the commercial farmers – who are mainly white. They point out that the elites tend to fence off large tracts of communal land for themselves; although they represent only a small number of people – perhaps a few hundred at the time of the 2000 study – their farms make up about 11 per cent of the total area of the region, or about one-fifth of the north-central regions of Namibia (the ‘four Os’ regions) (Mendelsohn et al., 2000: 70). This same study also states that 55-60 per cent of all households in the Cuvelai Basin in north-western Namibia do not own cattle; about 80 per cent of all cattle are owned by only 20 per cent of households. The Cuvelai Basin<sup>8</sup> is also where the majority of poor people live, resulting in less grazing for their few cattle. The study further recommended 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 Basin: this will reduce grazing pressure and provide opportunities for poor households to improve their herds (Mendelsohn et al., 2000: 70).

<sup>7</sup> The north-Central regions occasionally mentioned in this dissertation consists of four political regions, popularly known the ‘four O’s, formally; Oshikoto, Ohangwena, Omusati and Oshana regions (Mendelsohn & el Obeid, 2003:1)

<sup>8</sup> The Cuvelai Basin (also called the Owambo/Cuvelai-Etosha Basin) lies between the Kunene and Okavango rivers through into Angola and extends over 450 km from north to south. The Cuvelai Basin has shallow groundwater and fertile soils and is therefore inhabited by a large number of people who cultivate crops and access fresh water all year round for domestic purposes and watering their livestock. The majority of people in the Cuvelai Basin are Owambo people (Mendelsohn et al., 2013: 9-11).

## 2.2 History of land conflict in Namibia

Namibia is one of the least populated countries in sub-Saharan Africa, with a land area of about 824,000 km<sup>2</sup>. This translates to two persons per square kilometre according to the *Second National Development Plan (NDP2) 2001/2-2005/6 (Volume 2)* (hereafter NDP2) (National Planning Commission (NPC), 2001). Ostensibly, therefore, Namibia does not face the population pressures that trouble so many other developing countries and that often negatively affect socio-economic development efforts. However Mendelsohn et al (2000), 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 environment, Namibia’s 130 years of colonial history– first under German colonial rule from the 1880s through to 1915 (Fuller, 2006: 1) and thereafter under South African apartheid rule from 1920 – affected the environment adversely (Claasen, 2010: 306). Under the South African dispensation, Namibia’s settlements (especially the northern regions) were affected as a result of the sporadic migrations that took place on a large scale. This pattern left the country fragmented and unequal. As acknowledged by Mendelsohn et al (2000:1), 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 (2000). state that perspectives on current conditions in northern Namibia are often based on assumptions that the liberation war had massive effects on settlement patterns, economic activities, migration and demographic patterns, and on environmental conditions. Since tens of thousands of people left Namibia to go into exile and many more lost their lives in the war, an objective account of its effects on the northern region’s economy, demography, and land uses remains unavailable (Mendelsohn et al, 2000: 1).

Certain impacts, however, 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 in northern Namibia since Independence and the same is true regarding the provision of services (Mendelsohn et al, 2000: 1). Various analysts agree that the natural resources issues that Namibia faces can overwhelm or engulf community efforts to cope with environmental changes. 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 entrench existing ethnic divisions (Claasen, 2010: 306-307).

Claasen (2010: 308) quotes the historian Brigitte Lau (1987) who: ‘provides 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 (2010:310) further reports that ‘the dry season constitutes the most critical time, as migrant Ovakwanyama farmers needed to move their herds in search of greener pastures and water, frequently clashing over scarce resources with resident Vakwangali farmers’.

## CHAPTER 3: THE BACKGROUND TO LAND ADMINISTRATION IN NAMIBIA

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### 3.1 Communal land versus commercial land

On gaining its independence in 1990, the new Republic of Namibia inherited two agricultural sub-sectors, namely 'communal' and 'commercial' agriculture. These parallel agricultural systems not only divided Namibia almost equally in terms of land utilisation but also reflected the radical social and racial division in the country at Independence. This for a long time remained the status quo, where almost all the agricultural freeholders were predominantly white, and all of the communal landholders are black. Although this pattern still persists today, the Namibian government introduced programmes to re-distribute freehold (commercial land) to the previously disadvantaged Namibians. These programmes are the National Resettlement Programme (NRP) and the Affirmative Action Loan Scheme (AALS). White Namibians enjoy one of the world's highest standards of living while black Namibians are among the poorest of the world's populations, making Namibia one of the most unequal societies in the world. This inequality is deeply rooted in land use and ownership (Odendaal, 2005: 4-5).

Namibia has a land surface of approximately 824,000 km<sup>2</sup> (Odendaal, 2005: 5). The communal land in Namibia constitutes about 41 per cent of the total land surface and is home to two-thirds of the country's population, whereas commercial land constitutes approximately 44 per cent of land surface and is home to only 10 percent of the population according to the NDP2 (NPC, 2001: 142). The remaining land consists of the diamond concession areas and proclaimed nature conservation areas, about 1.5 per cent and 13.5 per cent of land coverage respectively (NPC, 2001: 142).

The *Communal Land Reform Act, 2002* (No. 5 of 2002) defines communal land as: 'Land that belongs (vested in) to the state'. Therefore individuals cannot own communal land, but may have customary land rights or rights of leasehold with regard to certain areas of land. Shapi (2005: 5) also emphasised this point in his field report: '*Grazing land dispute between Vakwangali and Ovakwanyama and Aandongga speaking people in Mpungu constituency in the Kavango Region*'.

In Namibia, most of the communal land areas are in the north (with a few in the south, central, west and east too). This is so because colonizers did not occupy the land in the north, whereas in the south, central, west and (to a lesser extent) the east of the country, much of the land was taken by the white settlers and converted to commercial farming units (Shapi, 2005: 5).

### 3.2 Land use and control in Kavango Region

Most land in Kavango Region is broadly and officially viewed as communal land. This means that land is formally owned by the state in a way, but many institutions and other entities exercise some control over it. The most significant institutions or groups are: traditional authorities; regional councils; the Ministry of Lands and Resettlement (MLR); other ministries that control certain areas – for example, the national parks that are managed by the Ministry of Environment and Tourism (MET); individual farmers, both small-scale and those on large leasehold farms; conservancies and community forests; and the Kavango Communal Land Board (KavCLB) (Mendelsohn, 2009: 11).

Land in Kavango Region is used for many different purposes, the most important of which are shown on Table 1 below.

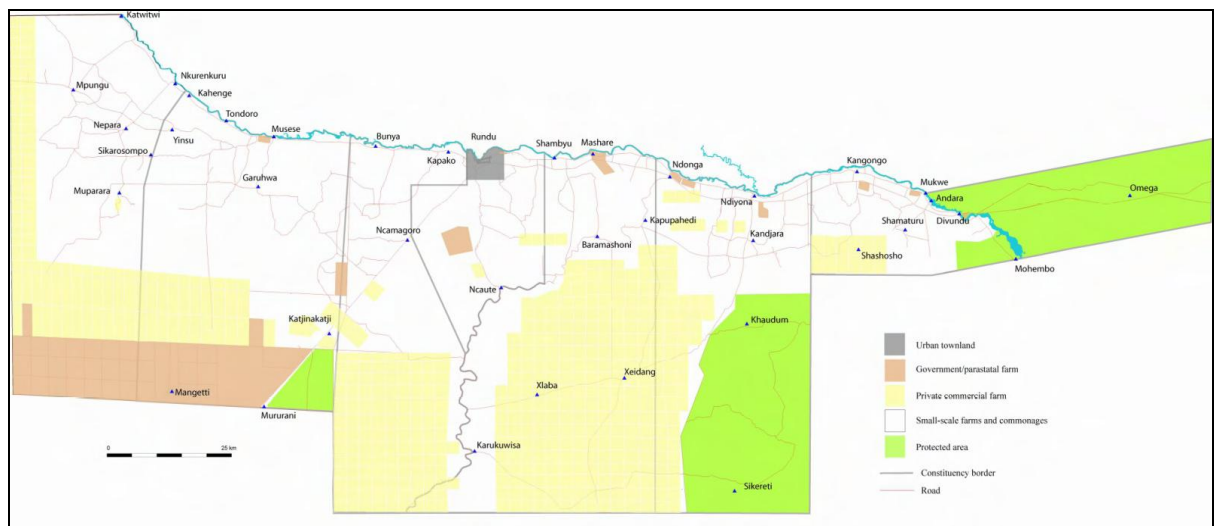
**Table 1: Land use in Kavango Region**

Land use/ownership	Square kilometres	Percentage of Kavango Region
Communal grazing	22,477	46.4
Private, commercial farms	14,529	30.0
Conservation areas	7,534	15.5
NDC farms	1,689	3.5
Small-scale crops	750	1.5
Namibia Defence Force (NDF)	537	1.1
Quarantine farms	280	0.6
Resettlement farms	200	0.4
Urban areas	162	0.3
Government farms	112	0.2
Forestry areas	101	0.2
Rehabilitation farms	62	0.1
'Green Scheme' farms	23	0.0
<i>Total area of Kavango Region</i>	<i>48,456</i>	<i>100%</i>

Source: John Mendelsohn, 2009: 11

It is worth mentioning that just under half of Kavango Region consists of communal land. The remaining areas are used for a variety of purposes, in particular for commercial farming and conservation (Mendelsohn, 2009: 11).

**Figure 2: Map of land use in Kavango Region**



Source: John Mendelsohn, 2009: 11

### 3.2.1 Traditional authorities and communal land management and administration in Kavango Region

The hierarchy of the traditional authority (TA) or leadership in Kavango Region (from top to bottom) consists of chiefs, senior headmen or headwomen, headmen or headwomen, and community leaders (sometimes called junior headmen/women). These are often patriarchal leaders and they are also sometimes the people who first established homesteads around which villages then developed. Headmen/women have responsibility for several communities or villages and they are elected by community members before the chief ratifies their appointment (Mendelsohn, 2009: 23).

Tribal areas are divided into wards, each of which is headed by a senior headman/woman who is appointed by the chief. In addition, there is a traditional council consisting of 12 or more traditional councillors, some of whom are senior headmen/women, while others are appointed in their individual capacities. One councillor is appointed as the chief traditional councillor. His or her role is to advise the chief and also to deputise when necessary (Mendelsohn, 2009: 23).

Tribal chiefs in Kavango Region (called '*hompas*' in Rukwangali, Rusambyu and Rugciriku, but '*fumu*' in Thimbukushu) are normally members of the 'royal family' having been appointed as leaders by their predecessors. Nowadays, however, headmen/women may elect a chief from among several candidates within the royal family (Mendelsohn, 2009: 23).

Mendelsohn (2009: 23) observes that prior to Independence, the chiefs of the five traditional authorities (TAs) would regularly confer at meetings called by the Commissioner for Kavango Land at that time; since Independence, however, nothing has been done to encourage the continuation of such meetings. Interestingly, the dispute over Ovawambo cattle in the Ukwangali tribal area apparently led the chiefs to meet again for the first time.

Mendelsohn (2009: 23) further points out that the level and kind of permission required for any change of land ownership will tend to be determined by the degree to which an applicant is known by, or related to, the local community. He notes that: 'the more familiar a person is, the lower the level of authorization needed for any change in ownership or allocation'. For example, a father can subdivide his land to provide a piece for his child (especially the first-born child and usually a son) without telling anyone, but will have to inform his neighbours and the local community leader if he wishes to allocate an adjoining piece of virgin land to his child. Likewise, an existing resident can enlarge his property or clear a new piece of land nearby as long as the neighbouring community knows that this is happening and gives its permission. Land may be transferred from one resident to another by informing the local headman (Mendelsohn, 2009: 23). By contrast, an immigrant from elsewhere who wishes to occupy a piece of land would require the agreement of members of the community, the community leader, and relevant headman/woman. In addition, the immigrant applicant would also need a letter of introduction from the headman/woman of his/her area of origin (Mendelsohn, 2009: 24).

While headmen/women have theoretical authority over open pastures and woodlands, levels of control are lax since these resources are perceived to be abundant. Livestock owners require no special permission to graze their cattle and goats in local commonages as long as the animals cover areas within daily walking distances from the homes of their owners. Livestock-owning residents along the Okavango River are expected to move within a zone that is perpendicular to the river so that their

animals go to the river to drink water and then graze in directions directly away from the river. Livestock owners from other villages or communities need authorisation from a headman/woman if they require temporary access to local grazing or water (Mendelsohn, 2009: 24).

While communal land is formally vested in the state, TAs are expected to provide considerable control over land. Provisions for this control are stipulated in the *Traditional Authorities Act, 2000* (No.25 of 2000) and the *Communal Land Reform Act, 2002* (Act No.5 of 2002) (Mendelsohn, 2009: 11). Mendelsohn however argues that TAs are primarily ‘gate-keepers’, controlling who may settle, build a home or a farm. Once a newcomer is given permission, to some extent there is little and sometimes no control is exercised by the authorities over how land is used. A major consequence of this is that no one has any effective control over commonage pastures and other resources. It is therefore in everyone’s interest to exploit commonage resources to the maximum. As a result, wealthy residents who have lucrative off-farm incomes graze as many animals as they like, often at the expense of poorer residents who depend or subsist entirely on farming (Mendelsohn, 2009: 11-12).

### **3.2.2 Customary grazing practices of the Vakwangali traditional community**

The Ukwangali territory borders that of the Mbunza (its sister tribe) to the east; to the west are the Kwanyama and Ndonga people. Angola is to the north, and Otjozondjupa Region lies to the south (Hinz, 2010: 287). Historically, in the Ukwangali traditional system, the chief had the power to rule and hence the land was in his hands and that of his TA (Hinz, 2010: 288). In fact the Kavango people, including the Kwangali 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 TA on behalf of their traditional communities.

Section 17 of the *Communal Land Reform Act, 2002* (Act No.5 of 2002) – hereafter ‘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 has therefore 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 his/her TA in the administration process as well as the relevant communal land boards. These two parties work together to ensure better communal land administration. It is also important to mention that each recognized TA in Namibia is represented on one of the 12 regional communal land boards.

In terms of Ukwangali customary law, residents of a specific area enjoy automatic grazing rights on the commonage of their communal area. On the other hand, non-residents who wish to graze their cattle on the commonage of a specific communal area must seek permission from the Chief of the UKTA.<sup>9</sup> In the situation under discussion in this study, the herders were not residents of the communal area and as such were not entitled to automatic right to graze their cattle on the commonage of this particular communal land. In order to acquire grazing rights on the commonage they were required to apply for the allocation of grazing rights to the Chief of the UKTA.<sup>10</sup> The manner in which non-residents can acquire grazing rights in terms of Ukwangali customary law is similar to that of the CLRA. The only difference is that, in terms of the Act, the TA is also empowered to grant formal grazing rights.<sup>11</sup>

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<sup>9</sup> Notice of Motion/Case No. 7325/06 (pg.11)

<sup>10</sup> Notice of Motion/Case No. 7325/06 (pg.11)

<sup>11</sup> Notice of Motion/Case No. 7325/06 (pg11-12)

## CHAPTER 4: THE REGULATORY FRAMEWORK FOR COMMUNAL LAND MANAGEMENT IN NAMIBIA

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### 4.1 The pre-Independence legal status of communal land in Namibia

Traditionally, the fencing off of communal land has been strictly regulated by the various customary laws of specific traditional communities and lately by the *Communal Land Reform Act, 2002* (Act No.5 of 2002), which came into force on the 1<sup>st</sup> of March 2003.

Land is a very important resource for the majority of Namibians in the northern areas of the country as they mostly rely on subsistence farming for their livelihoods. The mode of agriculture is mainly small-scale cropping and large-scale cattle farming. It follows that 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 Namibia became an independent constitutional state on the 21<sup>st</sup> of March 1990 (and indeed before more than a century of colonial rule under Germany and then under the South African mandate), rights in communal lands were conferred and managed by local traditional leaders in terms of the customary laws of those particular traditional communities.<sup>12</sup> During the colonial era the legal status of the various communal areas in Namibia became extremely complicated, reflecting shifts in political strategy on the part of South Africa and as a result of different distributions of power between South Africa and the South West African administration.<sup>13,14</sup> The legal scenario was further complicated by the existence of successive legislative and administrative authorities for South West Africa over the years.

### 4.2 The status of communal land at Independence (1990)

However, with the advent of independence from colonialism and the implementation of the Constitution of the Republic of Namibia (1990), communal land more or less gained its status as vesting in the state in

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<sup>12</sup> The *Treaty of Peace and South West Africa Mandate Act* (49 of 1919) gave effect to the mandate for South African rule.

<sup>13</sup> Under German rule, imperial proclamations of 1898 and 1903 made provision for the establishment of reserves for occupation by indigenous population groups. However few such areas had in fact been established by the end of German rule in 1915: the northern parts of Namibia – including the Kaokoveld, Owambo, Okavango and Caprivi areas – had not been directly affected by German settlement and were still occupied by indigenous groups at this stage. (*Report of the Commission of Enquiry into South West Africa* (the ‘Odendaal Report’).

<sup>14</sup> For example see, *inter alia*: *Findings of the Native Reserves Commission of 1921*; *Native Administration Proclamation 11 of 1922* and *Native Administration Proclamation 15 of 1928*; *Native Reserve Regulations of 1924* (GG 68/1924); *Regulations Prescribing the Duties, Powers and Privileges of Chiefs and Headman 1930* (GN 60 of 1930); *South West African Native Administration Act 56 of 1954*; *Bantu Areas Land Regulations, 1969* (R188/1969) framed under the *Development Trust and Land Act 18 of 1936*; *Development of Self Government for Native Nations in South West Africa Act 54 of 1969*; and the *Representative Authorities Proclamation* (AG 8/1980).

trust for the benefit of all those who occupy it.<sup>15</sup> This position is similarly borne out by Section 17 of the CLRA.<sup>16</sup> In effect, the communal land commonage is regarded as ‘the safety net for the poor’.

But the new constitutional dispensation left many traditional leaders in confusion. Many were no longer sure of their customary role in communal land management and administration (Fuller, 2006: 4). Customary law regarded the highest traditional authority of a community as the ‘owner’ of communal land but allocations of land for residential, grazing, and cultivation purposes were granted at the lowest level – such as the village headman/woman. The higher authority – such as the councillors and the king or chief – were involved only in cases where outsiders were applying for land. In all cases where land was allocated, however, the consent of the people living in the area affected by land allocations was necessary (Werner, 2011a: 12).

Although Article 66 of the Constitution of Namibia already protects customary laws to the same extent as Roman Dutch common law,<sup>17</sup> customary leaders were formally given the opportunity for statutory recognition as traditional leaders in 1997 with the passage of the *Traditional Authorities Act, 1995* (Act No.17 of 1995) which was later repealed and replaced by the *Traditional Authorities Act, 2000* (Act No. 25 of 2000) (hereafter ‘TAA’) (Fuller, 2006: 4).

### **4.3 The Traditional Authorities Act, 2000 (Act No. 25 of 2000)**

The TAA, *inter alia*, defines the powers, duties and functions of the traditional authorities that are formally recognized in terms of the Act.<sup>18</sup> Section 3 of the TAA generally sets out these functions and subsection 3(1)(c) states that the traditional authority shall: ‘ensure that the members of his or her traditional community use the natural resources at their disposal on a sustainable basis in a manner that conserves the environment and maintains the ecosystems for the benefit of all persons in Namibia.’

Accordingly, the 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).

It is important to note, however, that the TAA does not confer geographical jurisdiction to a specific TA other than accepting that a traditional community comprises people who inhabit a

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<sup>15</sup> Schedule 5 to the Constitution.

<sup>16</sup> Section 17 reads as follows: ‘(1) Subject to the provisions of this Act, all communal land areas vest in the State in trust for the benefit of the traditional communities residing in those areas and for the purpose of promoting the economic and social development of the people of Namibia, in particular the landless and those with insufficient access to land who are not in formal employment or engaged in non-agriculture business activities.

(2) No right conferring freehold ownership is capable of being granted or acquired by any person in respect of any portion of communal land.’

<sup>17</sup> Article 66 provides that : ‘(1) Both the customary law and the common law of Namibia in force on the date of Independence shall remain valid to the extent to which such customary or common law does not conflict with this Constitution or any other statutory law.

(2) Subject to the terms of this Constitution, any part of such common law or customary law may be repealed or modified by Act of Parliament, and the application thereof may be confined to particular parts of Namibia or to particular periods.’

<sup>18</sup> To date, the government has not given recognition to all customary traditional leaders, however, which is a source of conflict particularly when it comes to representation and participation in decision-making processes.

common communal area.<sup>19</sup> There are, in other words, no defined geographical boundaries for these areas in relation to a traditional community. It is often the case that more than one TA has jurisdiction over the different communities that occupy the same land area, which can lead to conflicts between two or more occupying traditional communities insofar as resource allocation and overall land administration is concerned. The jurisdiction the TA exercises is primarily jurisdiction over people who subscribe to that traditional community and its customary laws.<sup>20</sup>

#### **4.4 The Communal Land Reform Act, 2002 (Act No. 5 of 2002)**

The CLRA came into effect on the 1<sup>st</sup> of March 2003 and regulates the administration and management of communal land.<sup>21</sup> It determines which rights can be conferred on occupiers of communal land and regulates the mode of occupation. The rights that may be allocated in respect of communal land include specified customary land rights and rights to leasehold. The chief or TA has the primary power to allocate or cancel any customary land rights,<sup>22</sup> provided these powers are exercised in accordance with the CLRA and its regulations. However, any right so conferred by the chief or TA is of no legal force<sup>23</sup> or effect until ratified<sup>24</sup> by the relevant communal land board (CLB), an institution created in terms of the CLRA.<sup>25</sup>

Essentially this means that the chief or TA will first have to consent to a request for a customary land right or a leasehold right before an application can be considered by the CLB. Customary rights include grazing rights but these are exceptional in the sense that they are not required to be ratified and are of general application to the commonage. The CLRA expressly prohibits unauthorised occupation of communal land for any purpose.<sup>26</sup>

Section 29 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 stock and 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 chief or TA has the primary power by the Act to impose conditions for a grazing right – such as the kind and number of livestock that may graze on the commonage and the area or areas of the commonage to be used for grazing. This power is also in accordance with the duty of the chief or TA to maintain the environment sustainably in terms of the TAA.

The chief or TA can withdraw the grazing rights if set conditions are violated, such as having more livestock numbers than prescribed for use of a particular commonage.<sup>27</sup> The CLRA also allows the

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<sup>19</sup> See Section 1 of the TAA definition: 'Communal Area'.

<sup>20</sup> Adcock v Mbambo (A 87/2010) [2012] NAHCMD 35 (24 October 2012).

<sup>21</sup> Schedule I of the Act defines the geographical description of all communal land in Namibia.

<sup>22</sup> Section 20 of the CLRA.

<sup>23</sup> Paradoxically, the grant of the right is valid in customary law.

<sup>24</sup> Section 24(1) of the CLRA.

<sup>25</sup> Chapter II, CLRA.

<sup>26</sup> Section 43 of the CLRA.

<sup>27</sup> Section 29(2) of the CLRA.

chief or TA to grant grazing rights to non-residents provided they make an application.<sup>28</sup> Once granted, any grazing right will be subject to the conditions imposed by the chief or TA and they 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.<sup>29</sup>

The CLRA also regulates<sup>30</sup> fencing in communal land areas<sup>31</sup> and Regulation 26 of the CLRA creates exemptions regarding certain types of fences. Generally this relates to fences that already existed at the time of commencement of the CLRA and that are used to fence in homesteads, cattle pens, water troughs, or crop fields. These may be retained without any further application. Other fences that existed prior to the commencement of the Act require authorisation<sup>32</sup> in order to be retained<sup>33</sup> and all proposed new fences require pre-authorisation before they may be erected.<sup>34</sup>



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<sup>28</sup> Section 29(3) of the CLRA.

<sup>29</sup> Section 29 (3) of the CLRA reads as follows: ‘ Notwithstanding subsection (1), the Chief or Traditional Authority may upon application of any person who is not a resident referred to in that subsection, grant a grazing right to such person, either for a specified or an indefinite period, and any such person shall exercise such right subject to the conditions referred to in subsection (1)(a): Provided that the Chief or Traditional Authority may at any time withdraw a grazing right granted under this subsection if, due to drought or any other reasonable cause, the Chief or Traditional Authority considers such cancellation in the interest of the residents of the traditional community concerned.’

<sup>30</sup> See, *inter alia*, Section 18 and sections referred to in footnotes below.

<sup>31</sup> Section 44 of the CLRA.

<sup>32</sup> Section 28(2) (b) read with Section 28(8) of the CLRA.

<sup>33</sup> Although a ‘cut off date’ has been set, this has been extended by the minister of lands and resettlement by regulation from time to time.

<sup>34</sup> See Section 44 of the CLRA.

## CHAPTER 5: RESEARCH METHODOLOGY

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This chapter presents the research methodology used to obtain the required data for the study. This entailed the identification of study design and comprehensive data collection through to the final write-up. This chapter contains the description of research design, data analysis, research instruments, and the procedures used to obtain detailed information.

### 5.1 The research design

This study was done by using qualitative data collection techniques, which are based on the method of triangulation consisting of field research, key informant interviews,<sup>35</sup> and a desk study (Brink, 1996: 119). This approach was deemed appropriate for this study as it resulted in a diversity of responses on the same subject matter. The qualitative approach also involved capturing the feelings and opinions of respondents and these views were analysed and elaborated upon.

The **desk study** primarily involved the collection of published information and analysis of secondary material relevant to the topic, although not a great deal of material was available. Sources such as books, newspaper articles and other media reports were explored in order to provide an understanding of this particular grazing dispute and related information. As part of the desk research, a number of pieces of post-Independence legislation and policies that have had an impact on communal land administration and management were also examined. Research materials were gathered from various library institutions and through the internet.

The desk study was further enriched by the **key informant and stakeholder interviews**, which were held with relevant stakeholders in different places (including those held during the pre-field trip in the study areas). The key informants were identified through the literature review (especially print media) and while others were ascertained through referrals. The aim here was to familiarise myself with the matter and find out more about other key players and their locations with a view to possible future interviews. Among those identified were representatives from government institutions, such as the Ministry of Regional and Local Government, Housing and Rural Development (MRLGHRD), the Ministry of Lands and Resettlement (MLR), and Ministry of Agriculture, Water and Forestry (MAWF). Personnel from the Namibia Development Corporation (NDC), which is a state-owned enterprise and non-governmental organisations such as the Legal Assistance Centre (LAC), the KOMÉHO Namibia Development Agency, and Nyae Nyae Development Foundation of Namibia (NNDFN) were also interviewed. Stakeholders from local institutions, individuals from the Ukwangali Traditional Authority (UKTA), cattle herders and/or owners, and affected and concerned community members were also consulted.

Another method used in data collection was the **field research** and/or interviews. The field work was carried out over a duration of 3 weeks (March 2011, October 2011, December 2011 and April 2012) (see Annexure A). This consisted mainly of individual interviews, meetings<sup>36</sup> and focus

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<sup>35</sup> These were mainly respondents/interviewees from established institutions who knew the matter in-depth; some were directly involved and were able to give information and help me to identify other role players. I consulted them early on during the study (around 2011).

<sup>36</sup> Meetings were mainly held with one or two respondents only and frequent questions during meetings included those to do with the background to the dispute and role of stakeholders.

group discussions (FGDs)<sup>37</sup> with various identified stakeholders. During these field trips I conducted detailed interviews and discussions with relevant stakeholders in different regions and villages in Namibia relevant to the study. Among these were individuals from the affected communities; cattle herders/owners; the UKTA; the Kavango Communal Land Board (KavCLB); the MLR; and the Namibian Police (NAMPOL) force. Interviews and discussions were held in the following areas: Mpungu, Nkure-nkuru and Ntopa villages in Kavango Region, and the town of Rundu. Other areas included in this part of the research were the town of Ondangwa in Oshana Region, and Tsumeb and Bravo Resettlement Project in Oshikoto Region. Information was also gathered through a 'jotting' method, whereby ad hoc observations were made on the spot on a notepad and a diary was also used to record interview dates as well as to capture other important information acquired in the course of any given day. The diary was very helpful to note down emotional highs and lows while they were happening. Photographs were also taken during the data collection periods and others, depicting events that had taken place in the past, were obtained from other stakeholders. (These photographs were not used in the preparation of this report for ethical reasons, to protect the identity of the respondents due to the sensitivity of the matter. The photographs were nevertheless essential to help me to attain a visual understanding of the events that took place and to be able to put faces to words.)

Questionnaires were used throughout, especially with the key informant interviews and individual interviews with affected and directly involved parties, as well as during the FGDs.

The qualitative method is time consuming because it uses many approaches but it was chosen because it can answer important questions about applicability, unplanned outcomes, and the impact of policies and programmes more efficiently than quantitative approaches.

## 5.2 Research instruments

The primary instrument used to obtain information for the research was the structured questionnaire script. According to Burns and Grove (1995: 368) a questionnaire is a printed self report designed to elicit information that can be obtained via the written response of the subjects and is designed to determine facts about the subject matter and individual opinions on the subject under study. Seven different questionnaire scripts were developed (See Annexures D, I-VII) with pre-formulated questions for each target group or respondent(s): the affected community; cattle herders/owners; the UKTA; the KavCLB; the MLR; the Namibian Police (NAMPOL) Force; and other key informant(s). The questionnaires were used in this instance to ask verbal questions to individuals in each category of respondent and the answers were recorded by the interviewer in writing on the script. The scripts were prepared in English and, where necessary, were translated verbally and/or otherwise modified slightly for use, depending on specific circumstances.

In one case a tape recorder was used with an affected community member who was said to have had a long and intense dispute with some Ovawambo cattle owners and herders. This was necessary to obtain detailed historical information while listening to the respondent since the human memory is not a perfect recording device. Audio recording avoided the possibility of any inadvertent confirmation bias coming into play during the subsequent compilation of the dissertation.

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<sup>37</sup> FGDs comprised very detailed discussions with groups and were based on the questionnaires whereas meetings were brief and mainly involved only one or two respondents/interviewees.

Participatory observation was also employed in the process because I went to the particular sites in affected areas to familiarise myself with the actual situation on the ground and experience the real context in which the grazing dispute occurred.

### **5.3 Procedure**

A total of 36 people were consulted altogether. Detailed individual interviews and FGDs were held with 18 respondents. The remainder were consulted through meetings and brief discussions. Individual interviews were held with 13 respondents including the three who were also part of one of the FGD. Questionnaires were administered to a number of individuals from the following institutions and communities; MRLGHRD (1), MLR (1), KavCLB (1), UKTA (2), NAMPOL (1), affected Vakwangali community members (7). In addition, 15 Meetings and or brief discussions were also held consisting of one or two individuals from; NDC (1), LAC (2), MLR (2), Komeho Namibia (1), NAMPOL (2), UKTA (2), KavCLB (1), affected Mukwangali community member (1), MAWF (2), herders (2) and NNDF (1). Two FGD were held involving 10 people and these are; Cattle owners (7) and affected Vakwangali community members and farmers (3) (See annexure A). In most cases different individuals from the same organisation or community was interviewed during the different approaches. In a few cases the same individuals were consulted, especially those with multiple responsibilities for instance were one person doubles as a member of the TA and CLB at the same time.

Brink (1996: 202) states that the advantage of using personal interviews is to obtain detailed qualitative and descriptive information, which has a high degree of reliability and accuracy. Nevertheless, group discussions during fieldwork were also found to be useful as this approach provided for a relaxed and flexible atmosphere in which information was shared (and which was felt to be advantageous given the sensitivity of the matter).

The semi-structured questionnaires were designed in such a way that each of the seven would fit the level of understanding of a specific respondent category. This enabled me to probe for more information on the subject matter. The duration of the interviews per respondent was between 30 minutes to one hour for individual interviews, but up to two hours for FGDs.

Since the nature of the research topic required both data gathering as well as a desk top review, a study of the legal, social and historical literature, as well as other key works on the subject, was made. This intensive activity helped to establish what previous work has been done on the subject and which areas other authors had focused on. This procedure disclosed controversies, concerns, unanswered questions and gaps in knowledge of grazing disputes that assisted me to substantiate and increase findings on this particular subject to fill the gaps.

### **5.4 Data analysis**

Interview notes were typed into Microsoft Word software, this basically involved entering information from each and every questionnaire separately. This method was cumbersome and time consuming but it helped me to further digest the responses of the respondents. In their first edition titled '*Finding your way in Academic Writing*', Henning et al (2002) focused on the notion of 'writing as thinking and knowledge making'. In their second edition, they pick up on this thought and introduce the idea that 'writing is an observable performance of thinking-in-process that is rehearsed many times before the final product is delivered' (Henning et al., 2005: xiv). In

line with this notion of ‘writing as thinking’, I was doing preliminary analysis while typing my interview notes.

Other social science researchers have argued that qualitative methods require researchers to carefully code data and discern the themes in a consistent and reliable way with the idea of addressing the perceived problem with reliability. The researcher uses codes instead of a name for every respondent and the collected data are categorised into patterns as a primary basis for organising data of the same or similar thoughts or arguments. By coding the data, the researcher establishes the themes that need to be indexed as well as the patterns that need to be located and thought about. In view of the above, I then applied a method similar to coding: after the process of typing the interview notes was completed I began to categorise the data into patterns of the same or similar thoughts, ideas or arguments. This helped me to develop topics or headings in line with my research questions to ensure that the research objective(s) were achieved. The data were analysed manually since the number of respondents was manageable. This process also involved comparing the different responses to the same question for the purpose of triangulation.

## **5.5 Research ethics**

I did not face many difficulties when collecting data because I hail from Kavango Region and can speak Rukwangali, which is the local language spoken by the affected communities. Rukwangali is also spoken by most of the Oshiwambo-speaking cattle owners and herders from Ohangwena and Oshikoto regions, who have lived in the area for many years. The language issue really placed me as a researcher in a better position in terms of the involved communities trusting me and feeling that they could speak out freely.

I adhered to institutional ethical research protocols generally, and those of the University specifically. I fully understood the potential risks to people who participated in the study considering the sensitive nature of the subject and I thus endeavoured to act ethically at all times. In addition, all consulted sources are fully acknowledged.

The purpose of the study was explained to all respondents and this was done initially during the pre-field trip and also during the actual field trip interviews and FGDs. It was also explained that this was an academic dissertation and not a government or NGO exercise. This was necessary to avoid raising unrealistic expectations in terms of addressing any concerns which the respondents had raised. Due to the sensitivity of the subject matter, it was also emphasised that the research was not carried out with the intention of harming anybody’s interests in any way. Respondents were informed that their participation was voluntary and that they had the right to withdraw from the study at any time if they wished to do so. The participants were informed that their names would not be used in the dissertation to ensure confidentiality. They were also informed that their responses were not going to be shared with other respondents. The anonymity of respondents was respected at all times because a central tenet of research ethics is to protect the identity of the research respondents.

## CHAPTER 6: RESEARCH FINDINGS/OUTPUTS

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### 6.1 The historical causes of the grazing dispute

Soon after independence from apartheid South Africa on 21 March 1990, Owamboland (as the ‘four Os’ regions of north-western Namibia were known then) was divided into four political and administrative regions: the Oshikoto, Oshana, Ohangwena and Omusati regions. Oshikoto and Ohangwena regions are home to most people who subscribe to the Ondonga Traditional Authority and the Uukwanyama Traditional Authority, respectively. These two political regions share borders in the east with the Kavango Region, where the Ukwangali Traditional Authority (UKTA) is situated.

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. This proposal went through and a parcel of land measuring 50 km by 200 km<sup>38</sup> was said to have been donated by the UKTA to the Uukwanyama TA in the early 1960s (NSHR, 11 December 2005). Immediately, after Independence there was an intensive scramble for farming land involving rich Ovawambo farmers. These farmers began to fence off large portions of land, forcing the poor farmers out of the former Owamboland area (in this case in some parts of Oshikoto and Ohangwena regions) and compelling them to seek grazing elsewhere. Many of these poor farmers started entering western Kavango Region and started grazing their livestock there illegally. As time went by this area given by the UKTA became fully occupied as more and more cattle owners and herders from the Ohangwena and Oshikoto regions continued entering into this particular area and beyond (up to 20 km<sup>39</sup> into west Kavango Region) to seek temporary grazing, especially during times of drought (Anonymous interviewee, 11 October 2011).

These incoming farmers had started illegally grazing their animals in the western Kavango Region as early as 1982 (*New Era*, 27 June 2012). The cattle owners and herders started to settle in the Ukwangali area without seeking permission from the Ukwangali Chief or TA; even the headmen of the affected villages were not consulted by the herders. The CLRA provides for the grazing rights and the use of the commonage; Section 29 and Regulation 10 of the CLRA provides conditions regarding grazing of stock by lawful residents in the commonage. The Ovawambo cattle owners and their herders did not follow the right procedures to obtain grazing rights<sup>40</sup>. A member of the Ukwangali Traditional Authority who was interviewed stated that the herders probably misinterpreted Article 16 of Namibian Constitution, which states that any person can settle in any part of Namibia.

The cattle herders came from the Oukwanyama and Ondonga areas in search for grazing. The areas that they came from were heavily fenced and they found open grazing in western Kavango

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<sup>38</sup> ‘It was agreed that the Owambo would received a 100-120km strip of land, but this land would only be for grazing and not for settlement neither for cultivation purposes’ reports Mushimba (2006:20)

<sup>39</sup> ‘Respondents in case number A325/2006 described the size of the area presently occupied by them as being approximately 100km from east to west from the Owamboland-Kavango border and 200km from south to north. To the best of my knowledge its size is about 52km from west to east from the Owamboland-Kavango border and about 130km from north to south (Notice of Motion/Case No.7325/06)’

<sup>40</sup> *High Court judgement in a matter between Ukwangali Traditional Authority and others v. Vilho Tilyaameni Hamunyela and others (Case No. (P) A325/2006).*

Region. Those herders interviewed reported that they came into the area between 1991 and 1992. Some herders admitted to me that they entered the Ukwangali area without the knowledge of Chief Sientu Mipasi of the UKTA. As their numbers and those of their animals increased, the conflict 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 therefore food production declined because some local people were forced to abandon their crop fields. Another affected community member at Ntopa village (see Figure 3) said that there was also 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 (Ovambo people) fought for this country.”* (Affected community member A, 8 March 2011).

It was also reported that the herders did not respect the local traditions and customs. To support this statement there were allegations that when herders' cattle were confiscated for destroying crop fields, they would refuse to pay the fine which is customary in Kavango Region. There were also cases where they would steal the cattle belonging to the local people (including their own cattle that had been confiscated for destroying crop fields). In some cases the herders would demand the release of their cattle after they have been confiscated, which in most cases led to physical fights with the owners of crop fields.

Many people interviewed for this research (including herders, affected community members, and a member of the UKTA) said that it is almost like a custom for all the Kavango communities (including the Vakwangali people) to refrain from fencing off their crop fields. There was consensus that communities in Kavango Region generally tend to practise shifting cultivation and do not readily put up fences around their crop fields; furthermore many cannot afford fencing materials. For this reason, people in the community are expected to look after their livestock after the planting season – which is not a very common practice in most of the north-western communal areas (the ‘four Os’ regions) because most people there tend to put fences around their crop fields (Mushimba, 2006:36-37). Other local people complained that the Ovawambo herders were cutting their fences to let their cattle onto their farms for grazing and livestock diseases were increasing; the hunting of wild animals was another concern raised, as well as cattle theft.

As a result of the complaints it had received from the affected community members, early in 2000 the UKTA started to investigate the claims from the communities under its jurisdiction about their crop fields being destroyed by the herders' cattle. They found out that most of these allegations were true and also that the cattle owners and herders had not obtained permission from the local TA to graze and settle in the area. Many meetings were held and copious correspondences exchanged between the UKTA, the government (especially the MLR) and other stakeholders in this regard but no solution could be reached (Mushimba, 2006:66). Therefore the UKTA registered their complaints with the Kavango Communal Land Board (KavCLB, December 2006). In their submission to the KavCLB, the Chief of the UKTA demanded that all the cattle owners and herders be removed from the affected areas with their animals; they stipulated that these herders could be re-admitted into the area if they applied and followed the right procedures. On the 7<sup>th</sup> of December 2005, hundreds of people from Kavango Region in support of the affected Vakwangali community and the UKTA staged a peaceful demonstration at Kahenge village to express their unhappiness about the government's delay in evicting the illegal cattle grazers (Anonymous interviewee, 11 October 2011). The UKTA then alerted the police about the

situation and as time went by the local Vakwangali people became impatient and violence between the local people and the herders erupted. It was reported (and also confirmed during the study) that the local people started burning the huts of the herders. There were also allegations that a well was poisoned and a herder lost a number of cattle (the study found that a case in this regard was opened but was found to lack merit and was dismissed by the local magistrate).

## **6.2 Why did the Ovawambo cattle farmers and herders come to western Kavango Region?**

### **6.2.1 Enclosure of the Northern Communal Areas, its economic dynamics and the grazing dispute**

A fencing boom in northern Namibia began in the mid-1990s when large tracts of land were enclosed in the communal areas (known as the 'NCAs'); 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 water) from other residents, even fencing off government boreholes in certain cases. Evidence has shown that those who did the fencing were the rich and politically well-connected (Fuller, 2006: 11). 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). Werner further 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, 2011b: 29). Current local discourses on the topic point to the slow pace of land redistribution as a contributing factor, while undoubtedly many people engaged in the activity out of pure greed and self enrichment. Just before the national land conference of 1991 (which give birth to most land legislation, including the CLRA), the government announced that illegal fencing in communal areas would no longer be tolerated (Werner, 2011b: 28).

As a result of these enclosures, poor farmers from certain parts of northern Namibia (largely members of the Uukwanyama and Ondonga ethnic groups) who were moving into these areas to seek permanent settlements found themselves squeezed between fences and they were reduced to living in corridors between these enclosures. In 1991, these farmers moved east across the border into Kavango Region and in the southern areas of the UKTA (*The Namibian*, 23 February 2007). 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 Vakwangali residents and the immigrant Ovawambo cattle owners and herders (Fuller, 2006: 12).

The population of the neighbouring regions (Ohangwena, Oshikoto and Oshana) increased by 27, 25 and 20 per cent respectively from 1991 to 2001. As a result of the population increases, the demand for land in these NCAs also increased and consequently land speculation increased too. This situation then led to the illegal fencing of communal areas, mainly in the Ohangwena and Oshikoto regions. (Shapi, 2005: 18). The MLR's *The Land* newsletter of March 2006 reported that many well-off people were fencing off large portions of land without the consent of the headmen/women and were refusing to remove the illegal fences. These allegations have been

confirmed by many Ovawambo cattle owners who had moved to Kavango Region in search of grazing.

Werner (2011b: 24) argues that the ‘growing middle class exerted pressure on traditional leaders to authorize 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 former Owamboland 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 on its structures of accountability. The result was that the individual accumulation of wealth became more widespread and the dependence of communities for livelihoods through the allocation of rights to resources decreased (Werner, 2011b: 25). Werner (2011b:25) further argues that the objectives of class differentiation (e.g class of whites) as provided for in the ‘native policy’ now seemed to be getting realized through the process of narrow accumulation of wealth by the black elite – a consequence that is rather ironic. Basically, independent Namibia is realizing the development plans of its colonial masters, albeit not in ways originally intended.

Most of the Ovawambo cattle owners whom I interviewed entered Ukwangali areas from 1991 onwards, although none of them admitted that they entered the Ukwangali area illegally. The herders gave different reasons motivating why they left the Owambo areas of Ohangwena and Oshikoto regions for Ukwangali area. Some said that they left due to lack of grazing and because of drought; another herder said that he was grazing his cattle on a certain piece of land with others but as his herd was increasing he was ordered to leave and then headed for western Kavango Region because he heard of the good grazing conditions there. Many herders stated that the reason they left was because fencing by other individuals meant that available grazing land became limited:

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

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

The Owambo farmers who went to Ukwangali area with their cattle from Oshikoto region, entered into reciprocal agreements with the Kavango people (Mushimba, 2006:23). As per some of these agreements, a Owambo cattle owner would have to dig wells for the Kavango people and in return the Owambo would be allowed to have emergency grazing in western Kavango (Mushimba, 2006:23). This was confirmed by some of the Ovawambo cattle herders I spoke to.

When I asked the Ovawambo cattle owners and herders whether they had obtained permission to enter and graze in the Ukwangali area and whether they had some kind of agreement. Most of them said that they had indeed obtained permission, even though they could not produce written agreements:

*“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/farmer A, 14 December 2011.)

Many cattle owners said that they followed the right procedures to enter Ukwangali area in terms of the custom at the time. Some said that they would always arrange a meeting with the local headman/woman of the village in which they wish to graze their cattle. They said in most cases they were verbally granted grazing rights but were not permitted to put up any permanent structures for fencing or homesteads; others were given verbal rights to cultivate crops as well by some local headmen/women. Another herder said that upon his arrival at Mukekete village (see Figure 3) 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 verbally accepted his request to graze in the area.





### **Box A: An account of how an owner/herder came to enter western Kavango Region**

*“My brother was already living in a village called Oshashi in western Kavango, but when he died in 2002, I decided to go and continue running the affairs of the family/relatives. My family was very helpful to the local headman in the past and he decided to allocate land to us. The headman even gave us land to cultivate mahangu and things only changed when this grazing dispute began. After two/ three years my homestead was burned and a number of our cows died. The local people burned the area in the presence of the police and thus I believe the police were biased and they were on the side of the local Vakwangali 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, because correct procedures were not followed to evict us. We appeared at the Rundu Magistrates Court and were released on bail.” (Owambo cattle owner/farmer C, 14 December 2011.)*

Some herders told me that they were introduced to the local headmen 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 Owambo cattle owners had said that they had received verbal permission from a certain headman to graze their stock in the area. However, when these headmen were asked for clarity by the senior traditional councillors, they all denied giving any permission to these people. Other cattle owners/herders were honest enough to admit that they just came to Ukwangali area of their own accord. Among the areas in Mpungu Constituency which were affected by the dispute are; Mukekete west and south, Ondjaba, Etale, Nandingwa, Ruhepo, Zigizi and Kwaki (Mushimba, 2006:21)

### **6.3 Impact of illegal grazing on the lawful residents**

The illegal occupation of the communal land, in addition to being unlawful and constituting a criminal offence, had caused great hardship to the residents of the area. The hardship experienced by the residents over the years was primarily caused by the declining food production that was a direct consequence of the overgrazing of land and the destruction of crops by cattle owned by the Owambo cattle owners.

As a result of the illegal entry of the cattle onto the communal land, the carrying capacity of the commonage was significantly exceeded, resulting in the aforementioned overgrazing of the area. The cattle of the nine (accused) cattle owners (of which seven were my respondents) numbered 1,670 in total, according to them. One only needs to add to that number the cattle owned by other illegal cattle owners (who together with the respondents were estimated to be 73 people) to appreciate the severity of the problem.<sup>41</sup> Mushimba (2006:60) reports that ‘the UKTA in their investigation had collected 153 names of illegal Owambo cattle farmers. This list was handed over to the government but in the end only 72-73 of those 153 had ejection orders under their names.’

The complaints that were regularly directed to the KavCLB and the UKTA by the community members had to do with the conduct of the illegal herders. The community members reported that the cattle of the Owambo cattle owners/herders were destroying their crops thereby endangering their livelihoods as residents.<sup>42</sup>

<sup>41</sup> Notice of Motion/Case No. 7325/06 (pg. 14).

<sup>42</sup> Notice of Motion/Case No. 7325/06 (pg. 14).

## **6.4 Initial interventions, eviction order and subsequent court cases**

### **6.4.1 The initial interventions into the matter**

The UKTA had already been reaching out to the government and other stakeholders in the early 1990s to seek intervention to this particular grazing dispute; initially meetings were held as from 1992 with the Ondonga, Uukwanyama, Uukwambi, Ombalantu and Ukwangali TA leaders. Other meetings were held with the minister of lands and resettlement at the time (Hon. Richard Kabajani) and the minister of agriculture, water and forestry (Hon. Helmut Angula), as well as with other ministers and deputy ministers (including Hon. Hidipo Hamutenya, Hon. Hifikepunye Pohamba and Hon. Hadino Hishongwa). There was also a meeting with representatives from eight TAs from north-western Namibia (the 'four Os' regions), which took place on 28 September 2002 at Kwaki village (see Figure 3) in western Kavango Region and was attended by about 100 cattle owners including herders. The governor of Kavango Region at that time was Hon. Reinhold Muremi, who was present at the meeting together with the Councillor for Mpungu Constituency, Hon. Johannes Hambyuka. There was also a meeting held at Omauni village (see figure 3) on 2 November 2002 in Ohangwena Region, which was attended by all the five Chiefs in Kavango region (Mushimba, 2006:65). This process of consultations went on until 21 October 2004 when the last meeting was held with the founding president Sam Nujoma at the Ukwangali Royal House. There were claims however that these meetings did not yield the desired results (Mushimba, 2006:66).

This matter was brought before the KavCLB by the Ukwangali Traditional Authority (UKTA) in 2003 after it claimed that it had exhausted all available avenues for intervention. Coincidentally, 2003 was also the year the Kavango Communal Land Board (KavCLB) came into operation as per the enactment of the *Communal Land Reform Act* (Act No. 5 of 2002). A former member of the KavCLB whom I interviewed confirmed that it had received a request from the UKTA to look into this matter of the Ovawambo owners and herders. He continued that the UKTA also provided a list of the names of the illegal herders along with their submission to the Kavango Communal Land Board.

### **6.4.2 Eviction notices and the reaction of the cattle owners and herders**

The common law eviction procedure is a civil action that is brought against a person to remove him/her from land or property. The Lawful possessor has a real right that is guaranteed by law, to evict an unlawful possessor from the land or property (Mushimba, 2006:57). With that understanding, it is also important to note that from the outset, there was an issue relating to differentiating between the cattle herders and cattle owners, since most of the herders were not the actual owners of the cattle – these people were just employed to look after the cattle that belonged to others. However during the implementation of the eviction order, even herders were implicated and some reports suggested that they were also arrested. The eviction notices were therefore not strictly served to the cattle owners. It was therefore important to ensure that the right people were prosecuted.

Eventually the matter – involving 33-63<sup>43</sup>(actually up to about 73)<sup>44</sup> cattle herders/owners – went to court and the High Court ruled in favour of the Ukwangali Traditional Authority. The KavCLB

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<sup>43</sup> The fluctuation in the numbers of cattle owners and herders during court appearances is attributed to the fact that some would not turn up for certain court dates.

reacted by issuing notification of eviction in terms of Section 29 and 43 of the CLRA (see Annexure B) to 50<sup>45</sup> out of the 63 cattle owners with the help of the police between the 18<sup>th</sup> and 23<sup>rd</sup> of November 2005. A former member of the KavCLB who was interviewed confirmed that the land board did indeed issue eviction notices with the help of the police to all the Ovawambo cattle owners and herders on the list at the time. The list of cattle owners and herders was also said to be unreliable, because it included even cattle owners/herders who had already left the area voluntarily. On this list were also herders who were not necessarily cattle owners as they were just employed as caretakers, therefore they were not necessarily culprits.

This initial eviction was then found to be illegal as it was not issued by the court of law, but only by the CLB. Under common law in order to legally evict a person off the land, the owner must first obtain a court order from either the Magistrate's court or the High court. Without the court order, the owner neither the police is permitted to carry out an eviction order (Mushimba, 2006:57). The centre of the argument here is the fact that Sections 43 of the CLRA merely empowers a chief, TA and CLB with the power to institute legal action for the eviction of a person who occupies any communal land in contravention of section 43(1) (Mushimba, 2006: 57). However this was not the case because the KavCLB simply just went ahead and issued eviction orders without following the procedures described earlier, which could point to either wilful overstepping of power or lack of capacity with regards to the interpretation of the law (Mushimba, 2006:62&70)

Subsequent to the notification of eviction served in November 2005, only one of the 52 illegal cattle owners/herders on the list informed the KavCLB that he had left the area. The Mangetti Farmers' Association, which was representing the illegal cattle owners, wrote a letter on 21 November 2005<sup>46</sup> to the KavCLB requesting an extension of the eviction date to 25 January 2006. The herders reasoned that by that time enough rain would have fallen in the area to enable them to water their cattle on their way out of western Kavango Region to their next destination. The KavCLB therefore concluded that since the herders were effectively defying the eviction order they were then not complying with the CLRA, specifically sections 29 and 43. The KavCLB further stated that a request for an extension on the eviction date was a clear indication that the cattle owners and herders acknowledged that they were indeed illegal in the area. (Anonymous interviewee, 11 October 2011).

Initially the Ovawambo cattle owners and herders were found to have driven more than 1,600 head of cattle into the jurisdiction of the UKTA in western Kavango Region in 2003 (*New Era*, 27 June 2012). Cabinet had already pronounced itself in 2005 that all Ovawambo cattle owners and herders along with their about 60,000 cattle had to vacate western Kavango Region. By 2007, the illegal herders were occupying an area of 6,750 km<sup>2</sup> when the government, the UKTA and the KavCLB sought to evict them with their over 7000 head of cattle.

#### **6.4.3 Further action against the Ovawambo cattle owners and herders**

On the 29<sup>th</sup> of December 2005, following requests for intervention from the KavCLB, the MLR advised that the board pursue one of two options to remove herders from the area: they could either apply Section 29 or Section 43 of the *Communal Land Reform Act*. Due to the technical nature of the matter, the KavCLB requested that the MLR find a legal expert to clarify legal

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<sup>44</sup> *Notice of Motion/Case No. 7325/06 (pg. 14).*

<sup>45</sup> *Notice of Motion/Case No. 7325/06 (pg. 8).*

<sup>46</sup> *Notice of Motion/Case No. 7325/06 (pg. 9).*

provisions to the board (Anonymous interviewee, 11 October 2011). The meeting with the legal expert eventually took place on the 20<sup>th</sup> of January 2006 and as a consequence of the advice it received, the board decided to pursue Section 29 to evict the illegal herders from the area (Anonymous interviewee, 11 October 2011). Three members of the KavCLB met the UKTA at Kahenge Tribal Office on the 24<sup>th</sup> of January 2006 to brief the TA on the advice from the legal expert. The Ukwangali Chief and his councillors also agreed with the option of applying Section 29 following the recommendation of the Office of the Attorney General (Anonymous interviewee, 11 October 2011).

The KavCLB requested the Office of the Attorney General, through the MLR, to ensure that the issue received attention. The Office of the Attorney General was further asked to appoint a team of investigators, as well as a magistrate, to deal specifically with this matter in order to ensure that it was addressed in the shortest possible time. The KavCLB was of the opinion that Section 29 of the CLRA had been grossly transgressed and therefore appropriate measures needed to be instituted against the illegal herders to ensure that they were removed or evicted from the area. The three parties – namely the Ukwangali Chief, UKTA and the KavCLB – laid criminal charges with the Namibian police at Kahenge Police Station in western Kavango Region on the 3<sup>rd</sup> of March 2006 (see Annexure C).<sup>47</sup>

The police and the judiciary played a very important role during the eviction process. The investigating officer and his team continuously reported on the progress to the relevant authorities. He advised at some point that the actual prosecution of the alleged illegal herders could not be processed unless supporting evidence was secured from the three parties that indeed the herders were not authorised to graze in the commonage (Anonymous interviewee, 11 October 2011). The three parties met at Kahenge Police Station on the 24<sup>th</sup> of April 2006 and confirmed that the information given was sufficient to proceed with the case. The investigation officer further advised that he needed to obtain statements from the headmen/headwomen in the affected areas to confirm whether the illegal herders were authorised to graze in the area in question or not. After this confirmation, then the investigating officer could issue the docket to the Office of the Attorney General for a decision (Anonymous Interviewee, 11 October 2011).

#### **6.4.4 The cattle owners' and herders' first court order<sup>48</sup>**

Chief Sientu Mipasi and his UKTA had opened a case against the Ovawambo cattle owners and herders and eviction notices were issued back in November 2005. About 33 cattle owners/ herders from the Ohangwena and Oshikoto regions made their first court appearance on the 3<sup>rd</sup> of December 2006 in the High Court (*The Namibian*, 19 May 2011). The Ovawambo cattle owners were charged with illegal grazing and trespassing in western Kavango Region. 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 Authorities Act, 2000* (Act No.25 of 2000) as well as the *Communal Land Reform Act, 2002* (Act No.5 of 2002) (*New Era*, 27 June 2012).

According to the Notice of Motion dated 13 February 2007, in the matter between Ukwangali Traditional Authority and others (applicants) v. Vilho Tulyaameni Hamunyela and others, the applicants sought a court order to: (1) Evict the respondents and/or their herdsman from the communal areas in western Kavango occupied by the cattle owners (respondents) and their

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<sup>47</sup> *Notice of Motion/Case No. 7325/06* (pg. 10).

<sup>48</sup> *Notice of Motion/Case No. 7325/06*

herdsmen. (2) Interdict respondents and/or their herdsmen from occupying and grazing their cattle on the communal area. (3) Directing respondents to pay application costs and (4) Granting applicants further and/or alternative relief as the Honourable Court deemed fit. Some cattle owners/herders who had stayed for more than ten years in the area had put up permanent structures such as houses, boreholes and even fences without following the right procedures (Anonymous interviewee, 11 October 2011)

Eventually, the matter was heard on the 28<sup>th</sup> of November 2007 in the High Court of Namibia before Acting Judge A. J. Manyarara.<sup>49</sup> Again the applicants (UKTA and others) applied for the following relief: (1) Evicting the respondents and/or their herdsmen from the communal areas in western Kavango and (2) Interdicting respondents and/or their herdsmen from occupying and grazing cattle on the said communal area. However the respondents who were all cattle owners opposed *in limine* on a number of technicalities. They denied that the grazing of their cattle was illegal and claimed that they had received permission from various headmen through the Chief of UKTA. Mr Marcus of the Attorney General's Office presented the following facts before the judge: that the cattle entered the communal area in western Kavango Region before the *Communal Land Reform Act* (Act No.5 of 2002) came into force – the respondents' (cattle owners and herders) cattle entered the communal area from early 1990 up to 2000 for grazing purposes. He also revealed that the cattle were looked after or cared for by the herdsmen who were employed and paid by the respondents and that none of the respondents resided within the communal area occupied by their cattle and herdsmen. The area in question or affected area was said to stretch about 52 km from west to east from the "Owamboland-Kavango border" and about 130 km from north to south.

On 11 February 2008, the Acting Judge A.J Manyarara in this case (supra) ruled that no permission to graze cattle was sought or given either under customary law or the Communal Land Reform Act, 2002 (Act No.5 of 2002).<sup>50</sup> Therefore, the applicants were entitled to evict the respondents and accordingly the application for eviction was allowed in terms of prayers 1, 2 and 3 of the Notice of Motion (Case No.7325/06) stated earlier.<sup>51</sup>

However around 2008, there were reports that the Owambo cattle owners/herders had returned with their livestock to the western Kavango Region, reigniting the tension between them and the UKTA once again. These farmers and their herders were by then already facing criminal charges for illegal grazing and trespassing (*The Namibian*, 7 September 2011).

Most of the Owambo cattle owners and their herders were relocated by April 2009 from Western Kavango to farm 6 in Oshikoto region in one concerted move. There were also reports that some Owambo cattle owners and herders had left the area earlier and this was immediately before and after the eviction notices were issued. They were reported to have returned to former Owamboland (mainly Oshikoto and Ohangwena regions) and others back to Angola. As a result

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<sup>49</sup> *High Court judgement in a matter between Ukwangali Traditional Authority and others v. Vilho Tilyaameni Hamunyela and others* (Case No. (P) A325/2006).

<sup>50</sup> *High Court judgement in a matter between Ukwangali Traditional Authority and others v. Vilho Tilyaameni Hamunyela and others* (Case No. (P) A325/2006).

<sup>51</sup> *High Court judgement in a matter between Ukwangali Traditional Authority and others v. Vilho Tilyaameni Hamunyela and others* (Case No. (P) A325/2006).

the number of cattle was reduced from the initial 60 000 to about 7000 in 2007, but there was insufficient evidence to support this claims.

#### 6.4.5 Subsequent court appearances

The Ovawambo cattle owners were first charged near the end of 2006 and their case has dragged on since then. The long-awaited court case was then scheduled for plea and trial from the 16<sup>th</sup> to the 20<sup>th</sup> of May 2011 and the accused Ovawambo cattle owners again reappeared in court on the 26<sup>th</sup> of July 2011 (*The Namibian*, 19 May 2011). The defence council for the 43 cattle owners and herders was reported to have requested copies of the records of the proceedings at the Rundu Magistrate's Court and contents of the police dockets, which were not forthcoming. The defence lawyer, Mr Norman Tjombe, said that these documents were necessary to advise his clients on further conduct with regards to 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's Court to inform them that he would advise his clients not to attend court proceedings unless they had been personally served with the summons and he expressed his disappointment with how the court was handling the matter. He argued that it was unfair for his clients to appear before the court after it had 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 plea of guilty may be exonerated from them." (*The Namibian*, 7 September 2011).

Trial again resumed on the 25<sup>th</sup> of June 2012 when all the accused pleaded not guilty. Chief Mipasi testified on the 26<sup>th</sup> and 27<sup>th</sup> of June 2012 and the trial was postponed to the 28<sup>th</sup> of August 2012 (*The Namibian*, 29 August 2012). During his testimony the chief threatened to leave the courtroom when he felt humiliated by some questions that the defence lawyer put to him during his cross-examination (*The Namibian*, 29 August 2012).<sup>52</sup> The case had to be postponed because the accused had received information that the magistrate had visited the complainant in the matter, the UKTA Chief Sientu Mipasi, privately (together with the prosecutor) in an effort to convince the apparently reluctant leader to testify in court. The accused were claiming that they feared that 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 charges the accused faced under the CLRA 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 had received permission from the UKTA to live and farm on the land under the TA's control. The chief initially denied that he had given any Owambo cattle owner permission to graze their cattle in the area but after two days of cross-examination, he finally admitted that he had given land to some "political heavyweights" (*The Namibian*, 29 August 2012).

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<sup>52</sup> During his two-day testimony, Chief Sientu said: "I do not want any Oshiwambo speaking person in Rukwangali area. They are grazing here illegally." Sientu however also 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*, 05-11 July 2012).

It was reported that 25 of the 29 people accused of allowing their cattle to graze illegally in the UKTA area appeared on the 2<sup>nd</sup> of July 2012 before the Kahenge District Court, where they pleaded not guilty to the charges brought against them by that TA. During this trial, Chief Mipasi denied availing land for grazing to the group of illegal grazers. The accused were released on bail of N\$500.00 each until further notice. (*New Era*, 9 July 2012).

### **6.5 Small-scale farms in affected areas of western Kavango Region**

There were 110 farms in Ukwangali area in 2009, of which 50 comprised the Mangetti Block and other farms established in the 1980s. The remaining new farms were along the northern border of the Mangetti Block and along the regional border between western Kavango Region and Oshikoto/Ohangwena (Mendelsohn, 2009: 26). A number of farms that were part of the Kavango Cattle Ranch run by the NDC have been allocated to war veterans and/or the Namibia Defence Force (NDF) and the nature of occupation of these farms is not known (Mendelsohn, 2009: 27)

Part of the area that was used by the cattle owners and herders was later demarcated and surveyed by the Surveyor General's Office. This area was initially used for grazing by the lawful residents. The Ministry of Lands, Resettlement and Rehabilitation (MLRR) (the MLR previous name) had engaged a consulting firm in regards to the development of small scale farms in communal areas. The consultancy report recommended the development of small-scale farming units in the Kavango Region, in line with existing attempts to commercialise the farming sector on under-utilised land. The Kavango Communal Land Board then intended to recommend that the Minister of Lands and Resettlement allocate these small-scale farming units to lawful residents upon gazetting the surveyed area (Notice of Motion/Case No.7325/06:15).

A member of the UKTA informed me that when the TA heard of the presence of the herders in Ukwangali area 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 since the early 1990s and they continued to bring in more herders. Consequently, the Senior UKTA Council advised the Chief and TA to request government to subdivide the area into small-scale farms (5 km x 5 km) and to allocate this to the local Vakwangali people as a way of stopping herders from remaining or entering into the area again, as most of these farms would be located at the border between Ohangwena and Ukwangali (see figure 3). Eventually the government surveyed the farms and they were gazette and allocated. The allocations procedures were being adhered to as provided for in Section 31 and 32 of the CLRA (Anonymous interviewer, 29 December 2011). To date leaseholds have already been issued to some local farmers.

### **6.6 The relocation of Ovawambo cattle owners to Farm Six in the Mangetti area**

After the eviction notices were served on the herders, the Technical Committee for the Removal of Illegal Grazers from Western Kavango Region was established. The Committee Secretariat sits in the Ministry of Regional and Local Government, Housing and Rural Development (MRLGHRD) under the chairmanship of the permanent secretary of that ministry. The aim of the committee is – to facilitate the removal of herders and their cattle from western Kavango Region and to come up with a solution to the grazing dispute. The committee aimed at advising the political principals and the police (as well as other stakeholders) on steps that could 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 composition of this technical

committee is as follows: 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); the Kavango Regional Council; the Ohangwena Regional Council; the Oshikoto Regional Council; the UKTA; the Uukwanyama Traditional Authority and the Ondonga Traditional Authority.

A member of this committee highlighted some of the activities of the committee since its inception. He said that the committee had held meetings with the Ukwangali Traditional Authority (UKTA) about two to three times on the issue. It also consulted the Uukwanyama and Ondonga TAs.

The consultations with various stakeholders started in 2008. The Ministry of Trade and Industry (MTI) approached its parastatal, the Namibia Development Corporation (NDC), to make available some of its farms to the Owambo cattle owners and their herders who were facing eviction.<sup>53</sup> NDC made available some of its quarantine farms (farms built with a surrounding game fence to control animal diseases) at Mangetti block in the Bravo area in Oshikoto Region, about 80 km north of Tsumeb on the Tsintsabis road and the government, on behalf of the Ovambo owners/farmers, entered into a lease agreement with NDC. The farms are collectively known as 'Farm Six'. The 12-month contract/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. Nevertheless, Cabinet gave direction to the MLR to still seek permanent land for the cattle owners/farmers as the NDC arrangement was just a temporary one. Initially the NDC was concerned that the herders' animals were from rural areas and that they would spread disease to cattle on the other side of the cordon fence, thus affecting the market for meat from the area. This issue was addressed by doubling the height of the fence, (i.e changing it into a game fence) so that the new comers (Owambo cattle owners) cattle could not cross over to the camps to mingle with the NDC cattle. After the agreement, the government gave the committee N\$7.4 million for upgrading the farms, of which N\$4.7 million was transferred to the NDC for rehabilitation of farm infrastructures (such as boreholes, fences and water pumps/engines) and to undertake other necessary renovations. The balance of N\$2.7 million remained with the technical committee for operational expenses.

The consultations between the technical committee and the herders were held at Oluno Community Hall in Ondangwa and Leo Shoopala Hall in Oshakati and herders and other stakeholders were invited to these meetings primarily through announcements on the radio.

One of my key informants explained that before the actual relocation could even take place, the cattle owners and herders had 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 on foot instead and that mobile water tanks could be placed along the way to water their livestock (and this was then implemented). This key informant felt that:

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<sup>53</sup> The NDC was established under the *Namibia Development Corporation Act* (18 of 1993). The Government of the Republic of Namibia has a 100 per cent shareholding in the NDC but the corporation is controlled by an autonomous board of directors. The NDC's objective is the provision of financial and related services on the basis of sustainable operations (Dieckmann et al., 2012:76).

*“The government had been too good to people who violated the law in the first place. This people [sic] knew where they came from, they were just suppose to go back. What a waste of government money.”* (Anonymous interviewee, 15 February 2012).

He continued that the government had provided an environment conducive to compromise, despite the fact that the cattle herders/owners were wrong by entering Ukwangali area illegally in the first place. Another land and legal expert said:

*“The government would rather keep peace than punish people who violate the law.”*(Anonymous interviewee, 15 February 2012).

The Namibian Police Force and veterinary officials from the MAWF played crucial roles during this relocation process. The veterinary officials controlled the numbers of livestock and ensured that the correct numbers arrived at Farm Six. The police were there to ensure that there was peace and order throughout the entire translocation process. The first registration process was done in August 2008 and during the registration process the herders were divided in to two groups and according to one of my key informants this decision was made along political lines. One group was registered by the technical committee itself and the other group by the leader of the Owambo cattle owners and herders. The registration process entailed recording their; names, their ID numbers, numbers and brands of cattle, and the place in Kavango Region where they were grazing illegally; there was also a verifying process to ensure that the information was correct.

NDC indicated that the carrying capacity of the farms was just 4,000 large stock units for one year only. The 57 registered herders at the time of relocation had 7,630 cattle. When it was realized that their cattle had exceeded the carrying capacity for those particular NDC farms, the technical committee decided to convince them to reduce their head of cattle accordingly. The committee also suggested other options to the cattle owners/herders – one was that they could return some of their cattle to their areas of origin as it was understood that some of these cattle actually belonged to their relatives and friends. The other option was that they could sell some of their cattle through the Meat Corporation of Namibia (known as Meatco) at high prices, as per an agreement with the government to encourage them to reduce their number of livestock. A second verification process took place on the 24<sup>th</sup> of December 2008, when the actual reduction of the livestock was done. The number of cattle came down to 3,466 and these were then taken to the NDC farms. Eventually the herders and their livestock were all moved to the NDC farms at Farm Six by April 2009.

## **6.7 Impact of the relocation on the Owambo cattle owners to Farm six**

I visited the NDC farms to familiarise myself with the situation there in March 2011. It was during the rainy season and the vegetation at the farms looked very green. A few months later I had a chance to interview the cattle owners about their situation at the NDC farms. Most of them complained about a certain poisonous plant that was killing their livestock if the animals ate it; they said some of their fellow cattle owners/herders had lost up to six cattle a day, and some farmers had actually left the area because of this problem. The farmers also believed that Namibia Development Corporation (NDC) was not honouring its obligations as per its agreement with them through the government: the NDC had agreed to service the boreholes but they had reneged

on this commitment. As a result, some farmers (cattle owners) had to bear the cost of maintaining the farm infrastructure themselves in order to keep their farming activities running.

When asked about their future at Farm Six (the NDC farms), the herders said that their prospects were not promising and they were still reminiscing about the good times they had in Kavango Region. They said the difference between western Kavango Region and the NDC farms was that they were now fenced in. One said that the future was dark because it seemed as if the government was not going to find another parcel of land for them, despite their complaints regarding the problems they are currently facing.<sup>54</sup> He continued that their livestock had not yet fully adapted to the new environment and that they might continue losing their cattle until there is none left.

## **6.8 Relocation of the conflict: impact on the San people at Farm Six in the Mangetti area**

Local San people in the Mangetti Block area expressed their complaints regarding the presence of the Ovawambo cattle owners and herders at the NDC farms (Farm Six). After Independence, a group of San people were resettled in the Tsintsabis area about 60 km north of Tsumeb by the Ministry of Lands and Resettlement (MLR). They were resettled under the government's National Resettlement Programme (NRP) at the Bravo Resettlement Project in Mangetti Block (Dieckmann et al., 2013:16). The San people at Bravo Resettlement Project said that Ovawambo cattle owners and herders moved onto their ancestral land about two years ago, (at the time of the field research in 2011) when they were chased away from western Kavango Region. Three cattle posts totalling 300 km<sup>2</sup> in Farm Six which is part of or inside the Mangetti West Block, were sub-leased by the NDC to the Ovawambo cattle owners and herders until such time that alternative grazing land was to be found for their cattle (Dieckmann et al, 2013: 76).

Farm Six is situated 50 km to the north-west of Tsintsabis in the Mangetti West Block, an area of about 800 km<sup>2</sup>, which was originally acquired by the previous South African Administration as a quarantine camp for livestock moving from the Northern Communal Areas (NCAs) onto the commercial farmlands to the south (Dieckmann et al, 2013: 76). Farm Six constitutes one of eight cattle posts in the Mangetti West Block; it is leased from the government by the NDC, which uses the area as commercial farming unit (Dieckmann et al, 2013: 76). Farm Six is a large cattle ranch with several camps and cattle posts linked by tracks; however these are of no practical use to the community as they have no rights to utilise the land. The San people survive mainly from bush food, piecemeal, pension money and food aid.

(The Hai||om San at Farm Six did not know the number of households or people in the village at the time of the research. However, according to the farm manager, the NDC counted about 400 San

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<sup>54</sup> “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 [sic]” (Ovambo cattle owner/farmer D, 14 December 2011). “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. 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.” (Ovambo cattle owner/farmer B, 14 December 2011).

“We were viewed and considered as criminals and are seen as enemies of the government and we don't know why.” (Ovambo cattle owner/farmer A, 14 December 2011). The FGD with all the Ovawambo cattle owners was held on 14 December, 2011.

people in 2011 at Farm Six. The government's regional poverty profile of 2007 provided an estimate of 110 households (Dieckmann et al, 2013: 76). This *Oshikoto Regional Poverty Profile* estimated that there are 105 households (NPC 2007b: 39) and the settlement is only occupied by Hai||om people.)<sup>55</sup>

The Mangetti area has been inhabited by the San people for a long time; historically, they mainly lived from hunting and gathering in the area. They still depend on natural resources for their livelihoods. A wide variety of fruits is consumed on a regular basis and the main foodstuff is the mangetti fruit, which is available in sufficient quantities to provide food throughout the year. However, availability depends on rainfall – during a good rainy season people harvest a lot, but during drought years production decreases. Access to the fruits is open to all and many other wild foods are also utilised on a regular basis.

The Hai||om living around Farm Six said that they were never informed beforehand about the relocation of Ovawambo cattle owners/farmers and their livestock from western Kavango Region into their area. However some local Hai||om were later employed to put up fencing for the Ovambo cattle owners and at that time they were told that the Ovawambo cattle owners/farmers would just stay there for about nine months. The NDC informed them that this was just a temporary fence to provide grazing land to the cattle owners'/herders' livestock but at the time of the field research two years had already passed and the fencing, farmers/herders, and their stock still remained in place.

The influx of the Ovawambo cattle owners and herders and their cattle meant a severe restriction to the gathering activities of the local San people. Bush food (and hunting to a lesser degree) still plays an important role in the diet of the Hai||om in the vicinity as other livelihood activities are very limited in the area (unlike the Hai||om who are living on farms or townships in the commercial area or in the Etosha National Park). Therefore the presence of the Ovawambo cattle owners and herders had brought restrictions to this livelihood strategy as a vast amount of land is now fenced off and used by the Ovambo cattle owners/herders and their livestock.

The San people also reported that there were times when they tried to go into the area in search of food, medicinal plants and other natural resources, but the Ovawambo farmers felt threatened that they would steal their cattle (Dieckmann et al, 2013: 76). They related that these owners and herders have guns and are powerful. The San people informed a staff member from the Office of the Prime Minister (OPM) about this situation but no intervention was forthcoming.

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<sup>55</sup> For more ethnographic details on the Hai||om at Farm Six see Widlok, 1999: 182.

## **CHAPTER 7: CONCLUSIONS AND LESSONS LEARNED**

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This chapter will not only discuss the findings of the study and analyse them, it will also attempt to link the findings of the study with the literature on land rights. This chapter will discuss the seriousness of the grazing dispute and will detail and analyse the impact of the eviction order on the involved parties, including its unintended consequences. It will also discuss the effectiveness of the eviction order. The root causes of the grazing dispute will be explored and the central questions regarding the effectiveness of the legislation will be addressed. This chapter will also examine the lessons learned and attempt to discuss other factors that might have influenced the grazing dispute.

This grazing dispute was the first of its kind in Namibia. The government and other stakeholders worked together to try and address the matter and this coordinated effort between the government and other stakeholders played a big role in preventing violent clashes and ensuring that most herders left the area. Although one cannot, perhaps, conclude that the intervention was a success, there are valuable lessons that can be learned.

### **7.1 The significance of the grazing dispute**

Many respondents were in agreement with media reports that the dispute had the potential to erupt into violent clashes between the Vakwangali communities and Ovawambo cattle owners and herders if the government and other stakeholders had not intervened. Most of the respondents – including the affected local people, herders, and the law enforcement officers – shared the same sentiments. This dispute was reported to have had the potential to result in deadly tribal clashes and could even have led to civil war (Anonymous interviewee, 14 October 2011).

### **7.2 The impact of the eviction order on parties involved**

The eviction order seems to have had some positive impacts on lives of local Vakwangali people in the affected area. Many respondents informed me that their view of the government had changed when the eviction order was implemented; some members of the Ukwangali Traditional Authority were of the opinion that at last justice had been done. Many of the affected people who were interviewed also informed me that after most herders had left the area as a result of the eviction order, positive changes started to emerge. Among these were that their crop yields were increasing, the grazing conditions started improving, their livestock were also breeding well as a result of improved grazing conditions, and the cutting of fences had been minimised. The UKTA members also confirmed that complaints from their community members about the Ovawambo cattle owners and herders had, naturally enough, declined since they were evicted.

On the other hand there were other affected local Vakwangali farmers who were not totally impressed by the eviction and the eventual relocation of the farmers from Ukwangali area. They felt that the eviction was selective because some herders were still in the area despite the calls by the UKTA to remove them. Some respondents informed me that there were Ovawambo cattle owners and herders who were evicted but who had eventually started coming back into the area; because nothing had happened to their fellow owners/herders who had remained, they argued, they had no compunction about returning themselves. I also witnessed this when I travelled to Mpungu Constituency in April 2012: a truck delivered cattle from the northern regions into the

affected area although I could not confirm with the herders themselves whether they were newcomers or those who were returning to the area. I discussed the issue with the councillor and the principal of a certain school in the area who also both suspected that these would have been either new herders or returnees, indicating that it was not an unusual occurrence.

During the eviction process, Ovawambo cattle owners and herders claimed that they also suffered: some of them were arrested and their cattle were left unattended to – as a consequence some were lost to theft. The local Ukwangali people also threatened to poison the wells used by the cattle owners and herders. At Mukekete village, the herders said that they were refused permission to water their animals by the locals in the presence of the police and as a result they felt that the police were not neutral (Ovawambo cattle owner B, 14 December 2011).

The cattle owners and herders who were relocated to the NDC farms (Farm Six) expressed appreciation for the intervention as well as some disappointment. There were complaints about cattle deaths due to poisonous plants and water problems due to lack of maintenance of the boreholes. There is thus a need to revisit the agreement to ensure that all parties stick to their obligations; there is also a need to educate the cattle owners/herders about the agreement because there seems to be a lack of understanding concerning it amongst them. The Ovawambo cattle owners also seemed to be in the dark in regards to their future at Farm Six and the government should give assurance to the herders and encourage them to maximise their current opportunity while a new alternative is being identified for them.

### **7.3 The effectiveness and sustainability of the court order**

Generally, the eviction order and relocation of the Ovawambo cattle owners and herders did bring some relief to the affected local community members and the UKTA. However the eviction order also relocated the conflict to the Mangetti area, where the San people now felt marginalised by the Ovawambo herders who are newcomers in the area. There was also a general lack of follow-up on the eviction order, hence reports that some cattle owners and herders had remained in western Kavango and that those who had left were returning. The delays with monitoring and ensuring that all the herders had left the area has caused some of the affected local people to start losing confidence in the eviction order, reinforced by the fact that herders have been coming back in the area, too.

On the other hand, the Ovawambo cattle owners expressed their frustration with the delayed and extended court proceedings (*The Namibian*, 7 September 2011). There were nine cattle owners (including one now deceased) who were respondents in the matter. They had challenged the eviction order in court when the judgement was delivered against them on the 11<sup>th</sup> of February 2008<sup>56</sup>. I spoke to seven during my fieldwork and they related that they resented the fact that they were treated like criminals. The prolonged and frequent court appearances were said to be draining the cattle owners of their energy and finances. Some of the cattle owners/herders interviewed also expressed their disappointment about the delays through their lawyer (*The Namibian*, 7 September 2011). The pending court case between the cattle owners and the government as well as the Ukwangali Traditional Authority should therefore be brought to a conclusion. The cattle owners/herders first appeared in court on the 3<sup>rd</sup> of December 2006 yet to

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<sup>56</sup> *High Court judgement in a matter between Ukwangali Traditional Authority and others v. Vilho Tilyaameni Hamunyela and others (Case No.(P) A325/2006.*

date the herders have not been prosecuted. This delay has begun to bring doubts in the minds of local residents who once commended the government for implementing the eviction order.

#### **7.4 The strength of the law**

The 12-year old *Communal Land Reform Act* (Act No. 5 of 2002) was tested during this grazing dispute matter. The strength of the law is attributed to the fact that Namibia is one of the few African countries with a progressive legal and institutional framework governing natural resources. In their article titled '*Raising Awareness of Land Rights Necessary for Rural Namibians*' Sulle et al (2014) stated that the CLRA defines the roles and responsibilities of all the actors from the national to local level. The functions and powers of the CLBs and the TAs in regards to land administration (and rights in particular) are clearly stipulated and follow a system of checks and balances (Sulle et al, 2014). Accordingly, the chief or TA is empowered by the CLRA (and customary law, which is recognized by the Namibian constitution) to grant grazing rights and also withdraw these under certain conditions, as stipulated in the Act.

#### **7.5 Selective implementation of the law**

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 and stock 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. The partial application of the law was viewed as unhelpful by some in itself – especially the cattle owners and herders who were dealt a double blow: first by the enclosures in their areas of origin and then by their eviction in Ukwangali area. Failure to apply the law consistently was seen to have been politically motivated since those who put the fences up are elites such as business personalities, politicians, and those with excellent political connections.

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 process 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. Moreover, there were claims and perceptions that the lack of control and a follow-up mechanism was intentional – to avoid offending political elites and to prevent revelations regarding back-door agreements that may have involved the TA and cattle owners/herders regarding land and grazing rights. The scope of the study was, however, not sufficient to substantiate these claims.

#### **7.6 The influence of politics and tribalism on the grazing dispute**

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. What caused further confusion with the Ovambo cattle owners/herders and affected Vakwangali community members were revelations in the media about land that had been allocated to 'political heavyweights' and other politically well-connected individuals by the same TA (*The Namibian*, 6 July 2012). Some of the herders and even certain local Vakwangali people have questioned the legitimacy of those allocations. This is in light of the fact that there are some cattle

owners and herders who are known opposition party members who might therefore have been evicted because of their political affiliations. There were allegations that the UKTA might have favoured the political elites of the ruling party, SWAPO, and business people in their allocations based on the value of gifts given in exchange and also in order for the TA to remain in good political standing. One national newspaper 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 were devoted supporters of the ruling party and that political motives were said to have caused the grazing feud as some prominent Ovawambo cattle owners were known supporters of the main, official opposition party, the Rally for Democracy and Progress (RDP) (*New Era*, 27 June 2012).

Another element which was alleged to have affected the cattle owners and herders was the so-called tribal conflict between the Oukwanyama and Ondonga traditional authorities. In its press release 'Illegal Kavango Cattle Farming Symptom of Owambo Conflict', the NSHR (2005) reported that the Ondonga-Oukwanyama tribal conflict has historical, economic and political, as well as class, dimensions. The article further discussed an incident in 2004 where the late chief of the Ovakwanyama ceded the disputed border areas to the Ondonga TA in an agreement concluded behind closed doors. The Oukwanyama TA later renounced the agreement, saying that the late king signed it because of 'political pressure'. This also explains perhaps why Ovakwanyama herders were in the majority in the western Kavango Region – because their land was reduced through this agreement. All of the above point to the importance of uncovering the underlying causes of any dispute (such as favouritism based on political standing and/or tribalism) in order to ensure transparency in the implementation of the law.

### **7.7 The influence of enclosures in NCAs on the grazing dispute**

It was clear from the findings that the NDC farms could not accommodate all the cattle belonging to the Ovawambo cattle herders. As a result, some cattle/herders were forced to return to the NCAs (and there are also allegations that others went to Angola, especially after the eviction). It is therefore not a surprise that there are allegations of Ovawambo cattle owners and their herders returning back to Ukwangali area, because the proliferation of illegal fences that had further reduced the commonage since they left. Interestingly, from 2013 to the beginning of 2014 the government had sent warnings to people who had illegally fenced off communal lands to remove such fences voluntarily and as a matter of urgency, or face the wrath of the law. In 2013, the government issued a 30-day notice for removal of a fence belonging to a high profile politician (*The Namibian*, 24 January 2013) after complaints from certain community members in Kavango Region. This government action is widely seen as a step in the right direction: firstly because it is going to test the implementation of the CLRA in terms of the removal of illegal fences and secondly, the government has also been accused of not prosecuting high profile individuals while being quick to bring low profile individuals – and particularly the poor – to book. This has been widely reported by the local media against the background of the public outcry that the Anti-Corruption Commission (ACC) seem to avoid high profile individuals but seem to be relentless in pursuing low profile cases.

The shortcoming in this case study process 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 the former Owamboland, especially in Ohangwena and Oshikoto regions where the case study cattle owners and herders came from. This is why at the time of the eviction even those cattle

owners/herders who might have been keen to return to their places of origin could not do so since there was insufficient grazing in these areas due to enclosure activities by the elite. What made returning even more difficult was the fact that most of these Ovawambo cattle owners had increased the size of their herds as result of good grazing in western Kavango Region and some had also acquired more cattle from different areas, including Angola. Therefore 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. This could have also prevented the transfer of the conflict from western Kavango Region to the Mangetti Block area in Oshikoto Region – thus subsequently involving the San people. Therefore the law itself is not weak, but the problem is the way in which it was selectively implemented.

### **7.8 The effect of the grazing dispute on the indigenous minorities (and implications thereof)**

In addition, there is currently dissatisfaction among some of the inhabitants of Mangetti area, specifically the San people who claimed that the area is their ancestral land. Most of them were resettled by the Ministry of Lands and Resettlement (MLR) at Bravo Resettlement Project just opposite the NDC farms (Farm Six). The San people said that their access to bush food was limited because they are viewed as a threat by the Ovawambo cattle owners who fear that the San people might steal their cattle. (The government could bring the two communities together to prevent suspicion and hostility from both sides.)

This basically meant that the relocation of the farmers and their cattle just entailed a migration of the conflict but did not present an ultimate solution. The San comprise one of the most marginalised ethnic groups in Namibia (Suzman, 2001b: 143, quoted in Dieckmann et al, 2014: 4). This is especially true of those, like the Hai||om at Farm Six, living in very remote areas. They often lack political representation or organisational structures to raise their concerns. Their traditional use of land – hunting and gathering – is often ignored by others as a legitimate land-use pattern and therefore other groups, in this case the Ovawambo farmers, could easily take the land used by the San. The situation at Farm Six is not the only case where outsiders took or tried to take the land of San people: the case of the Gam farmers at the Nyae Nyae Conservancy in Otjozondjupa Region, where Herero farmers entered the conservancy with their herds of cattle without authorisation in 2009, is a further example (Anonymous interviewee, 13 February 2013). Another one is the development of small-scale farms at Xeidang village in eastern Kavango Region, where San people were living beforehand (Dieckmann et al, 2014:337).

These cases involving the San people raise questions about the applicability of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and the African Commission on Human and Peoples' Rights (ACHPR) principles and practices. Namibia voted in support of UNDRIP when it came up for a vote on the 13<sup>th</sup> of September 2007. Namibia is also a signatory to the African Charter and in January 2011, Namibia participated in the Universal Periodic Review (UPR) of the Human Rights Council, the main human rights review system of the United Nations. Furthermore, the government of Namibia responded positively to recommendations made by the African Commission on Human and Peoples' Rights in its review of Namibia in 2005. The cases described above are now casting doubts on the credibility of the Namibian government, which had hitherto demonstrated strong commitment to the rights of indigenous and minority peoples and historically disadvantaged populations in the country (Anonymous interviewee, 30 November 2012). Certainly the relocation of Ovawambo cattle owners to the area around Bravo Resettlement

Project that is inhabited by the San people without informing them is not consistent with the principle of free and prior informed consent (FPIC) as defined in the UNDRIP.

## **7.9 Lessons from the Vakwangali affected communities and their TA**

One clear lesson that can be learned from the grazing dispute in western Kavango Region is related to the determination of the Ukwangali Traditional Authority (UKTA). 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 to involve itself. In the process, the UKTA also got the attention of other stakeholders who came on board. This is in clear contrast to the similar dispute involving the San people in Nyae Nyae Conservancy and the Gam farmers (predominantly Ovaherero people). In that instance, the Ju|'hoansi Traditional Authority was clearly weak, disorganised, and proved to be incapable of dealing with a matter of this nature, despite efforts from the Nyae Nyae Development Foundation of Namibia (NNDNFN) to back the TA in question. Apart from the general disregard for the indigenous minority affected by the conflict, the TA was further weakened by allegations of bribery and false representation in respect of land allocation. The TA's ability to exercise their authority in terms of serving the interests of their community has been weakened because of this (alleged) abuse of authority for personal gain. The Ju|'hoansi TA has manifestly failed to get the attention of the government and other stakeholders in the way that the UKTA did. It could also be argued that the reason relevant authorities are reluctant to address the matter is because it involves San people, whose land is seen as underutilised due to their nomadic lifestyle. Thus there appears to be reluctance to apply relevant legal instruments to ensure that the Gam farmers are evicted.

The affected Vakwangali communities and their 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 requires an organised TA, one that is consistent in regards to applying pressure on government and other stakeholders, to play its 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.

## **7.10 The applicability of this case study to handling similar cases**

Mendelsohn et al (2000) and Claasen (2010) both caution about the potential resource scarcity facing northern Namibia in particular. They attribute this scarcity to the high population in that part of the country and as a result of enclosures by the minority elites grabbing large tracts of land at the expense of the poor majority. Mendelsohn et al (2000) further states that Namibia, being one of the most arid countries in southern Africa, has a low environmental carrying capacity to sustain livelihoods considering the fact that the majority of the rural population depends on agriculture. 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, 2010). The author therefore hopes that this dissertation is useful in the sense that it has presented important aspects of how this dispute was handled in terms of what worked and what did not. This analysis is crucial so that lessons can be learned in order to address similar disputes in the future and in order to avoid the mistakes made in this particular case, as similar conflicts are likely to occur due to the scarcities of natural resources that Namibia will continue to face into the future.

## ANNEXURE A: TIMETABLE FOR RESEARCH ACTIVITIES

Place	Date	Respondent/Institution/Stakeholder	Activities
Windhoek, Khomas Region	08.02.2011	Namibia Development Corporation (NDC)	Meeting
Windhoek, Khomas Region	15.02.2011	Legal Assistance Centre (LAC), Land, Environment & Development (LEAD) Project	Meeting
Windhoek, Khomas Region	15.02.2011	Ministry of Regional and Local Government, Housing and Rural development (MRLGHRD), Technical Committee on the Removal of Illegal Herders from Western Kavango Region	Individual interview
Windhoek, Khomas Region	17.02.2011	Division of Land Board Tenure and Advice (LBTA), Ministry of Lands and Resettlement (MLR)	Meeting
Rundu, Kavango Region	07.03.2011	KOMEHO Namibia Development Agency	Meeting
Rundu, Kavango Region	07.03.2011	Ministry of Lands and Resettlement (MLR)	Meeting
Rundu, Kavango Region	07.03.2011	Namibian Police Force (Nampol)	Meeting
Nkure-nkuru, Kavango Region	08.03.2011	Kavango Communal Land Board (KavCLB) and Ukwangali Traditional Authority (UKTA)	Meeting
Mpungu, Kavango Region	08.03.2011	Ukwangali Traditional Authority (UKTA)	Meeting
Ntopa village, Mpungu Constituency, Kavango Region	08.03.2011	Affected Mukwangali community member	Meeting
Tsumeb, Oshikoto Region	09.03.2011	Veterinary Services, Ministry of Agriculture, Water and Forestry (MAWF)	Meeting
Mangetti farms/Farm Six, Ohangwena Region	11.03.2011	Two Ovawambo cattle herders	Meeting
Rundu, Kavango Region	10.10.2011	Namibian Police Force (Nampol)	Meeting
Rundu, Kavango Region	11.10.2011	Ministry of Lands and Resettlement (MLR)	Individual interview
Rundu, Kavango Region	11.10.2011	Kavango Communal Land Board (KavCLB) and Ukwangali Traditional Authority (UKTA)	Individual Interview
Rundu, Kavango Region	14.10.2011	Namibian Police Force (Nampol)	Individual interview
Rundu, Kavango Region	14.10.2011	Affected Mukwangali community member	Individual interview
Tsumeb, Oshikoto Region	06.12.2011	Namibian Police Force (Nampol)	Individual interview
Onethindi/Ondangwa, Oshana Region	14.12.2011	Seven Ovawambo cattle owners	FGD
Ondangwa, Oshana Region	15.12.2011	Veterinary services, Ministry of Agriculture, Water and Forestry (MAWF)	Meeting
Rundu, Kavango Region	28.12.2011	Three affected Vakwangali community members	Individual interview and FGD
Nkure-nkuru, Kavango Region	29.12.11	Affected Mukwangali community member	Individual interview
Nkure-nkuru, Kavango Region	29.12.11	Ukwangali Traditional Authority (UKTA) and affected Mukwangali community member	Individual interview
Nkure-nkuru, Kavango Region	30.12.11	Affected Mukwangali community member	Individual interview
Nkure-nkuru, Kavango Region	17.04.12	Affected Mukwangali community member	Individual interview
Windhoek, Khomas Region	30.11.12	San Project, Land Environment & Development (LEAD) Project, Legal Assistance Centre (LAC)	Meeting
Windhoek, Khomas Region	13.02.13	Nyae Nyae Development Foundation of Namibia (NNDFN)	Meeting

## ANNEXURE B: EXAMPLE OF AN EVICTION NOTICE

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**ATTENTION:** Mr XYZ  
*Eengodi Village, Oshikoto region [sic]*

Dear Colleague [sic]

**SUBJECT: NOTICE IN TERMS OF SECTION 43 AND 29 OF THE  
COMMUNAL LAND REFORM ACT 2002 (ACT NO.5 OF 2002)**

Kindly take notice that you have contravened Section 43 of the Communal Land Reform Act, 2002 (Act No.5 of 2002) in that you are unlawfully occupying or using for grazing purpose land in Kavango region [sic], which is commonage in the communal area of Kwangali Traditional Community contrary to the provisions of this Act.

Take further notice that you have occupied the said portion of the commonage without a written authority of the Chief or Traditional Authority and ratification of the Communal Land Board contrary to Section 29 (4) of the Act.

You are notified that your occupation of the said commonage is an offence and if you are found guilty you will upon conviction be liable to a fine not exceeding N\$4000 or imprisonment for a period not exceeding one year.

Kindly take further notice that you are hereby informed to vacate or cease to occupy the said communal land within **seven (7) days**, failing to do so, legal action will be instituted against you.

.....  
CHAIRMAN: KAVANGO COMMUNAL LAND BOARD

## ANNEXURE C: EVENTS RELATED TO THE DISPUTE

Date	Parties involved
1960s	The 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 up to 60 000 cattle to seek grazing, and continued to do so.
1992-2004	The UKTA held consultative meetings with various TA 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 be convinced to move out.
2003	UKTA brought the grazing dispute matter to the KavCLB.
4 <sup>th</sup> October 2005	UKTA and Chief sent a letter dated 4 October 2005 to the KavCLB to seek assistance to resolve the long-standing matter.
18 <sup>th</sup> -23 <sup>rd</sup> November 2005	The KavCLB issued eviction notices to fifty (50-53 herders) cattle owners with the assistance of the police.
3 <sup>rd</sup> March 2006	The UKTA, Chief and the government (MLR) laid criminal charges with 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 <sup>rd</sup> December 2006	The accused farmers made their first court appearance.
14 <sup>th</sup> December 2006	Court order dated 14 December 2006 was granted following the founding affidavit of the herders to remain in the area.
13 <sup>th</sup> -23 <sup>rd</sup> February 2007	The applicants – UKTA, Chief Mpasi, KavCLB and MLR – made an application or founding affidavit/Notice of Motion for hearing on the 13 <sup>th</sup> of February 2007.
28 <sup>th</sup> November 2007	The application (Notice of Motion) was heard.
11 <sup>th</sup> February 2008	Judgment 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.

## ANNEXURES D: (I-VII) QUESTIONNAIRES

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<b>GRAZING DISPUTE IN WESTERN KAVANGO REGION</b>
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### QUESTIONNAIRE I: MAIN INFORMANT(S)

Date of Interview:

Name of Interviewee:

Age:

Sex [*sic*]:

Position:

Contact address:

Area of Residence:

Name of Interviewer:

1. Can you give me an overview to this grazing dispute (how it all began)?
2. How many cattle in total did they have at the time of entry?
3. How did the number of cattle continue to grow so rapidly and to that extend [*sic*]?
4. How many cattle did they have in total at the time of eviction?
5. Do you think the eviction was effective and that the problem has been addressed completely?
6. Explain the lease agreement between the Government and Namibia Development Corporation (NDC), in terms of leasing the farms to which the herders were relocated? [*sic*]
7. Can you describe the relocation process after the eviction to the Mangetti area?
8. When did the illegal grazing matter reach the Ministry of Regional, Local Government [*sic*], Housing and Rural Development?
9. What is the objective of the Committee on the Removal of illegal farmers from Kavango region [*sic*]?
10. Which institutions are represented in the Committee?
11. What has been achieved since the establishment of the Committee?
12. How does the committee deals [*sic*] with social, animal disease, infrastructure problems faces [*sic*] by the farmers at the NDC farms?
13. How many herders were grazing in Kavango region?

14. How big is the NDC (Farm Six) farm which is allocated to the herders?
15. Tell me about the camps allocated to herders and whether they are practising sustainable grazing practices?
16. How many camps are available to the herders?
17. How many herders per camp?
18. How big are the camps?
19. How do you determine the number of herders per camp?
20. How did you determine the livestock number per camp?
21. How do you determine who should be with whom in a specific camp?
22. Do the herders adhere to the carrying capacity of the camps?
23. What is the carrying capacity of this farm?
24. Do the herders receive extension services from the Ministry of Agriculture, Water and Forestry (MAWF) and which services?
25. Who monitors the herders to ensure that they do not violent [*sic*] the agreement between the MRLGHRD and NDC in regards, to their stay at Farm Six?
26. When will the Herders be allocated their own farms?
27. Who funds the committee for the removal of illegal farmers in Western Kavango region?
28. Do you know the actual locations were [*sic*] the herders where [*sic*] grazing their cattle, if so provide a list?
29. What are the challenges faced by the Committee in regards to working with the cattle herders?

## GRAZING DISPUTE IN WESTERN KAVANGO REGION

### QUESTIONNAIRE II: MINISTRY OF LANDS AND RESETTLEMENT RELEVANT STAFF MEMEBERS [sic]

Date of Interview:

Name of Interviewee:

Age:

Sex [sic]:

Position:

Contact address:

Area of Residence:

Name of Interviewer:

1. Can you give an overview or background to this whole grazing dispute, how did it all began [sic]?
2. What was the agreement between the herders and the Uukwangali Traditional Authority?
3. What went wrong between the two parties (Herders vs Uukwangali TA)?
4. How did this matter reach the Ministry of Lands and Resettlement?
5. What steps were taken by the Ministry of Lands and Resettlement to deal with the matter?
6. The first attempt to evict the herders failed, when did this happen and how?
7. Why did it take so long to resolve this matter?
8. What lessons do you think the Ministry learned from this situation, should a similar situation arise again?
9. Which stakeholders played a vital role in addressing the matter?
10. What is your opinion on the court decision, was it affair [sic], does it solve the problem, was it sustainable?
11. Do you have any available documentations [sic] regarding this matter, any correspondences between involved parties, reports etc?

## GRAZING DISPUTE IN WESTERN KAVANGO REGION

### QUESTIONNAIRE III: KAVANGO COMMUNAL LAND BOARD

Date of Interview:

Name of Interviewee:

Age:

Sex [*sic*]:

Position:

Contact address:

Area of Residence:

Name of Interviewer:

1. Can you give an overview or background to this grazing dispute, how did it all begin?
2. What was the agreement between the herders and the Uukwangali Traditional Authority?
3. What went wrong between the two parties (Herders vs Uukwangali TA)?
4. How did this matter reach the Kavango Communal Land Board?
5. When did this matter reach the Kavango Communal Land Board?
6. What steps were taken by the board in an attempt to deal with the matter?
7. The first attempt to evict the herders failed, when did this happen and how?
8. What was the role of the Land board in this whole matter?
9. There were reports of new fences which were established in the Uukwangali areas, by the herders, what is the boards take on this?
10. Why did it take so long to resolve this matter?
11. What are the lessons you think the board had learned from this situation, should a similar situation arise again?
12. Which stakeholders played a vital role in addressing the matter?
13. What is your opinion on the court decision, was it affair [*sic*], does it solve the problem, was it sustainable?

## GRAZING DISPUTE IN WESTERN KAVANGO REGION

### QUESTIONNAIRE IV: UKWANGALI TRADITIONAL AUTHORITY

Date of Interview:

Name of Interviewee:

Age:

Sex [*sic*]:

Position:

Contact address:

Area of Residence:

Name of Interviewer:

1. Can you give an overview of this grazing dispute (including the year which the Ovawambo [*sic*] (herders) farmers enter the Uukwangali area?
2. What reasons did the herders give initially, for coming to graze in Uukwangali area?
3. What was the initial grazing agreement and what were the conditions?
4. Was the grazing agreement verbal or written, provide proof if available?
5. Did the grazing agreement also include other rights such as access to a residential [*sic*] and a field to cultivate crops etc?
6. How many herders were part of the initial grazing agreement and which year?
7. Do have [*sic*] any idea about the number of cattle first herders [*sic*] came with?
8. What are the customary grazing practices in the Uukwangali area?
9. How did the dispute arise, what was the cause of the dispute?
10. What steps were taken initially by the Uukwangali TA to resolve the dispute?
11. It was reported that the first attempt to evict herders failed, how did this happen?
12. Which stakeholders played a role in solving this grazing dispute?
13. Why did the matter take so long to resolve?
14. Why did the government take long to act dispute calls [*sic*] by the Uukwangali TA and other stakeholders?
15. For how long has the Uukwangali TA been consulting the government to intervene in this issue?

16. What were the problems which were experienced/faced by the local community as a result of the presence of herders in the area?
17. Can you discuss the confrontations between the two parties, for how long and what actually transpired?
18. How did the matter end up into court [*sic*] and what was the court decision?
19. What was your initial reaction towards the court decision, where you happy with the decision and why?
20. Do you think the dispute has been resolved?
21. As a leader(s) [*sic*] representing your community, what has changed since the herders left the area?
22. What lessons did you learn from this situation, if any?
23. Additional Comments;



## GRAZING DISPUTE IN WESTERN KAVANGO REGION

### QUESTIONNAIRE V: AFFECTED COMMUNITY MEMBERS

Date of Interview:

Name of Interviewee:

Age:

Sex [*sic*]:

Contact address:

Area of Residence:

Name of Interviewer:

1. Since when have you been living in this area?
2. Are you a fulltime or part-time subsistence farmer?
3. Tell about [*sic*] the grazing dispute and how it all started?
4. When did you first start sharing grazing land with the cattle herders?
5. What was your reaction when you saw new comers in the area?
6. How were you affected by their presence in the area?
7. Can you describe your relationship with the herders?
8. Did you make any effort to find out when and how the herders enter [*sic*] the area?
9. What did the herders say when asked how they entered the area?
10. How did the Uukwangali Traditional Authority explain the presence of the herders?
11. Can you describe the relationship between the herders and that of [*sic*] the Uukwangali Traditional Authority?
12. What was the cause of the dispute between the herders and the local community members?
13. How serious was the physical violence and vandalism between the two parties?
14. How long the tension between the herders and community members did persists [*sic*]?
15. What was your reaction towards the court order?
16. What has changed since the herders left the area?

17. Did all the herders completely vacate the area, explain?
18. Are the remaining herders still a threat to the community in any way?
19. What do you say about the government's intervention in this matter, was it helpful?
20. Do you think that the court decision is sustainable?
21. What lessons did you learn from this whole situation?
22. Do you think the problem have [sic] been solved, explain?
23. Where [sic] there any consultation by any institution with the community members during that time when tensions was [sic] high to obtain your input?
24. What do you think could have happened if the government and other stakeholders did not intervene in this matter?



## GRAZING DISPUTE IN WESTERN KAVANGO REGION

### QUESTIONNAIRE VI: CATTLE HERDERS/OWNERS

Date of Interview:

Name of Interviewee:

Age:

Sex [*sic*]:

Contact address:

Area of Residence:

Name of Interviewer:

### BACKGROUND

1. What is the name of the area of origin [*sic*] (village, town, and region)?
2. When did you arrive in this area?
3. Which area(s) or village (s) in Uukwangali did you graze your livestock [*sic*]?
4. Why did you feel that you had to move and seek grazing in Uukwangali [*sic*] area?
5. What was the initial grazing agreement between yourself and the Uukwangali TA?
6. Was this a written or a verbal agreement, please provide proof, if available?
7. How many livestock did you have when you initially entered the area?
8. Did you have a good relationship like[*sic*] with the Uukwangali TA after the agreement?

### GRAZING CONFLICT

9. Tell about [*sic*] the grazing dispute, what went wrong?
10. What exactly is the cause of the dispute between owners/herders and the Uukwangali TA/Community?
11. Give some details regarding violent confrontations between the two (2) groups (herders vs local people)?

## **GRAZING PRACTICES**

12. What are the customary grazing practices in your area of origin?
13. How does it [*sic*] differ with customary grazing practices in this area?

## **FENCING OFF OF LAND IN COMMUNAL AREAS**

14. How did the fencing off of land in your communal area affect you?
15. When did people started [*sic*] fencing land in your area of origin and why?
16. What prevented your Traditional Authority from stopping these individuals who were fencing off land in the communal area?
17. Who are these individuals and what gives them the power to go against the law?
18. Is it true that some herders/owners were also fencing off land in the Uukwangali area?

## **THE COURT ORDER/EVICTION ORDER**

19. Tell me about the eviction order and the court case?
20. What was your reaction towards the court decision?
21. How did the eviction order affect you?
22. Why did you resist the eviction order?
23. How many herders/owners were in Uukwangali area in total at the time of the eviction?
24. Do you think the court order/decision or eviction order was fair, what should have been done?
25. Tell me more about the on-going (pending) court case and what is your hope and expectations?

## **RELOCATION TO FARM SIX (MANGETTI/BRAVO)**

26. Tell me about the relocation process from Uukwangali to Mangetti?
27. How is your situation at the Mangetti area (National Development Corporation (NDC) farm or Farm Six) now, are you facing any problems, challenges and what are those?
28. What is your future at this NDC farm, do you think this intervention is sustainable?

29. What do you think should be done to improve your current situation?
30. Do you really believe that the Uukwangali TA will grant you land in their area if you try to follow the proper procedure, please justify your answer?

### **STAKEHOLDER INVOLVEMENT**

31. Which other institutions, individuals (stakeholders) played a role (in a positive sense) in this whole situation?



## GRAZING DISPUTE IN WESTERN KAVANGO REGION

### QUESTIONNAIRE VII: POLICE OFFICERS

Date of Interview:

Name of Interviewee:

Age:

Sex [*sic*]:

Position:

Contact address:

Area of Residence:

Name of Interviewer:

1. Can tell [*sic*] about this grazing dispute and how [*sic*] came to the attention of the police?
2. What was the role of the police in this matter?
3. Can you tell about more [*sic*] about the actual conflict and how [*sic*] managed it?
4. What do you think could have happened if the police were not involved on time or if they were not involved at all?
5. Has the violence completely ceased since the herders left the area or not, if yes [*sic*] to what extent is there still violence?
6. What do you think are the lessons for the Police Force?

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