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# THE EVOLUTION OF LAND TENURE IN OSHIKOTO

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April 1997

## Dedication

This paper is dedicated to Brigitte Lau, who lost her life in a tragic motor accident in early November 1996. As former Chief Archivist of the National Archives of Namibia, Brigitte assisted in locating sources for this research, but did not live to read the result.

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## Introduction

This section seeks to trace some of the historical developments which may have shaped recent enclosures. More specifically, it attempts to describe the processes of internal colonisation as well as customary and statutory land tenure arrangements within the study area.

Historically, the research area was part of the former Ovamboland. This area was defined as the Magisterial District of Ovamboland by *Proclamation 40/1920* and set aside as a reserve 'for the sole use and occupation of natives' by the *Ovamboland Affairs Proclamation, 1929*.<sup>1</sup> In the north and west Ovamboland was bounded by Angola and the Kaokoveld respectively, while its southern boundary was formed by the Etosha Game Park and the district of Tsumeb.

To the east, its border ran in a straight line along 17°30'E from the Angola–South West Africa border until it intersected with the straight line separating it from Etosha. A wedge shaped piece of land referred to as the *Unnamed Area* separated Ovamboland from Okavango.

This land was set aside as a native reserve by Government Notice 193/1952 but was 'apparently added neither to Ovamboland nor the Okavango Territory.'<sup>2</sup> In the south-east, Ovamboland was separated from the commercial farming area in the Tsumeb district by a piece of state land measuring 247,000 ha. After independence Ovamboland was split up into four separate regions, as defined by the Delineation Commission. The study area is now in Oshikoto, a region which includes commercial ranches in the south (formerly Tsumeb district) and 'communal' areas in the north.

In 1964, the *Odendaal Commission* recommended that Ovamboland be slightly enlarged, proposing that the two areas mentioned above, plus a small portion of Etosha Pan in the west be added to Ovamboland. These additions would have increased the total size of the area from 4.2 m ha to 5.6 m ha, but in the end the eastward section was only extended as far as 18°E, rather than 18°15'E as was originally recommended. As we shall see, the significance here is not so much the overall extension of former Ovamboland, but the fact that chunks of land were added to Ndonga territory in the south and east.

## Customary land tenure arrangements

Former Ovamboland was occupied by eight different population sub-groups. Since all these sub-groups speak different dialects of the same language and practice the same kind of agriculture, conventional wisdom has presented a rather static and uniform picture of land tenure systems in the region. In particular, the powers of chiefs with regard to land allocation and administration, as well as the importance of ethnicity in obtaining access to land, seem to have been overstated (NEPRU 1991). The *Report presented by the Government of the Union of South Africa to the Council of the League of Nations concerning the administration of South West Africa for the year 1929* carried this portrayal of Ovambo land tenure beyond the boundaries of the then SWA to international fora. Amongst other things it stated that:

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<sup>1</sup> RSA, *Report of the Commission of Enquiry into South West African Affairs 1962–3*, RP 12/1964, para. 249, p.69.

<sup>2</sup> *Ibid.*, para. 251, p.69.

'Each tribe inhabits a well-defined area in which it carries on an independent system of government. There is no such thing as individual ownership of land as understood in our law. The chief is the undisputed ruler over the whole tribal area and the land is regarded as his property, though he administers it for the benefit of his subjects. No native may reside or cultivate land within a tribal area without first becoming a member of the tribe.' (Union of South Africa 1930: 99)

These 'independent systems of government' did create 'clear differences in rules to land tenure and land use within Ovamboland' (NEPRU 1991: 549), and to some extent these differences reflected the differential impact that colonial domination had had on indigenous communities. In the Kwanyama and Ombalantu communities, for example, former Kings had been replaced by councils of headmen (Union of South Africa 1930). Nevertheless, despite some regional differences, land tenure in all eight communities of former Ovamboland was broadly structured along two categories of land (NEPRU 1991):

- Settled or inhabited land (*shilongo*) on the one hand and uninhabited land or bush areas (*ofuka*) on the other; and
- Residential, arable and grazing land.

In the inhabited areas or *shilongo*, land for cultivation and residence was allocated through a hierarchy of traditional leaders. In pre-colonial and early colonial times, 'the Chiefs or Kings of the various communities in Ovamboland had the ultimate right to allocate land in the inhabited parts within their jurisdiction' (NEPRU 1991: 555). However, in some parts, allocation rights had been transferred to headmen. For example, among the Kwanyama, who did not have a King, eight principal headmen exercised the rights of the chief in respect to land allocations.<sup>3</sup>

Where Kings still existed, their territory was sub-divided into a number of 'districts' under the authority of 'headman-councillors' (later referred to as senior headmen), who were 'responsible to the tribal council.' Districts, in turn, were composed of several wards or *omikunda* (*omukunda*, sg.). *Omikunda* were granted to people who could afford to pay a certain amount of cash or cattle. Upon payment, the new 'owner' became a headman with certain rights and responsibilities. Apart from 'exercising native administration and judicial authority'<sup>4</sup> in their *omikunda*, headmen were entitled to 'sell' portions of their *omikunda* to individual homesteads (Hinz 1996: 31). The sizes of *omikunda* varied, but 'comprise[d] anything from 10 to 100 or more kraals [homesteads].'<sup>5</sup>

Generally, the payment for land applied only in the inhabited areas or *shilongo*, and changed according to the degree of land pressure. In the less densely populated parts of the north-west, payments were lower than in the Cuvelai area. In the 1920s, allocation fees for residential and arable plots were applicable in the Ndonga, Ongandjera, Ukuambi and Ukualuthi areas. No payments were required in other communities. Payments depended on the size of the plot, ranging 'from two goats or sheep to three or four Pounds Sterling in Ukualuthi ... to one or two head of cattle in Ondonga ...' (NEPRU 1991: 551). As pressure

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<sup>3</sup> A 450 Vol.9 2/38 Typed manuscript of the Tribal customs of the Ovambos. Property Rights, nd, p.29. See also NEPRU (1991: 556-7).

<sup>4</sup> A 450 Vol.7 2/18 *Annual Report 1937*, 22.12.1937, p.13.

<sup>5</sup> *Ibid.*

for land increased and settlement extended eastwards, payments followed, and payments for land in the eastern Kwanyama area were reported for the first time in the late 1940s (NEPRU 1991). It appears to have been the custom in the Ndonga area that 'should it become necessary to eject an allottee before he has reaped at least one crop this payment must be refunded.'<sup>6</sup>

### ***Rights and responsibilities***

In general, payment of a fee ensured access to residential and arable land and use rights 'which can best be described as being a sort of permanent usufruct, subject to good behaviour and loyalty to his chief.'<sup>7</sup> With the exception of marula trees, the rights of heads of homesteads 'included not only unlimited use of the land itself, but also rights of first access to waterholes, wells, and trees on or near the plot' (NEPRU 1991: 534).

'Within the inhabited area (*shilongo*) a waterhole situated in a cornfield or closely contiguous, accedes to the corn field. The occupier of such field becomes the occupier of the waterhole. This right cannot be alienated; the accession is complete.'<sup>8</sup>

The ownership of waterholes outside a field was determined by the 'importance of the man who made it or caused it to be made:'

'If he was an important, rich or influential person, the waterhole is inalienable and accordingly his relatives cannot inherit it. The rights over it pass to the person who succeeds him, *i.e.* the person who is appointed in his place.'<sup>9</sup>

While use rights of allocated land were extensive, the latter could not be allocated to anyone else by the head of a homestead, 'be it through sale, gift or inheritance' (NEPRU 1991: 554). Upon the death of the head of the homestead, the headman of the *omukunda* could reallocate the land against a payment (Hinz 1996).

These rights to residential and arable land also came certain responsibilities regarding the protection of resources and the protection of persons using the resources (see NEPRU 1991 for more details). Indeed the colonial administration found these responsibilities so extensive that it felt it necessary to change them.

### ***Grazing land***

Available written records reveal very little about land tenure arrangements regarding grazing land. The section dealing with this issue in the report to the League of Nations in 1930 devoted only four lines out of two pages on the subject, stating simply that:

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<sup>6</sup> NAO Vol.9 2/12 Native Tribal System of Land Tenure in Ovamboland, nd [1929], p.5.

<sup>7</sup> *Ibid*, p.3.

<sup>8</sup> A 450 Vol.9 2/38 Typed manuscript of sections of the Tribal Customs of the Ovambo, nd, p.31.

<sup>9</sup> *Ibid*.

'The grazing grounds are common to all members of the tribe both in the inhabited and the uninhabited portions of the tribal area. The chief alone has the right to reserve any place for grazing.' (Union of South Africa 1930: 99).

During the early part of this century Ovamboland had large reserves of unused land. Interstitial areas between different polities were kept as long as possible for grazing purposes.

In addition, herd owners made use of cattle posts in the bush or *ofuka*. Much of the land in the study area was considered to be waterless and thus could not be settled or used on a permanent basis, and utilisation was limited to seasonal grazing. This was observed in the mid-19th century when the traveller Charles John Andersson visited the Ndonga area. Although the inhabitants were known 'to be possessed of vast herds', he found no cattle at their homesteads as a 'general scarcity of water and pasturage in Ondonga compelled them to send the oxen away to distant parts.'<sup>10</sup>

Despite the long distances to most cattle posts, rights of 'ownership' were exercised in some cases. Given the importance of water, ownership rights to a cattle post 'usually hinged on ownership of the water supply which sustained the site as a cattle post' (Kreike 1994: 25). It had also been noted that:

'well established cattle posts (with waterholes) have definite owners ... [while] at other posts the first man on the post each year acquires the right of user. Every new waterhole dug in the bush belongs to the man who digs it.'<sup>11</sup>

More generally, while the 'owner' of a waterhole at a cattle post had the right to satisfy his needs first, 'the water itself is incapable of ownership.'<sup>12</sup> It could not be alienated by sale, for example, but could be passed on to heirs (Kreike 1994). Neighbours were allowed to draw water, 'provided that they have assisted in the annual opening up and cleaning of the waterhole after the rains.'<sup>13</sup> In fact rights to a waterhole often lapsed through continued disuse and neglect (Kreike 1994).

### ***Ndonga land claims and 'bushmen'***

Ndonga claims to *ofuka* in the east and north-east were rather weak, probably because most of this land was considered to be waterless and thus could not be settled. As a result, this area 'was mainly used as hunting grounds by former Ondonga chiefs.'<sup>14</sup> However, as land pressure in the inhabited areas grew, this land became used increasingly for seasonal grazing. During bad droughts in the first quarter of this century, Ndonga herdsmen were said to have moved with their cattle as far east as Omshilonga (c. 17°30'E, 17°40'S). Local bushmen stated, however, that 'no cattle have ever been seen south and south-east of Omshilonga',<sup>15</sup> the area known as 'Omaheke bush.'

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<sup>10</sup> CJ Andersson, *Lake Ngami*, p.190

<sup>11</sup> A 450 Vol.9 2/38 Typed ms of Section of the Tribal Customs of the Ovambos, nd p.32

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> A 450 Vol.7 2/18 *Annual Report 1937*, 22.12.1937, p.2.

<sup>15</sup> NAO Vol.10 5/7/1 Assistant Native Commissioner, Oshikango to Native Commissioner, Ondangua: Proposed extension of Ukuanyama area, 10.7.1942, p.7.

'For generations Bushmen have lived here and have established more or less permanent settlements. Each group has its well-defined territory and it moves from waterhole to waterhole within its boundary.'<sup>16</sup>

Although the Bushmen or San communities clearly enjoyed ancient rights to the land in eastern Oshikoto, transhumance by Ndonga or Kwanyama herdsmen seemed to cause little friction (see Box 1). Documentary evidence suggests that Bushmen regularly attached themselves to Ovambo families, 'invariably [as] servants, hunters and herdsmen' for 'wealthier Ovambos.' In bad seasons they obtained food from Ovambo families,

'and it is often because of this friendly intercourse that ... old or detached Bushmen, who can no longer eke out an existence in the wild veld ... attach themselves to settled communities ... [Moreover] when once they have taken to agricultural or pastoral pursuits, they seldom revert to their original wild life (*sic*).'<sup>17</sup>

The function of herdsmen went beyond simply looking after Ovambo cattle. Because of their intimate knowledge of the eastern parts of the country, they were useful to Ovambo cattle owners in leading them to resources. In the early parts of this century, they seem to have played an 'increasing role in the long distance transhumance system' of Ovambo cattle owners' (Kreike 1994: 24).

While seasonal grazing in the eastern Ndonga area seems to have taken place regularly, it was reported in the late 1940s that a prohibition existed among the Ndonga to cross the riverbed at Okankolo to the east, with the aim to clear bush for new fields:

'It is an *ohithila* (forbidden things) for the Ondonga people to cross the riverbed in the East-Ondonga (Okankolo) to clear bush and to make new fields in that fertile soil, though the people are very much pressed to live together in the small and unfertile fields in the middle and South Ondonga.'<sup>18</sup>

The report continued that while *ithila* could be fined, 'there are no such forbidden things' where there were no 'big chiefs.' This seems to suggest that in the case of the Ndonga, the king and his senior councillors were directly involved in the management of land resources.

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<sup>16</sup> *Ibid.*

<sup>17</sup> A 450 Vol.7 2/18 *Annual Report 1940*, pp.30–31.

<sup>18</sup> NAO Vol.71 32/7 Native Commissioner Ovamboland to Secretary for South West Africa, 21.4.1947, p.2.

### Box 1: Bushmen

The Bushmen Groups in the far Eastern and North-Eastern Ukuanyama country are generally referred to as the Kau-Kau Bushmen. They belong to an altogether different group to that of the Heikum. Their language is quite different...Their main hunting reserves are very extensive and extent (*sic*) a considerable distance into Southern Angola and towards the Okavango, north of our border. This area also includes the Oshimpoloveld where there is always water and game and a good variety of wild fruit ...

The most important group in Eastern Ukwanyama and Ondonga is the Chwagga group, which has its permanent settlements some twenty or thirty miles South and South-East of Omshilonga, in what can be called the Omboto area. This group has been settled there for generations. The old leaders I met informed that they had always lived in that part of the country and that as far as they knew, their forefathers had always been there ...

Their relations with the Ukuanyama are excellent. The Ukwanyama look upon them as children and are always keen to do them a favour. I have never heard a complaint from Bushmen against Ukwanyamas or by Ukwanyamas against Bushmen. Stock theft by Bushmen is to my knowledge unknown. They are very friendly with the Ovambo herdsmen at the cattle posts as they generally obtain milk from them. They actually like to have cattle posts fairly near their settlements. Ule, the most important leader of the Wachwagga, informed me that he welcomes Ukwanyama cattle posts in his area.

*Source: A 450 2/18 Annual Report 1940, pp.30,39*

### **Tenure security**

Historical evidence suggests that customary tenure was reasonably secure, although colonial records display a certain ambiguity regarding tenure security. This was undoubtedly influenced by the desire of the colonial administration to obtain more control over the process of land allocation.

Powers of eviction varied from community to community. In some instances such as Ukwambi, headmen were denied the right to evict households from their land. In other areas, headmen, as the allocating authority, had the authority to evict heads of households from their plots (NEPRU 1991). Reasons for eviction included instances where 'an individual proves a disturbing factor in any section of the tribe', where 'an allottee is not able to cultivate his fields to the same extent as did his predecessor' or is guilty of 'disloyalty or treason. In such cases the individual is ordered to leave the tribe and forfeits all his crops, including corn already reaped by him' (Union of South Africa 1930: 99–100).

In pre-colonial times, Chiefs and headmen were said to have been 'frequently influenced by bribes and political considerations to deprive individuals of their land under false accusations' (Union of South Africa 1930: 99; NEPRU 1991: 558). These instances were cited by the colonial administration as a way of demonstrating that land tenure was insufficiently secure. In subsequent attempts to make 'tenure of land as permanent as possible', the South African



administration introduced restrictions on the powers of traditional leaders to evict people. In those cases where Kings no longer existed, headmen were:

‘required to refer any questions of ejection to the offices of the Administration, because it has been found that although many of them are capable and efficient administrators, they lack the sense of responsibility of a chief, which makes them too easily influenced.’ (Union of South Africa 1930: 99).

Government intervention appeared to have some effect on ejections: in the late 1920s the Administrator reported that evictions ‘seldom happen today’ (Union of South Africa 1930: 100). Indeed, one analyst has argued that ‘this [was] the one area where the colonial administration actually restricted the powers of Chiefs and headmen’ (NEPRU 1991: 558).

## Statutory land tenure

The discussion above provides a brief historical view of customary land tenure practices. With the advent of colonialism and more specifically the onset of South African rule in South West Africa, the issue of ownership to and rights in communal land became ‘governed by a mixture of general law and customary law’ (Hinz 1996: 4). The question therefore arises as ‘to what extent the power of traditional authorities to allocate land has survived inroads into customary land law’ (Hinz 1996: 18). This issue seems particularly important to the discussion of enclosure of grazing land.

Several pieces of legislation were introduced by the colonial government with implications for land allocation and administration. After a thorough review of these laws, Hinz (1996) concluded that none of the legislation affected customary law and, by implication, customary powers of land allocation. The following information is taken largely from his review, as well as those of Hubbard (1991) and van der Byl (1992).

The *Treaty of Peace and South West Africa Mandate Act, 49 of 1919* was the first piece of legislation introduced by the South African government with a bearing on land matters. It provided the Administrator with powers to grant title on reserved land. Despite the potential effects this may have had on customary land allocation and rights, Hinz concluded that while the Act restricted the rights of traditional authorities to allocate land geographically, ‘it did not encroach into the provisions of customary law to allocate land as such’ (Hinz 1996: 19).

The *Native Reserves Regulations, GN 68 of 1924* which were promulgated in terms of the *Native Affairs Proclamation, 11 of 1922*, laid down certain restrictions on land allocations by headmen in ‘native reserves.’ In terms of an amendment passed in 1941, however, Ovamboland was excluded from these regulations:

‘Therefore, whatever inroads into customary law the Native Reserve Regulations provided for, these inroads never came into effect in ... the then Ovamboland and Kavango.’ (Hinz 1996: 22).

The limitations of powers of chiefs and headmen set out in the *Regulations Prescribing the Duties, Powers and Privileges of Chiefs and Headmen, GN 60 of 1930* applied only to headmen appointed by the government in terms of the *Native Reserve Regulations*. These were not headmen in a traditional hierarchy. For the latter, *GN 60 of 1930* ‘meant a

confirmation and to some extent specification ... of their customary law power to allot land' (Hinz 1996: 25).

The *Bantu Areas Land Regulations, R188 of 1969* were framed under the *Development Trust and Land Act, 18 of 1936*. They introduced the Permission to Occupy (PTO) system in communal areas, a system

'defined as 'permission in writing granted or deemed to have been granted in the prescribed form to any person to occupy a specified area of Trust land for a specific purpose.'

PTOs could only be granted by the responsible Minister 'after consultations with the tribal or community authority.' As *R188 of 1969* 'did not spell out the needed explicit invalidation of customary law with regard to the allocation of land', it did not affect it (Hinz 1996: 27–28).

From the late 1960s on, Ovamboland underwent a series of constitutional changes as recommended by the *Odendaal Commission*. In 1968 the Ovamboland Legislative Council was established, and in 1973 the area was declared a self-governing area in accordance with the *Development of Self-Government for Native Nations in South West Africa Act, No.54 of 1969* (Hubbard 1991: 52). As these proclamations did not transfer any land to the new Ovambo Government, 'nobody was certain to whom the land belonged.'<sup>19</sup> Concern was also expressed that the powers and functions *vis à vis* land allocations and administration of tribal councils and magistrate's offices were vague. The Planning Advisory Committee which was established in the early 1970s therefore recommended that all land in Ovamboland should be vested in the new Government and that all applications for land allocations be channelled through it.<sup>20</sup>

No legislative changes seem to have been introduced to implement these recommendations until 1980, when the *Representative Authorities Proclamation, 1980, AG.8 of 1980* was promulgated.

'Sec 48bis (3) of the Proclamation made provision for the executive authorities of representative authorities to confer a valid title to the ownership of, or any other right in, to or over, any portion of such (communal) land.' (Hinz 1996: 28–29)

The *Representative Authority of the Ovambos Proclamation, AG.23 of 1980* replaced the Ovambo Legislative Council with a Representative Authority. While the proclamation provided for the continued retention of the powers and function of traditional leaders prior to the establishment of the new Representative Authority, it also applied Sec. 48bis of *AG.8 of 1980* to Ovamboland. In law, therefore, the executive committee of the Representative Authority was entitled to alienate communal land and grant title over it, 'provided that a period of 15 years (or a shorter period determined by ordinance of the Legislative Assembly) elapsed after such registration.' *AG.8* and *AG.23* thus provided for the establishment of new forms of land tenure (*i.e.* title) without necessarily affecting the powers of traditional authorities to allocate land.

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<sup>19</sup> OVA 45 6/8/1–7(ii) Ovambo Beplanningsadvieskomitee. Notule van 'n Vergadering gehou op 21 Augustus 1973, p.2.

<sup>20</sup> *Ibid.*

## The process of enclosure

From the previous section it seems clear that statutory legislation made few significant inroads into customary forms of land allocation and administration in Ovamboland. If anything, colonial policies seem to have bolstered the powers of traditional leaders, although this has not been convincingly demonstrated (NEPRU 1991: 555–8). The large scale enclosure of communal pastures does suggest, however, that fundamental changes have taken place with regard to the allocation and control of communal land. The remainder of this section of the report will try to identify some of the factors which may have shaped these changes. It shows that contrary to widespread beliefs, the fencing of communal land in Oshikoto Region does not necessarily signify the dissolution of customary forms of land allocation and management. Instead, enclosures were a response sanctioned initially by the Tribal Authority in defence of its territory against perceived alienation by the colonial government.

In seeking to understand the history of tenure change and specifically the enclosure of communal land, it is important to recognise that enclosure through fencing is the ‘culmination and not the commencement of the processes that transformed the communal lands’—processes characterised by ‘conflict among users and among different rights and competing uses in a situation of political and economic change’ (Peters 1987: 177). In the following sections some of the sources of tenure change will be identified. Bruce (1987: 10) has identified a number of possible sources of change: ‘innovation in agricultural technology ... changes in population densities ... drought and famine.’ With regard to the study area, the establishment of colonial boundaries should be added to this list, as this had an impact on some of the factors identified above. Two major issues will be discussed specifically here:

- Internal colonisation as a result of increasing population numbers; and
- Development policies aimed at ‘modernising’ the agricultural sector.

### ***Internal colonisation: population pressures***

At the beginning of the century, increasing population numbers brought increasing pressure to bear on the land, which in turn led to the gradual diminution of the interstitial areas. According to Kreike (1994: 4) natural resources in the inhabited parts of Ovamboland were already becoming scarce by the mid-1920s:

‘Owing to the intensified system of cultivation of the land, there is very little grazing in the vicinity of the kraals, and, the water supply being inadequate, the cattle are sent to cattle posts for the greater part of the year.’

This situation was compounded by various border demarcations which followed in the wake of new South African control. Initially the demarcation of the border with the Etosha Game Park as defined in the *Prohibited Areas Proclamation, 1928*, limited the grazing available to Ndonga herdsmen—a situation exacerbated by developments in Angola and the demarcation of the SWA–Angola border. Portuguese colonial policies differed in some fundamental ways from those pursued in South West Africa. Amongst other things, the Portuguese had imposed a hut tax and implemented military service and a forced labour regime. In addition, ‘the wage labour-market was smaller and pay almost always lower’ than that in SWA (Hayes 1992: 266).

On the other hand Angola contained large areas of comparatively underpopulated country, with better water and grazing conditions. Many Kwanyama were therefore faced with a choice between ‘more favourable ecological conditions as opposed to more favourable

administrative conditions.' In the event 'ecology tended to tip the balance' in terms of these decisions (Hayes 1992: 267), and movements across the border with Angola occurred almost continuously. Cattle owners in the Ovambo floodplains regularly took their cattle into the Oshimolo–Cubango area of southern Angola, and while the transhumance calendar changed from season to season, 'cattle usually (stayed) at the cattle posts throughout the dry season' (Kreike 1994: 11).

By the mid-1920s the Union Government and Portugal had reached agreement over the boundary between Angola and SWA, although 'stock watering rights for residents of SWA who had previously enjoyed access to the Kunene River remained undecided well into the 1930s and beyond' (Hayes 1992: 265). In October 1928 a team of surveyors began to mark out the beacons and clear the boundary line, causing much concern among Kwanyamas 'as to what would be their ultimate place of residence' (Hayes 1992: 269).

Most traditional Kwanyama farming land lay in southern Angola. On the SWA side of the new border, farming land occupied only a relatively narrow strip. At around 1920, the eastern border of their territory was said to have run south of beacon 22, corresponding roughly to 16°E: 'the territory east thereof was considered waterless, uninhabitable and useless to both men and stock.'<sup>21</sup> Moreover, 'the bush is very narrow between the Portuguese and Martin [*i.e.* the Ondonga territory], it looks like a footpath, it is not enough for one headman's cattle.'<sup>22</sup> In the west they were 'hemmed in by the Ombalantus, on the south-west by the Ukuambis and on the south and south-east by the Ondongas.'<sup>23</sup> Southward movement, for the time being, 'was prevented by friction over land and watering points by similarly expanding Kwambi and Ndonga neighbours' (Hayes 1992: 270).

The onset of a serious drought in 1928 and looming famine in 1929–30 once again pushed many Kwanyama north across the Angolan border (Hayes 1992). For many years the Kwanyama grazed most of their stock in Angola, 'where grazing and watering conditions are far better than those prevailing here.' The reliance on Angolan grazing was particularly important during bad years (Kreike 1994: 33). The Portuguese authorities attempted to discourage trans-border traffic of cattle during the inter-war years, 'without ever really completely disrupting the trail', while after 1945 'South African and Portuguese interests to close the border began to converge' (Kreike 1994: 411). Of increasing importance in this respect was the argument that closing the border with Angola was the only way of ridding Ovamboland, Kavango and Kaokoveld of animal disease.

### ***Eastern Kwanyama development***

The outflow of Kwanyama to Angola in the late 1920s caused the SWA administration to step up their efforts to keep as many Kwanyama as possible in Namibia. Of particular concern was the drop in the supply of migrant labour which coincided with the large exodus of Kwanyama to Angola in response to the 1928 drought. In previous years about 50% of the labour supply came from the Kwanyama (Kreike 1994). Henceforth, colonial officials encouraged

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<sup>21</sup> NAO Vol.10 5/7/1 Assistant Native Commissioner Oshikango to Native Commissioner, Ondnagua, 10.7.1942, p.1.

<sup>22</sup> Kwanyama headman Jikuma, quoted in Kreike (1994: 34).

<sup>23</sup> NAO Vol.10 5/7/1 Assistant Native Commissioner Oshikango to Native Commissioner, Ondnagua, 10.7.1942, p.1.

Kwanyama people to 'colonise' the eastern parts along the Angolan border by opening up water. This process began in 1927 when settlements were established at Ondanda and Enana. Throughout the 1930s the settlement frontier moved gradually eastwards, more or less along the border line until it reached Oshishogolo and Olupale Munene in 1938.<sup>24</sup> At Omboloka, c.130 km east of Oshikango, it was said that:

'The quality of the water and the fertility of the soil is such that many natives are being attracted. Most of the cattle which the natives had perforce to send to Angola during the dry season are now concentrated at and near Omboloka ... the inhabited area of five years ago is in danger of becoming overpopulated ... The influx of natives has increased tremendously during recent years and if the inhabited area is not extended the position will soon be reached where the country cannot adequately feed the population.'<sup>25</sup>

Possibilities for extension further east along the Angolan border soon diminished due to the problems experienced in finding water. In the early 1940s efforts to obtain water proved 'an uneconomical proposition.' Distances from other settlements became too large, and water too deep. Very often the water table was more than 30 m deep, making digging wells in the sandy dune country difficult and dangerous.<sup>26</sup> The *Annual Report* for 1943 expressed the opinion that:

'Unless more suitable territory can be found in the Eastern Ukuanyama the Administration will have to consider other means of providing grazing lands for the stock of the natives. This stock now has to be grazed in Portuguese territory. It is felt that unless something can be done to meet the requirements of the many owners in this respect, many of them will be forced to trek across the border to settle in Angola.'<sup>27</sup>

Attempts were made, therefore, to explore the country south and south-east of Omshilonga, 'to ascertain the possibility of starting cattle posts in that part of the country.'<sup>28</sup> In terms of a new border demarcation between Kwanyama and Ndonga tribal areas agreed to in 1939, the land targeted for exploration and development south-east of Omshilonga was now considered to belong to the Kwanyama. In 1941 a meeting attended by several native commissioners from the north decided that the eastern boundary of the Kwanyamas should be extended to a line running roughly from north to south along 18°E and down to the Omaheke Omuramba. Bounded in the west by Ndonga territory, the area north of the Omuramba and west of this line was henceforth to be Kwanyama territory.<sup>29</sup>

The grazing found in the area of Omboto and Shau 'compare[d] favourably with the Oshimpolo Veld in Angola. As a matter of fact it is a continuation of the Oshimpolo Veld and has most of the fruit trees that grow there.'<sup>30</sup> While places such as Shau, Ongodi, Shanika and

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<sup>24</sup> *Ibid*, p.2.

<sup>25</sup> A 450 Vol.7 2/18 *Annual Report* 1937, 22.12.1937, pp.7-8.

<sup>26</sup> A 450 Vol.7 2/18 *Annual Report* 1943, 20.12.1943, p.6.

<sup>27</sup> *Ibid*.

<sup>28</sup> NAO Vol.7 2/18 *Annual Report* 1940, 3.1.1941, p.17.

<sup>29</sup> NAO Vol.10 5/7/1 Note of conclusions and decisions reached at a discussion on 14.7.1941 relative to suggested extension of Ukuanyama area to the Okavango River, p.1.

<sup>30</sup> *Ibid*.

Omboto had hardly any standing water, 'in many places water is found only a few feet from the surface. Small waterholes dug by Bushmen, only three to four feet deep, with a good supply of water, were seen at Shau, Okayoka, Kroma, Oshimbungu, Shanika and Omboto.'<sup>31</sup> However, by the 1940s prospects for adequate water supplies in places such as Omboto and Onamiso still did not look promising. The Assistant Native Commissioner summarised the situation as follows:

**Omboto** — 'Now three waterholes at this centre. Area where sand waterholes can be dug at this centre is, however, very limited. Supply of water fair.'

**Onamiso**—'Waterholes were sunk at this centre which is apparently 20–30 km east of Otsholo, but without success.'<sup>32</sup>

As was mentioned previously, the Ndonga King laid vague claims to the land south of the Angola–SWA border. The *Annual Report* for 1937 stated that although Chief Martin was addressed on several occasions by officials on the issue of Ndonga land rights in the east, he 'has so far failed to give a definite expression of his claims.'<sup>33</sup> For as long as no developments had taken place on that land, Chief Martin 'had agreed to wave any claim to the Eastern Ukuanyama bush along the Border, in order to enable the Ukuanyama to extend to the Okavango.' However:

'when he realised that the Ukuanyamas were actually moving east, and starting settlements in the bush, which he and his tribe had claimed as hunting grounds, he began to raise objections and make things as difficult as possible, especially as regards water rights and for a time managed to actually hamper developments.'<sup>34</sup>

Some Ndonga headmen resented Chief Martin's cession of land for Kwanyama expansion, particularly since water had been found and new grazing opened up. The Annual Report for 1941 commented that:

'in a country where one of the greatest difficulties is the finding of water for stock, it can be readily understood that contesting parties press their claims to the utmost limits.'<sup>35</sup>

The response of the colonial administration to these border disputes was to negotiate and demarcate a boundary between the Ndonga and Kwanyama in 1939. In a sense this provided some protection against the further encroachment on Ndonga land, particularly by Kwanyama farmers.

The independence of Angola and the outbreak of war in that country in 1974 generated new pressures on available land in Ovamboland. Informants stated that Kwanyama people in southern Angola gathered cattle from Portuguese farmers and sold these cheaply to local people, bringing about a major influx of livestock and adding pressure on cattle posts in the

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<sup>31</sup> *Ibid*, p.18.

<sup>32</sup> NAO Vol.10 5/7/1 Assistant Native Commissioner, Oshikango to Native Commissioner, Ondangua, 8.11.1942, p.2.

<sup>33</sup> A 450 Vol.7 2/18 *Annual Report 1937*, 22.12.1937, p.2.

<sup>34</sup> NAO Vol.10 5/7/1 Assistant Native Commissioner, Oshikango to Native Commissioner, Ondangua, 8.11.1942, p.2.

<sup>35</sup> A 450 Vol.7 2/18 *Annual Report 1941*, 14.1.1942, p.6.

east and south east. Angolan independence also enabled the Peoples Liberation Army of Namibia to open up a front in Angola, shifting the main theatre of the liberation war into northern Namibia and southern Angola. In time, many people living along the border were displaced, particularly as a result of the establishment of a 10 km wide 'no-man's-land' zone. Those people who were displaced and refused to settle in the sprawling squatter settlements around Oshikati, Ongwediwa and Ondangwa sought refuge in the eastern and south-eastern parts of Oshikoto.

The Ndonga King gave permission for these people to settle in his area and make fields. One informant stated it was an old tradition among the Ndonga traditional authority to provide refuge to people from other areas. However, the King's generosity reinforced the earlier concerns of many that the Kwanyama were going to take over Ndonga territory. In order to prevent the perceived take-over, the Ndonga traditional authority encouraged its subjects not only to develop land in the east, but also to fence it.

### **Modernising agriculture: the Odendaal Commission**

The fear that increasing settlement in the east by the Kwanyama was resulting in the Ndonga losing their land was compounded by another, unrelated set of developments in the 1970s and 1980s—for it was during this period that the colonial government began to implement policies to promote agricultural development through a process of 'modernisation.'

In the 1960s, the South African colonial regime embarked on limited reforms in the reserves of the country. These efforts coincided with the first stirring of national resistance against continued South African rule in SWA. The first nationalist movement, the South West Africa National Union, SWANU came into existence in 1957, followed by the establishment of the South West Africa Peoples Organisation, SWAPO. With these developments, the South African colonial state was faced for the first time with 'organised mass resistance to its political domination' (Innes 1980: 576). It responded to this challenge in two ways. First, it sought to smash any nationalist organisation through increased physical repression. Second, and more importantly to the discussion here, it set out to split Namibia up into a number of separate, tribally demarcated Bantustans (Innes 1980). To achieve the latter objective, certain political and economic reforms had to be initiated. In 1962 the South African state set up the *Commission of Enquiry into South West Africa Affairs* under the chairmanship of FH Odendaal.<sup>36</sup> It was required to come up with 'recommendations on a comprehensive five year plan for the accelerated development of the various non-White groups of SWA and

'to ascertain how further provisions should be made ... for their social and economic advancement, ... proper agricultural, industrial and mining development in respect of their territories and for the best form of participation by the Natives in the administration and management of their own interests.'<sup>37</sup>

The Commission argued that the first aim of economic development, namely the establishment 'of a modern economy in the Southern Sector by the White group' and concomitant 'selective

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<sup>36</sup> Republic of South Africa, *Report of the Commission of Enquiry into South West Africa Affairs 1962–1963*, RP 12/1964. This commission is commonly referred to as the 'Odendaal Commission' after its chairman.

<sup>37</sup> *Ibid*, p.3.

transformation' of the 'traditional socio-cultural background' of indigenous communities had been achieved in SWA. It saw SWA on the verge of a second phase of economic development, 'namely where non-White groups have increasingly to be given the opportunity, necessary assistance and encouragement to find an outlet for their new experience and capabilities.'<sup>38</sup> The Commission characterised this process as the transition from a subsistence economy to a money economy, where 'the traditional system of supplying their own needs and of self-support was gradually supplanted by a *money system* peculiar to the system of the Whites.'<sup>39</sup> Future development programmes in Namibia had to build on these tendencies by 'consolidat[ing], expand[ing] and convert[ing]' existing reserves into homelands 'in which groups concerned could develop their own viable economy.'<sup>40</sup> Economic activities had to be brought to the reserve areas through a 'broad programme of capital expenditure' in which 'the various population groups can participate' without 'disrupting their existing strong traditional family and homeland ties.'<sup>41</sup>

Amongst other things, the Commission made some recommendations for the modernisation of agriculture in Ovamboland. More specifically, it

'consider[ed] the development of animal husbandry in all its branches to be vitally important to the inhabitants of these areas. In this development the efficient marketing of livestock and of meat is a decisive factor ...'<sup>42</sup>

It recommended the establishment of a special trust of livestock producers, whose responsibilities would include, *inter alia*:

'improv[ing] animal husbandry in Ovamboland in order to make it more remunerative for producers ... Success could be ensured by giving advice on more efficient breeding and marketing methods.'<sup>43</sup>

As far as the Commission was concerned, the improvement of livestock husbandry was primarily a matter of improving animal health and the quality of breeding stock. It did not discuss customary forms of land tenure and range management and how these might have affected animal husbandry, except to say that the proposed trust should be given land on a long term lease basis in order to establish quarantine farms for the fattening of livestock and subsequent marketing south of the veterinary fence.

With regard to land ownership, the Odendaal Commission expressed the opinion that among indigenous Namibian communities 'the interests of the group ... still largely prevail', rather than private land ownership.<sup>44</sup> It did not put forward any major recommendations on land matters, except to propose that future homeland governments should take over and manage land tenure, and it did not specify in detail how this task should be accomplished (Pankhurst 1996). In the case of former Ovamboland, all land within its boundaries was to be transferred to the new Legislative Council 'in trust for the population.'

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<sup>38</sup> *Ibid*, para. 1437, p.429.

<sup>39</sup> *Ibid*, para 1429, p.425.

<sup>40</sup> *Ibid*, para 1437, p.429.

<sup>41</sup> *Ibid*, paras. v (d) and (f) p.333 as quoted in Innes, 'South African Imperialism', p.577

<sup>42</sup> *Ibid*, p.277.

<sup>43</sup> *Ibid*.

<sup>44</sup> Republic of South Africa, *Report of the Commission of Enquiry into South West Africa Affairs*, para. 1421, p.425.



'Provided that the Legislative Council may, with the permission of the State President of the Republic of South Africa, release certain parts of the land added to Ovamboland for alienation to individual citizens, and further that the Executive Committee or a citizen shall not have the right to alienate any land to a non-citizen [*i.e. non-Ovambo*] except with the approval of both the Legislative Council and the State President of the Republic of South Africa.'<sup>45</sup>

The right to alienate land thus referred only to the 1.4 m ha of land which the Commission had recommended be added to Ovamboland. This area comprised a small portion of the Etosha Game Reserve, approximately a million hectares of land in the district of Okavango and 247,000 ha of government land in the south-east.<sup>46</sup>

## The Five Year Development Plan

The Odendaal Commission has been described as 'much more an intervention into *politics* than agricultural production *per se*...' (Pankhurst 1996: 418). It was left to the *Five Year Plan for the Development of the Native Areas*, which was drawn up in the mid-1960s (and on the basis of the recommendations of the Odendaal Commission) to recommend specific interventions for improving agricultural production in the former reserve areas. It operated on the premise that 'agricultural planning must ... pave the way in converting an existing subsistence economy to an exchange economy.'<sup>47</sup> The basis for 'scientific agricultural planning' hinged on two main elements:

- The sub-division of reserves into agro-ecological zones in order to capture the ecological characteristics of each area; and
- An 'assessment of the carrying capacity of the grazing and the determination of the size of economic farming units' in order to estimate the 'ultimate human carrying capacity for the region to be planned.'<sup>48</sup>

In conjunction with 'scientific agricultural planning' the Five Year Plan also proposed the establishment of training and research projects to support the process of 'modernising' agriculture in Ovamboland. It identified fields for agricultural research to support the five year development programme. These included grazing systems for saline soils; improvement of sanga cattle, sheep and goat breeds; and livestock management practices with special reference to diseases and parasites.<sup>49</sup> Proposed developments in the livestock sector concentrated on the improvement of herd quality and livestock disease control, particularly the eradication of lung sickness (*pleuro pneumonia contagiosa bovum*). Quarantine facilities with appropriate paddocks were to be established over the next five year period in order to facilitate livestock marketing to the south.

Despite the fact that much of the Five Year Plan was geared towards the modernisation of agriculture in Ovamboland and thus the transition from subsistence to commercial farming, it

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<sup>45</sup> *Ibid*, para. 310, p.85.

<sup>46</sup> *Ibid*, para. 300, p.83.

<sup>47</sup> SWA [1966] *A Five Year Plan for the Development of the Native Areas*, Windhoek, p.94.

<sup>48</sup> *Ibid*, p.95.

<sup>49</sup> *Ibid*, p.102.

completely ignored any issues of transforming the customary land tenure system towards more individualised land tenure. This is particularly interesting in view of the fact that 'a large scale fencing programme' was proposed for former Hereroland. Here, argued the Five Year Plan, 'proper pasture rotation' was 'a prerequisite for optimal utilisation of available resources' and could only be achieved through enclosure.

'With the erection of fences, grazing camps can be given the necessary rest periods during certain times of the year and thus offer more abundant and better grazing to animals.'<sup>50</sup>

It is unclear why similar recommendations were not made for Ovamboland.

### The Ovambo Legislative Council and enclosures

The recommendations of the Odendaal Commission were explained at tribal meetings and some traditional leaders subsequently requested that the South African Government establish a Legislative Council for Ovamboland. This was done in 1968 (Töttemeyer 1978). Thus the beginnings of rangeland enclosure in Oshikoto coincided roughly with the establishment of a regional, ethnically based form of government in 1968.

The issue of enclosure surfaced in the Legislative Council soon after its establishment. During its Third Session in early 1970, a lively debate ensued concerning the pros and cons of fencing off communal grazing areas into camps. Those in favour of fencing felt that the establishment of camps was the only way in which grazing could be permanently improved. In addition, fenced camps would provide an important management tool to either substitute for the decline in the number of herd boys resulting from increased school attendance, or to enable those still herding cattle to attend school.<sup>51</sup> The shortage of labour for herding and the simultaneous absence of fences increased the problem of stray cattle.<sup>52</sup> Protagonists of fenced camps also argued that these would greatly facilitate the breeding of cattle.

Members who opposed these proposals did so largely on technical rather than on equitable grounds. In particular they feared that enclosures would eventually lead to a depletion of soil fertility, as taking cattle away to distant camps would deprive farmland of manure. In addition, milking would take place far away from homesteads. One of the opponents of fencing concluded that if the Legislative Council were to agree to the proposal, they would be getting a hiding outside, saying 'if we approve this planning, it will bring about unrest, today.'<sup>53</sup>

During the debate the issue of ownership of fenced camps was also raised. The view was expressed by Councillor Cornelius Njoba, in later years to become the Deputy President of the Democratic Turnhalle Alliance (DTA) and leader of the Second Tier Authority of the Ovambos, that the customary form of land tenure was no longer appropriate for the level of

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<sup>50</sup> *Ibid*, p.163.

<sup>51</sup> RSA 1970. *Veratimverslag van die Ovambolandse Wetgewende Raad. Derde Sessie, Eertse Wetgewende Raad, 16.3.1970–25.3.1970*, p.39.

<sup>52</sup> During the same session a Select Committee tabled a short report dealing with stray animals. It recommended that a number of fenced camps be established in every tribal area to accommodate stray animals until they were claimed by their owners. *Ibid*, p.53.

<sup>53</sup> *Ibid*, pp.38–39.

development attained in Ovamboland. He argued that as the people were developing in such areas as education, government and the church, there was a desire by the people to develop the land and change customary forms of land tenure. Because a man could not pass on land to his widow and children under customary laws, there was little incentive to bring about permanent improvements. Similarly, the customary process of land allocation was not always honest and just. For all these reasons, improvements in customary forms of land tenure were called for.

The debate around the fencing of communal land was conducted against a background of increasing social differentiation. The First Legislative Council was composed of traditional leaders and a small, but growing elite of clergy, farmers and traders. The latter increased their representation in the Second Legislative Council which came into being after 1973. Traders were generally conservative, but enjoyed considerable status and influence on account of 'the possession of cash to which more value is probably attached than to mere ownership of land and cattle.'<sup>54</sup> While the 'modernising elite' may have been rather small in number, they were able to use the Legislative Council to articulate their views on such matters as agricultural and economic development in the region. What most members of this group shared, was a perception that Ovambo farmers could no longer earn enough from agriculture alone—85% of people interviewed in the early 1970s ascribed this to the fact that 'too many people were farming in Ovamboland' (Töttemeyer 1978: 143).

The general solution to this problem was widely regarded to lie in the modernisation of agriculture: 70% of respondents in the survey referred to above were of the opinion that yields could be improved by improving farming methods. Central to this process was to be the transformation of customary land allocation and control. Certain sectors of the population, particularly the educated and traders, rejected 'the communal system of land ownership and the dominant role played by the headmen and chiefs in allocating land ...' These feelings resulted in a 'fervent desire for permanent private land ownership.' On the other hand, 80% of traditional leaders interviewed opposed the proposals that land should be removed from the control of headmen.

With the desire for change within customary land tenure came the realisation that such changes would be meaningless unless the matriarchal inheritance system was also altered. Of particular concern was the fact that when the head of a family died, the matrilineal relatives were the heirs, rather than the dead person's family. While more than 90% of teachers, religious leaders, civil servants and nurses thought that the matrilineal inheritance system should be changed, only 38% of traditional leaders were similarly inclined (Töttemeyer 1978: 145–6).

## **The Select Committee on Land Tenure and Utilisation**

The land tenure issue was referred to a Select Committee on Land Tenure and Utilisation by the Legislative Council, 'to sound out the feelings of every tribe on the old system of land ownership, and on the most suitable new system for the future development of Ovamboland' (Töttemeyer 1978: 77). In view of the tension between the 'old and new', the Select Committee steered clear of any radical proposals. As a result, it did not recommend any changes to the ownership of land at household level and proposed that the system of lifelong

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<sup>54</sup> *Ibid*, p.69.

usufruct to arable land be retained. In a curious twist, however, the Committee recommended that the ultimate ownership of land be transferred to the Ovambo Government and 'that the monies owing no longer went to the traditional leader but via the tribal fund to the Ovamboland Government.' In addition it recommended that 'sub-headmen should no longer pay for their respective districts and wards, while for their subjects a fixed though reasonable price for land was recommended, which was to be the same everywhere in Ovamboland.' Further, traditional leaders should be compensated for the loss of income from land 'sales' by receiving a stipend from the tribal fund (Töttemeyer 1978: 78).

The Select Committee on Land Tenure and Utilisation reflected the view of the more traditional sectors of Ovambo society. Thirty out of the eighty-three people invited for consultations consisted of 'reliable' sub-headmen, while another forty were considered to be 'reliable' also. It would appear as if the recommendations of the Select Committee sought to retain customary forms of access to land, while increasing the powers of traditional leaders through the newly created Ovambo Government.

## Colonial officials and fencing

Demands by the modernising elite to improve agricultural production and transform customary land tenure coincided with proposals by the colonial government to embark on programmes to commercialise the northern economy in general and agriculture in particular. Fencing was to have an important place in these efforts. The Chief Agricultural Officer in Ondangwa argued in 1969 that 'fencing and water will be needed to promote sound veld and stock management practices.'<sup>55</sup> A year later a sub-committee of the 'Planning and Co-ordinating Committee' submitted that:

'the present system of land ownership and utilisation had a limiting influence on the administration (extension) and production (lack of continuity) as economic asset (*sic*).'<sup>56</sup>

Officials were generally agreed that serious attention needed to be paid to the transformation of the traditional system of land ownership of Ovamboland which should be settled on 'a healthy and economic basis.' At the same time, they were aware that such a development course would require considerable negotiation and persuasion of the population by the Executive Committee.<sup>57</sup>

The concepts of agricultural planning and, more specifically, farm planning, were introduced for the first time in Ovamboland in the late 1960s. This symbolised the new approach to agricultural development and 'modernisation' which followed in the wake of the Odendaal Commission and the development philosophy spelt out in the Five Year Development Plan. While agricultural planning was regarded as having to 'pave the way in converting an existing subsistence economy into an exchange economy',<sup>58</sup> farm planning was seen as taking care of

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<sup>55</sup> OVA 49, 6/9/1 Hooflandboubeampte Ondangwa: Insake vraelys, 25 June 1969, p.4.

<sup>56</sup> OVA, 49, 6/8/4/1 Vergadering van die Onderkomitee oor Dorpsbeplanning en ontwikkeling en Landbouontwikkeling van die Beplannings- en Koördinerende Komitee op Woensdag 2 September 1970, p.2.

<sup>57</sup> OVA, 49, 6/10/2-7(I) Die Sekretaris (no date, no title), p.13.

<sup>58</sup> SWA [1966] *A Five Year Plan for the Development of the Native Areas*, Windhoek, p.94.

pasture management. Anticipating that the Ovambo public would be very critical of 'farm planning', it was proposed to initiate these efforts in the more lightly settled areas in the west (Ukwaludhi and Ongandjera) and in the east (land added to former Ovamboland as a result of the recommendations of the Odendaal Commission). In time, the process was to be extended into more densely settled areas (planning targets of 200,000 ha a year between 1971 and 1974 were proposed).<sup>59</sup>

A report produced in 1971 on the future development of Ovamboland also recommended the introduction of *economic units* in Ovamboland. It determined the size of an economic unit to correspond to 100 large stock units or 400 small stock units.<sup>60</sup> This recommendation was approved by the Ovambo Cabinet and applied to farm planning.

The South African government appointed the Bantu Investment Corporation (BIC) to initiate and oversee economic development in Ovamboland. It was primarily concerned with commercial development and established a number of factories and businesses (Töttemeyer 1978: 151). It was also appointed as the sole agent for cattle marketing in Ovamboland and Kaokoveld by the South African Department of Bantu Administration and Development in 1973. Since the marketing of cattle to the south of the country was not possible because of the veterinary cordon fence, an abattoir had to be built in Oshikati. In addition the BIC needed land to store unfinished and young animals, which represented 50–75% of the cattle on offer. To facilitate this, the Corporation obtained 104,000 ha of land in the Ndonga area between Etosha and the West Mangetti.<sup>61</sup> Much of this land had been allocated to white farmers for emergency grazing in the early 1970s. In February 1973, 11,200 cattle owned by about forty white farmers, mainly from the Tsumeb, Grootfontein and Outjo districts were grazed in the Ovambo Mangetti. With this number the limit had been reached, and no additional cattle were allowed in. Grazing fees of 20¢ per head per month were charged and contracts entered into on a first come first served basis.<sup>62</sup>

## Enclosure as defence against land alienation

Land for the Mangetti Block was obtained by the BIC after consultations with the Ndonga Tribal Authority. It had agreed to the scheme, as it regarded the development of cattle marketing as important. It was not in favour, however, of fencing any more communal land and therefore opposed government plans to develop the area east and north-east of the quarantine farms into economic units. Government anticipated such development to extend east to the Kavango border and then all along that border in a northerly direction.

Suspicion of government plans was reinforced by perceptions that the BIC was fostering competition to local business people instead of supporting their development. It was thus feared that it and the government had colluded to take the land away from local people for the

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<sup>59</sup> OVA, 45, 6/8/1-7(I) Directeur: Landbou to BENBO, 4.5.1971, pp.1–2.

<sup>60</sup> See OVA 49, 6/10/2–7 (II), Sekretaris Departement van Landbou en Bosbou to Sekretaris van die Hoofminister, Ondangua, 2.7.1973, p.2.

<sup>61</sup> OVA 51 16/17/1 Sekretaris Binnelandse Sake aan Sekretaris, Bantoe Administrasie en Ontwikkeling, pretoria, 13.9.1974, p.2.

<sup>62</sup> OVA 47 6/8/2/3-7 Vol.II Telex to Secretary: Bantu Administration and Development, Pretoria, 28.2.1973; D.J. Booysen to Direkteru: Gemeenskapssake, Ondangua, 15.3.1973.

benefit of someone else. In an attempt to prevent this from happening, the Ndonga Tribal Authority gave permission and encouraged its own people to fence off land instead, although no statutory provisions existed which might have authorised it to do so. As such, the Traditional Authority established its own procedures in terms of which allocations for fencing were to be made. Interested parties had to approach the Senior Headman of the area to obtain his approval before the latter took the application to the King and his Council. The King would normally send someone to the land in question in order to ascertain its borders and exact location. Once this had been done, the Council assessed the application against a set of criteria. These included a requirement that the applicant had to be a Namibian citizen; that he/she was of good character, *i.e.* had no criminal record and was not utilising fenced land elsewhere.

Approval was given on a prescribed form, which had to be signed by the King, the Senior Headman of the area and the Secretary of the Tribal Authority. It confirmed that 'The King of Ondonga and his Council approved the ownership of this land by the above mentioned person' and reflected the name of the grazing area, the name of the recipient, name of the farm and date of occupation. A copy of this 'agreement' was kept by the Ondonga Tribal Authority. In late 1996, it had records of more than one hundred approved farms. The procedure also provided for the retroactive legalisation of farms that were fenced without prior authorisation by the King and his Council. At least one case was observed where authorisation was given for a farm first fenced and occupied in 1985. The emergence of these procedures indicates that the Tribal Authority was not opposed to fencing as such, but rather wanted to be in control of the process. The legality of fencing hinged on whether approval had been obtained from the Tribal Authority or not. While payments were not required for a fenced unit, it was customary to do so after approval had been granted. Payment in a sense transferred certain rights to the land to the applicant and legalised the process.

Although the certificate authorising the fencing of land refers to the ownership of the land, the rights of allottees are restricted. Since fencing is a relatively new phenomenon, rights to fenced units have not been formalised yet, and represent a mixture of traditional notions of non-alienability and more modern notions of private ownership. Several informants expressed the opinion that fenced land cannot be sold, although this is said to have occurred in some cases. In one or two cases where this happened, it was said that a price would be negotiated as compensation for the improvements on the farm. While not condoned by the King, headmen were said to turn a blind eye to land sales against payment of a small fee. In a few other cases, fenced units were subdivided and rented out to several farmers. Although the extent of this is not well known, the Tribal Authority is said to disapprove of this and intends to act against such practices. Fenced land can be passed on to an heir, however. Rights to a fenced unit lapse upon non-utilisation of the farm. In such instances it would revert back to the King for reallocation.

## **Independence and after**

Although the Ndonga Tribal Authority seems to have managed to retain considerable control over the fencing of communal land, it must be assumed that unauthorised enclosures have occurred in the 1980s. It would appear also that Independence accelerated this process. A dramatic decrease in registration of fenced units in the office of the Ndonga Tribal Authority

after Independence supports anecdotal evidence that the unauthorised enclosure of communal land has increased since 1990. This has been ascribed by informants to several reasons.

In the first place, the Namibian Constitution placed the ownership of all communal land in the hands of the state. For many people this was an indication that traditional leaders had no more authority over their land and thus no powers to restrict the fencing of land. Those who prescribed to such a narrow reading of the Constitution saw their views supported by Article 21 of the Constitution which provides that 'all persons shall have the right to ... reside and settle in any part of Namibia'. Many people therefore regarded it as their constitutional right to settle wherever there was space. The possible prohibition by a traditional authority do so was interpreted as an infringement of a fundamental constitutional right.

Most importantly, however, the absence of any constitutional recognition of customary land tenure rights in communal areas and a comprehensive land policy continues to leave communal area farmers and traditional authorities without any recourse to statutory law to defend their rights. At the time of writing, the functions and responsibilities of traditional leaders with regard to communal land are not defined by law. Powerful political and economic interest groups have used this state of affairs to their advantage by ignoring customary land tenure rights in their bids to obtain what they believe to be a legitimate reward for their contribution to the struggle for Independence: a fenced farm on communal land.

## Conclusion

The enclosure of communal land in Namibia has frequently been ascribed to the gradual breakdown and dissolution of customary forms of land tenure. The evidence presented above does not support this argument altogether. Rather, it suggests that before independence, Ndonga traditional authorities sanctioned the enclosure of tribal land in an attempt to prevent the colonial government from alienating land through a government initiated fencing programme. The support given to the enclosure of communal land enabled the King and his Council to retain their powers to allocate land and thus remain in control of the process of communal land enclosure. This control was formalised by procedures which governed applications for fenced units, their approval and the registration of an allocation.

With a few exceptions, most of the fencing before independence seems to have been carried out with the approval of the Ndonga Tribal Authority. Since independence, the ability of the Ndonga Tribal Authority to remain in control of enclosures has decreased dramatically, with incidents of 'illegal fencing' increasing.

The reasons for these changes in the ability of the Ndonga Tribal Authority to control enclosures have to be sought in the changing balance of power in former South West Africa and Ovamboland. Three periods can be identified in this regard. During the first period ending in the late 1960s, the colonial government implemented a policy of indirect rule in Ovamboland, according to which traditional authorities were expected to administer customary matters, including land. During this period, statutory legislation did not encroach on customary law to allocate land, and traditional leaders generally administered tribal land according to customary laws.

The second period covering the late 1960s through to the 1980s was characterised by the introduction of self-government in Ovamboland. The establishment of an ethnically based regional government structure - first in the form of the Legislative Council and then as Representative Authority of the Ovambos - provided traditional authorities with certain statutory powers which bolstered their positions to some extent. At the same time, traditional authorities came under increasing pressure to change customary land tenure arrangements. On the one hand such pressures came from an emerging elite of teachers, nurses, the clergy and business people who regarded customary land tenure practices as inhibiting future socio-economic development. The colonial government, on the other hand, also sought to transform the traditional land tenure system in order to promote modern agricultural practices.

These challenges of customary land tenure developed amid increasing political polarisation. The independence of Angola had shifted the war of liberation right onto the borders of South West Africa. Both sides to the conflict - the liberation movement and the colonial government - were vying for the support of traditional leaders. The decision of the Ndonga Tribal Authority to encourage the enclosure of communal land in its own tribal area must be situated within this wider political context.

The third period started at independence in 1990. It is during this period that traditional leaders gradually lost control over the process of communal range land enclosures. Representative authorities were dissolved and with them other aspects of tribal rule, such as the tribal police. Traditional leaders found themselves without any legal or institutional support. In addition, many people interpreted some constitutional provisions such the freedom to move and settle anywhere in the country quite literally. The new political elite did little to replace traditional authorities with other local and regional government structures, thus leaving an administrative vacuum which facilitated unauthorised fencing. Independence and subsequent political and administrative changes thus seem to have accelerated the disintegration of control over land allocation by traditional authorities, opening the way for the new elite to appropriate communal land for private use without authorisation from anybody. In a very profound sense, therefore, access to communal land for small scale herders became more limited rather than wider and more secure in independent Namibia.



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