Department of Geography
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# Traditional Authorities in North-Central Namibia: Seeking to Maintain Legitimate Authority Between two Fields of Land Reform, and Transforming Ideas of Law, Justice, Space, and Accountability

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# Traditional Authorities in North-Central Namibia:

# Seeking to Maintain Legitimate Authority Between two Fields of Land Reform, and Transforming Ideas of Law, Justice, Space, and Accountability

# Zusammenfassung

Diese Dissertation widmet sich den Traditionellen Autoritäten in Namibia, genauer den im zentralen Norden des Landes ansässigen Oukwanyama, und untersucht, wie sich ihr Status und ihr Handlungsspielraum durch die Landreform verändert hat und weiterhin verändert: Durch die Kommunallandreform wird das traditionelle Gouvernanzsystem teilweise formalisiert, und gleichzeitig werden essenzielle Elemente davon illegalisiert. Landgouvernanz wird hier als ein Spiel dargestellt, welches von einer Reihe von normativen Verschiebungen geprägt ist: Diskurse der Demokratisierung, der Dezentralisierung, aber auch der Geschlechtergerechtigkeit sind in lokalen Verhandlungen von Landrechten und letztlich auch bei der Behauptung von Autorität über Landpräsent. Dabei werden grundlegende Widersprüche zwischen der Machtlogik der Traditionellen Autoritäten und jener der modernen Staatslogik offengelegt.

Im Etablierungsprozess eines demokratischen namibischen Staates provozieren Land als Ressource und die Landreform als Grundpfeiler der Wiedergutmachungspolitik besonders aktuelle und dringliche Auseinandersetzungen. Dazu gehören Fragen nach der Dezentralisierung und Rezentralisierung von Staatsmacht, also ob und wie weit die nationale Regierung bereit ist, den traditionellen Autoritäten ihre eigene Gerichtsbarkeit zuzugestehen. Inmitten dieses volatilen Regelwerks sind die Handlungen einzelner Akteure, und sogar von Institutionen, schwer zu antizipieren. Während sich einige traditionelle Autoritäten diese Unsicherheiten zunutze machen können, sehen sich andere von staatlichen Autoritäten ausser Kraft gesetzt und resignieren. Diese Dissertation legt in Form von Fallbeispielen dar, mit welch unterschiedlichen Strategien traditionelle Dorfvorsteher diesen Herausforderungen begegnen.

Das zentrale Argument dieser Dissertation ist, dass die oftmals stark homogenisierende politische Charakterisierung Traditioneller Autoritäten zu kurz greift, ganz besonders in dieser Phase, da tiefgreifende Normen neu ausgehandelt werden. Als individuelle Akteure und als Mitglieder einer teilformalisierten Institution sind sie exponiert und müssen sich neu positionieren hinsichtlich ihrer Auffassung von Tradition, ihrer Rolle im Landmanagement sowie in ihrer Handlungsfähigkeit. Die ethnografische Untersuchung zeigt deutlich auf, wie Schlagworten wie *Tradition* oder *Entwicklung* als essenziellen und gleichwohl dehnbaren Narrativen in alltäglichen wie institutionellen Diskursen eine wichtige Rolle zukommt. Die Funktionalisierung dieser zwei Codes geht so weit, dass sie als zwei unterschiedliche Währungen von symbolischem Kapital gehandelt werden. Die TAs müssen ihre Autorität neu erwerben, indem sie sich zwischen den beiden Narrativen entscheiden oder aber eine geschickte Kombination arrangieren.

## Summary

This dissertation attends to shifting conceptualizations of agency for Traditional Authorities in the process of Namibian land reform. Particular focus is given to the nuanced effects of Communal Land Reform as it in part reinforces (through formalisation), and in parts weakens (through prohibition) basic pillars of Traditional Authority. I conceptualize land governance as a game, which is shaped by a number of normative transformations, including how discourses of democratisation, decentralisation, and gender equity are drawn into local negotiations on land rights and ultimately on land authority. In this manner, fundamental contradictions are exposed between the logics of power inherent in the traditional authority and in that of the modern state government.

In the process of establishing a democratic Namibian state, land as resource, and land reform as a pillar of reconciliation politics turn into particularly urgent matters of debate. The central questions I attend to are how far the national government is prepared to concede the Traditional Authorities power within their jurisdictions; hence, how it navigates between decentralising and recentralising its own power. The central argument of the study is that the political characterisation of TAs as homogeneous groups of interest obstructs a comprehensive assessment on the current phase of deep normative renegotiations, in which they are partaking as co-negotiators. Being actors, and members of a semi-formalised institution, they are particularly exposed and forced to take position with regards to their appreciation of tradition and of land management.

Amidst this volatile system of rules, individual and institutional agency is hard to anticipate. Whereas some Traditional Authorities manage to turn this insecurity into opportunities, others feel deprived of their power. This thesis illustrates the variety of strategies employed by Village and District Headmen as they confront a challenging environment. The ethnographic analysis identifies, among other things, how narratives such as *Tradition* or *Development* are turned into changeable, yet essential instruments on all levels of discourse and land governance. The functionalisation of these two codes goes so far that they become representatives of two separate currencies of symbolic capital, which are upkept by force of the respective capital holders. Consequently, TAs navigate their position by combining or choosing among those narratives or moral fabrics.

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## List of Acronyms

| | |
|---|---|
| Mahangu | Pearl Millet, Staple food in the study area |
| Shebeen | Small drinking places selling industrial beer, and soft drinks, or homemade brews; also referred to as *Cuca Shops* |
| Kapatashu | Deputy Village Headman |
| TA | Traditional Authority |
| CLRA | Communal Land Reform Act (2002) |
| TAA | Traditional Authorities Act (1995) |
| SSCF | Small Scale Commercial Farming Project |
| CLB | Communal Land Board |
| MLR | Ministry of Land and Resettlement (2015 renamed to Ministry of Land Reform) |
| MRLGH | Ministry of Regional and Local Government and Housing |
| GIZ | Deutsche Gesellschaft für Internationale Zusammenarbeit |
| FAO | Food and Agriculture Organization |
| MCA | Millenium Challenge Account |
| LAC | Legal Assistance Centre |
| NGOs | Non-Governmental Organisations |
| UNDP | United Nations Development Programme |

# 1. Introduction

*"Mr President, we, the people […], want to know who has more power: the government, or the traditional chief?"* (Kooper, 2019)

This question was addressed to the President of Namibia in an anonymous text message in early 2019, and subsequently released by a national newspaper. It hits the core of what this thesis aims to answer, which is: What is the position of the Traditional Authorities within the postcolonial, democratic Namibian state? My intention is to uncover the discourses and practices within local governance settings.

The current political and legal context in Namibia is shaped by a wave of reforms and steps taken toward reconciliation. Individual actors and Traditional Authorities, in particular, are challenged to defend, or even re-invent their claims to power. Throughout this political era of transformation, varying ideological positions have shaped the process of land reform. While the proponents for a fast-acting catch-up to a 'developed' state design push toward national unification, another, conflicting position advocates for a political and moral reconciliation through recognising and valuing the diversity of the Namibian population as a mandatory step in the process of state building. Amidst these two convictions, two land reforms and governance systems were designed to attribute to each of those convictions in different areas of the country: The Communal Land Reform (CLRA) to provide for a non-commodified, partly traditionally governed land tenure, and the Commercial (Agricultural) Land Reform (ALRA) to maintain the free-hold land market in the colonially appropriated commercial zones (*see Figure 1*).

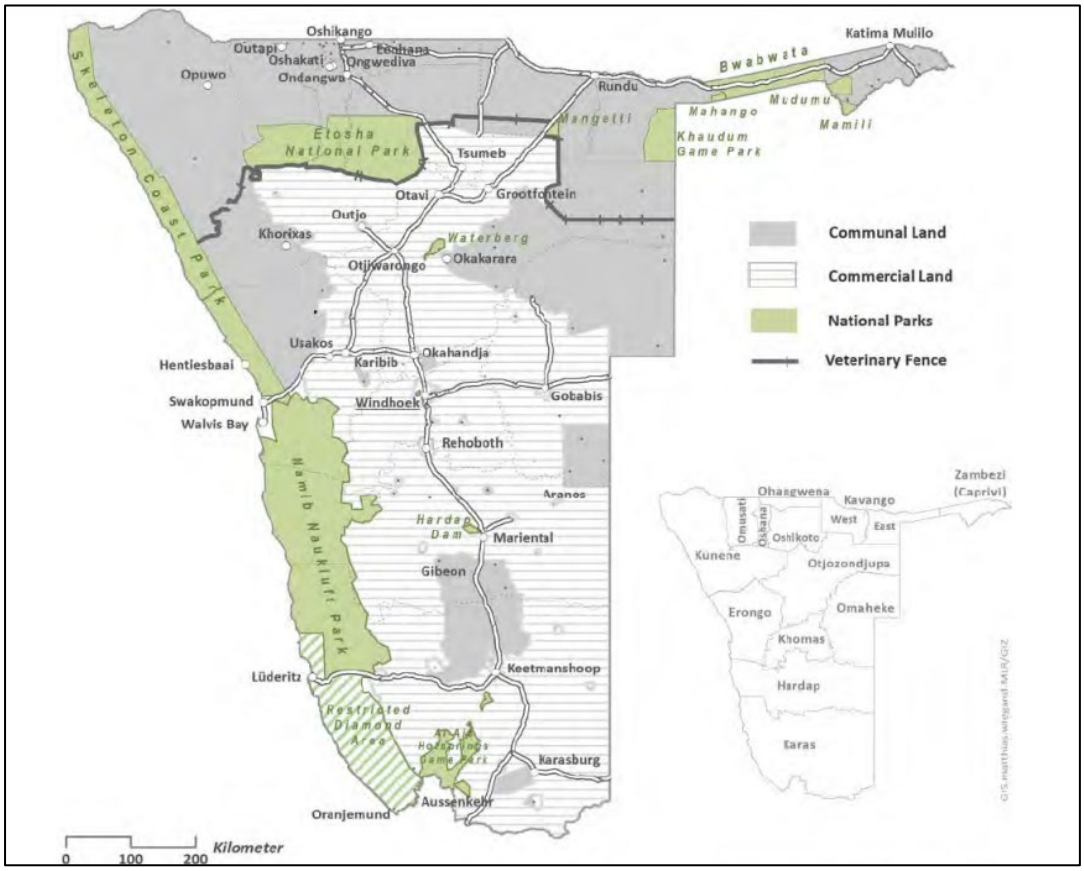



**Figure 1 Plural Land Tenure Regimes in Namibia.** Communal, Commercial, and Protected Land (Ministry of Lands and Resettlement (Thiem & Caplan, 2014, p. 5 Map by M. Wiegand, GIZ))

Whereas commercial land largely remains in a freehold titling system, communal land is zoned as a tenure system that accredits land users only use rights, which are managed by local Traditional Authorities, but vested in the state as its legal owner. Thereby the Traditional Authorities were assigned a formal, yet constricted, position within the statutory administrative network, which remains under strong, ongoing transformative dynamics. Of these multi-layered and manifold transformations, this thesis aims to understand two things in particular: Firstly, how the basis of authority of Traditional Authorities (TAs) is affected by such transformations, and secondly, how they renegotiate and re-invent creatively their leadership roles. Located between modernity and ethnohistorical genealogies and myths, between systems of democracy and of patronage, between democratic and totalitarian ideals, chiefs and traditional authorities have shown a surprising resilience (Bollig, 2011, p. 157).

Land is among the issues, which most urgently confront the national government and Traditional Authorities, and their respective systems and logics of governance and allocations of rights. Tellingly, the text message quoted at the beginning of the chapter, goes on to raise serious allegations and threats towards both power centres:

> *"We are asking this question because the chief of the Mafwe is busy giving our land to his so-called rich friends in the community. Please intervene, or else the whole Kapani area is not going to vote in the upcoming elections."* (Kooper, 2019)

The message illustrates how citizens, confronted with a plural and transforming system of authorities, become aware of their own power through agency of (de)legitimisation. The present state of land governance in North-central Namibia is highly dynamic and results in a broad array of intended and unintended, direct and indirect transformations on all scales and registers of society.

**The unsettling of the game, the rules, and the predictability of moves**

The game of local land governance in North-central Namibia is undergoing a range of transformations. On the one hand these transformations are triggered by legal reforms, such as the communal land reform (CLRA 2002) and the legal pluralism it entails. On the other hand, the rules of the game of governance are affected by more fundamental normative or moral transformations. These legal and normative transformations unsettle the rules of the governance game as it were and render the moves in bargaining legitimisation and power even harder to anticipate. Thereby, individual moves and agency patterns gain particular importance, since they provide a focus on immediate agency in local negotiations of common-sense, law, and legitimisation. Governance describes a context in continuous process of formation, influenced by various normative layers and references (Wiersum et al., 2014, 6), in which state law is not the only – or even the most important – regulating system at work (Rose, 2008, p. 21). As the game is being created from merging or re-aligning two different fields and normative references, the "cognitive and moral powers of citizens" (Offe, 2009, pp. 559–560) as a legitimising "resource" is crucial. Being a key aspect of governance, the practice of legitimisation is considered as a fluid counterpart to the plural social and legal fields, guiding strategic employment of capital forms (Bourdieu, 2012), both through practice and discourse (Van Dijk, 1993; 2011).

**Shifting the fields, transforming land governance**

The (communal) land reform enforces a merging between two "fields" that have rather successfully been kept separate for a long time, namely the statutory and the traditional field. The two fields, established as politically and legally distinct systems, have over the course of the colonial era

expanded into distinct economic, cultural, and moral markets (the latter phenomenon is highlighted in multiple works by Schnegg and Bollig (2016; as a *moral model* in Schnegg et al. 2016, S. 585). Social fields, according to Bourdieu (2012; Bourdieu & Terdiman, 1986; Schwingel, 2009), consist of moral values and commonly accepted facts, rules, experiences, and behaviours. Each field, thereby, revolves around its own currency of symbolic capital, of power. With the communal land reform, traditional communities and their authorities were recognised formally (Parliament of the Republic of Namibia, 1995b). In that way, the social (or power) fields that shape land governance in Namibia's communal land were officially multiplied. This means that there are rules and norms of applying power, of claiming land, which may be in line with the values of one field but contravening those of the other. For instance, the monetary payments in return for land allocation in communal land are explicitly prohibited by state law, yet perfectly common-sense in within the *traditional* field. This normative pluralism is a challenge to all actors since either social field with its values and common-sense is de-naturalised; and risks to decrease in its self-evidence, legitimacy or "binding power" (Benda-Beckmann et al., 2009b, p. 12) of each of the pre-existing fields. The customary and the national legal fields and their respective moral basis remain fundamentally divided, each holding its basic norms and behavioural duties, thus the ability to predict the outcome of a social act. With the implementation of the land reform, however, these basic collective understandings, including different ideas of legitimate power, equality, and fairness (Olivier De Sardan, 2011, p. 22) are rendered uncertain.

**The Outline**

This thesis is divided into introductory and analytical parts. The second chapter constructs the theoretical and conceptual frame that stands at the heart of this work. Bourdieu's theoretical instruments of habitus, capital forms, and most importantly, legal and social fields form the basis on which transformative effects are observed. Land governance is decidedly defined by a legal pluralism, which, again, is re-negotiated through practices and strategies of legitimisation. These three concepts are therefore examined in their current theoretical debates. The third chapter lays out the research problem and the hypotheses that build the core of my research, before explaining the research questions in their respective contextualisation. This contextualisation draws a focus on the political logics of land reform on the one hand, and on the inclusion of tradition in governance and administration of the state on the other hand. Chapter four retraces the process and the methods of the field research. It draws out how my ascriptions of meanings and expectations were successively realigned throughout my presence and progress in the field, which strongly informed the development of my research interest and my estimations on methodological and empirical options. The two main methods – participatory observation and semi-structured Interviews – and the necessity to have a translator, who later turned into a research assistant, are critically assessed in their benefits and disadvantages. Chapter five establishes the historical and political context in Namibia and the north-central regions, which led up to the communal land reform in the form it takes shape today. Chapter six draws on the political identities or subjectivities that are shaped or re-defined through the land reform, by combining conceptual literature with empirical sources. Chapter seven and eight are dedicated fully to the analysis of the data and responding to the two research questions: Whereas the former expands on specific aspects of social life and how they are affected by transformations, the latter focuses specifically on the shift of roles and strategic responses of TAs. Finally, chapter nine provides a conclusion of the findings, of the research process, and offers a glimpse at the study's contribution to debates and new questions it raises.

# 2. Conceptual location of power practices in Land Governance

This chapter establishes the frame of analytical concepts this study employs, and of their academic, political, and legal debates these concepts are embedded in. It conceptualises land governance as a systemic context, which embraces both structural features as well as individual and spontaneous moves. This systemic context may be understood as a game, which is based on a set of rules (laws, norms) (Bailey, 1990), yet also of individual and at times spontaneous moves (*see Figure 2*). In the north-central Namibian context of land governance, this game is presently particularly unstable, since the communal land reform, the dual land tenure system, and the shifting legal and institutional contexts bring about transformations in the system on different layers. The layer of rules on the one hand, embraces formal laws as much as social norms (normative rules (ibid. 1990, p. 5)), whereas individual moves, on the other, follow pragmatic rules, which embody "private wisdom" on how people "set about winning" the game (ibid. 1990, p. 5). Over time, if commonly re-enacted, such practical norms may naturalise into self-evident, doxic (Bourdieu & Terdiman, 1986, p. 848) forms of behaviour. In short, this chapter addresses the analytical potentials and limits in the context of a game that is in the process of multi-layered transformation and renegotiation.

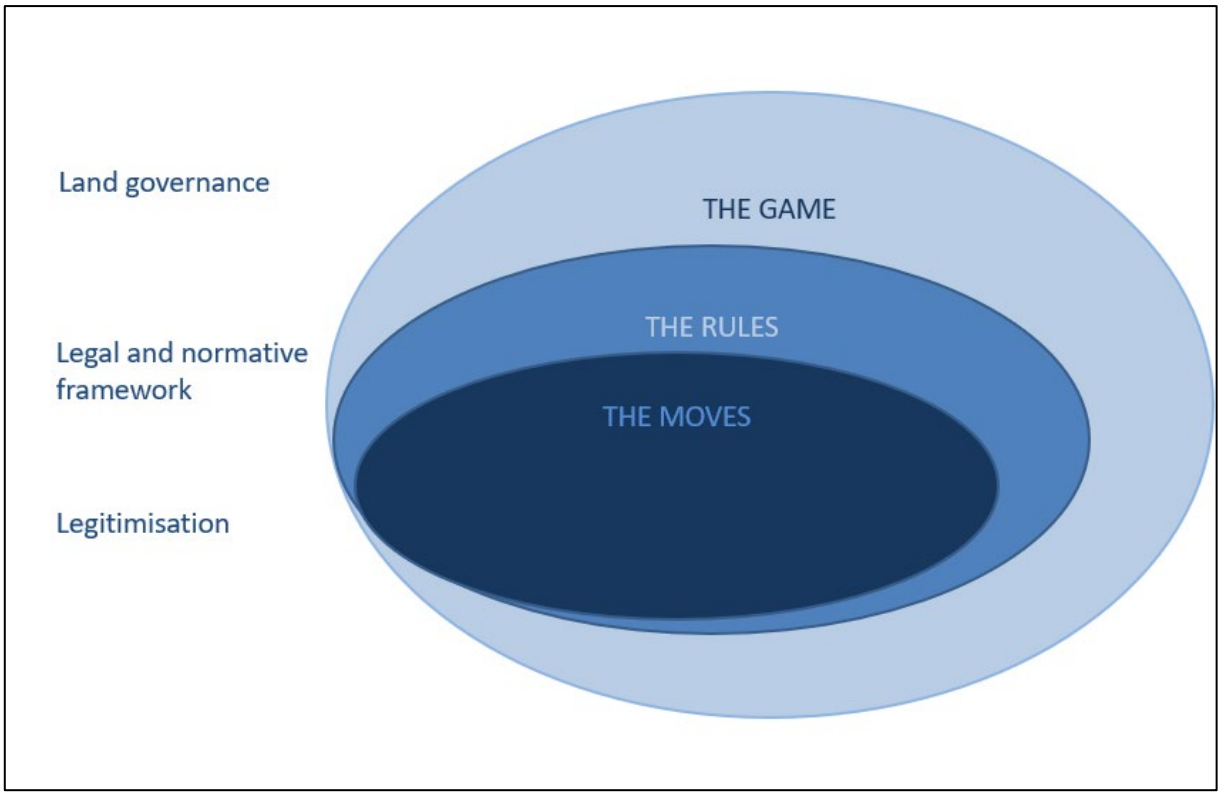



Figure 2 **The Game of Land Governance, its Rules, and its Moves** (Weidmann 2019)

Land governance is conceptualised through its normative underpinnings, its political and legal structures, and its expression in daily negotiations of power and land. This cross-scale perspective is my toolbox to make sense of land governance as a context, which Traditional Authorities are confronted with, and which they contribute reshaping by their involvement and manoeuvring among the transforming layers.

## 2.1. Land Governance: A systemic and agency approach to politics

Land governance undergoes a reshuffling, whereby the value of different capital forms is re-arranged, in turn calling for new strategies and tactics. This instability of the field is most accurately described by the term land *governance* (Benda-Beckmann et al., 2009b; Delaney, 2011; Lund, 2011; Herdt & Olivier De Sardan, 2015). Land *governance* (Delaney, 2011; Lund, 2006) as a wider concept, is employed to include not only officially foreseen acts of authority, but also the unofficial, informal, (even illegal) responses to, or ignorance of, official actors or law. It further allows taking note of phenomena which occur across different scales and levels of the political spectrum (Markelova & Mwangi, 2012; Appadurai, 2010).

Berry (2000) and Lund (2011), among others, share the idea that struggles over land in African contexts extend to a fundamental negotiation over authority. In that sense, the land reform forms part of this negotiation struggle, rather than providing a solution to it. It is, however, often promoted as a solution in political discourse, advertising land reforms as an "organised method of delivering public or collective services and goods" (Olivier De Sardan, 2011, p. 22). Introducing a new legal and political approach to land initiates an extensive process of negotiation, of compromising, denial, and of re-interpretation. This process is often the main focus among political and anthropological scientists, who selectively refer to it as *real governance* (ibid. 2008, p. 1), or related notions of the concept that emphasize its informal and/or unplanned features (Moore, 1969; Benda-Beckmann & Pirie, 2007; Ostrom & Hess, 2007). One common point of concern is that anticipated results of policies and laws often notably diverge from their real outcomes. This insight, however, can lead to the drawing of rash "conclusions about 'gaps' between actual practices and a conflated ideological-legal-institutional complex" (Benda-Beckmann et al., 2006, pp. 22–23; with reference to Moore, 1969). Their concern is based in the continuing over-estimation of law, institutions, and any formal ascription of authority within the practical and concrete experience and reality (Gitonga, 1988, p. 7).

In any case, however, the game of governance in the context of north-central Namibia is under thorough re-negotiation, to the point where different stakes, moves and sets of rules are competing (Schwingel, 2009, p. 85). In Bailey's terms of a game, if a "political structure" defined by its shared rules about prizes, leadership, personnel, competition and control (Bailey, 1990, p. 21), it would translate in this case in two increasingly competing games or sets of rules, each (originally) targeting the struggle toward their own desirable (and therefore scarce) prize (Bailey, 1990, p. 20). This upends the terms of authority among each of the coexisting (and mutually interfering) modes of governance (Benda-Beckmann et al., 2009b, p. 5).

It is sensible to promote the notion of *governance* as a system in which different norms, logics, and interests are continuously re-arranged and re-adapted. Limiting the concept to politically, structurally regulated agency (Risse, 2007, pp. 4–5), is, however, not practicable in this setting of north-central Namibia. Firstly, because laws and policies act on a level with extra- or semi-legal factors and actors that shape local land governance, thus ascriptions of political and formal authority are embodied along a continuum rather than on a strict binary principle.

By looking at the functional aspect of governing activities, the ways in which national laws inevitably influence practices, not only of government, but agents of 'alternative' governance, becomes visible (Benda-Beckmann et al., 2009b, pp. 1–2). Inquiring not only into the official establishment and enactment of policies, but also on their practical negotiations, enlightens the process in which they transport meaning. Firstly, they transport a message reconciliation to the citizens who were formerly disconnected from any political participation. Secondly, they implant international narratives through various channels and institutions. International NGO's and consultants are strongly involved in

advising on political and legal projects, such as the Communal Land reform, while requesting or expecting moral adaptations, such as adherence to Human Rights (GOPA & Ministry of Agriculture; Millennium Challenge Account Namibia, 2011; Community Lands Support Sub-Activity & Millennium Challenge Account Namibia, 2014). Governance is thus observed by means of ethnographic empirical extract of its constituting negotiations. They reflect the system and its actors through momentary interactions, strategies and enactment of roles, which are redefined by shifting legal or political logics and settings. Hence, such moments of interactive agency render strategic paths and capital forms visible.

The reason for applying a concept of governance to land realities in Africa is an obvious one. Boone and Lund state, that "land claims [are] tightly wrapped in questions of authority, citizenship, and the politics of jurisdiction" (Lund & Boone, 2013, p. 1). Hence, land tenure reforms deeply affect "political and social relations that govern resource access" (Boone, 2013, p. 189), as they change not only the nature of individual property rights, but also "redefine relationships between and within communities, and between communities and the state" (ibid. 2007, p. 558).

> Land policies express, implicitly or explicitly, the political choices made about the distribution of power among the state, its citizens and local systems of authority. (Lund, 2011, p. 7)

Institutionalist and environmentalist literature on landed resources (Dafinger & Pelican, 2006, p. 128; Lentz, 2005, p. 158) often depict land governance as dominated by group of actors with an active, 'stakeholder'- or management position, while non-stakeholders are excluded and remain passive recipients of its outcomes, unless organised in a formal protest (Kuch, 2016; Chimhowu, 2018; Bartley et al., 1990; Bryan, 2012; Carr & Smith, 1975; Donaldson et al., 2013; Ingram et al., 2015). In this thesis, however, I argue that land negotiation and governance is a more inclusive matter in which all citizens partake by legitimising or opposing a policy. The power to decide, accept, refuse, or manipulate what has been defined as a policy or authority, of course varies with the set of capital one has at their disposal.

### 2.1.1. The concept of Governance – critiques and potentials

> Definitions and uses of *governance,* […] are as varied as the issues and levels of analysis to which the concept is applied. (Krahmann, 2003, p. 323)

The reason as to why definitions of *governance* are so diverse lies in the increasing acknowledgement of how far the concept needs to be stretched, to encompass all its determining factors. It may be employed to embrace numerous scopes of arrangements, scales, processes and practices, variable fields of social life, or different levels of formality (spontaneous, normative, legal, constitutional), to the extent that it threatens to be overstretched into futility, or losing its "analytical purchase" (Brubaker & Cooper, 2000, p. 1). And indeed, scholars have adopted the concept as an instrument that is adaptable to their respective focus in research, by expanding to what are considered governance-relevant attributes.

Many authors who discuss the concept of governance are concerned by its "irredeemabl[e] overstretch[ing]" attributes (Offe, 2009, p. 552). Suggested measures to contain the concept's meaning, are to limit what is considered strategic influence on public policy, and to accredit the core of state institutions a predominant structural authority (ibid. 2009, p. 552). While this operationalisation appears reasonable, unfortunately, it proved difficult to apply to the communal land of Namibia. Clear boundaries or even complete detachments between "spontaneous"

coordination of action and governance (ibid. 2009, p. 552) lacked, first, because the state is (still) too "weak" (Knight, 2010, p. 4) at the state peripheries, and because powerful non-state actors are many, it is nearly impossible to exclude anybody from potentially "impact[ing] upon socially relevant issues, through which they can block or promote public policies dealing with these concerns" (Offe, 2009, p. 552). Secondly, the system encompasses the institution of TAs, who consist of a vast number of individuals who remain anonymous in front of the central government.
The concept of *good governance* (Risse, 2007), propagated predominantly in development studies and discourse (UNDP, 1997), became symbolic for how governance has been amalgamated with a positivist, Eurocentric vision on a state-centred governance guided by the rule of law (Benda-Beckmann et al., 2009b, p. 9). Such normative governance concepts are applied in research questions that aim to assess governing strategies in terms of ecological or social sustainability, and equity, for instance (Agrawal & Benson, 2011, p. 199). Benda-Beckmann et al. (2009) criticize the good governance approach with regards to its, oftentimes, unrefined use as either referring to a social-democratic ideal or to the model of a liberal economy (Benda-Beckmann et al., 2009b, p. 9). Thus, literature on governance ranges from applying it as a structural concept, as a synonym for institutional control (Bartley et al., 1990; Hodgson, 2015), and as a form of control that is not tied to institutional authority (Benda-Beckmann et al., 2009b, 12; Wiersum et al., 2014; Ingram et al., 2015), to almost spontaneous, informal interactions (Benda-Beckmann et al., 2009b; Brondizio et al., 2009, p. 255). This variety of definitions and applications has been identified by some as having potential to "function as a bridge between disciplines" (van Kersbergen & van Waarden, 2004, pp. 143–144), and is criticized by others, for instance, for justifying the ignorance of "questions of power, distribution, and conflict" (Offe, 2009, p. 558). For the purpose of this thesis, the institutional aspect of governance is central to understand the mechanisms of ordering and negotiating the world. However, the relevance and interconnectedness of institutions within land governance reality is explored rather than presupposed *(→ Chapter 7*).
Benda-Beckmann et al. (2009b, pp. 1–2) understand the establishment of *governance* as proof of a wider conceptual transformation in scholarly thinking on legal politics. It reflects a turn in academic thinking from exclusively state-centred government to a functional understanding of agency as a characteristic of governance. Hence, governance, as a new concept, reflects legal anthropology's inclusion of multiple (potential) legal actors and references, promoting the notion in the context of local land claims allows stretching the field of inquiry beyond a clearly defined 'political system', into the social field. This interaction is what is ultimately under examination here.

### 2.1.2. A processual and cross-scale approach

Political and legal scientists increasingly acknowledge the need for a more elastic, cross-scale and processual concept of governance (Hinz, 2006; Benda-Beckmann et al., 2009a). Communal land governance in Namibia as a political system is characterised particularly by its semi-formal institutions, which are adapted or newly instated in the course of the reform, introducing complex amalgamations of procedures. Therefore, the topic of political or institutional character of communal land governance requires thorough scrutiny.
Processual concepts are needed to establish an image of local land governance, in its produced and contested natures, to do justice to "the interplay of interactions, institutions, actors, principles, policies, mechanisms and processes" (Ingram et al., 2015). Unveiling the local *nomoscape* (Delaney, 2011) and its forms of enactments is best achieved through picturing land governance as a social

process and product, which happens through “dynamic association between administrative institutions and other institutional practices found in the everyday associational life of people” (Davies, 2014, p. 2). In reference to Bourdieu’s notion of a social field, local land governance still lacks a commonly agreed and acknowledged set of “rules and conventions” (Bourdieu & Terdiman, 1986, pp. 830–831), as its boundaries – social, political, economic, and legal – are still fluid and increasingly transgressable. Thus, as the system of governance remains in the process of constitution, so is reality itself (ibid. 1986, pp. 830–831).

Because governance refers to a plurality of fields that exhibit each a different setting of normative standards, legal references, agency, and discourse patterns, it requires spatially-refined analysis. Peripheral communities without close links to, and knowledge of, the central government’s laws and processes, are especially required to adopt new discursive instruments and codes, in order to participate in the *game*, and to protect their interest reliably. For the case of Namibia, I suggest that a governance system does not ‘swallow’ another without undergoing substantial change itself. I adopt a multi-levelled approach to governance (Benda-Beckmann et al., 2009b, pp. 1–2), for it recognises governance as an interface between knowledge, normative standards, and self-techniques of re-producing conscious, normed social practice (Günzel et al., 2010, pp. 4–5). It is not restricted to the formal scale, to the process, or the exertion of power in a one-dimensional perspective. This study includes implementation and negotiation on an actor-level, because ultimately this is where governance measures succeed or fail. In its multilevel and multi-site dimension, my concept of *governance* is simultaneously a process of interactive rule-making (Ingram et al., 2015, p. 3), but includes also “a broader societal process based on social practices, values and principles” (Wiersum et al., 2014, p. 6), which are established as different forms of transformations in the analysis *(→ 7. Transformations in Legal, Political and Social Practice)*. The transportation of political logics, the land laws and authority ascriptions from the national judiciary into the lives of citizens in the peripheries involves several steps of implementation and a large network of stakeholders or governance agents. Through regional government offices, municipal councillors, and the TAs, the Communal Land Reform Act and related initiatives are negotiated from perspectives of the various fields.

In addition to the processual dimension, this thesis assumes a cross-scale perspective on land governance, hence including its reality and dynamics beyond one single level or “mode of governance” (Krahmann, 2003, p. 323). The implications of land policies and management are thus scrutinised from the point of view of different actors, and their respective influence on the success of those policies. This analysis includes practices that are not directly tied to statutory law, institutions, and procedures. This process arises “out of complex negotiations and exchanges between “intermediate” social actors, groups, forces, organizations, public and semi-public institutions in which state organizations are only one – and not necessarily the most significant – amongst many others seeking to steer or manage these relations” (Rose, 2008, p. 21; also Herdt & Olivier De Sardan, 2015, p. 5). A similar endorsement for a governance concept with a focus on agency and process rather than institutional structures, is put forth by Benda-Beckmann (2009b, pp. 1–2), who suggests to include “fully privatized and hybrid governance practices, *ad hoc* or institutionalized, such as so-called 'public-private partnerships', in which a variety of agents co-operate and which give rise to the emergence of new constellations of rules authorizing and organizing governance.”

The debate on whether governance describes a set of institutions or rather a field of processes and mechanisms, gains importance against the backdrop of land reform and reconciliation policies in Namibia. By recognizing “traditional governance as part of the overall national governance”, the Namibian state has introduced a particularly nested version of governance (Hinz, 2008, pp. 152–153;

also Ingram et al., 2015, p. 14), with numerous intermediary actors, institutions, norms, and various forms of governance co-existing side-by-side (Benda-Beckmann et al., 2009b, p. 8); not as a permanent condition, but a continuous process of negotiation.

### 2.1.3. The dimension of agency in Governance

The system of land governance rests on a high pile of 'layers of social organisation' (Benda-Beckmann et al., 2006, pp. 22–23), each containing norms that have been created through a locally and historically specific setting, and that have been naturalised to a different degree. The most deeply deposited is the "ideological layer", to which those of (semi-)legal institutions and processes, and "concretised social relationships" refer in their being and actions (ibid. 2006, pp. 22–23). Those layers do not work as an integrated, harmonious system, but as individual, yet interacting, layers (ibid. 2006, pp. 22–23), which are never completely harmonised. The moral ideas, on which the legal and institutional systems are built, and within which agency is planned and conducted, are in turn re-informed by those institutionalised systems and actions. Agency, or the concretisation of social relationships (Benda-Beckmann et al., 2006, pp. 22–23), is thus shaped in reference to official, as well as practical norms (Olivier De Sardan, 2008, p. 19). Those norms have evolved in response to, and in mutual relationship with, land reform and other political initiatives.
Even though political and legal fields build on presumed spatial and social delimitations (Schaap, 2007), I will refrain from analysing a local reality in isolation, but try to take the complex and constantly mediated contexts into account (Gupta, 1995, p. 377), based on the assumption that the locus of political authority is ever-changing (Krahmann, 2003, p. 323). A perspective that excludes the world beyond a local reality would decidedly inhibit my analysis, as the localities and polities of both state, traditional, and hybrid institutions are so overlapping and intertwined, that no single institution is dominant enough to provide a legally coherent setting. Besides, policies on natural resources are rarely only about the resources themselves, but also about identity politics, and politics of property; consequently, "local politics are rarely local" (McCullers, 2012, p. 327). In order to avoid all of these potential pitfalls, this study considers three dimensions of land governance: 1. The moral or common-sensical foundations of legal and political designs; 2. the systemic or process dimension, in which land governance reflects as a political system with (semi-)formal institutions and procedures; and 3. the agency dimension which reflects how the other two dimensions are responded to and re-negotiated in the public discourse and practice of everyday legitimisation. These three dimensions combined help in deducing how communal land users respond to moral and institutional imaginaries of the state. Based on the methodological choices of this study, the dimension of agency is the most empirically substantiated. The system, as a point of reference for all agency, becomes more complex through the legal and policy initiatives surrounding the Communal land reform. The shuffling of the governance system re-arranges the sets of rules and the values of capital forms. Sharpened for the specific interest in this thesis (Krahmann, 2003, p. 323) my concept of governance encompasses those three dimensions, which are connected through moments of governance interactions.

## 2.2. Legal Pluralism

The process of implementation of the Communal Land Reform Act (CLRA 2002) calls the notion of *Law,* as it exists in western scholarship, into question. The formalisation of (aspects of) customary

laws and Traditional Authorities, leads to an official acceptance of an alternative and potentially competitive legality (Benda-Beckmann et al., 2009b, pp. 1–2), and logical frame for authority production – creating a legal pluralism. The logics and effects of this legal pluralism, and more generally the role of law in local land governance, are the main objects of this chapter. The chapter expounds social workings of law and discusses the suitability of the concept *Legal Pluralism* to describe the shifting terrain of land governance in Namibia.

The Communal land reform, as a policy and legal intervention, has altered "the existing structure of rights, of legitimate positions of social, economic and political power" (ibid. 2001a, p. 47). In this context, where plural legal sets are in place, the customary and the statutory field each carries multiple "governance agents, who engage in new modes of exercising power" (ibid. 2009b, pp. 1–2). As the previous chapter has highlighted, (land) governance constitutes a highly dynamic, socially influenced and influencing field, that builds on similar principles as Delaney's *nomosphere*, which expands the *Legal* onto "elements [that] may be sublegal or extra-legal, informal and lacking the common indicia of […] positivist conceptions" (Delaney, 2011, p. 27). While it is certain that more than one self-contained legal framework is present within communal land, the number and boundaries of 'alternative legalities' remain largely unspecified; not least because the recognition of such alternatives depends on the way law itself is conceptualised. Also, the formally recognised aspects of customary law only embrace a small part of the 'laws' that are locally respected and executed (Hinz & Kwenani, 2006, pp. 204–205). A pertinent question is, then, what concept of law is accurate for examining local governance and agency, which is considerably shaped by customary, national, even international narratives and legal ideals.

Many political and legal stakeholders acknowledge the fact that formal law is merely one among many normative layers of governance. Despite, or rather, because of this fact, it is crucial to identify the concept in its range and its limitations. The recognition of law as a construct of political and social origin and its effects has earned it an important role within anthropologic research (Moore, 2001, p. 111). The focus of interest has expanded from how law is used as a political instrument to how it is conceived, especially with the discovery that the state is "not the only source of obligatory norms, but coexist[s] with many other sites where norms were generated and social control exerted" (ibid. 2001, p. 95). Among scholars with a focus on law in African states, two concurring approaches have developed: The Weberian, that still holds on to the idea that legal sovereignty is an aspirational goal of all 'state-building' endeavours, and the Chabal and Dalozian, that a society can – and does – live without reference to a sovereign rule of law (Chabal & Daloz, 1999). The latter view is spread especially among scholars who have studied legal contexts of the global south, where Common law was imported as "an alien body of norms" (Woodman, 2001, p. 28), and inhabits a more bendable and relative role than it did in its places of origin. Thus, among them, it has become widely accepted that statutory law is seldom the only normative framework or even the most sovereign at play (ibid. 2001, pp. 29–30).

### 2.2.1. The Eurocentrism and transferability of law

The benefits of the concept of legal pluralism are that it "offers most hope for understanding the role of diverse normative regimes", since it promotes a non-essentialist understanding of law (Tamanaha, 2000, pp. 320–321). Many scholars criticise how the universalised concept of law carries specific, although implicit, Eurocentric ideas. Those who do regard *law* as an Eurocentric imposition, emphasise that vernacular (Chimhowu & Woodhouse, 2006; Mnisi-Weeks, 2011) and imported legal

systems usually differ in their form, mechanisms, and even the ends they are working toward (Tamanaha, 2000). This is where a fundamental problem of Namibia's dual law takes shape: Common law is based on the custom and precedent (Amoo, 2008, p. 90) and common-sense as it had evolved in British society (Ranger, 2010, p. 212; Dlamini, 2015, p. 41) or in line with the Roman-Dutch law (Hubbard, 2007, p. 209; Needham, 2001, p. 12206; Amoo, 2008, p. 69). Through long processes of documentation, *technologisation* and *expertisation* (terms that will be laid out in more detail in the process of this thesis) – all strategies of "[j]uridical ratification" (Bourdieu & Terdiman, 1986, p. 840) – , the law adopted an air of something more valid than vernacular sets of 'customary' law. In consequence, this superposition of a foreign order onto a locally evolved normative order, inevitably leads to a fundamental power imbalance. After all, the universalised discourse of legitimacy that is owned by the imported political, moral, and legal ideas, always threatens to define local versions of justice, its forms, and mechanisms from its own perspective. With their term "soft law", for instance, De Bùrca and Scott describe "alternative laws" as constructs that fundamentally differ from European law in terms of mechanisms and purposes. Thus, they promote legal pluralism to be inherent in the concept of "new governance", describing "a shift in emphasis away from command-and-control in favour of 'regulatory' approaches which are less rigid, less prescriptive, less committed to uniform outcomes, and less hierarchical in nature" (Búrca & Scott, 2006, pp. 3–4; also mentioned in Benda-Beckmann et al., 2009b, p. 9). However, even such conceptual attempts at equalising vernacular legal ideas fail by emphasising their marginalised role as 'alternative' constructs.
The current discourse on legal pluralism generally agrees that the law is a major political instrument to legitimise the social, economic, and political character of a field (Benda-Beckmann, 2001a, p. 47). In Namibian communal land governance, an emphasis on law's world-creating power (and the world's law-creating power) (Bourdieu & Terdiman, 1986, p. 839) is only appropriate, if it also refers to informal or alternative legalities, such as customary law. This presupposes – and acknowledges – that a plural legal setting destabilises any aspiration to stable superiority or sovereignty by one legal authority or field, hence fluidly adapting to a field-transgressing governance (Benda-Beckmann, 2001a, 2007, 2002; Benda-Beckmann et al., 2009a; Moore, 2001, p. 111; Fuller, 1994, p. 10).
An important variance in perspectives exists on how to reconcile the concept of legal pluralism with the concrete ways in which legal fields interact. Does legal pluralism describe the inclusion of one legal system into another, where their coexistence is inherently hierarchical? Or are two legal systems promoted and enacted as two (or multiple) equal, co-existing systems? Von Benda-Beckmann and Von Benda-Beckmann (2009b, p. 8) argue that the two options are mutually inclusive: Different governance-guiding rules may be in "peaceful, relatively unstructured and complementary" co-existence, meanwhile always carrying the potential of "intense, and at times violent, conflicts in which reference to different legal orders rationalizes and justifies opposing economic or political 0objectives". The duration or strength of co-existence, they claim, primarily depends on the division of accountabilities and character of each legal order (Benda-Beckmann, 2002, p. 37).

### 2.2.2. Empirical dimensions of law

The approach of *Legal Pluralism* gives due attention to the "empirical reality" of normative orders, beyond the official state laws (Odgaard, 2005, p. 246). Depending on the focus of a study, its conceptualisation, however, varies between three dimensions: The dimension of a *legal logic*, which law and legal action refers to, and which may serve as an explicit reference for actors to legitimise their action, that of legal and judiciary application, as the point of interaction between land users and

any legal institution or authority. This approach stems from a conviction that law is both cause and effect of the social world (Moore, 2001; Bourdieu & Terdiman, 1986). My position is to look at both formal and unofficial legal and normative orders combined as they manifest in local governance. Rather than adhering to a dual formal-informal binary, norms are scattered along a continuum that expands from the statutory formal law, which holds a specific form of political legitimisation, to the most implicit, and internalised practical norms, which are beyond explanation and declaration to outsiders.

According to Olivier De Sardan (2008, 9), the term *informal* often refers to local, non-western regulations or institutions, "where these are considered to be typically African, endogenous and not originating in the Western model – in other words, the unofficial mode of regulation". Despite this rather patronising perspective and terminology, his recognition is important that non-formal behaviour often still follows norms, only of a less formal standard (ibid. 2008, 9). This recognition invites to explore alternative forms of legality, legitimisation, and authority, and is a crucial step towards understanding the interactions between the formal and the informal realms. By considering new arrangements, such as "institutional bricolage" (Cleaver, 2003) which "refers to the cross-cultural borrowing of institutional arrangements and their underlying norms, values and social relationships, and the crafting of new arrangements" (Ingram et al., 2015, p. 3), the approach has shifted closer to the scene of social relationships, away from an abstract, institutional level of analysis. Simultaneously, it is a reminder of the underlying normative or moral fabric that feed the fundamentally different versions and expectations of governance. Their informality is not a sign of weakness (Lund, 2013, p. 29), but a sign of a more recent and less publicised social construction.

The question now arises, how statutory formal law is containable at all as an authority, where it has not (yet) reached the sovereignty required and assumed by (domestic and international) state-building architects. Of course, normative and legal frameworks have never completely been identical (Delaney, 2011, p. 27); if they were, there would be no need for lawyers and courts. However, in Western ideals, law is always to reflect a will to keep up with changes to common-sense and/or the habitus (Bourdieu & Terdiman, 1986, pp. 848–849). This leads into the discussion how flexible a notion of law (or the *Rule of law*) ought to be, in order to accommodate realities beyond the origins of the imported, Western moral fabric; however, without expanding to a degree in which it completely loses legitimacy and purpose? On this tightrope walk, some scholars attribute the term *law* with any normative order, while others consider the differences between normative layers to be too essential to put them on a same level. Bennet & Vermeulen (1980) for example, expressed their fear that the naming of customary justice procedures as law would be a tremendous oversimplification, because rules of African origin assume a radically different role than the law of the "western mind", setting prime value on "reconciliation, not impartial application of rules" (Bennett & Vermeulen, 1980, pp. 212–213). Along similar lines are Tamanaha (2000) and von Trotha (2000), who dismiss such disregard of "fundamental differences in form, structure and effective sanctioning between state law and other normative orders" (Benda-Beckmann, 2002, 38) as ethnocentric equalisation.

For this thesis, it is of major concern to forestall both threats: Neither is the concept of law to be expanded too far, nor can we risk overlooking unformalised but agency-relevant normative orders. This is hopefully achieved by looking at legal logics, practice and their influence through daily interaction with reference to a continuum of formality – not necessarily identical with the continuum of relevance. This continuum of formality allows an integrative look at the dynamic and mutually informing field between (plural) formal legal definitions and guidelines and their enforcement practices and reactions of rejection, or syncretistic absorption into the local normative doxa *(→*

*2.3.4.)*. However, in order to distinguish authors and origin and different degrees of formalisation, the *Legal* in this thesis refers to the written statutory law, or the written and formalised customary law, if so specified. State law has at least one fundamental advantage when in direct competition with the customary for accountability: It relies on documentation and expertise, both of which are tools of naturalization or legitimization for a specific – and hence the constitutional – worldview or moral (p)reference. Legal documentation thus acts as a symbolic reinforcement naturalisation of norms. The legal field at stake is a complex construction of diversely formalised and explicit norms and rules. Consequently, legal pluralism cannot be imagined as two opposing systems which provoke a clear and differing standpoint in any situation, but rather one in which norms have various situationally bound meanings, assertiveness, and implicitness.
When observing conflict procedures or how rights – to land for instance – are enforced or acquired, a "functional characterization of governing activities" (Benda-Beckmann et al., 2009b, pp. 1–2) and legal activities more specifically, is essential. In such cases the legal dimension at play consists of the set of rules that is observed by the concerned people in a specific legal moment (Odgaard, 2005, p. 246), which most likely include or are complemented by practical norms, and moral codes. The topic of land rights offers a great opportunity for observing law through an anthropological lens. Through a focus on social interaction as decisive processes for effectuating or preventing a *de facto* right, the situational and relative power of law(s) becomes tangible (ibid. 2005, p. 246; Moore, 2001; Eckert, 2006). For the purpose of this study, it is useful to view its complex institutional framework as legal pluralism, in the sense that two legal systems with different inherent logics (e.g. Haller, 2010, p. 433), forms, and institutions co-exist on a local scale (Benda-Beckmann, 2002; Woodman, 2001).
Access to any form of justice has a great impact on social coexistence; whether this justice is informal, extra-legal, or formal is secondary (Benda-Beckmann, 2001a, p. 53). Yet, the primary status of state law must be kept in mind, otherwise its specific features, such as the inherent postulation of legal or political sovereignty of the state as the judiciary author, which would risk systemic underestimation.

### 2.2.3. Interweaving State Law and Customary Law

In a singular governance system, the rules (of the game), which actors can refer to when acquiring or defending a status or resource claim, are unequivocally provided. By means of its multiple sets of rules, ascribed to commercial versus communal land, common versus customary law, or national citizen versus traditional subject, Namibian communal land governance disposes over a complex web of rules, norms, and moral references. Because the legal fields are vastly undefined in their borders, they provide scope to manoeuvre for actors who dispose over respective transferable capital currencies.
At this point, it is important to remark an inherent paradox in opposing 'common law' to 'customary law', which in German translate both as '*Gewohnheitsrecht'*. Hence, establishing two legal sets, each claiming to be based on shared habits, practices and norms, but applied to the same group of people, inevitably culminates in a paradox (Woodman, 2001). A 'common law system' is a rule of law based on the customary law (or justice) or "legal tradition" of a certain group or society. It is shaped by a "common familial experience" of specific precedents and interpretations (Bourdieu & Terdiman, 1986, pp. 832–833), which serve as a reference for future cases and contribute to award its members with a "sense of the game" (Bourdieu, 1990, p. 82). Precedents, as common experience, thus are

mechanisms that align, create, reinforce and refine a *legal habitus* that incorporates "categories of perception and judgment" (Bourdieu & Terdiman, 1986, pp. 832–833).

Since the 1970's, scholarship on customary law has undergone a transition from focussing on alternative instruments of "dispute management", over "the role of law in ordinary social relations and social behaviour", until it became regarded as one component within "complex legal systems" (Benda-Beckmann, 2001b, p. 5707). After 2000, the contextualisation and concept of customary law has been employed in various settings and to support different agendas, ranging from human rights discourse to pragmatic resource claims. The customary moral fabric of the Kwanyama (as well as those of other traditional communities), is interfered with by the attempt to join state judiciary with the customary law. This results in a *de facto* forceful subjugation to the former, by fractional inhibitions, and partial requesting answerability (through documentation, or stipulated institutions). Each such non-conformity poses a new challenge to this precarious co-existence of legal systems and logics. The inclusion of TAs and customary laws in legal texts and administration of communal land is a strongly debated matter. How far should, or must, the central government restrict or interfere with the authorities and definitions of the TA? A fundamental reservation that is perpetually carried into this discussion is that customary law was a natural enemy to development and political modernisation. Among the arguments is the claim that an independent judiciary is indispensable, but unattainable in many customary systems: They do not provide a "sphere of authority protected from the influence, overt or insidious, of other government actors" (Amoo, 2008, p. 93). This requirement is neither fulfilled by the state nor by the customary judiciary, and hence an essential principle for overcoming despotic rule and achieving "development in Africa" (Diescho, 2008, p. 41) is unattainable. Again, such claims are countered by those who argue for a de-essentialising of statutory law (Tamanaha, 2000). Woodman for instance claims that the potential of "producing development through customary law" is undeservedly neglected in international aid narratives, thus marking off on national policies (Woodman, 2001, p. 32).

> The earlier law, the one to be replaced, […] is regarded as the main cause or reason for the unsatisfactory social and economic conditions to be changed; it becomes the scapegoat for underdevelopment. Law and 'institutions' must, therefore, be researched and, even better, newly designed. (Benda-Beckmann, 2001a, p. 47)

According to statutory legal and institutional stipulations, the relation between state and customary law is a clearly hierarchical one (Parliament of the Republic of Namibia, 22 December / 2000, p. 12). Meanwhile, it remains unspecified how this legal hierarchy plays out in the reality of legal practice, for instance when or by whom contradictions are to be identified, and how their application ought to be terminated. There is a lack of a common order, or basis legitimacy (*Basislegitimität*) (Popitz, 1976, p. 38). However, legal pluralism is not to be viewed as a simple duplication of layers within a static system of law and generic legal practice but extends to a multiplication of moral ideas or *fabrics*, which offer reference, and thus create considerable insecurity. The fact that the two legal systems are identified as such, after all, reflects that the authors of state law conceive a difference between their definitions of 'reasonable', 'fair', 'just', and consequently legalised social behaviour, and those applied and integral to the vernacular, 'customary' laws.

Of course, for the sake of international collaboration, global trade and relations, it can be argued that one sovereign legal framework would be helpful to appear as a nation with common and unified norms. And of course, the extensive documentation and officialization of the Roman-Dutch law (Amoo, 2008, p. 69) serves these purposes probably most efficiently. It is, however, a constant effort to try and conceal that its foundations lie in the customs and customary law of a certain place and time. Its applications run much smoother in its places of origin than in Namibia for instance, where

state law remains an imported logic despite a century of interweaving and adapting with local ideas. This interweaving is not to be underestimated either, as emphasised by scholars of law, who particularly point out the success with which the Namibian legislative and judiciary "have adopted a values-oriented approach […] and have thereby developed home-grown jurisprudence based on value judgments and an epistemological paradigm rooted in the values and norms of the Namibian people" (ibid. 2008, p. 94). It is not my aim to devaluate this positive assessment, but rather to inquire why yet great differences between "the values and norms of the Namibian people" (ibid. 2008, p. 94) seem to persist to such an extent, that different laws are required to cater to both.

In this context, it is crucial to approach points of disagreement between the two legal orders from a substantive (legal) point of view, but also to critically scrutinise some of the employed narratives on a more informal stage of negotiation. Through the convergence of local, national, and international normative standards, a syncretistic arrangement of meaning and of law is established:

> The Namibian legal system […] is an amalgamation of Westminster-style Constitutional law, Roman-Dutch common law, African customary law and international law. Most of what constitutes the corpus of Namibian law is not codified and must be distilled from the evolving body of jurisprudence. (Mwanza Geraldo & Nowases, 2014)

However, this body of jurisprudence is merely another form of embodied common-sense, similar to the (plural) legal system. It is a widely-researched and agreed fact, that law is historically closely interwoven with a respective common-sense (Foucault, 1991; Bourdieu & Terdiman, 1986; Eckert, 2006). Law – in this case encompassing customary and statutory – and a respective common-sense or moral fabric are related insofar as they both expand along a continuum of internalisation, ranging from norms that need forceful explicitness and coercion, to those that are in complete harmony with the common-sense, and thus as laws *de facto* obsolete (*see Figure 3*).

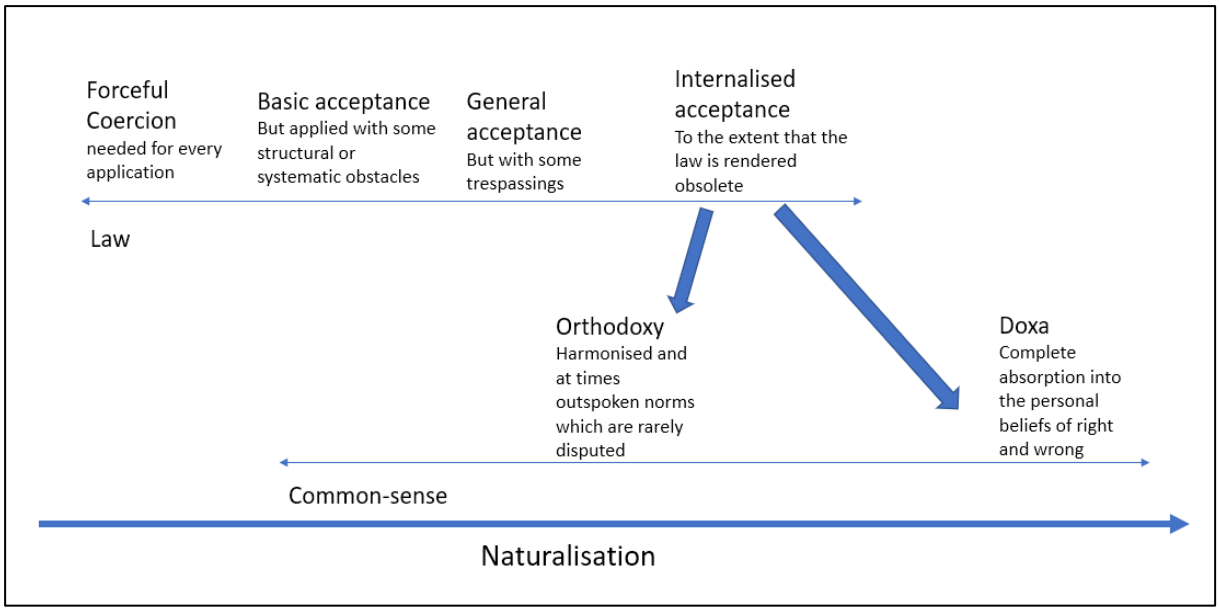



**Figure 3 Continuum of the Naturalisation of Law and Common-Sense** (Weidmann 2018)

In the communal land of Namibia, such synchronisation seems particularly out of reach, because there are two referential fields of common-sense, or moral fabrics. The management of such a legal pluralism – as in dividing, hierarchising, and arguing a certain case – is rendered more difficult through an underlying pluralism of moral references, or doxa.

### 2.2.4. The process of Law-making: Naturalisation of norms and a moral fabric

The creation of laws and institutions, as well as the manner and vehemence with which they are implemented, is crucially shaped by social and moral needs and challenges. Law is thus always founded on an underlying normative system, which reaches beyond the known, the consciously negotiable, the pragmatically explicable (Odgaard, 2005, p. 246). We must therefore understand law not as "a passive acquiescence or belief system" (Eckert, 2006, pp. 46–47), but as a construct which is based on a referential framework of a moral fabric.

Law cannot be navigated without considering the existing effect of common-sense on law and the actual role of law, or the dominant discourse(s) on the political-legal stages (Meneses, 2006, pp. 100–101). As the previous chapters have illustrated, "the value of the cultural capital of legality" (Eckert, 2006, p. 46) within this plural legal context is variable, depending on an actor's moral references. A moral fabric, comparable to Geertz' *common sense* (1987, p. 265), consists of agreed forms of behaviour, which serve as a reference for planning and anticipating social action. These agreements, which together weave a moral fabric, however, can be of conscious or subconscious nature; of expressed, re-emphasised *orthodox* or allusive, implicit, *doxic* character (Bourdieu & Terdiman, 1986, p. 848). Collective constructions of the past, identity and rights gain validity and resilience through a widely unspecified 'stickiness' (Lund, 2013, p. 29), which is "related to the institutions involved in the competition" (ibid. 2013, p. 29), but also more informally by continuous social approval. It describes a measuring degree of sorts, where a norm is placed on the doxa-orthodoxy continuum. The continuum illustrates a fluid process of *normalisation*: Through continuous testing and probing discourses or ideas are normalised with the passing of time (Bourdieu & Terdiman, 1986, pp. 845–848). If they prove relevant and acceptable as common-sense, they may pass from *orthodoxy* (consciously accepted or legitimised guidelines, which are explicit and monitored), to a status of *doxa*, norms that seem so self-evident and true to the extent that they ultimately "turn into unchallengeable absolutes" (Loewenstein, 1953, pp. 693–694), which no longer require any form of assertion (Bourdieu & Terdiman, 1986, p. 848). By way of subscribing to such norms in practically accumulating and spending the stakes and currencies at play, an actor commits to the respective field – or *game*. Law is "a quintessential instrument" within this continuum of normalisation (ibid. 1986, p. 848), as over time, and with continued social enactment and acceptance, legal norms pass from a status of explicit coercion, over orthodoxy, and possibly to a doxa, where a law itself is rendered redundant. According to Bourdieu, typical measures of naturalising state law include a reflection on objectivity through "specific organizational structures and mechanisms" and subjectivity, by realising "itself in social structures and in the mental structures adapted to them" (Bourdieu et al., 1994, pp. 3–4). As plural sets of rules apply, actors are inhibited from gaining a "'feel' for the game" (Bourdieu, 1990, p. 82) or a certain "sense of one's place [and] of the place of others" (ibid. 1989, p. 19) in the context of north-central Namibia. This lack of *Ordnungssicherheit* (Popitz, 1976, p. 35) restrains the ability to anticipate future rules and stakes at play, and to making informed strategic decisions. Thus, by taking any legal action, formal or informal, actors are forced to position themselves within the two moral fabrics of common-sense. They are forced to rethink their references and ways of referencing, in order to steady their position or their rights. The reference or orientation to a moral fabric remains essential in the process of choosing a coherent strategy in a given setting, not only for those who aspire a formal authority, but also to defend a 'simple' claim, such as a land right.

The moral fabric consequently presupposes heterogeneity and fluidity, yet it is tied to a community among which it is shared. The notion of 'fabric' reflects these blurry borders, its characteristic potential to interweave with foreign ideas and strategies. Yet, a moral fabric is not detached from specific spatial and social connotations of shared realities: A pertinent example is the concept of *tradition* or *custom*, which gains coherence from a spatial and social ascription which is simultaneously existential and vague. A continuous adaptation is essential to re-enforce a local, or *vernacular* identity, and an appendant politics of habitus (Schwingel, 2009, p. 79) and identity (Lindeke, 2014, p. 85; Bayart, 2009, 2013; Werner, 1989; Kyed & Buur, 2006; Kössler, 2000; Akuupa & Kornes, 2013; Davies, 2014; Chabal & Daloz, 1999). The two moral fabrics at play in local land governance each dispose of a different set of mechanisms to ensure their naturalisation. The priority of (oral) tradition is its close relation "to the experience of a unique place and social setting" (Bourdieu & Terdiman, 1986, pp. 844–845), hence responding flexibly and immediately to changing local needs and realities. Written law – and its underlying moral fabric – on the other hand, provide the "disciplined technical refinement" (ibid. 1986, pp. 844–845) of norms that may be the only way to establish and maintain a sense of a larger, stable moral fabric.

### 2.2.5. Different mechanisms of Naturalisation: documentation vs. flexibility

Formalisation is an act of juridical creation and therefore a powerful channel for ideas to achieve social importance (Bourdieu & Terdiman, 1986, p. 842). Namibian state law has an essential advantage when in direct competition with the customary, for it relies on documentation and expertise – both of which are tools to naturalise or legitimise a specific moral fabric. Formal law, and its expertly representation, "ratifies and sanctifies" the respective doxa in a way that resembles an objectivity and universality claim that is characteristic for orthodoxy (ibid. 1986, p. 851). This proclaimed objectivity, however, is inherently untrue, as international law is biased through its historical and geographic origins, with its naturalisation tracing back to fundamentally Eurocentric moral concepts. Yet, a strong belief in formalisation and expertise as tools to achieve power, political status, and legal rights, has been incorporated in the national moral fabric itself. Besides documentation, or, "the cult of the text" (ibid. 1986, p. 839), another *trick* of the imported moral fabric to expand its scope of recognition, is through *expertisation* as a universal, (seemingly) neutral, and depoliticised process (Bollig, 2011, pp. 157–158). To distinguish state law's underlying norms, ideas, and practices further from any subjective or biased origin, they are not only documented, but also adopted by specifically instated experts: judiciary experts, lawyers, judges, and academic disciplines serve to "define the boundaries of law and distinguish it, as a method of social control, from other related modes of social control, such as religion, morality and custom" (Bennett & Vermeulen, 1980, p. 214). Expertisation is an effective instrument for the normalisation of ideas, laws, institutions; and in this formalised shape, the western doxa was 'exported' into other parts of the world. While the exporters probably understood it as a common-sensical set of norms that must be globally applicable, it had unfathomable effects on the creation of new elites and inequalities around the world. The definitional power that comes with the expert status of legal elites (Bourdieu & Terdiman, 1986, pp. 834–835) is just as valuable a currency in land governance as their knowledge of the moral embedment of legal and institutional logics. The naturalisation of *expertise* as a universal (and thus morally neutral) doxa, progresses by its extensive use in language of development organisations: *Lack of expertise* is widely used as a, seemingly, value-free term to

describe the unsuitability of local resources to the demands of state-building (Thiem & Caplan, 2014, p. 19).

It is quite convincing to believe in the hegemonic status of documentation, and the 'formal' (McConnell et al., 2012), firstly, because it depicts a non-opinionated materialising of reality, and secondly, it offers practical tools to enforce or support a normative stability. Both of these effects serve to cover all underlying intentions, "by making them relatively immune from critical reflection" (Della Fave, 1986, p. 481, with reference to Bourdieu, 1977; Habermas, 1979). The naturalising effect of formalisation has neither escaped traditional leaders, who display an increasing interest to consolidate (certain) of their customary norms and identities. Considering these strong instruments or mechanisms, which serve the imported moral fabric to establish roots in the national field, it is surprising that customary law, TAs and their referring moral fabric were strongly maintained thus far. This resilience is often explained by their adaptability, a way of "always develop[ing] in relationship with, and in response to, other normative orders" (Benda-Beckmann, 2001b, p. 5707). This characteristic requires a certain freedom of definition, which is often seen as a contradiction to its claim to *tradition*:

> The struggle for self-determination of indigenous peoples also suffers from traditionalization of indigenous law. Because reference to long traditions strengthens the claim to self-determination, attention is called away from the flexibility and adjustability of such legal systems. (Benda-Beckmann, 2001b, p. 5705)

The instrument of resilience of customary law is thus crucially dependant on self-definition and threatens to clash with attempts of formalising tradition, which inevitably leads to solidification. Several scholars argue that this flexibility is essential to customary law (Bennett & Vermeulen, 1980, pp. 212–213; Amoo, 2008, p. 90). Effectively, the oral nature of customary law and of knowledge transmission defies the level of precision that is "so sought after in western jurisprudence" (ibid. 1980, pp. 212–213), because they pursue fundamentally different priorities than 'western' law, namely that "cardinal value" is the settlement of a dispute, rather than the rule of law (ibid. 1980, p. 213).

## 2.3. Legitimisation: Symbolic Capital enacted

The limited effect of formal law became increasingly obvious, as I investigated the basis of legitimacy of TAs. Because this study focuses on the *de facto* influences experienced by holders of authority positions and of customary land rights, I realised that the processes of power configurations required a primary focus. Thus, I gave preference to analysing processes of legitimisation rather than structural perspectives that promote power and legitimacy as static and homogeneous. The source of TAs power, however, was located in the in-betweens of structures: In negotiations, manoeuvres, argumentation, strategic capital investments, prioritisation, and moral referencing. Therefore, to understand the process in a system of land governance, I approached the "question of legitimacy" (Chabal & Daloz, 1999, pp. 53–54) by analysing social practices that appear decisive in the securing of claims to land tenure and land authority. Legitimacy is the goal of all strategies aiming for the recognition of power, (land) rights, membership of, and positioning within, a group:

> The power to impose upon other minds a vision, old or new, of social divisions depends on the social authority acquired in previous struggles. (Bourdieu, 1989, p. 23)

In a context of plural moral fabrics and corresponding currencies, all symbolic capital lacks the strength described in the above quote. Imposing recognition is never undisputedly accepted,

because there are a multitude of currencies and credit markets of symbolic capital (ibid. 1989, p. 23). This quote however illustrates the interactive relationship between agency, power, and a governance system.

Legitimisation as a practice, and as a form of exerting power that is open to any participant of a group, embodies the active counterpart to capitals and their application within the economy of power. This outcome is anticipated on the basis of experience, and the knowledge (or assumptions) of the rules of the game (Bourdieu & Terdiman, 1986, pp. 830–831). Legitimisation is the aim of daily striving for recognition for power, land, and belonging. In Bourdieu's line of argument, the process-character of governance lies in the naturalisation of the rules and practices that take place within the field, and in the common acceptance of the stakes that are implicit to the very *playing of the game*. If we are thus to understand the anticipated effects of a strategy, the process of naturalisation takes centre stage. What is perceived as conventional, common-sense behaviour in a specific field, is what adheres to established and re-established norms, to ongoing adaptations of what is socially legitimised. *Legitimisation* is hence not a static rule of the game (Schwingel, 2009, p. 85), but a relational and situated act of recognising a specific claim to authority or resource. Due to the plural legal and institutional frameworks, an authority position ascribed by one system is not necessarily legitimised by the other, and loopholes between the legal systems and social practices most likely and immediately manifest through *performed* legitimisation. Legitimisation is the recognition of a claim that is put forward, either by agency or discourse, through formal or informal channels (Van Dijk, 1993; Boone, 2003b; Appadurai, 1995; Stryber, 2001).

As participants in the process of interactive rule-making (Ingram et al., 2015, p. 3; Eckert, 2006, pp. 46–47), all actors adapt their behaviour and discourse to the transformations in the moral fabric, but re-shape the latter through their own power *of* legitimisation. They all partake in spreading, advocating, or denial of claims and norms:

> Symbolic capital is a credit; it is the power granted to those who have obtained sufficient recognition to be in a position to impose recognition. (Bourdieu, 1989, p. 23)

Every actor has a certain power to legitimise, but the effect depends on the status and legitimacy of the legitimiser themselves. A continued legitimacy is equivalent to symbolic capital (Bourdieu, 1989, 22); and a necessary asset in order to raise and maintain claims. The more symbolic capital actors hold, the more constant and secure their legitimisation, their impact in (de-)legitimising other power agents. Repeated approval of moves, procedures, or behaviours may lead to their naturalisation to an extent that they convert to *rules* of the game, along the spectre of naturalisation from law to orthodoxy, to doxa. The depth of recognition, varying from active support to resignation, and the time frame over which it should be sustained, decides on the 'degree', or naturalisation, of a legitimisation.

Legitimacy is a broad concept, so much so that in scholarship it has been variably looked at as a playing *move* or the *goal* of the game; largely depending on the weight one ascribes the individual and informal agency within a social and political field (Barnaud & van Paassen, 2013, p. 8). Therefore, it is likely appropriate to distinguish categories of strategic paths, according to their audience, depth, and whether they are employed to acquire political status or 'mere' social recognition *(→ 2.3.2.)*. The 'audience' that is to be addressed by a claim decides over what moral fabric an applicant must consider, and whether an emphasis ought to be put on legitimate ways of obtaining or maintaining a status or claim; translated to *input*- or *output-legitimacy* (van Kersbergen & van Waarden, 2004, p. 156) *(→ 2.3.3.)*.

Governance actors dispose over diverse combinations of capital forms and their social and spatial positions, which vary considerably in value and effect in the legitimisation market. With reference to Bourdieu, strategies are applied capital with a certain expected outcome. Social (informal) and political (formal) legitimisation differ in their paths and sources. Especially in a setting of multiple laws, regulations, and norms, the process of achieving legitimisation is of utmost importance for the value of an authority, being at mercy of audiences from two fields. In effect, the status of TAs is equally at stake, with both the state and their community persistently holding power to support or challenge their authority.

### 2.3.1. Legitimisation: The process and product of Naturalisation

The heeding and ascertainment of what is deemed "right and proper" (Lipset, 1959, p. 71) – or at least what is not worth challenging at a specific moment in time – makes legitimisation an inherent aspect of all social practice. The actual withdrawal or acceptance of any form of power, however, is a fragmented, assembled, multi-layered, and momentary operation. It can be derived through official or unofficial, formal or informal, spontaneous or institutionalised designations. Legitimisation as a "social creation" (Utas, 2012, p. 18) reflects what practices, authorities, and laws an actor subscribes to; thus, assembling an image of her/his moral references. The normalisation effect describes "the imposition of legitimacy in a social order" (Bourdieu & Terdiman, 1986, pp. 845–846), hence the interconnection between two bendable and adaptable constructs. Accordingly, Bourdieu suggests a view on legitimacy in the form of different degrees of *naturalisation* within which individual claims and responses for legitimacy are situated; but also, as collective and cumulative strengthening of a legitimacy's depth. Naturalisation is a third source and path of legitimisation, supporting claims which are neither coerced nor necessarily attractive to an individual as isolated impositions – representing a middle way between applying soft and hard power (Nye, 2009, p. 160) –, but which are legitimised through a shared "belief pattern" (Loewenstein, 1953, p. 691), "common cultural codes" (Utas, 2012, p. 18), or "rules of the game" (Stryber, 2001, p. 8700). Such forfeiting of individual interests in favour of the collective moral fabric is directly tied to the process of naturalisation of collective norms (Bourdieu & Terdiman, 1986, pp. 845–846): A raised claim is promptly compared and related to personal imaginations of normality, is instantaneously assessed as acceptable or offensive. Such status or right, in order to outlast as a non-violent condition requires perpetual reassuring of its legitimacy. So long as legitimisation is sustained, a power holder may employ it as symbolic capital, an exchange agent, to achieve further forms of capital. The credit of symbolic capital carries a circular potential as it is disguised as a credit (Bourdieu, 1989, p. 23), "as legitimate competence, as authority exerting an effect of (mis)recognition" (ibid. 2002, p. 283).
In empirical observations, it is close to impossible to confidently differentiate between *active* legitimisation and mere capitulation. This is because, as the variegated approaches in literature to legitimacy reflect, the scope of consciousness of actors for their consent ranges from "cognitive orientation" to rules, over "attitudinal approval", to "behavioral consent to those rules" (Stryber, 2001, p. 8701). This range again resonates with the doxa-orthodoxy continuum as it was depicted earlier (*see Figure* 3), based on Bourdieu's conceptual image of a transgressional boundary and process between internalised, unquestioned truths and explicated bases of arguments. A further reason for the difficult separation between the active and passive approval of rules is the complex intertwining between self-interest and systemic submission. Individual practices – the concrete *moves* – that are designed to follow practical and rational logic, thus trade collective norms against

individual claims or enrichment (Schwingel, 2009, pp. 83–84), counteracting the willingness to escalate "interest-based conflicts" (Stryber, 2001, p. 8700). However, personal interests and normative security and stability are also strongly interdependent; Thus, ultimately, a person's claim is always strictly measured against a moral fabric and its systemic stability, on which actors build their self-evaluation and, accordingly, their participation in the game (Della Fave, 1986, p. 480); and so, all "[g]overning activities" (Benda-Beckmann et al., 2009b, pp. 1–2) are guided by normative fabrics and respective rules. The process of naturalisation, contributing starkly to the building of such fabric, attributes symbolic power to selected rules, people, or institutions, by reproducing and strengthening their originally invested power (Bourdieu & Terdiman, 1986, p. 840).
In this study, in order to account for drastic shifts within the *ordinary* and their interweavement into moral fabrics, a combination of a conflict- and an everyday-perspective was required. Observing the *everyday* and opposing it to untested situations of disruptions, helps to understand what is required to achieve legitimisation. The latter exposes boundaries between the legitimate and the intolerable in a particular way; Examples for disruptions are rebellions against perceived favouritism or overreaching, which are deemed "unjustified excesses" (Chabal & Daloz, 1999, pp. 53–54). When a behaviour or claim violates the moral fabric beyond a tipping point of urgency, it may be met by strong, even violent opposition. The forms of claims which are expected to be met with opposition, because they divert from naturalised norms and behaviours in a respective moral fabric, may be emphasised through various strategies ranging from moral suasion (like shaming) to pressure of different kinds (Offe, 2009, p. 562). Conflicts offer a great opportunity to assess the relational character of governance, as to how power can be exerted or opposed by means of capital, strategies, and arguments. These cases only gain validity, however, if put in relation to situations that are not opposed. Strategies of disruptions show how the role of time and naturalisation not only work on the level of norms or law, but also in daily relations of legitimisation – which have been argued to be particularly diverging in postcolonial settings (Chabal & Daloz, 1999). Through finding common patterns of resistance, we are able to see "what power relations are about" (Foucault, 1982, p. 780), and thus, what makes a claim legitimate.

### 2.3.2. Distinguishing Symbolic and Political Legitimacy

So far, this chapter has established that formal and informal forms of power lie particularly close to each other in postcolonial contexts, resulting in a governance system of unpredictable and negotiable character. With several moral fabrics at work, the field is much more intricate to define, the rules of the game are less established and easier to bend, an excess of norms (Herdt & Olivier De Sardan, 2015, p. 4) to be followed, leading to a mutual suspension of claims (Olivier De Sardan, 2008, p. 13).

Although rarely expressed as an explicit goal, each person aims for a status within a community which requires continuous recognition. Any status claims certain rights (e.g., land, property, or governing authority), relies on legitimisation. Claims to authority and claims to resource rights are similar in their urgency and exposure on a local scale. They both seek constant recognition by their counterplayers. Be it a claim for tenure security or for authority over other actors, both claims can easily be destabilised or even undermined by the slightest active opposition. An authority claim can be denied legitimisation, or de-legitimised, by non-compliance, whereas a land claim may be denied by intrusion, theft, or removal of a fence or other structure. Even though formally no ownership can be claimed to communal land, a land user may aim at a legitimisation of similar stability; the key is to

convince powerful counterplayers of one's justified entitlement. Legitimacy for rights is hence a crucial precondition for tenure security of any communal land user. Thereby, the legitimisation process and symbolic power that provides a land claim relative stability, can well be compared to those required for authority. And just like claims to authority, also to achieve and sustain tenure security, a skilful manoeuvring is required along a chosen path, and all layers of normalised norms involved.

Not only are the process of legitimisation of rights and authority similar, but they are linked by contracts, as the recognition of a (land) right simultaneously acknowledges the authority of whomever had conferred that right (Sikor & Lund, 2009, pp. 1–2). Both need to be sustained through "skilful management of […] moral judgement" of both the claimants and "judges" to a claim (Lentz, 1998, p. 48). These "mechanisms of reciprocity" (Coicaud & Curtis, 2002, pp. 11–12) are most likely to persist as long as the players refer to the same moral fabric, defending the same concepts of *property* and *power*. However, as the following chapters uncover, these essential terms are far from a single harmonised and coherent discourse. Legitimisation is the outcome of a negotiation of power, of *legitimisation*, which can take place on various levels of social hierarchy, in multiple directions. The temporal duration of a legitimisation relation depends on constant re-valuation, and the less naturalised the claims are, the more active and consistent the actor's efforts need to be.
Yet, there is a field-specific reason to establish the mechanisms of social and political legitimisation separately. Although undisputedly related, similar in their mechanisms, and permeable in their respective demarcation, they differ in their intention to influence governance. Apart from different requirements to capital investment, the (strategic) direction of claims can differ in urgency, their addressed audience, and the political level of the issue at stake. Different from symbolic capital, political capital – or authority – is typically limited to a specific field defined by its institutionalised, de-personalised position (Popitz, 1986, pp. 38–39); a field in which the formalised title and the formalising institution enjoy unquestioned acknowledgement. This feature contrasts with informal symbolic power as the latter is, by means of its credit bank-character, more readily transferable from one field of action to another. As a result, symbolic capital has been interpreted as a notion translating legitimation into Bourdieu's capital discourse (Casey, 2008, p. 14):

> Symbolic power, in its prophetic, heretical, anti-institutional, subversive mode, must also be realistically adapted to the objective structures of the social world. (Bourdieu & Terdiman, 1986, p. 840)

Thus, claims to (governing) authority, in contrast to resource claims, depend more closely on a political path or source of legitimisation, in order to achieve "fully recognized, official existence" (ibid. 1986, p. 840). Those are regulated through a palette of political norms, which offer a reliable framework for referencing new political ideas, projects, or authority allocations. More precisely, political legitimacy requires, and uncovers, "specific expressions used to fashion, transmit, and then refashion thoughts and perceptions about politics and political legitimacy" (Schatzberg, 1993, p. 446). The main difference between social and political legitimacy thus lies in the latter's legitimisation path through specific discourse and institutionalised process. Formally legitimised claims to power are often recognised as *political capital*, which is "best associated with control over and among actors, and particularly coercive power, of any societal institution" (Casey, 2008, pp. 6–7). All political capital stems from capital assets that were legitimised in reference to social norms, and transformed from "situational power […] into structural domination" (Dobler, 2009, p. 129). Political legitimacy of a status covers situational prioritisations of regulations of an authority holder through a "de-personalisation of power" (Popitz, 1986, pp. 38–39). Thus, while a status – or a title (Casey, 2008,

p. 14) – may be legitimised, this legitimisation can at times be found wrongly attributed to the person assigned. However, so long as no opposition is raised, formal status and personally acquired legitimacy work mutually protecting and reinforcing. It is, consequently, impossible to distinguish political and symbolic capital, even more so in this specific context of governance.

### 2.3.3. Adapting sources and paths of Legitimacy to the targeted audience, direction, and degree of stability

Between plural moral fabrics to refer claims to land and power, all actors decide which laws and rules of the game they prioritise in each of their strategies. Thus, lacking an overarching *Ordnungssicherheit* (Popitz, 1976, p. 35), actors are prevented from taking informed strategic decisions, as they cannot anticipate the span of possible actions of all players. They cannot rely upon a common knowledge of which actions are normative transgressions, which of those would lead to punishment, or what actions will lead to the most resonating “advantages and recognition” (ibid. 1976, p. 35). This leads to a clear advantage for those who dispose over capital forms that are easily convertible into other currencies (Benda-Beckmann et al., 2009b, p. 12), that is symbolic capital (Casey, 2008, p. 14). The following examples present some paths and sources of legitimisation, which are instituted in a way to achieve a naturalised status, so that the form of instituting orders, laws and public response options, gain a doxic status comparable to rituals. Such rituals of sorts may be of religious, traditional, or historical origin, and are upkept through practical, performative, narrative (content), or discursive codes.

There are several ways in which an actor may strategize to gain legitimisation for claims outside the formalised system or tested field. The most extreme measure is to threaten with physical force: it is most often the last resort, for it means risking everything for that specific claim – up to the complete withdrawal of social goodwill by the community. Furthermore, the success of such strategies is usually short-lived, unless it is applied with enough continuity so as to spread resignation among the threatened, which over time can sink into a tolerated circumstantial factor, a doxic fact. This factor is legitimised, when it has normalised to a degree that makes it count as a component of stability. This happened in most countries with the exertion of violence by the state (Foucault, 1994), in a process of fabricating “legitimate domination” (Bayart, 2013, p. 92). However, even the most violent regime or power holder depends on allies (oftentimes a political elite), who legitimise the authority sustainably; otherwise, *subjects* need to be constantly reminded of their (physical) domination. Thus, lasting authority is best not static and “unilaterally 'imposed' on” dominated groups but instead is “jointly produced” through persuasion or other forms of naturalisation (Van Dijk, 1993, p. 250).

With the different audiences that are to be addressed in a quest for legitimacy, strategies develop with either an upward and downward focus on accountability (Logan, 2011, pp. 2–3), input and output (van Kersbergen & van Waarden, 2004, p. 156), and with the aiming at different degrees of stability (or naturalisation). With the moral request for transparency (or input legitimacy) grows the need for more subtle strategies to claim power, which replace direct, open, coercion: Manipulation, persuasion, “policies of moral and cognitive signals, and appeals to the citizens' capacity for enlightened self-binding” (Offe, 2009, pp. 559–560).

At the basis of the different paths or mechanisms described is always a set of capital forms that is applied as support to the claim. Those means that are used to apply and administer legitimisation are thus worthy of short analysis, as they reflect moral ideas of what is regarded as a basis for legitimisation and symbolic capital (Bourdieu, 1989, p. 23). Both fields are argued to rely on mutually

complementing legitimisation paths: While the "norm established and imposed by the state is based on a legal and rational model of legitimacy", TAs fulfil the requirement of a more "vital justice" (Meneses, 2006, p. 116). Therefore, it appears that the two moral fabrics appeal to different reasonings for acceptance, namely by emphasising on input or output-focused legitimisation: Input legitimacy is acquired by adhering to legitimate ways of authority achievement, output legitimacy is gained from the performance one delivers after being allocated a position – either by working, performing, or being able to deliver the goods necessary to keep a position (van Kersbergen & van Waarden, 2004, p. 156). Their differences are possibly most manifested in their output and input foci respectively. Output legitimacy is mostly enacted in the form of service provision and protection of rights or goods. Almost any claim to authority is built on (a promise of) providing such benefits. "As guarantors of the public space", the role of political institutions in preserving (and expressing) rights, typically expands to protect the law and lives of citizens (Coicaud & Curtis, 2002, pp. 11–12). The Namibian government has long engaged in a discourse on party and state identity, with the promise of outputs in terms of defence and development (Balch & Scholten, 1990; Akuupa & Kornes, 2013; Becker, 2011; Ubink, 2011; Pearce, 2012, p. 455). Decentralisation of state authority was a further promise that stirs an ongoing hope for accommodating the diverse local needs for development and support (Ribot, 2001, p. 1). Historically, Many TAs had taken on this duty of protecting their subjects (Dobler, 2008, 2014; Hayes & Haipinge, 1997; Devereux & Getu, 2013; Weidmann, 2018), as "providers, nourishers, and protectors" (Schatzberg, 1993, pp. 451–455). In this endeavour, the legitimisation power of economic capital as a direct investment in such output services (providing, nourishing and protection), is certainly of high value. Its long-term reliability, however, relies substantially on the difference in available capital between an authority holder and his/her community, to fulfil a downward accountability. And even more is the way those services are shaped and adapted to the community's actual needs and demands.

Not only the TAs – as Lentz suggests –, but all authority holders depend "upon a combination of historical and contemporaneous positioning" (Davies, 2014, p. 9); not least because, in the long term, they cannot survive on either output or input legitimacy alone. In that regard, both in the customary and in the statutory political field, a narrative was constructed, upon which their respective design for legitimate input to gain symbolic and political capital is built. Any argumentation for input legitimacy relies crucially on a historical narrative. The customary authorities possibly more explicitly so, because they must compete with the means of documentation and expertise that offer a strong legitimisation basis to any government-related authority and claim. A further reason is the strong emphasis on territorial ideas among global hegemonic discourses (Bryan, 2012; Chinigò, 2014, p. 2). These strongly naturalised national claims to sovereignty are countered by the *indigenous*, or *traditional* discourse by appropriating *time* as a basis of legitimate claims to a place (Lund, 2013; Mbembé, 2001, p. 4). The narrative of *Tradition* as a collective identifier and common history gives their claims to land a weight the colonial and state powers cannot offer. "[T]ime immemorial" (Mbembé, 2001, p. 4; Hinz, 1999b, p. 6) is used as a code reference to the long history of recognition of plots, territories, but also to a "broader regional history of migration and settlement" (Lentz, 2005, p. 176), which allows for the raising of "first-comer claims" (ibid. 2005, pp. 157–158; also Mbembé, 2001, p. 4). The political – but also the social – field of custom thus differs considerably with respect to input legitimacy, by counter-arguing the "hegemony of the formal" (McConnell et al., 2012, p. 805) with oral statements, opinions and testimonies as legitimate means of negotiation. Output legitimacy depends in both fields on material offers or services that benefit the relationship, comparable to what is expected of "fathers, […] to permit their children to grow up and eventually to succeed them in power" (Schatzberg, 1993, p. 455). Within the customary patronage relationship, in

order to make it a lasting, mutually beneficial tie (van Beek, 2011, p. 41) despite an absence of documentation, it is necessary to focus on spatial and temporal immediacy with a good "memory for services rendered" (ibid. 2011, p. 41).

### 2.3.4. Establishing different elites

Each field at stake, the state and the customary field of power and legitimacy, are designed along a respective set of rules, sources, and paths to gain legitimacy, and a respective elite, which evolves by accumulating those symbolic or political capital most successfully.
The national government, although it aims to be director of different games or fields, is yet far from being "the *culmination of a process of concentration of different species of capital"* (Bourdieu et al., 1994, p. 4). This is so, because its sources and paths of legitimisation are not monopolising, due to the country's short postcolonial history in which markers of class distinction are still emerging (Pauli, 2019, p. 259).
Instead, governance interactions offer ways not only to adhere to formally available rules and mechanisms, but for actors to explore to what extent their symbolic, and other forms of capital "enables them to mobilize a given legal order or decision-making authority successfully" to their own political or economic objectives (Benda-Beckmann et al., 2009b, p. 12; similar statement by Ingram et al., 2015). The choice of strategies relies mostly on people's capital and livelihood projections; with the latter putting their social and symbolic aspirations into focus. This feeds into the naturalisation of legitimisation procedures as a socially differentiating effect: The more powerful hold a stronger negotiating position and are more likely to enact their legitimisation with consequence, and taking effect on the claims of others, whereas the less powerful have fewer such opportunities and impact. Hence, there is always an elite-bias in the definition of norms and moral fabric (Fanon & Philcox, 2004, pp. 22–24; Mosse, 2006, p. 702; Van Dijk, 1989, p. 22).
The "symbolic elites", who control "the production mode of articulation" (Van Dijk, 1989, p. 22; referring to Bourdieu, 1984), feature a relative power to decide on the genres, topics, presentations a discourse takes "within their domain of power". This gives them direct access to symbolic power by taking influence on political agendas and priorities, and by steering and restricting the flow of information (Van Dijk, 1989, p. 22). Thus, they are manufacturers of "public knowledge, beliefs, attitudes, norms, values, morals, and ideologies, [whereby] their symbolic power is also a form of ideological power" (ibid. 1989, p. 22). Language is hence a strong tool for legitimisation, if "it is effectively persuasive, internalized into the experience and subjectivity of at least one audience" (Posel, 1984a, p. 13). Such "language of legitimation" (ibid. 1984b) is often consciously employed in furthering political agendas (Dlamini, 2015, p. 41), because "*persuasive speech"*, "*explanation",* and "invoking *norms* and *values* which can be recognized as relevant motives" (Offe, 2009, pp. 558–559), are common strategies to provoke voluntary acceptance of resource claims, authority, and policies. To that end, law is a particularly "powerful discourse" (Bourdieu & Terdiman, 1986, p. 812), as it institutionalises mechanisms that ensure compliance with orthodox values (ibid. 1986, p. 848). However, if a policy or a law fails to consider "legitimately constituted forms of political or economic subjection" (Foucault, 1982, p. 790) at stake, it ignores the agency potential of those governed, which can have fatal effects on their projects taking roots. It fails however, to equally bind all Namibian citizens, because for a successful language of legitimacy it is decisive that the norms and values invoked are in line with the moral fabric subscribed to by the audience. To that end – and because such an audience is always starkly heterogeneous – it requires careful balancing between

employing descriptions that are “adequate to things” (Bourdieu, 1989, p. 23), and “metaphors, analogies and symbols” that help merging opposite perceptions (Lund, 2006, p. 691).
An actor’s power to effectively legitimise is subject to the context and strategy, but also to his/her symbolic capital, as a situated and relational power configuration (van Beek, 2011, p. 26). Symbolic capital thus supports the accountability of an actor’s judgement and is in return reinforced (Bourdieu, 1989, p. 21; Lentz, 1998, p. 48). Any power assertion with the intent to gain legitimisation may thus be understood as a governing activity, because it involves the aspiration of symbolic capital in any field of currency (Benda-Beckmann et al., 2009b, pp. 1–2). There is no neat and static separation of such stakeholders from non-governance actors; they are divided by their symbolic capital (Boone, 2003b). In order to gain more enduring forms of legitimacy than through enforcement or economic incentives, the stakeholders must perform “value commitments” (Offe, 2009, pp. 558–559) to display their appreciation of (local) social norms. Thus, political elites distinguish themselves by increasingly shifting their strategies of legitimisation and persuasion to advertising more self-determination and “enlightened self-binding” through taking up the task of “remind[ing] people of what is "the right thing to do"” (Offe, 2009, pp. 559–560). By this refereeing status, they are assigned authority to “make, enforce, modify and sanction the rules” (Ingram et al., 2015, p. 3). Of course, this brings out the difficulty in comparing governance systems to a game that has been put afore by Bailey himself: As surely as there are “roles and institutions in politics which do the job of a referee”, they are ambiguous since they are also subjected to the rules and may be competing for the “prize” (Bailey, 1990, p. 32).

# 3. Research problem

Land reform has thoroughly stirred up the system of land governance in communal land, and the TAs, so this thesis argues, are among the most profoundly affected in the way they perform and re-define their status. The most palpable intervention of the state in their system of governing occurs through the land reform’s institutionalized aspects, for instance, by its specific administrative enactment through the registration and certification of land rights, and the institutional re-structuring by introducing Communal Land Boards. Their visibility, however, ought not to cover the fact that these judicial aspects of land reform, too, are ambiguous, dynamic, and negotiable to some extent. Many laws connected to land governance centrally rely on a more refined adaptation to specific local needs, in order to effectively function as relevant stakes in the game of governance. In a quest to adjust to local governance networks legal procedures are simplified, rendered more inclusive for other forms of landholding, for instance, or the conditions for applying as beneficiary, need to be loosened. This need for local refinement and adaptation holds a crucial opportunity for TAs to stage themselves as persisting powerful stakeholders in land governance.
In establishing the nature and strategies involved in re-negotiation the TAs’ position in land governance, this thesis suggests that new amalgamations of formal and informal ideas and behaviours are triggered by the land reform. Thereby the normative and practical realities of local land governance are altered (Bourdieu, 1990, p. 82), the field composition and principles are shifting, and result in a re-valuation of capital forms that the actors have at hand (ibid. 1989, 2012, 1984, 1990; Van Dijk, 1989). Uncertainties on basic understandings such as *property* or *community* increase tensions within traditional village communities; they carry the threat of potentially changing the values of existing capitals, of common aspirations of the game, and even the binding force of laws.

Consequently, concepts of power and legitimacy are similarly destabilised. Such wide-reaching uncertainties interrupt the actors' possibility to assess and anticipate the game of land governance:

> The 'feel' *(sens)* for the game is the sense of the imminent future of the game, the sense of the direction *(sens)* of the history of the game that gives the game its sense. (Bourdieu, 1990, p. 82)

As the legal and social frameworks are changed through land reform, the game of land governance is under transformation. As a game, it ought to be constituted or structured by fundamental law (Bourdieu & Terdiman, 1986, p. 852), its enormous re-invention thoroughly disconcerts the actors' confidence in their *sense of the game*: What is the worth of the capitals one has at hand? What currency is applicable in a certain social relationship? How to reformulate claims and re-strategize to have them legitimised? The inconsistent governance system thus triggers a relentless negotiation modus: seeing that the law has not organically evolved from local common-sense, from what is regarded as practical, feasible, it is on this level of common-sense that the definition of acceptable, legitimate practice and power needs to be re-negotiated. My interest is to identify the practices and present coping strategies within the current state of these negotiations. What aspects of the land reform impact the local power relations and access to land, and how are moves designed without knowing the principle of the 'game' (Schwingel, 2009, p. 96)?
At present, TAs are the actors and institution most directly and profoundly affected by the Communal Land Reform Act (Parliament of the Republic of Namibia, 2002). This is due to their position in-between legal texts and local claims. While the Act explicitly includes them in the jurisdictional and administrative system of land governance, the uncertainties of duties and responsibilities transform the very basis of their legitimacy. Consequently, control of communal land is a matter of negotiation between national government and Traditional Authorities, while the population is involved with its legitimising or de-legitimising capacity.

## 3.1. The political logic of Land Reform

The political logic behind the government's land reform projects ought to be inspected from a historical and cross-scale perspective, the latter promoting a focus on the "emergence and uses of governance across" of different institutional layers (Krahmann, 2003, p. 323). Adding to the national requirements of meeting its multiple postcolonial accountabilities, and its salient interest in controlling subjects and resources, international pressure rises – as it does in other (African) countries – to formalise land titles (Evers et al., 2005a; Benjaminsen & Lund, 2002; Peluso & Lund, 2013, 2011; Toulmin, 2009). The main arguments raised in favour of land titles refer to food security, national sovereignty, and documentation as an internationally recognised form of legitimised claim to land. From the point of view of protecting Namibian citizens from international markets that seek to acquire high-value resources such as agricultural and mining grounds, some political measures are undoubtedly needed (Toulmin, 2009, p. 10). Such arguments – stating that land rights must be protected from international interests – are adopted by the national narrative, although the communal land in Namibia thus far has largely been spared from international investment, in part due to the complex and extensive institutional procedures this requires (Odendaal, 2011a, p. 3).
It is not the intent of this study to question the worth of Land reform as a political idea. Some authors have rated Namibia's Land reform as a failure (Tapia Garcia, 2004; Werner, 2011), meanwhile recognition prevails, that its emotional significance outweighs all criticism, for it must be regarded not only as a "neutral redistributive policy, but as a restitutive one" (Tapia Garcia, 2004, pp.

50–51). The land reform's highly emotive and complex character was newly proven by the high number of attendees (most of over 800 invited came (Melber, 2019, p. 78)) and the dense agenda of the 2nd National Land Conference that took place between October 1-5 in 2018. The acting President of the country opened the Conference with the words:

> We all agree that the current pace of Land reform is not sustainable! Hence, this second national Land Conference. (The Villager Newspaper, 0:30-0:43)

Hence, instead of engaging in a discussion on the merit of a Land reform *per se*, policy development scholars suggest investing in its perpetual improvement (Tapia Garcia, 2004, pp. 50–51). In contrast, in this thesis I am interested in observing the local processes that emanate from the land reform(s), and the effects of their interweaving with other social transformations as they manifest in local lives, and in the positionality and agency of TAs.

## 3.2. Including (some) Tradition in state Governance

The government's motivation to officially include customary laws, institutions, and procedures into land governance reflects an explicit interest and duty. Not only has it been decades of negotiation between state representatives and Traditional Authorities (TAs) – from the first national land conference in 1991 until the second that took place in 2018 – but it has become a matter of moral value and international prestige to recognise the ethnic diversity in the state formation, because of an international movement promoting decolonialisation through acknowledging tribal identity, customary or traditional politics and concepts of power and property . As the title suggests, this study highlights and analyses the process of integrating aspects of customary governance in the postcolonial state, under the guiding hypothesis that it is rife with contradictions, and thus there is a need to re-position TAs in the field of land governance authority.

Moral and legal scholars suggest that land management is a crucial element of customary identities (Wicomb & Smith, 2011, p. 446), and thus a substantial pillar of customary authority systems. Despite this substantiation by the human rights narrative having the right to culture), the extent to which customary governance is practicable, valid, and relevant, as complementary to a modern state's sovereign constitution, remains bitterly negotiated. Despite their state acknowledgement, statutory courts take it upon themselves to define in what form and to extent this "customary land holding" is granted: examples are the limits to tenure contract to 99 years and to 20 has (with exceptions granted upon individual assessment). In the process, customary (legal) practices transform into a substratum of statutory legal language, submission, and dependency. Furthermore, this potential right to self-governance "will only be unlocked, [if African courts recognise] customary communities as 'peoples' whose rights to development and resources deserve protection" (ibid. 2011, p. 446). But, because all members of customary communities are at the same time also citizens of a state, they remain liable to statutory law; the same applies to the TA institutions and their members. Thus, customary forms of living and governing are fundamentally antagonised by this dual loyalty (Alden Wily, 2011; Harring, 1999; Pohamba, 2014; Hinz, 1999b). The limited success of legal and judicial harmonisation between commercial and communal land, gives evidence of the deep-reaching rift between the statutory and customary fields and their doxic foundations. By analysing the conjunction of these two doxa, the transformations which are triggered – or at least accelerated – by the communal land reform are rendered visible.

## 3.3. The research questions: effects of Land Reform on the power basis of Traditional Authorities

The transforming field of land governance includes different stakeholders, their relationship and interactions. With the situation of TAs in focus, those stakeholders are members of the village community, other TAs of higher or lower hierarchical standard, but also political and economic leaders. Apart from its actors, governance consists of settings, policies, rules, and authority shifts. By evaluating land governance dynamics, this study uncovers the new politico-legal ordering, and attempts to explain its local implications. For this purpose, the thesis follows an approach of qualitative legal and political anthropology, adopting an integrative perspective of scale and time (Cousins & Scoones, 2010, p. 32; Griffiths, 2011, pp. 192–193; Markelova & Mwangi, 2012).
The actors most affected by the Communal Land Reform Act (Parliament of the Republic of Namibia, 2002) are the Traditional Authorities (TAs). Their involvement with, and dependency on, land management for their power status, forces them to immediately respond to these shifts in land governance. Hence, they are the focus group – as institution and individuals – within the research questions:

1. **How are the positions of Traditional Authorities affected by the implementation of the communal land reform?**

In pursuing this question, Land Reform will be outlined as a part of a wider wave of transformation, which has taken grip in all communal land in the country: Land reform and other products of the postcolonial state-building process are thoroughly transforming local land governance by introducing legal pluralism, and thus referees and fields of reference for legitimate land use and tenure regimes are pluralized.
The recognition of traditional land tenure practices and authorities, at the same time, strengthens and threatens the status of TAs and the practicality and importance of customary land governance practices. Important pluralistic, sustaining factors include the limited reach and assertiveness of state law and judiciary in the study's context. Some laws include intentional definitional gaps, while others build on misperceptions or wrong generalisations of local realities. Assimilation of legal and judicial practices between the two fields is further inhibited by distinctive delays of information on, and coercion of, new rules, but also by unanticipated shifts in local land use patterns, legitimisation discourses, and power *game* set-ups (→ *7. Transformations in Legal, Political and Social Practice*).

2. **What practices and discourses do TA members, who pursue a continued legitimisation as leaders, employ in practice?**

TAs are affected by the communal land reform both as an institution and as individual actors. In either role, they face its implications differently, and react through different fora. Thus, implications occur through different instruments, strategies, and inter-dependent actions via many channels of strategies and discourse, and various levels of argumentation and legitimisation. Local traditional communities are to be continuously convinced of their need (and/or benefit) of the TA as their leader and primary land governance institution; but their needs are also multiplying and diversifying, and so are the expectations and doubts towards a leader. Hence, these developments submit the market of legitimisation to a process of re-invention: The field (Bourdieu, 1971, p. 55) changes as the rules of the game (policies) and the stakes are shaken up. The game unveils new options of moves and aims in the game (e.g., new legitimate reasons for claiming land or forms of land use), some to integrate

the communal population into the bigger field of rights as citizens, others unintentionally by insufficiently defined rules. Resulting from this re-invention of the game, the local common-sense, or the sense of the game, is in a vulnerable and insecure condition *(→8. Fending for a Status as Traditional Authority)*.
The two research questions are connected through complementing two different perspectives on the reasons and effects of political and legal alterations on locally evolving strategies in governance practices. The causal link between changing laws and strategies are understood as an on-going negotiation between documented and practical norms, rather than as a linear cause and effect. It is possible to make assumptions as to what transformations provoke certain strategies, behaviours, or new structural implements, since new patterns of action and governance can be traced back to several potential causes.
The main aim of my thesis was to record governance practice with the aim of discovering the motives of various stakeholders. It creates perpetual scrutiny and insecurity, much rather than rendering a judgement over the adequacy of a law or a policy, or of the behaviour of a group or individual. It is an ethnographic work in a classical sense, in the sense of a thick description of political, legal, and social interconnections, rather than offering recommendations or advice.

# 4. Methods

In order to analyse the impact of national policies on local lives, and on the corresponding relations and processes of power, I have adopted an agency-focused approach. To this end, it was important to avoid focusing on formal polities, laws, and institutions exclusively (Benda-Beckmann et al., 2006, pp. 22–23; Moore, 1969), but rather to look at governance through ethnographic "detailed observation […] in order to arrive at a comprehensive and insightful picture" (Wolff, 2004, p. 48 on the basis of Geertz). I chose an ethnographic research-design to draw a picture of processes and practices of legitimisation, and to show how individual TA members could appropriate such practices to benefit of their own status. Taken as the key-aspect of governance, the agency of legitimisation – on the case of land tenure and governance – had to be observed in its practical and discursive outlets at all levels of society (Schatzberg, 1993, p. 445), since a reform of land tenure is found to "relationships between and within communities, and between communities and the state" (Boone, 2007:558, 2013:558).
By recording moments of interactions which carried negotiations of meaning, I identified patterns of strategic negotiations, narratives and behaviour. I aimed to understand the way roles within governance are redefined through interaction, especially those of TAs. Furthermore, through the observation and inquiry of such negotiations, I identify social meanings of traditional or formally accepted lines of behaviour, and thus deduce more spontaneous, non-explicit norms which help shape practices.
My theoretical and conceptual viewpoint has contributed to the choice and development of my methodology and methods *(→4.1.)*. I thusly display the connecting threads between the research questions and the respective methods chosen to answer the questions, calling them my meta-concepts. For instance, what paths did I take to establish the legal impacts on, and strategic reactions by, TAs within land governance comprehensively? The two main methods – participant observation and semi-structured interviews – are subjected to a critical assessment regarding their actual benefits and disadvantages within the specific research context later in this chapter *(→4.2.*). A further subchapter *(→4.3.)* sums up the experience of data acquisition by reflecting on the

processes of translation, transcription, and interpretation of data. Thereby, thoughts are given to the translators' influence on the research process, and consequently on the form and quality of data. This chapter ends with a retrospect reflection on my own role in the field as a researcher *(→ 4.4.*), especially with my obvious status of an outsider who takes an interest in 'private' feelings and estimations on the "*meaning* of social events" (Wolff, 2004, p. 48). My role will be illuminated in relation to different contexts and what were identified as characteristic potential 'manipulators', and their presumed effects on informants and data. Besides those *personal* manipulators, that affect and at times grow from the interaction of the field with the researcher, may be of linguistic, political, gender, ethnic-historical, age, and other possible origins, also *contextual* manipulators are taken into consideration, such as spatial, historical, social features and effects on the data.
This chapter retraces the field research chronologically from the moment I entered the field (physically, socially, and intellectually). During this research, my ascriptions of meanings and expectations were constantly redrawn, and with them my research interest and my own estimations of empirical options and requirements needed perpetual re-evaluation.

## 4.1. Understanding Governance and Transformation: An operationalisation

Governance and disruptions, or transitions within its field need to be approached from an explorative perspective, making use of working concepts such as Olivier De Sardan's *practical norms* (2008) or Bourdieu's forms of capital and their application (Bourdieu, 1977, 1989, 1990), without categorising patterns of agency or claims *a priori* (ibid. 2008, p. 1). While establishing my research question I realised that a conflict-based approach – departing from documented dispute registers – was by far not as easy or generously yielding as I had imagined. The standards and importance ascribed to documenting disputes on the level of villages or municipalities, proved much lower than I had imagined in my Western mind. Instead, undocumented and more informal moments of disagreements, turned out to be more interesting. I found out that there were quite widely agreed procedures for dispute mediation which were still under the documentation radar and including them would allow to take a broader and more local segment of actors and negotiations of rights and legitimisation into account. Thus, my first field insights drew me to see conflicts in the way that was put forward by Evers et al. (2005b, p. 6): As processes, for they are hardly ever resolved permanently. A second deep-cutting lesson I learned during my field research was that of the status of law: Instead of growing from a common-sense or even just attempting to assimilate to it, the plural laws in north-central Namibia take the role of simply one, among many, factors or currencies in the legitimisation market. Consequently, the cross-scale approach gained prevalence, in combination with a sceptical take on expertise and its use as a legitimising tool.

### 4.1.1. Conflict and the Everyday of Governance

> [L]and conflicts […] reveal processes of exclusion, deepening social divisions, and class formation, and are deeply implicated in the shaping of nation and citizenship across Africa. (Peters, 2013, pp. 5–6)

After having focused in a first phase on conflicts as indicators for social and political acceptance or refusal of the communal land reform, I developed the understanding that a differentiation between the 'everyday' and the 'crisis' (Delaney, 2011; Bourdieu & Terdiman, 1986) required much more

refinement than simply focusing officially recorded *land conflicts.* This is due to two reasons: first a clear definition of what qualifies as *conflict* became increasingly difficult when the amount of undocumented and uncategorised grievances was conceived. And second, this identification became even more imprecise when I attempted to differentiate land from other reasons for conflict.

Documented disputes were rarely directly retraceable to land reform or governance shifts as the one exclusive reason. Thus, this research phase depicts exemplarily, how an evolving theoretical basis shifts my methodical approach. Documented conflicts offered a too narrow database for what I was interested in, and thus the criteria of how disputes manifest, had to be adapted to vernacular normative and practical realities. At this stage of the research, it became clear that local socio-political systems are subjected to a deep moral shift in discourse and practice around authority, legitimate claims to land, and land use patterns. Apart from the individualising effect of land registration, other social phenomena had to be acknowledged in order to grasp change in local understandings of the 'everyday'. Examples are the speedy rise in population, and diversification of land uses and investments, which is often referred to the 'elite'-problem among Africanist scholars (Barrows & Roth, 1990; Chimhowu, 2018; Dobler, 2014; Becker, 2006; Draper et al., 2007). Hence, in order to understand the underlying reasons and logics of conflicts, a simultaneous comprehension of wider socio-political transformations is necessary. The key focus was thus identified as the matter of *land governance* as a process of negotiating normative and practical common-sense (Agrawal, 2003, 2007; Ostrom & Janssen, 2005; Berry, 2000; Sikor & Lund, 2009).

During my second phase of field research, the methodological focus broadened on several levels, aiming to include more variegating factors. Broader concepts of the 'everyday' and scopes of strategies were necessary after the first findings insinuated that there were stark differences in actors' scopes of action, and strategies along their spatial, socio-political, and demographic freedom and/or restrictions of movement. Using the principle of ethnomethodology, I thus adopted methods which allowed not to identify (static) social facts, but rather to observe them within spectres of negotiation. Hence, it is one of my research interests to understand which "social facts are experienced as an objectively determined reality," but the more ultimate aim is to grasp the "objective reality" of social facts as "an ongoing accomplishment or product that is accomplished in and through the activities of everyday life" (Bergmann, 2004, p. 73). Olivier De Sardan's (2008, p. 1) exploratory concept of *practical norms*, and its methodological extension onto the system of governance, is desirable for this approach, as it offers a provisional framing for patterns and phenomena without prematurely restricting them into predefined categories.

The process of normalisation is a dynamic of continuous social negotiation; not only of foreign institutions, but also of fundamental concepts of justice, equity, and 'good governance', to merely name a few. Discourse is a major instrument in such processes of normalisation. Empirically, discourse is also a means to establish the degree of a normalisation, as identified through discourse analysis, which norms form the explicit orthodox, and which the implicit doxic discourse on certain concepts, norms or claims (Popitz, 1976, p. 35; Wolff, 2004, p. 48). And as a further step towards normalisation, we establish those norms which are taken as a basis for new discourse and strategic experiments. Along this process, a certain concept is trodden into the fabric of naturalised, moral reality through discursive practice (Posel, 1984a; Van Dijk, 2011). However, in postcolonial contexts, where the legal system builds on normalisations which have not evolved from local social discourses, this 'treading down' may result in a fundamentally misconceived safety of values in the legitimisation

game. Unharmonized orthodoxies may be more quickly reverted once the contentment with the delivered benefits vanishes.

Some exploratory categorisations inevitably occur in the process of choosing contexts, moments, and people of empirical interest. At the beginning of the empirical work, I had to decide whether power relations in governance ought to be researched through the "everyday" or by focusing on disruptions thereof (in the form of conflicts for instance). Foucault (1982, p. 780) suggests approaching power relations by investigating resistance that is raised against them. Such resistance, like a "chemical catalyst," illustrates power relations, their position, and establishes their "point of application and the methods used" (ibid. 1982, p. 780). He thus pleads for analysing power not from the angle of its "internal rationality," but from a view on strategies and events of disruption and attempts to dissociate those power relations (ibid. 1982, p. 780). Delaney (2011, p. 43) on the other hand promotes a "critical perspective on everyday life," arguing that it discloses "the production and maintenance of unremarkableness." Thereby, he claims, "concepts such as ideology and legitimation" are revealed in their lived reality. Delaney further highlights that from this angle, disruptions or perceived uncommonness, can be made visible (ibid. 2011, p. 43).

Both positions have their methodological merit, depending on the angle and channels of empirics: With regards to 'African agency', as one which is often researched by (and for) outsiders, the emphasis on everyday practices is often justified as a means to understand how "Africans constitute their own agency" (Davies, 2014, p. 21), hence acknowledging (or insinuating) a deep foreignness towards the observed everyday (Moore & Vaughan, 1995). In applied ethnographic methods of participant observation and (narrative) interviews, this approach can be productive because it reveals aspects of the everyday, which can be perceived in a different light by outsiders. The merit in doing so is that it maturates evidence as to how disruptions or transitions are dealt with, which changes are accepted, and which resisted. For the direct questioning of the people in the empirical group, a focus on conflicts or on what was perceived as *uncommon* was, however, more straight-forward: For gaining knowledge and support for the research, and to gain access to their daily lives and struggles, as the urgency of disputes or uncommon behaviour often initiated discussions quite easily.

For the aforementioned reasons, I firstly approached the field from an angle of disruptions in their escalated form: conflicts. However, over the course of months, the concept of "conflicts" and the differentiation between conflicts and non-conflicts became harder to sustain within the empirical experience. On the one hand, because more often than legal cases (officially declared conflicts) I found informal unrests or quarrels between neighbours, which existed only on a basis of community gossip, or accounts of many people who have resigned from former conflicts, due to no perspective of change. On the other hand, even the boundary between normality and conflict became blurry at some occasions – for example, when I realised a matter that is raised as a dispute appears at such a perpetual step, that it actually becomes a form of everyday interaction. For a second example, some acts of resistance to existing power relations can be successfully applied without any form of conflict. In view of such examples, the standpoints of Delaney (2011) and Foucault (1982, 1994) are closely related, seen that resistance is not necessarily equal to conflict, but can take on the form of day to day antagonising strategies, and thus become mundane and unremarkable. With a view to detect such blurry forms of the *everyday* and *disruptions,* it was inevitable to immerse myself into deeper layers of analysis. Emirbayer and Mische (1998, p. 983) reflect on this blurriness with regards to *routines*: Institutional – and also individual – decisions are "embedded in established routines and become 'rationalized' (and thereby legitimated) only through retrospective accounting processes".

This embedment however only occurs if it is not met with notable resistance. The acknowledgement of such a linear and at times unspectacular transition from *new* to *routine* lines of action, leads us to scrutinise more thoroughly how practices can be identified with regards to their level of social expectedness or disruptiveness and respective effects.

### 4.1.2. A cross-scale perspective on Governance

Effects of land policies, management, and practices are scrutinised on various levels of actors, institutions, and powers of definition, so that political classifications and subjectivities may be established, including their impact on – or divergences from – reality (Lund, 2006; Geertz, 1987). One especially prominent political classification applies to the case of *experts*: As one of the most potent means or instruments of legitimising the import of statutory ideas and policies into the north-central peripheries, experts of law, of political, governmental strategies, and of communal land rights are delegated in the form of town officials, clerks, and Communal Land Boards. While they are chosen to give opinions from their professional or academic standpoint, this expertise is undoubtedly in constant exchange with non-professional opinions, experiences and social influences – such as common-sense constructs (Dorussen et al., 2005).
For instance, when a legal training facilitator for TAs emphasised what they should do in case their villagers were fencing off land unnecessarily, she stressed that, ultimately, "you should not be afraid to take the person to court" (Field Notes TA Training, 7.4.14). It is, thus, a particularly disputed label in ethnographic research, where it is acknowledged that the boundaries of professional and personal grounded statements and information are necessarily blurred, and the criteria of expertise are subject to cultural stipulation, reflecting for instance in the (self-)ascription of traditional knowledge (Gluckman, 1963, p. 311; Appadurai, 1995, p. 207; Van Binsbergen, 2008). As a result, my method's normative foundation and assumption is that genuine communication of interest and intentions can lead to the most genuine answers. I mean *genuine* in a sense of offering 'expertise' on who the participants are, what their possible intentions and motivations are, and what drives them to do what they do. Hence, I believe that social realities are created through joint negotiations of (accepted) lines of action (similar to some of the basic assumptions of the school of symbolic interactionism (Flick et al., 2004, p. 65)). 'Experts' have thus a double role in this method, as they explain governance practice and logics from the perspectives of their institution, but also offer a merged analysis of how they arrange this logic with their personal experiences as a member of local society, of traditional communities, and as land users. Thus, these individual self-descriptions complement my image of social meanings and positionings of TAs in governance to an important degree.
A triangulation of perspectives was of interest as it promised to make "the multiple layers of local meanings" (Wolff, 2004, p. 48) accessible. Besides, from a research design perspective, it is adding to the quality feature of „establishing interpersonal consensus" (Bortz & Döring, 2002, p. 328). By collecting and joining as many as possible subjective interpretations and enactments of norms, I aspired "to arrive at a comprehensive and insightful picture of the social circumstances under investigation" (Wolff, 2004, p. 48), which in my case are the status, expectations and assessment of TAs and their status-due behaviours. With the intent to capture a factual cross-scale und processual perspective, stakeholders holding different levels of political authority are observed and questioned. Their respective estimations about when and why a meaning or a norm needs renegotiation or re-enforcement are merged and compared. Interpretations that exhibit remarkable differences, are

analysed in depth with respect to the negotiations of meanings that lead up to this moment or constellation of a dispute. Interviews, observation of meetings und witnessing informal conversation through participant observation, allow access to "multiple layers of local meanings" (Wolff, 2004, p. 48) as they are formed and expressed in various social settings.
Legal spaces are transgressed as international and domestic law are increasingly interwoven through global interactions. I thus agree with Markelova and Mwangi's (2012) central claim that it "is impossible to capture and account for the true complexity of human-resource interactions without disaggregating by scale and looking at cross-level linkages". Such cross-level linkages are claimed by many scholars (Brondizio et al., 2009; Mwangi & Wardell, 2012) to be the key for evaluating (or improving) governance arrangements and how they ought to balance between national and local needs and support. Contemporary legal ethnography, argues Griffiths, calls for research that is "multi-sited" (Griffiths, 2011, pp. 177–178) or even deterritorialised (Gupta & Ferguson, 1992; Holston & Appadurai, 1996; Appadurai, 2010). It ought not to be confined by geographic markers but extends also to virtual spheres of media. It is thus multi-sited to such an extent that it is multi-material and thus calls for performative and discursive considerations. The stress I lay on a cross-scale perspective has prefigured in the establishment of *land governance* as a key-term of this thesis. Consequently, the implications of, and reactions to, land policies and management are scrutinised within and across various institutional and social levels. Towards this goal, it is necessary to adopt an agency-based method, which includes individual as well as institutional agency, and their respective normative guidelines (Emirbayer & Mische, 1998; Habermas & MacCarthy, 2005).
In quest of agency-based data, the physical presence in the field was indispensable, and formed a major part in the corpus of acquired data and meaning. Participant observation allows to gain a sense of the "structures of feeling, geographical insight, as well as visceral understanding of distance and landscape that cannot be found in written accounts" (Davies, 2014, p. 21). Davies hence addresses a central problem of ethnographic description; the task of "verbaliz[ing] the ''silent'' dimension of the social" (Hirschauer, 2007, p. 413), which calls for turning "away from the logic of recording and develop into a theory-oriented research practice" (ibid. 2007, p. 413).

### 4.1.3. Understanding strategies and discourse as enactments of Governance

The second research question particularly calls for a delicate method to record – or locate in a theory-oriented manner (Hirschauer, 2007, p. 413) – legitimisation strategies and patterns among individual TAs. (The question reads: What practices and discourses do TA members, who pursue a continued legitimisation as leaders, employ in practice?) To begin with, strategies are at times difficult to identify and isolate from the body of observed interactions. Even if this body is confined to practices and discourses that aspire gaining or retaining legitimisation, many intentions carried in those interactions cannot immediately be recognised. Thus, it is a methodical challenge to make note of potentially intended effects of an action, even after a thorough analysis.
As the main conceptual anchorage of this thesis, Bourdieu's approach impacts the methodological and methodical choices of this study. Individual interests, means, and strategies are understood through Bourdieu's theory: While it is assumed that to gain or at least preserve resource rights and power is an interest shared by all actors in the field, the envisaged forms of power and the paths chosen to achieve it might differ (Bourdieu, 1989; Bridge, 2002; Bourdieu, 1990). Through the transition in which land governance currently finds itself, the field and its capital forms – or rather their 'exchange rates' – are subjected to a serious re-shuffling. The rules of the game are blurred by

the haphazard merging of two previously separated jurisdictional fields (see *→ 2.2. and → 7.3.*). In this setting, strategic moves gain more importance than usual, as they become creators of new precedents (Bourdieu & Terdiman, 1986, 833 pp.), as testers of the translation or interpretation of "new" laws into local reality.

Apart from high-level political discourse, which is the primary interest of many discourse analysts (Van Dijk, 2011; Posel, 1984a; Paasi), informal and spontaneous conversation and interactions are equally important in the negotiation of what is socially acceptable as claims, behaviour, or power. Gossip, in Gluckman's (1963, p. 308) words, is the "blood and tissue" of community life, for it maintains its "unity, morals and values". For research of this kind, gossip carries rich data, as it reflects what is "customarily accepted" (ibid. 1963, p. 308), what is perceived as disruptive to the gossipers' image of normality. Gossip is the performance of a social and situational truth. Many anthropologists have argued that gossip is often too quickly disqualified as unusable data or that researchers would not find a way to include them into their findings, similar to how written documents tend to be trusted too eagerly in 'western' moral understandings of science *(→ 2.2.5.*). In this sense, Delaney's explanation of legal imaginaries helps understand the methodological process from subjective opinions and statements to scientifically valuable and legitimate 'results':

> Access to legal imaginaries can be made by reflection on the plausible (or implausible!) answers given to questions such as: What is law? What is law for? What would the absence of law be like? […] What are property, privacy, punishment for? Do I, we, they, have the right to ...? (Delaney, 2011, p. 19)

Apart from discourse, the non-verbalised needed to be paid tribute in this study, too. Not least in order to include the struggles or views of "the voiceless, the silent, the unspeakable, the pre-linguistic, and the indescribable" (Hirschauer, 2007, p. 413). Moreover, since in this field governance has largely proven to occur off the official political stage, the importance of reflecting the silent voices, was recognised early in the research process. After many interviews and informal talks with neighbouring villagers, it became clear that a large number of disputes did not even exceed the level of unvoiced disagreements, and even a smaller portion reached the official platforms. Of course, it followed that the *voicing* or *silencing* of a claim or grievance became gradable on different levels: the completely silent (which was only remarkable through implicit statements or even gestures), and the secretive, that was voiced towards the researcher but kept secret from anyone involved in the grievance. A further category of non-verbalisation could be found on the level of official conflict management, which included documentation. This status could vary from voicing a grievance at the village level, where it was addressed orally during a meeting and documented in the secretary's book. It quickly transpired that, depending on an actor's social status and the nature of a problem or claim, the level on which the latter was voiced, varied. And that hence the voiceless stems not always from a lack of power but may even be part of a strategy. Thus, in order to uncover different actor groups and their different claims and concerns, the levels of voicing could be best understood through informal interactions in combination with analysing official documents. The responsibility that comes with putting into words something that "did not exist in language before" was developed through careful reflection and consideration of the methodical quality, and theoretical grounding (Hirschauer, 2007, p. 413).

The methodology was composed of qualitative anthropological semi-structured interviews and participant observation. Those empirical methods were applied on different geographic and social scales of governance. The majority of interviewed and observed informants consisted of villagers and traditional leaders within a rural area that was defined within the project group. A second group, which altogether counted about the same number of people, consisted of 'experts' and 'authorities'

who each represented a governance institution or system, while simultaneously drawing from their personal experiences and moral fabrics; thus, due to their double-role in the sphere of governance, this group added crucially to the thickness of data.
This thesis merges methodologies from two disciplinary field, by combining ethnographic ambition (Geertz, 1987; Davies, 2002; Griffiths, 2017) with the model for human geography of *constructing* Data and *constructing* interpretation (Cloke et al., 2004, p. xi). This merging finally resulted in a two-stage process of analysis. First, an ethnographic interpretation of actors' references daily practice and discourse led to an image of shared and varieties in common-sense, norms and moral fabrics. This image was carefully systematised into a set of topics which have emerged as the most prevalent within conversations on land governance that I held and witnessed in the course of my total twelve months of field research. From those findings, a set of factors was identified, which would serve to compare TAs' aims, strategies, and invested resources. And thus, these findings helped, in effect, to outline a number of strategic patterns that TAs employ.

## 4.2. Doing fieldwork

My methodological approach was moulded by my thoroughly ethnographic formation and corresponding normative beliefs, and simultaneously, it was undeniably shaped by the structural necessities and constraints that came with entering a foreign country for the first time. When I first visited Namibia with my research team in early 2013, my expectations were largely based on legal documents such as the Communal and the Commercial (Agricultural) Land Reform Acts (Parliament of the Republic of Namibia, 2002, 1995a), on maps (according to Noyes (1994, p. 252) carriers of the "ultimate inadequacy" of relating anthropological and geographical categories), and a rough oversight over the history and geography Namibia, that I had acquired thus far from Swiss and online libraries, which clearly largely present accounts from colonial archives (Miescher, 2012, p. 15). To a certain extent, I had thus anticipated the importance that must be given to oral sources, a major transporter of tradition and local history (ibid. 2012, p. 15), if I was to understand governance in rural Namibia.

When we entered the field in February 2013, we were a group of three PhD candidates, three professors, and one Postdoctoral researcher. Even though we had among us Romie Nghitevelekwa, a north-Namibian herself, and all advanced scholars had extended knowledge on the country and specific disciplinary issues at stake, we were undeniably a group of outsiders who had to get their way into their respective fields of research. We were

**Figure 4 Meeting with the Queen of the Oukwanyama.**
The author, Queen Martha Nelumbu, my PhD colleague, and a councillor to the Queen (Weidmann, 19.2.2013), and a councillor to the Queen (Weidmann, 19.2.2013)

thus repeatedly reminded of the importance that we “follow due process” (Field Diary, 22.2.2013) and introduced ourselves to all offices in the correct chronological order. And although higher level TA members, such as the Queen and her close advisory team, recognised and sometimes even asked to see our permission note from the Ministry, they also emphasised that it was the right thing for us to come and pay the TA a courtesy visit, too, before interviewing their subjects. So, our fieldwork started off by introducing ourselves down the hierarchical ladder, meanwhile discovering that some actors perceived it as a double-stranded hierarchy. This was my first encounter with the sensibilities and potential rivalries between state and traditional authority (Field Diary, 10.2.2013) (*see also Figure 5*).

**Figure 5 Parallel Hierarchies: Traditional and State Leadership.** Display at the Kwanyama TA office in Ohangwena town. From left: King Mandume (1894-1917), current Queen of the Kwanyama Martha Mwadinomho Kristian Nelumbu, current President Hifikepunye Pohamba, and the first President of independent Namibia Sam Nujoma. (Weidmann, 4.12.2013)

The research field emerged from a core site (*see Figure 6*), which was chosen by the project team for its position between various forms of land use and legal status of tenure within the process of land registration, ecological, and demographic varieties and their impact on “landed resources” (Lentz, 2005, p. 158; Dafinger & Pelican, 2006, p. 128; Graefe et al., 2011, 3 pp.). Within this core site, we chose one village as our geographical base, letting our decision to be led by its location between what seemed a drastic change of settlement density (along the west-east gradient), and the at-the-time status of official mapping for the issuing of communal land certificates (Pack & Nkolo, 2012). In more pragmatic terms, it was necessary to choose a place to conduct research, which provided me with the mobility and access to the variegated places I had to reach for a multi-scale research.

Ondobe offered access both to rural villages, but also to cities of different scales within the span of a day.
Entering and becoming known in a research area as a whole team, we discovered, had both

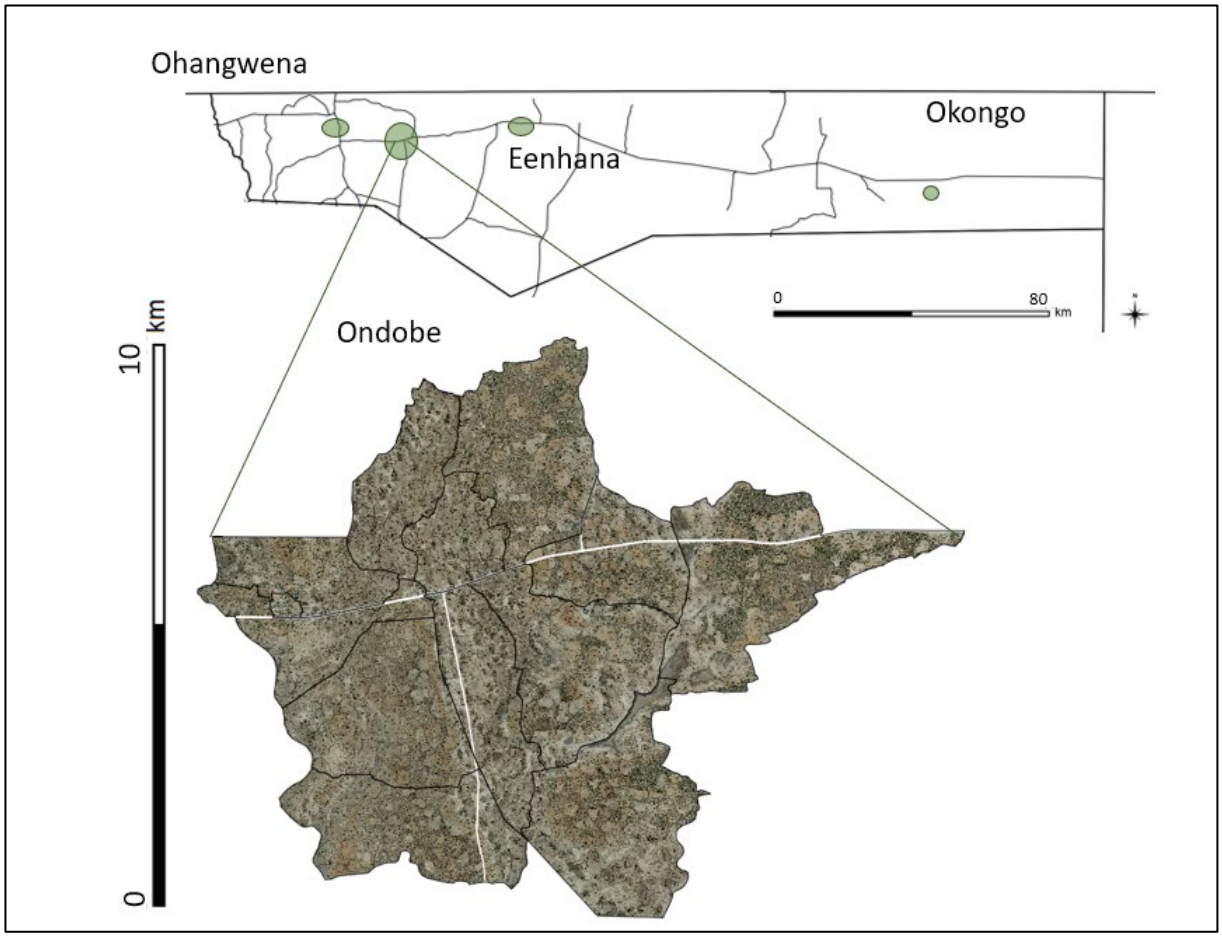



**Figure 6 The Core Field Site: Ondobe Area in the Ohangwena Region** (Prudat & Weidmann 2019)

advantages but also posed challenges. Since two of us – Romie Nghitevelekwa and myself – even shared an academic background in social anthropology, we took our time and great effort to navigate and formulate reach our separate focus within the project: Because it was clear that in order to avoid competition and instead render benefits to the project, we were supposed to ask different questions. Our solution was to divide our paths by scale: Romie Nghitevelekwa chose to enter more deeply into the field of households, families, enquiring the norms and practices of gender, inheritance, detangling bundles of rights, and access to different resources. I, in contrast, decided to adopt a multi-scale approach, shedding light on various layers of governance, from the national down to the local, albeit not inner-household or family-internal levels of governance systems, norms and practices.
The complete research was conducted in three field visits. The first field contact was conducted with the whole project team, between February and March 2013, with the goal of contacting national scholarly and political gatekeepers. In the north, we gathered our first impressions and negotiated our housing and mobility options. While we prepared the path for cooperation with stakeholders from different governance scales, in the North I did find some time to do insightful interviews with both introductory and analytical value. The second field visit was the most extensive one, lasting from October 2013 until April 2014. Of this time, about five months were dedicated to living and

researching in the north, mostly around the area of Ondobe and in the wider range between Ohangwena (settlement) and Eenhana. It also included a few short excursions to the Okongo area, and to conferences and trainings in the urban areas of the Ohangwena region, and to a visit each to the Oshikoto and the Omusati Communal Land Board meetings. The third visit took place in July 2014, in which we visited the Ondobe area with a group of students and professors from Switzerland and Namibia (NUST), with the intention of studying the developments along the regional main road. I also took the opportunity to revisit and thank some of my friends and informants in the area and was able to conduct interviews with a few significant actors in the land governance network.

| **Field research schedule in 3 phases and different methods applied** | | | |
|---|---|---|---|
| Level / Location | Interviews | Informal talks | Participant observation |
| Phase 1 (Feb/March 2013) | | | |
| Farmers/Households<br>Ondobe area | 27 | | 1 Oukwanyama Queen Celebration |
| Land related offices and institutions<br>Windhoek | | Introduction as a team MLR, LAC, National Scholars | |
| Phase 2 (Oct 2013-Apr 2014) | | | |
| National and international offices / experts<br>Windhoek | 4 Members of LAC, MLR, GIZ, NUST (formerly Polytech) | | |
| Okongo area (Cattle post)<br>North | 1 Cattle post owner | 1 Cattle post owner | 1 Cattle post celebration |
| Regional and municipal level (CLB, Councillors, GIZ and CLS North-Namibia)<br>Ohangwena region, Oshana, Oshikoto, Omusati | 4 International consultants<br>3 CLB officials<br>2 CLB members<br>3 MLR officials | 2 | 3 CLB Meetings<br>1 Gender equity workshop<br>1 Land Board Training (on week)<br>1 Team of outdoor officers in their fieldwork<br>1 SSCF Meeting (Okongo area)<br>1 official *Handover* of area Maps CLS – TA (Okongo area) |
| Traditional Villages<br>Ondobe area | 3 VHM<br>2 Village Sec./Kapatashu | 1 VHM | |
| Traditional representatives<br>Ohangwena and neighbouring regions | 4 SHM (3 from Oukwanyama, 1 Ondonga)<br>1 VHM Ondonga TA | 1 SHM and educationist (Ondonga) | 1 Community Court hearing<br>1 Eudaneko (Traditional Village Cluster) Meeting |
| Farmers/Households<br>Ondobe area | 16 Villagers | 1 Religious leader | 1 Village Meeting |
| Urban settlers<br>Okahenge | 1 Chairman of Men- and Women Network<br>1 Business owner | | |

| | | | |
|---|---|---|---|
| National level<br>Windhoek | 1 MLR representative<br>1 Geography Scholar, UNAM<br>1 Land Management Scholar, NUST | | 1 Handover of Policy Recommendations by CLS to the MLR |
| Regional government and municipal clerks<br>North: Ondangwa, Ongwediva | | 1 Legal Training Facilitator, MLR & CLS | 1 Legal Training for TAs<br>2 CLB Meetings |
| Phase 3 (August 2014) | | | |
| National scholars and experts<br>Windhoek | 1 Geography Scholar UNAM<br>2 Legal Scholars, LAC<br>1 journalist/historicist | | |
| Regional government and municipal clerks<br>Ohangwena | 1 Regional governor<br>2Town/Constituency clerks | | |
| Traditional representatives<br>Ohangwena | 2 VHM, Eenhana area<br>2 VHM, Ohangwena area<br>1 SHM and 1 Kapatashu, Okongo area | | 1 Eudaneko Meeting |

As for the process of data gathering, in all three phases I allowed for interviews and/or observation slots on all scales of interest: In the villages, I first visited the headman/woman or their deputies, if they were absent. Most of the informants were aware of us and the project in general terms, since we had ourselves announced over radio by the municipal governors of the area we intended to visit. Those village-level interviews and visits usually took place without individual appointments. This naturally led to a selection of informants that was biased towards non-working household members, namely elderly, and predominantly female caregivers for children.

For interviewing members of regional government offices, more specified guidelines were needed, since they were questioned about their professional experience and assessment, and their answer was not only valued as a personal statement (my take on *expert interviews* are further established in *3.2.2. Merging Data from Different Sources*). The most important interview partners on this level were the regional Ministries of Lands and Resettlement (MLR), with whom I held close contact through monthly Communal Land Board meetings, and their administrational dealings with the board's decisions and tasks. The meetings gave insight into performed relationships and strategies between different official stakeholders within the new land governance system, and the handling, knowledge, and interpretations of the legal writings in the moment of their transference into reality. Finally, several key actors within the legal and implementation history of land reform have been interviewed, many of them on multiple occasions.

The analysis was first conducted through a critical scrutiny of the local and social context, from which the data had emerged. In the analysis, close attention was therefore paid to the channels of transmission (legal texts, documented statements of political actors, field notes, interview transcripts, and newspaper articles) and the status of the sources within the governance and authority system. In every case, the context from which data was derived was scrutinized from two angles: Firstly, from the anthropological approach to individual interests, means and strategies, and secondly the geopolitical setting and its potential influence on how strategies or positions are reflected in practice and discourse. According to the theoretical tenets of discourse analysis, all

gathered data was analysed as an entity, irrespective of its "various forms of texts and carriers of data" (Blatter et al., 2007, p. 76 own translation). This procedure allows to identify an "overarching scheme of meaning" within this broader discourse which is uncovered through "comparing various forms of texts and carriers of data" (ibid. 2007, p. 76 own translation). In this study three main types of data were considered as sources: 1) Official documentation by statutory and customary institutions, 2) Notes in the form of a field diary and protocols, and 3) transcripts of translated and interpreted interviews. Seeing that each of those forms comprises a number of empirical types, it became harder to differentiate data into official and non-official sources (Cloke et al., 2004), which is further depicted in the table below. It lists the different sources of data that made the empirical base of this study, and relates them to their form, context of extraction, and what insights they offered for the analysis.

**Table 1: Different Sources of Data and their provided Insights**

| Data Source | Data Type | Insights |
|---|---|---|
| Acts, Regulations, Amendments | **Official legal texts** (Legal documentation) | Formulation of the government's perceived power of definition and desired scope of involvement (the omissions can be as revealing as the formulated law: no legal guidance, no responsibility?) |
| NGO support documents: NGO guidelines and brochures for the legal implementation | **Procedural official documents** (Official documentation) | Advertisement and forwarding of the implementation process<br>Translation of the legal texts into practical guidelines for broader acceptance and quicker outcomes |
| CLB Communications and minutes (16) | **Documents of official negotiation** (Official documentation) | Translation of the legal document into practical governance; prioritization of tasks; solution to (recurring) disputes; argumentations in disputes; power relations between the board members (including the TA representatives) |
| Public service and Media accounts: Newspaper articles & Radio programmes | **Narrative negotiation** (Written articles, blogs, radio programmes) | Narration of current conflicts and accounts of 'disruptive moments', addressed to the broader 'public' |
| CLB meetings – observation (9) | **Narrative negotiation** (Oral data recorded) | Power relations and narrative tools in negotiating the "legal truth" |
| Village meetings (3) | **Narrative negotiation** (Oral data recorded) | Narrative and performative tools in negotiating/re-defining the tradition and the community-legitimisation; forms of participation in decisions for community members |
| TA members (…), villagers, state officials, other experts | **Semi-structured Interviews** (Oral data recorded) | Narrative accounts of personal experience and opinions on the power field / legal field in general and personal disputes in specific |
| TA members, villagers, officials, scholars, NGO consultants | **Informal talks** (Field notes, mind maps) | Personal negotiation of claims, legal imaginaries, political satisfaction |

| | | |
|---|---|---|
| TAs, villagers, officials, NGO consultants | **(Participant) Observation** (Field notes, Photographs) | Interactive negotiation of claims, legal imaginaries, political satisfaction |

For each of these data sources, their context of emergence is no less important to consider than the data itself, in order to localise the data with respect to their social priority and meaning. This context, for instance, includes the audience that was addressed in the moment of speech, the power status of the informant (or author, in case of written documents), the channel of communication chosen, or the aspired or anticipated reaction or counter-argumentation (Van Dijk, 1989, p. 30). Each 'author' that was given a voice has a role and power within governance. The actual effect of their legitimisation differs according to their forms of capital, the way in which they apply it strategically and the capital of respective recipients.

Since ethnographic participant observation was pragmatically limited in official and institutional contexts, I had to revert to the great arsenal of documented discourse to complement my insights through expert interviews (Meuser & Nagel, 1991), with other voices on those levels of governance and politics. Such sources of documented discourse were found in legal documents, dispute registers and meeting protocols, among others.

Each of the sources of data contributed to the growth of my understanding of single arguments, and of my 'feel' for the game (Bourdieu, 1990, p. 82), thus adding to the understanding of the wider "Bedeutungsschema" – or "the specific or general logic of the discourse" (Blatter et al., 2007, p. 76 own translation). In anticipation of my successive approximation to vernacular realities, I have employed the cross-scale and processual perspectives particularly with the intention of using them as support in re-evaluating changes in direction and proceeding while navigating the focus of research.

### 4.2.1. Iterative and re-evaluative methods

Building on ethnographic methods, the process of data acquisition stood in a constant dialogue with theoretical and logistic rationales. The procedure was to keep meta-concepts at hand – field-specific and discipline-related arguments prevented a *grounded theory*-approach –, while avoiding taking a deductive position by foreclosing explicit theoretical and hypothetical limitations. This would not have been constructive in view of the unprecedented character of this research in comparable conceptual and regional settings. From the beginning of the research project, I was aiming for a methodological approach that stipulated continuous re-evaluation and refinement throughout the process. The 'thickness' of a description lies in the connection between observation and interpretation on the conceptual system at stake, in "our (re-) constructions of what the participants construct at the time" (Wolff, 2004, p. 48).

This approach presumes to conduct the collection and analysis of data in a procedure of circular reappraisal. To acquire its 'thickness', a description is not to merely include the observable details, but to connect it to hitherto insights of the emic system(s) of meaning (Wolff, 2004, p. 48) or the habitual classificatory schemes of social meaning (Bourdieu, 1989, p. 19). For this reason, it was crucial to collect data and ask questions, test hypotheses across all scales of governance, throughout the course of research. This meant that the international, national, regional, and local actors were to be observed and questioned in a non-chronological order.

**International level:**

The Namibian democracy discourse, its legislative and executive mechanisms and strategies are considerably informed by the German, United States and other foreign support programmes and funds. This reaches from policy recommendations by the CLS (Ministry of Lands and Resettlement et al; Community Lands Support Sub-Activity & Millennium Challenge Account Namibia, 2014; Millennium Challenge Account Namibia, 2011) to the funding of information brochures and facilitation of trainings on the Communal Land Reform Act by the CLS (Field Diary, Land Board Training, 28.10.13), to the technical and expert support in the regional offices for land registration, for instance by the GIZ (Pack & Nkolo, 2012). Hence, 'Western' discourses continue to inform the definitions, agendas and priorities (Van Dijk, 1989, p. 22) of customary land rights. For this reason, the international scale of social meanings was important to take into consideration when looking at and defining systems of meaning in the form of moral fabrics, to establish where a logic or conviction, such as democratic election as a paramount source of input legitimacy stems from if it has obviously not grown from local 'custom' and history (Field Diary 19.2.2013).

**National level:**

On a national level, documents and expert interviews were conducted and consulted in order to find out the political and developmental agendas, as well as priorities, interpretations and definitions about customary land rights as they exist on a national scale. National media discourse was another important source to keep track of this scale: Statements by Ministers on national priorities for example of the land issue in general, of the commodification of land, or the importance or challenges of recognising TAs as vital stakeholders in national governance offered important insight in narratives of power by the symbolic elite (Van Dijk, 1989, p. 22) of national politics, but also of what they anticipated to be commonly legitimised opinions and meanings.

**Regional level:**

Inquiring upon the perspectives of Village Headmen (VHM) and Senior Headmen (SHM) proved insufficient particularly when it transpired that the vicinity to TA centres (palace, communal court, district centres), commodities, mobility and infrastructures, and regional and national government offices had crucial impacts on the demands to governance. Therefore, to include a broader range of such socio-economic contexts, the original study area around Ondobe (*see Figures 7 & 8*) was expanded. It was extended to include the Ohangwena constituency, which is shaped by a tight coexistence of the TA centres (Palace, TA office, and community court) and town administrations, the immediate vicinity to Eenhana town land, and to the Okongo settlement. It had become evident from

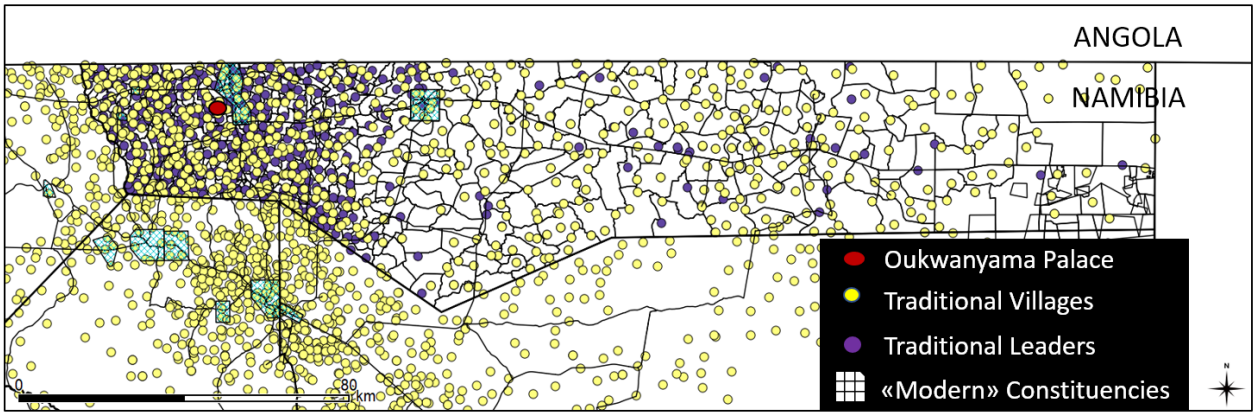



**Figure 7 Geographies of Power: The Palace of the Oukwanyama, Traditional Villages and Leaders (as recorded by the MLR), and the Statutory Constituencies within the Ohangwena Region** (MLR Cadastre 2015 & Weidmann, 2019)

observation of institutional and community gatherings, that those diverse political, ecological, and

infrastructural spheres within the region make for crucial variations in their form of and use and governance: the location of the Queen's palace and the traditional (community) court of the Kwanyama in the Ohangwena constituency, showed to be having a different impact on people's control and attachment to the TA. In their own right, the hubs of regional and local government representations had another potential pull effect, and again another audience was likely to be pulled towards fast-growing urban land.

On the side of state authorities and institutions, the regional level is headed by the regional councillor. After the councillor, the next-lower scale of authority varies according to the form of land

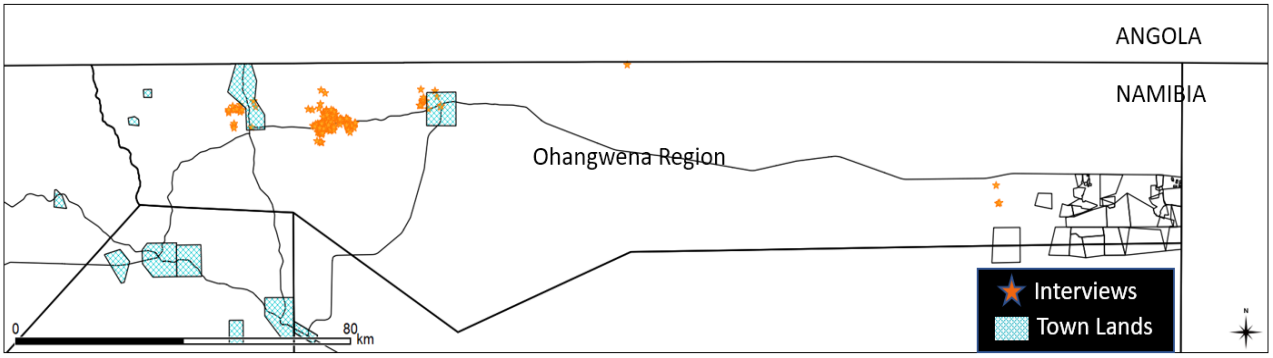



**Figure 8 A Geography of Fieldwork: Locations of Interviewed Land Users and TAs in the Ohangwena Region** (Weidmann, 2019)

tenure that prevails in the respective territory: Besides regular communal land tenure, which is governed on this level by traditional leaders, town lands, or statutorily gazetted local authorities are managed by respective statutory administrations (Parliament of the Republic of Namibia, 2002 Sect. 15.2.) (*see Figure 8*). Furthermore, the region comprises formalised commercial rangelands, which are intended to function as de facto leasehold contracts between the state and the individual farmers (SSCF; Hager, 2013). Statutory local authorities are town clerks or councillors that have been appointed or elected to represent the "municipality, town or village" in question (Parliament of the Republic of Namibia, 2008, p. 6).

**Local level:**

Below the scale of municipal councillors, the TAs are reigning local governance on a village level and conglomerates or clusters of villages (*ediko),* which are headed by Senior Headmen (Field diary: 07.04.14). The territories of traditional villages and clusters are often disputed (→ *5.3.4. Spatial contextualisation of Traditional Authorities*). Varying views exist among their subjects on the importance of traditions, and TAs in land authority. Especially in quickly urbanising centres, where land use is more temporary and commercially focused, the legitimisation of TAs is becoming aggravated. In the words of a politician, the acting Minister of Lands in 1996, this was particularly emphasised:

> Many traditional leaders have lost control over the administration of communal land. The power of traditional leaders has diminished over time and people [no longer] seek their guidance. (Pendukeni Iivula-Ithana, then; quoted by Thiem & Caplan, 2014, p. 110)

One important factor that has proven to be destructive to TAs' basis of power, is the increasing absenteeism among communal land users, and of TAs themselves. The long-established practice and need for labour migration have accommodated absenteeism in local land governance, although it stands in direct opposition with the TA's reliance on social cohesion and community responsibility.

The methodological design was purposefully chosen to contain both inductive and deductive moments interrelating through constant dialogue (Cloke et al., 2004, p. 216). Consequently, the theoretical focus shifted towards more procedural concepts, in order to establish local land governance within a broader political culture. Such processual concepts expanded from Bourdieu's habitus, capital sets and playing moves (2012), and Van Dijk's (2011) works on power in discourse and communication. De Certeau, in his attempt to overcome a too static concept of habitus (or moral fabrics), he suggested a distinction between 'strategies' and 'tactics', depending on whether an actor works along the lines, or contrary, to institutionalised routes of action (ibid. 1980, pp. 5–6). This suggestion, however, does satisfactorily address the variations in agency observed in the in the north-central Namibian governance system. While multiple legal systems and moral fabrics are in use, strategies in De Certeau's sense prove almost impossible to find, since very few practices can build upon one normative, legal, and organisational system, without going counter another field's moral fabric; neatly complying with the routes of action prescribed by state law and norms, for example, often implies a transgression of some norm prescribed by the traditional system.
In the process of an inductive formulation, I identified various types of goals, strategies and capitals that continued asserting themselves as promising comparative factors. Criteria that proved to have an impact on the 'choice' of strategies in village leadership were determined to be:

- **Demographic criteria**: of the size and number of allocated and/or registered plots
- **The socio-economic character of their villagers** and/or the proportionality of the economic resources of villagers and the village leader(s)
- **Geo-political criteria**: a village's spatial distance to a centre of political or customary authority
- **Hierarchy levels** within the TA, as a factor for varying means and forms available to their members
- **Expertise** as a capital of both TA and villagers

Over the course of the ethnographic field phase, however, these criteria of course showed great variety, in their sub-forms, but also in mutual intersections.

### 4.2.2. Participant observation

One of my earliest entries in my field diary summarizes a general sentiment I had on the culture of power and authority:

> "… on the notion of hierarchy: If peoples' trust in their headmen and councillors is in fact so great that they will actually talk to us (only) after we have been given the *blessings* by all of them, then this indicates a very strong, functioning structure (power structure), meaning a healthy balance between power and responsibility." (Field diary 1, 12.02.2013)

However, I later realised that the first impressions of the field, and especially of its actors, are often starkly influenced by their performative agendas towards outsiders. And 'outsiders' we were naturally, as our project team appeared on the stage of the local and regional governance: obvious outsiders with an unknown agenda. Not completely unknown, in the sense that the region is popular with scientists from Europe and the United States, and some interactions mirrored a certain routine of talking in such type of semi-formal setting. In the above described example, the approval of the councillors was just as much a self-protective measure for the local actors as it was a tribute to the political stakeholder, in the form of a performative re-legitimisation.

A strict anthropological construction of participant observation, for instance in the form of "thick participation" (Spittler, 2001), was hampered by linguistic and formal hurdles to access "social vicinity and common experiencing" (ibid. 2001, p. 12 own translation). Therefore, I was not expecting to be able to do as much ethnographic observation as I ultimately did, owing to my translator's shifting role to research assistant and being sensitised to the topics and dynamics of interest. Gossip is a control mechanism to maintain equality and a common identity (Gluckman, 1963, p. 312) within a group. I only recognised its importance when I was inducted in a local gossip for the first time. The value such informal social events carried for my research was based in the information that was transferred: It clearly pointed out the remarkable and the unremarkable aspects of a story and the immediate reactions gave support to the narrator's separation between these two.

### 4.2.3. Semi-structured interviews

The main source of the interview questions was my participant observations, and how I, with my pre-concepts, made sense of them. The interviews were structured only to the extent that was deemed necessary to establish an interest on the part of the interviewee, to trigger a reflection on a certain issue without implying a predefined interpretation. This was challenging in some cases, where I caught myself having constructed my personal interpretation before asking the informant. These cases multiplied further in the research process, more discussions, interviews, and observations, feeding into a sense of comprehensiveness in my reading of certain situations and facts. This transition I found interesting to observe, however challenging to keep awareness of, in order not to fall into the trap of interviewing further for the sake of substantiating my – or certain informants' – premature analysis. One instrument to avoid this was to keep formulating more questions that arose from every interview I made.

My choice of informants was strongly directed along those actors I considered the most affected by TAs and the status of TAs according to new legislation. At first, I interviewed the villagers and village Headmen close to my field base and adjacent villages. On the level of state authorities, close and regular contact was established with the land board secretary, its members, and the development planner of the regional Ministry of Land. In an advanced phase of my research, I began to broaden my scope or field of interview visits, in order to follow up on factors that have become increasingly interesting as (potential) factors that decide on an actor's new position in land governance, and – correspondingly – on their goals, strategies and capitals. This way, the above-mentioned distinctive criteria asserted themselves as factors of comparison: Demographic, socio-economic, geo-political, and hierarchical positions, as well as a person's expertise.

The central aim of my data-gathering was to visualise different personal and institutional imaginaries and performation of law, by gathering accounts of "world-making" (Delaney, 2011, p. 23) from the standpoint of individuals, communities, and even from a national perspective. In the way I approached the drafting of my interview guideline, I followed Delaney's instructions to reveal legal imaginaries:

> Access to legal imaginaries can be made by reflection on the plausible (or implausible!) answers given to questions such as: What is law? What is law for? What would the absence of law be like? (ibid. 2011, p. 19)

And, specifically using those questions to expand the cross-scale field: What scale and source of authority does law represent, and what role does it acquire in situations of raising and disputing land

claims or land authority? In cases of the absence or weakness of law, what takes its place instead? Further: "What are property, privacy, punishment *for*?" (ibid. 2011, p. 19). The interviews were generally prepared along topical blocks. For example:

1. **Legitimisation:** How can the Village Headmen keep up their authority position despite the structural changes in land management practices? (Institutionally, performatively, discursively…)
- Towards state / government side?
- Towards the side of villagers /community?
2. **Challenges**: Which challenges do they face in the process (of those strategies)?
- From state / government side?
- From the side of villagers /community?
3. **Strategies**: What are their reactions? Can they redefine or keep their positions?

The constitution of interview guidelines was subject to constant reshaping following previous interviews, participant observations, informal talks, and data gained from legal and political documents and medial discourse. Because the field was so fundamentally foreign from my own origin, my interview guidelines at the beginning bristled with wrong assumptions, strange prioritisations and other oddities that sometimes gave cause for laughs among my informants. The process of adaptation is, however, a valuable negotiation, in which normalities and absurdities are reflected to their potential origins, when explained. The instances in which I was humorously outed as an unknowing outsider, often helped to put the interview at ease and willing to share personal – and not necessarily highly reflected – opinions.
In almost all cases of conducted interviews, it felt natural to re-visit the interviewed villagers and village-level authorities at least a second time. Such follow-up proved to be very valuable for many considerations: to show personal appreciation of the time and information they had offered to my research, build on the established trust and deepen it in favour of receiving more or more detailed information. Especially after the informants had the time to assess me, my personal and research interests, and knowledge, some would take a different or more refined standpoint vis-à-vis a specific event or problem or have remembered another issue that they might deem interesting for my endeavours. An additional reason was that it allowed a person to speak from various roles within land management: government officers for example are also villagers, some of them related to village leaders and so on. Hence, to grasp as much of their experience and their involvement in and the knowledge of the issue of land reform, it was of considerable interest to invest more time and let the person rest and reflect between interview dates. This was not least due to my interview guideline, which did not stipulate for various roles to be assumed within a topic but followed a topical thread and could result in a double burden when each question or topic was to be answered consecutively from two perspectives.

### 4.2.4. Merging data from different sources

Using ethnography as my main methodological reference, in the process of field research, and post-field analysis, I have established my own approach of blending the process of acquiring, treating, and finally interpreting the data. At the centre of these interests, however, remained "the depth of understanding and the purchase on the lives of real people," thus lies "the characteristic strength of ethnographic research" (Davies, 2002, p. 32). Participant observation, the conventional method of

ethnography, needed to be complemented by other approaches of data acquisition, such as semi-guided interviews, expert interviews and participant observation within formal settings (meetings, hearings, trainings). This expansion of the methodical spectrum was mainly due to the considerable disparity in how the lives of actors in different power positions are accessible for participant observation (ibid. 2002, p. 32). In other words, it was simply impossible to conduct an ethnographic cross-scale analysis through solely relying on one method. Thus, although the method mix (Verne, 2012, p. 185) resulted in a broad variety in the form of the accessible data and in the ways, they had to be treated in the process of interpretation and quoting, I tried to bring all data unto a common level of expression and comparison. My empirical sources of data were thus my fieldnotes, interview transcripts, and official or semi-official documents. The fieldnotes I took to reference both formal meetings, and informal, spontaneous interactions. They comprised not merely a detailing of what was spoken, but also notes on my observations, new ideas and questions sprouting from them. They were all conveyed as an electronic field diary, assembled village meetings, Land board meetings, and coincidental events and exchanges. The transcripts finally counted 33 interviews with villagers: 12 VHM, 7 SHM, 10 deputy headmen and secretaries, and 4 with advisors to the Queen. Documents of Ministries, Land Boards and international aid companies were treated through the same system of analysis as the transcripts (MaxQDA).

A discussion on what constitutes *experts* and *officiality,* serves as a point of critically reflecting on the dichotomisation of official and non-official sources (Cloke et al., 2004, 61 pp.). This methodological excursus is even more pertinent in view of the general doubts this study raises against officialism, formalism, and informality. Because, even though official data (ibid. 2004, p. 61) is increasingly scrutinised as an inherent political construction, their distinctive form still tempts many researchers to treat such data more reverently than undocumented, or less standardised sources of data. Cloke et al. (2004, pp. 91–92) explain, that while both, "imaginative and factual sources […] promote partial and particular viewpoints," the documented sources do this "under the banner of faithfully reporting the truth" (ibid. 2004, pp. 91–92). This is the trap researchers must try to avoid.

> Thus new methods are required that retain insofar as possible the strength of ethnographic insights into what real people on the ground are doing, while allowing researchers 'to broach, in their own ethnographic right, such things as electronic media, "high" culture, the discourses of science, or the semantics of commodities' (Comaroff and Comaroff 1992: 31). (Davies, 2002, p. 32)

Expertise and life experience are oftentimes – if not always – interconnected, but need to be disentangled in quest of an expert interview (Meuser & Nagel, 1991, p. 442). I, however, consider expertise (in the sense of knowledge capital in different fields), as inextricably connected to a person's social status and their knowledge, beliefs, and moral fabric. This connection cannot simply be extinguished when asked for expert advice or opinion, as completely withdrawing from one role for the benefit of another is not possible.

A journalist was one of a number of 'experts' whom I interviewed with the aim of adding to a historical perspective on TAs and their position within Owambo communities, over the past 30 or so years. Clearly, history was present in every instance and source of empirical and non-empirical data (Lund, 2013; Radcliffe, 2005; Appadurai, 2010). In the case of the journalist, his narration on the history of the TAs' position was not only guided by his expertise in political and social history, but also by his expertise as a member of that community, which is by no means an objective one. Retrospectively, this encounter made me take a position opposing any expectancy of expertise being a homogeneous coat that can be worn or taken off at discretion, without influencing the person's overall personality or opinions. I refute the assumption of experts as computerized, de-personified

information sources, for this would mean that a researcher can consult a brochure or official information that has been issued on or by the institution in question. But the researcher is not to give an uncritical account of expert-facts, especially when it comes to social facts – but rather to reflect on these issues in their representation by officially recognized experts. And by reflecting the information critically, one cannot avoid to critically scrutinize the political position and communication strategies by the "expert," which I preferably call a *specialized* informant. Choosing the journalist as a specialized informant grounds in his particular set of capital and knowledge, which I expected to differ in many respects from those of people I had previously interviewed. In this sense, he was not representing a certain 'type' that was to be directly compared, but the aim was rather to fill gaps in my thusly established picture by means of more precise inquiries.

### 4.2.5. Translation, research assistance, and transcription

Language is power, because "[i]f you cannot give voice to your needs you become dependent on those who can speak the relevant language to speak for you" (Temple & Young, 2016, p. 164). In consequence, for a research report focusing on power relations, it is particularly crucial to identify the effect of language on power relations – both in the field of study and in the contexts created by the research activity itself. The researcher, research assistants, translators and the impacts of their presence, as well as the internal power and communicative channels are important to note for understanding the content and priority of information transmitted through those channels.
A social constructionist interpretative research paradigm presumes that an actor's position within the social world influences their understanding of it. It follows, that translators and the process of translation hold an important role in the research situation:

> [T]ranslators *must* also form part of the process of knowledge production. There is no neutral position from which to translate and the power relationships within research need to be acknowledged. (Temple & Young, 2016, p. 164)

The presence of a translator can have an intimidating effect because it puts the interviewees in a minority position. However, in the case of this study, the presence of my translator Ndali Mathias rather reassured the informants (*Figure 9*). The reasons were her young age, her gender, but probably most importantly, that she came from the area herself, and thus shared a social field of the livelihood in a rural Kwanyama community. Hence, her knowledge of the informants' field of reality and moral fabric served as an invaluable basis of trust.

**Figure 9 Research assistant Ndali Mathias**, and the author at a villager's homestead in Ondobe (A. Wüntscher, 13.12.13)

The form of the discussion, which was slowed down by, and simplified through the translation, further contributed to counterworking any perceived power imbalance. At first, I rated such pauses in interviews, caused by the translation, as nuisances. After a while, however, they were smoothed out and shortened by an improving accord between the research assistant and me, and even became welcome opportunities for reflection. By including Ndali more and more into the process of creating and formulating questions, which was undoubtedly facilitated by our co-habitation, her understanding and interest in the research questions at hand grew. As she became more involved in the research aim and sharpened her skills to identify topics or statements of interest for out project. As a result, the interviews became more fluent and accurate in their testimonies, since Ndali could swiftly re-formulate or re-emphasise questions that were not addressed accurately or sufficiently by an interview partner. Furthermore, it enabled me to do participant observation even in completely informal and unrecorded moments, since she translated synchronically to keep me in the conversation. She translated and interpreted spoken – but also unspoken – meanings that were to be transferred to and from the informants and the fields to me, the researcher. Together, we did our best not inhabit a role of superior authority in the conversation but to establish a "shared authority" with the narrator (Raleigh Yow, 2005, pp. 1–2). This impression was reinforced when the interviewees asked counter-questions or made comments on other daily struggles they are facing, which digressed from the subject of research altogether.

In interviews, even though she spoke swiftly and precisely, there remained of course pauses of translation, between the questions and answers. I later started to reflect on their implications on (the course of) a conversation. At times I worried that they would be irritating, for persons who were eager to continue their account, or if they could sense an insecurity of the translator when formulating 'their' statements, or if my reaction was different from what they expected it to be. It was thus a condensed market of trust, emphasising, repeating, creating, and forming social relations. The transcripts that formed the documented basis of most of the empirical data for this study reflect a considerable adaptation of the thoughts and how they had been formed in the speakers' minds.

Ndali Mathias and other translators who were engaged along the course of this study had the difficult task to translate and interpret simultaneously during the interviews. In an attempt to have those meanings and eventual shifts in meaning recovered or at least reconsidered, they were asked to transcribe the interviews, in such a way, that they retrospectively reviewed the original Oshivambo statements and so completed or corrected their simultaneous translations.

This measure served two purposes: firstly, it allowed the researcher to trace back things that possibly got lost in the situated prioritization of translation. This was not considered a mistake by the translator. Because my perspective was to accept and appreciate that a translator is rather a research assistant, guided by their own interpretations of what is interesting and what deserves more or less emphasis, than merely a machine transferring meaning one-to-one. Secondly, it gave me a closer insight into the Oshivambo language system – even without learning the language itself in detail, the structure of sentences, the construction of argumentations helped crucially to estimate the meaning or emphasis of a certain word (like for instance "ne…", for instance). This knowledge served me well in interviews that were conducted in English but were often constructed along similar systems of "verbal fillers" or non-verbal behaviour in a conversation.

**Figure 10 Informal discussions with English speaking locals.** The author in a conversation with Tatekulu Halweendo, in front of the research group's house in Ondobe (A. Wüntscher, 13.12.2013)

Of course, there were also a considerable number of people with whom I was able to communicate in English (*see Figure 10*). With those informants, I was certainly able to maintain a more personal relationship and receive more immediate hints toward issues and opinions that would be of interest in my study.

### 4.2.6. Visual methods

Topics so inherently spatial and material as *land* and *land governance* indefinitely call for visual methods, such as landmarks, as marking stones or trees, and of maps – witness to the history and present of the western doxa of documentation taking over (post-)colonial spaces.
Oftentimes, I avoided bringing up maps in interviews with villagers or TA. This was a conscious decision, being aware that local perceptions and management of space largely exist without aerial maps (Chapin et al., 2005), and could possibly trigger a feeling of technological inferiority. Instead, I was aiming to make sure to mention my critical standpoint vis-à-vis the technique and technology of

mapping in an area which has thus far worked on a non-documented system of tenure. In this line of argument, I intended to gain explanations on local or vernacular techniques of defining their rights to land. At times, during the interview, the certificate was brought out for display or as proof, on which a map of parcel is displayed. More often, however, it was only mentioned as a piece of paper that ought to be sitting somewhere, but was not brought to display, maybe due to its unproved importance.

In a few instances, however, especially in conversation with people of expert status and accordingly my questions on specific cases, I showed maps to underline my point or uncertainty. At times it proved to be a great discussion starter, especially for follow-up meetings, as they worked as a stimulus to remember the general topic and a specific issue at once. I had to be careful not to appropriate maps as a means of expanding my distance – academic and/or cultural – from the interviewees, appear as using maps to 'prove them wrong', but as an alternative reality, asking why this might be seen as a reality by official bureaux.

In interviews with government officials on the other hand, maps were often the basis for questions on specific measures in land management their offices take. In an interview with a town clerk for instance, I referred to specific areas, inquiring about settlement patterns and plans, or on the motivations for the boundary-location or future estimated projects. In this case, the map took a much less intimidating role, to the contrary even; it gave raise to their status as an expert in the conversation.

In one case, I asked an informant to help me draw her family tree. This was an idea that had grown over some time and conversations, during which it successively became clearer that the population of a village was much more closely interwoven through kinship and other social connections than has become recognisable from the family names of land right holders (as documented in the Ministry database) and interviews conducted. The family tree was therefore an attempt to collect a dense web of spatial, familial, and historical connections, as I increasingly noticed their importance in the distribution of land, and, in the composition and leadership of the village. The result was insightful in as a clear majority among villagers turned out to be descendants of the founding father of the village.

## 4.3. Critical reflection of the researchers' role in the field

> In crosscultural studies, cultural representations are constructed in terms of the researcher's own culture, thus making method and methodology inseparable. (Aldridge et al., 2010, p. 49; referring to van Maanen, 2011)

The question of my affect as a researcher on the field and data was a constant companion throughout my field research. My identity, as it reflected in the context of rural north-central Namibia, gender, skin colour, age, presumed nationality - and (potential) identification with the coloniser language, presumably affected the informants and data. It is my personal concern to address the problem of exoticization, and the criticism of scientific colonialism or imperialism (Griffiths, 2017). This question has been a constant companion throughout, and beyond, my field work: Not only when I was asked by informants what I intended to do with the information I received, and why I took such interest in their lives, but also back at home, in the process of writing and editing was I confronted with similar questions, and rightfully so. I am convinced that this topic ought to be a fundamental concern to researchers of all disciplines to "look on and within ourselves in the West" (ibid. 2017, p. 4), our participation in a history of stark and structural inequality, of which academia is not exempt at all. Thus, doing ethnography in "the South," as Griffiths (2017, p. 4)

argues, obliges us postcolonial geographers to engage "with complex (and sometimes contradictory) perspectives on privilege and difference."

> For many geographers the belief that the world is *their* 'oyster' has never been questioned, and the possibility that large portions of it are really *somebody else's* world is not one that is often addressed. (Cloke et al., 2004, p. 13)

Although the authors (2004, p. 13) are referring to the "specific places" that we define as our field, and that we often access without sufficient hesitation and reverence, the same conditions apply for how we should inquire the legal or practical "'ownership' of land" that we intend to access. To me, it was a fundamental conviction, that my foreign or outsider view would add value by retaining openness towards conceptualising and connecting interpretations. This was especially important in a highly politicised topic, such as the land reform, which affected everybody, and would inevitably lead to a blending of personal interests and stakes.

My field entries began by explaining myself and my interests in/towards my various interview partners. This explanation required some prior debate and reflection, as to why a person like me should be asking the questions I wanted to ask. The explanation of my interest to informants was challenging, in the sense that I had to formulate it in a transferrable and comprehensive way, which raised peoples' interest and eagerness to help answer my research question, without intimidating them through academic language, codes, or assumed common interests. The second challenge was to explain my interest in an everyday, pragmatic way (Griffiths, 2017). For this cause, I, at times, resorted to the topic of land disputes: because, just as we as outsiders seem more likely to notice uncommon behaviours, disputes or simple disagreements were easier as conversation starters. I thus quickly gained access to the information I aspired to gain, and the informants were often interested in the discussion, and thus motivated to have themselves be heard.

> In [new] ethnographic research … power may be unequal, but both interviewer and narrator are seen as having knowledge of the situation as well as deficits in understanding. […] The interviewer thus sees the work as a collaboration. (Raleigh Yow, 2005, pp. 1–2)

Various measures were taken to work towards the idyllic idea of collaborating with informants through "shared authority" (ibid. 2005, pp. 1–2). One measure was the inclusion of a research assistant who originated from a neighbouring village, who was able to provide not only linguistic but also cultural translation. In interviews with authority holders (or experts of some sort), such as Senior Headmen, the authority balance had to be achieved through confirmation of a certain level of knowledge and commitment to the topic, and by signalling that I understood and acknowledged customary positions.

With an increasing level of formal authority my interviewees held, the more I felt required to substantiate a similar authority position – through academic, conceptual, and topical knowledge of my field of research. In general, there were rather few occasions when my personality had an intimidating effect on the discussion partners. My age (which tends to be underestimated, too), being a woman, and my obvious foreign looks calmed people who would otherwise be suspicious towards actors with a potential agenda to make use of their information – this could be to gain land access or political espionage (the latter carrying a heavy burden from a violent history during the war of Independence). Of course, I indicated my honest interest in local governance, devoid of any ulterior personal motives, other than scholarly success. My translator often explained my efforts as being part of a "homework for school," which was a reproducible motivation and one that deserved

support and unnegotiated help. All these factors helped to put a person at ease and open up in terms of their own perceptions and experience.
My skin colour and the assumptions it triggered are important factors to reflect before and during analysing the data I gathered as the person I was in the context that was my field for study. It is not to be ruled out that my appearance evoked associations with local employees of international development organisations (e.g. GIZ). This may have had an impact on peoples' responses or choices of accentuation on what is perceived as the Western moral or political discourse. For example, it may have affected the readiness to talk of development in interviews, to argue based on the state law or written laws in general. However, at times I had the impression that my presence was also used as a legitimising support; when a Village Headman had understood that I am not against the 'customary' norms, but – as may have been interpreted as encouraging – in favour of them, they quite enjoyed emphasising their ideas in village meetings or on more private occasions, by referring to how they do things "traditionally."

# 5. The Field: Namibian Land Governance in upheaval

This chapter fundamentally explains the legal frameworks, political logics, interests, and actors at play, and their respective interrelations. I begin by examining the political significance of land in Namibia's past and present. In a second step, I describe the local setting of land governance in North-Central Namibia, the influences it is exposed to, and the dynamics that such land governance creates. In Namibia, land reform plays a central role in the socio-political dimension of land governance; its implementation into local realities offers a unique platform to examine the country's postcolonial political pulse across all spatial levels and social fields. Isolated aspects of land reform, however, cannot be understood without examining its contextual genesis. Only through an historical and cross-scale lens can we grasp how legal and political subjectivities and institutions were formed, and what realities the normativity of resource management and forms of ownership had produced. Therefore, in order to really understand claims, to resources or authority, including their underlying and debated logics, some wider socio-political transformations must be considered. It is on this basis that this chapter aims to offer a comprehensible outline of the political, legal, social, and geographical context of Namibian land reform and land governance.

To begin, I present a short history of land governance in Namibia by shedding light onto its socio-political levels, and patterns of agency with regards to legitimisation. This is to illustrate the evolution of present land politics along its most influential factors, including legal, economic, and normative pluralities. A particular focus is dedicated to these policies' persistence and transformation on the way to a democratic state building after independence. Later in the chapter, I will address several questions regarding the political logics on which the Communal land reform is built: What are the official arguments in favour (or against) a dual land tenure system, and what informal factors and normative setting contribute to their taking shape? The third part discusses the national and local bearings of Communal (officially termed: Customary) Land Rights and how they are politically negotiated, advocated for, and objected against. The fourth section is dedicated to the de facto implementation of those political, legal, and normative ideas onto the specific regional setting of this study, the Ohangwena region, and the village cluster around Ondobe. The scenarios reveal the particular effects of local historical, demographic, and spatial factors on the implementation of Communal land reform. The last section presents an outline of the regional implementation on an institutional level, and shows how existing institutions adapt, and how new institutions are received within the local governance arrangement (Ingram et al., 2015).

The sum of these insights offers an accurate background on which empirical examples of lived governance may be comprehended and critically reflected. Those examples illustrate the reality of governance practices and uncertainties on respective rights, duties, and scope of power between and among different authorities and land users. Meanwhile, a special focus is always lent to the role and agency of Traditional Authorities.

## 5.1. A short history of Land Governance in Namibia

Since 1896, when Namibia was under German occupation, the country was divided into two different forms of land governance (Miescher, 2012, p. 23): the more actively occupied south, which comprised about two thirds of the country and was proclaimed the *police zone* in 1911 (Diener, 2001, pp. 245–246), and the northern part of the country, which was initially declared a reserve outside the sphere of direct influence by the protectorate (Miescher, 2012, p. 23). The protectorate, called S*üdwestafrikanisches Schutzgebiet*, was readily accessed by European companies, and marketed to white farmers at "extremely low prices" (Tapia Garcia, 2004, p. 43). In the 'native reserves' or 'homelands' (terms employed under German and South African oppression respectively (Legal Assistance Centre, 1991)), the management of land and other natural resources remained at the relative discretion of the local Traditional Authorities (Adams et al., 1990, p. 95). Relative, because officially there was a formal procedure in place "to own land or exercise property rights", after which "Africans were required to request permission from the Administrator, the highest official in the South African colony" (Miescher, 2012, p. 77). In reality, however, this route was rarely taken, due perhaps to a modest interest by both the government and land users to enter a direct contractual relationship.

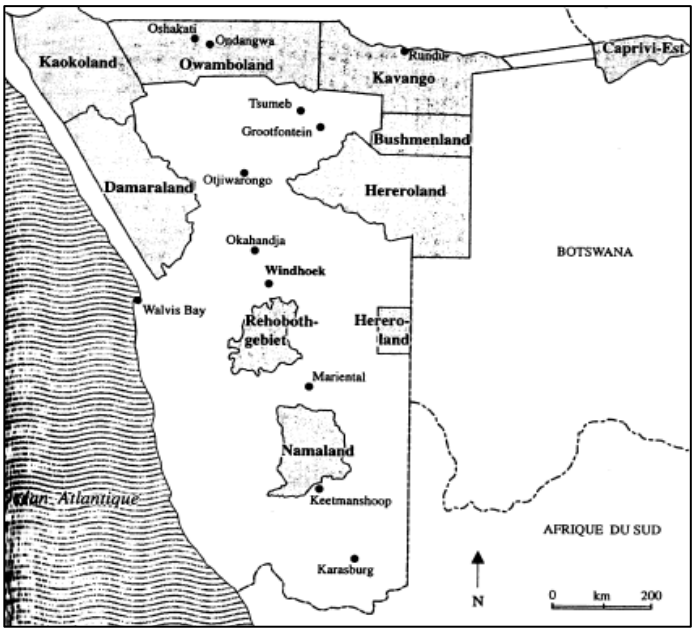



**Figure 11 The Homelands of Namibia under South African rule** (Diener and Graefe, 2001:13)

While the native commissioner was to keep an overview of local hierarchies and political unrest, his duty was mainly to control the homelands' economic viability in the form of labour force and spending capacity (Tötemeyer, 1978; Werner, 1991, p. 43). In consequence, land claim documentation was selective, and thus there is no documented proof that territory was indeed a primary subject for power in these areas before the 1920's. However, this lack of documentation does not prove that such territorial power did not exist; it must be kept in mind that all written documents of that time expressed the colonialists' views and reflected their respective political agendas. A source from the 1920s, for instance, reports that a chieftaincy is "absolutism in its fiercest thinkable form" (Nitsche, 1913, p. 128), that the chief is proprietor of both land and subjects (ibid. 1913, p. 128). The time of this publication coincided with the creation of Native Reserves in the 1920s and 1930s, in the course of which the colonial state enforced its ultimate ownership by removing all black people from land that was of interest for white owners of freehold title (Devereux, 1996, p. 13). We can thus assume that accounts the likes of Nitsche targeted to denounce the 'native' form of governing as an exploitative ruling system, in order to legitimise their outsourcing from the spatial and political core of the colony.

Regarding the question of how land ownership existed among the local population, Dobler (2008) convincingly argues why the importance of territorial control may have increased in the same era: Before the 1927 border demarcation with Angola, he states, land was abundant while the scarce resource was labour power. Hence, political domination was defined through its subjects, not its territory, “and there was no incentive to control land effectively” (ibid. 2008, pp. 8–9). Even though territory did play a role in earlier customary concepts of power, it differed from the European concept as it was less defined by “the borders that contained it” than by “the lived space from which it could expand” (ibid. 2008, p. 26). A map depicts the buffer zones between the ethnic hunting grounds, which were long preserved through agreements between the groups. The author does not explicate a date for this map, but adduces it to a chapter on the Foundation of Kingdoms in Owamboland, also framed as an era of migration (Salokoski, 2006, p. 80) or expansion (Williams, 1991, p. 90) (s*ee Figure 10*). This concept of land and territory was hardly comparable to that of the occupying powers. A few instances in history highlighted this divergence to the disadvantage of the traditional communities: in the 1920s with the establishment of the reserves, and from the mid-1960s, when they were proclaimed *Homelands* under South African rule (Kössler, 2000, p. 447). The “native” forms of land administration challenged the colonialist’s comprehension regarding a dissenting concept of how people, power and space (and hence territories) related to each other. Noyes suggests that this difficulty intersected “ethnographic and administrative discourse” (Noyes, 1994, p. 241), by raising the “problem of determining the nature and scope of the spaces or territories which could be defined as belonging to "natives," and in what sense this belonging could be interpreted” (ibid. 1994, p. 241). Local land rights were differently managed: They involved households instead of individuals, and a land claim included more than one field in order to provide for shifting cultivation (Ramutsindela, 2012, p. 755). To apply a term from legal anthropology, the way local *bundles of rights* to land were composed, they differed significantly from Western concepts of property: The form of land ownership consisted of different sets of rights and obligations, different social units, and even different property constructions of land as a resource (Benda-Beckmann et al., 2006, pp. 14–15). These practices of space, governance and agriculture were foreign to the oppressor’s spatio-legal imaginary (Delaney, 2011, p. 86). It differed in definitions of the *public* and the *private*, and the triangulated relationship between owners, property, and potential competing land claimants. Despite its long history of consolidation, the local form of land rights was ruptured with the colonial intrusion when the exclusivity of those existing rights was momentously misjudged. While those variations of the notion of property still captivate scholars of political, legal and anthropological studies (Needham, 2001; Lapeyre, 2010; Ostrom & Hess, 2007), such soaring flights of etymology are

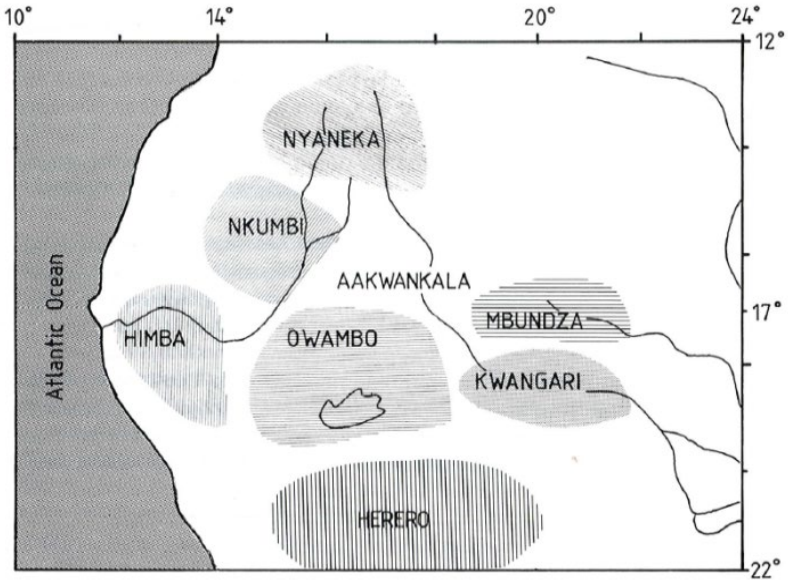



**Figure 12 An Estimated Localisation of the Different Owambo Kingdoms** ("Owambo and her Neighbours" (Williams, 1991:96))

dampened by pragmatic voices (e.g. Ramutsindela, 2012), who state that it was not so much a lack of understanding, but much rather simply a profit-seeking ignorance that led to the superseding of local ownership. In consequence, it must be rightly taken into consideration that there has never been a candid interest in harmonising customary and the statutory concepts of land rights. Consequently, postcolonial attempts to reconstruct *traditional* definitions and practices of space, territories, and boundaries often lack the legitimisation of documents. As a result, little is known about particular measures in customary land governance. Few land conflicts within communal land were passed down (on a national or even regional level), but with the drawing of the international border to Angola, which confined a large part of Oukwanyama's population to the south and restricted their cross-border mobility, it is probable that the number of land conflicts grew (Dobler, 2008, p. 8). Thus, with an increasing competition over land, the imported link between power and space finally started to directly implicate internal land administration of the *Homelands* (ibid. 2008, p. 8; Peters, 2013, p. 4). It re-shaped 'traditional' systems of power and governance, by lifting "authority over land upwards, from family heads, lineage elders, and town chiefs to 'paramount' or 'territorial' chiefs" (ibid. 2013, p. 4). This colonial intervention in the "traditional fluidity of collective identities" (Diener, 2001, pp. 245–246) had a devastating effect on the political autonomy of the customary communities, placing them in disparate positions of austerity and dependency (ibid. 2001, pp. 245–246). This rift in the sense of collectivity among communities was later deepened when the political elite went into exile. Dobler (2014) argues that while it is often wrongly interpreted as an urban-rural divide, it is one between exiles, and those who remained on the land. This misinterpretation conceals the actual characteristics of divide – its socio-political origin. This is how contemporary state politics are dominated by actors who live detached from the realities of permanent rural dwellers, who, with their experiences and livelihoods, rarely reach higher political influence (ibid. 2014, 207–208, 220). Consequently, exclusively rural priorities were less likely to influence the political moral fabric and agenda – and hence projects like land reform were largely shaped by the liberation movement in exile and international diplomacy (Melber, 2003, p. 135).

## 5.2. Land Governance today: Multiple authorities, institutions, laws, and moral fabrics

Following a national land conference in 1991, two Land Reform Acts were established: The Agricultural (Commercial) Land Reform Act in 1995 and the Communal Land Reform Act (CLRA) in 2002. The national reconciliation project was negotiated to confine to a "scope of social change" (Melber, 2007, p. 110) which would not disrupt the existing socioeconomic framework of ownership and property rights (ibid. 2007, p. 110). By the formal recognition of TAs and traditional communities, the central government thus performs a hegemonic act of power through "sharing" its power – to a limited extent at least – with traditional leaders. Again, this refers to the problematic relationship of the Namibian government with calls for decentralisation, while striving for a unified country (Akuupa & Kornes, 2013, pp. 44–45). Because the Namibian nation lacks a "unifying national story in which law's civilising effects are diffused throughout the territory", it cannot be backed in its "authority and legitimacy" on an established "moral consensus" (Hogg, 2002, p. 32). For this reason, while regional governments in Namibia "may be trusted and well regarded", and in any case affecting every governance agent by restricting and/or benefitting their intentions by their presence, they still lack a strong "embed[ment] in the political culture" (Lindeke, 2014, p. 84). This enduring (competitive) co-existence of customary and statutory moral fabrics is possibly founded in the

addressing of different needs. It is indispensable to acknowledge that the vernacular moral fabric of the north central communities and that of the Namibian state have evolved separately and each within their respective geographies and histories (Miescher, 2012; Graefe, 2003; Diener & Graefe, 2001). Yet, the statutory field has become a syncretistic mix between European imports, and their century-long adaptations to various local ideas of state, law, rights, and independence.
To understand the logic behind the continuation of a seemingly out-dated dual land governance system, we need to look at the reasons for keeping a non-commercial zone within the national territory. The north central regions are particularly valuable due to their agricultural potential and output. As international scholars often stress the topics of food sovereignty and food security (Scoones et al., 2014, p. 7; Shipton & Goheen, 1992, p. 307; United Nations Economic and Social Council, 2001, p. 4), the Namibian government has a special interest to intensify agriculture in the northern communal land, which, due to rainfall, groundwater and soil composition have higher production potential than the areas further south (Adams & Devitt, 1992, p. 6).

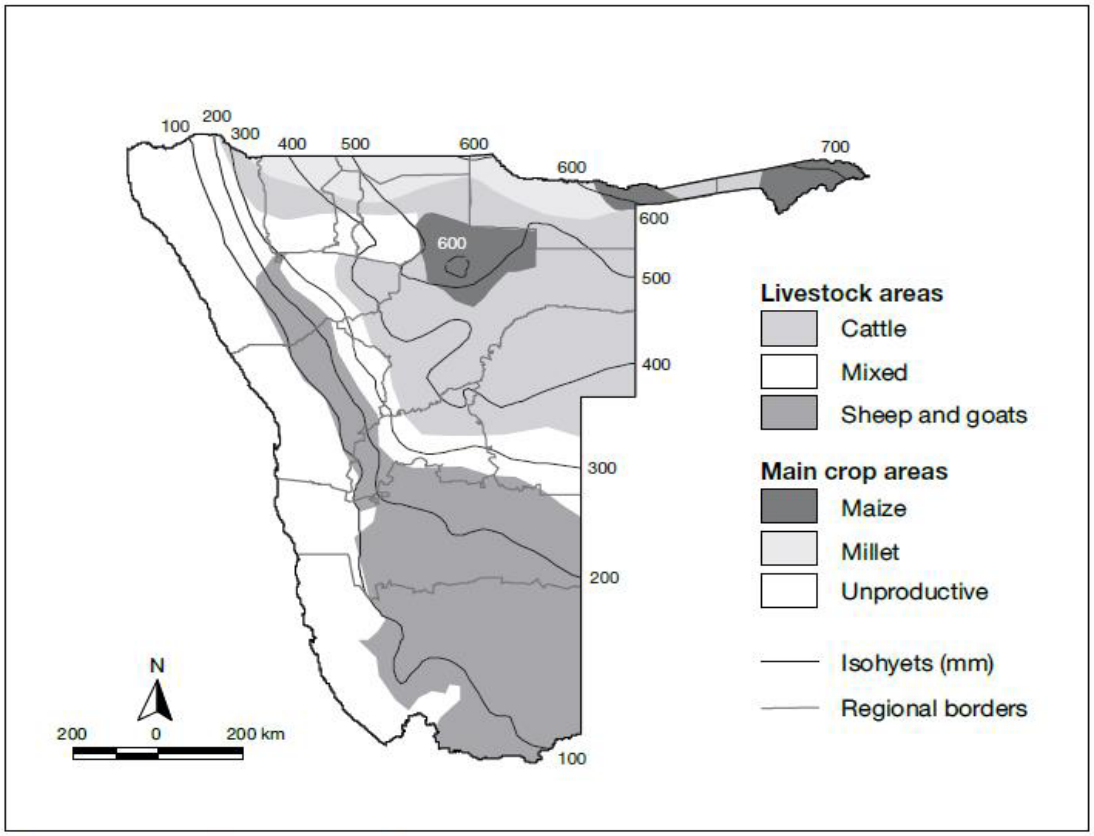



**Figure 13 Types of Land Use in Namibia** (Source: Kiljunen, 1981; FAO, 1997, quoted by Tapia Garcia, 2004:46)

As Tapia Garcia (2004, p. 45) describes different farming models across Namibia, he acknowledges the importance of crop farming as a "key feature", but stresses that in terms of social meaning it is secondary to cattle holding. With this in mind, the map of land types (*see Figure 11*) loses validity, failing to grasp the importance of double-pillared land use in the northern regions, with crop production being above national average and cattle holding carrying more social than economic value. Through its inaccuracy, the map depicts why national and international politicians often struggle to grasp the northern agricultural practices. At this point, it must also be considered that the forms of rural land use have not evolved along 'genuinely' customary designs. The practice of

subsistence farming of *Omahangu* (the Oshivambo term for pearl millet, which is the primary staple food and cultivation product in the north-central communal land) for instance, although often propagated as a dignified tradition, had been encouraged by colonial economies as a wage subsidy. By granting access to land, the labour force from the homelands could be paid wages well below its value on the free market (Werner, 1991, pp. 43–44). This history of so many interwoven interests, economic politics, and local strategies of adaptation provides a clear illustration of how complex land relations are.

The dilemma of the recognition of TAs reflects the sensitivity of the matter: it is simultaneously a moral obligation, a crucial measure for feasibility, but also posing a constant threat to the idea of a unified state of equal citizens. This dilemma implicates politicians, government agents and Traditional Authority members in their room for manoeuvre as well as their interactions. Whereas local governments now have the power to "reward or punish (traditional) leaders and communities" (Lindeke, 2014, pp. 85–87) by giving or denying them legal recognition – which comes with certain economic, and legal amenities – they also rely on the local communities' favour in votes as per the democratic system they are part of (ibid. 2014, p. 85). To include TAs and their customary laws and governance lifts a variety of different "customary" understandings on social life, such as norms, ideology, and common sense, onto a level of government responsibility.

Through institutional, legal, and normative interventions, the communal land reform in Namibia presumes a syncretism between moral fabrics. Governance is consequently a stage for testing the legitimisation of each moral fabric and locating their compatibilities and contradictions. Although land reform impacts most features of land governance, it is not always clear if a certain outcome was solely or even primarily effectuated through reform, or whether it had already been emerging as a product of wider transitions brought along by postcolonial state (re-)construction. For instance, Graefe (2003, p. 54) found, that even before communal land registration commenced, plural land authorities and the multiplication of territories have led to a *territorial lability* (Deleuze & Guattari, as cited in ibid.). A study from 2014 concluded that the decentralisation efforts had reached only meagre success, in terms of aligning the moral and legal standards. To use the author's words, although regional representation of the national government "may be trusted and well regarded", "it is not yet deeply embedded in the political culture of many Namibians" (Lindeke, 2014, p. 84). It follows that the two lifeworlds coexist in a continuous field of negotiation, defying any one grand narrative (Griffiths, 2011, pp. 192–193).

## 5.3. Land Reform: A means of reconciliation

> **"[L]and is our only source to get us on our feet."**
> - Simon Kooper, a councillor of the Kai-//Khaun Traditional Authority, quoted in *The Namibian Newspaper*, 5/19/2016 (Sasmann, 2016)

Postcolonial state-building is closely connected to questions of land, as Werner (1993) accentuates all Namibian citizens ultimately depend on land and any political decisions taken in its regard. It is thus a highly emotional and pragmatic subject. Alongside its meaning for subsistence, land in southern Africa symbolises wealth and "ownership of the country" (Mufune, 2011, p. 26) to an extent that has uniquely evolved from history of oppression and deprivation. Land reform is therefore a central policy issue for many postcolonial governments because it requires taking a

fundamental moral stance on national reconciliation. In Namibia, the land reform process was initiated immediately after the formation of the democratic government under President Sam Nujoma (1990-2005), showing consideration to "the promises made by the SWAPO Party during the resistance war and during Namibia's first electoral campaign" (Tapia Garcia, 2004, pp. 43–44). The first decisive questions to address were: Which actors have a legitimate claim to land? For what purposes, and based on what arguments? Answering these questions presupposes a principal decision as to whether reconciliation ought to be achieved through welfare and protection, or by supporting economic growth within the norms of the "free" market. Ideally, the respective decision would be based on common norms, however contested, but it necessarily "anticipates community", if reconciliation is aspired (Schaap, 2007, p. 15). In short, a nation's dealing with land issues accurately reflects its politics of reconciliation (Veitch, 2007, p. 10), of distribution of power more generally (Lund, 2011, p. 7), and decisions for future peace within the country (Mufune, 2011, p. 3). The respective prioritisation (of land claims and policies) accordingly drastically influences how land (management) is mobilised in national political discourse: In the welfare-narrative, land is often employed as a symbol of restoring pre-colonial identity, belonging, and self-determination (Wicomb & Smith, 2011, p. 446). Through the argument of development, however, land is primarily perceived as a source of production, which is most efficiently exploited by experts (farmers, companies, businesses) and in accordance with standards of macroeconomic liberalisation (Deininger & Binswanger, 1999, p. 269). One important difference is the prioritisation of the individual's or the community's self-determination: Partial administrative 'outsourcing' of communal land administration to traditional leaders is an important aspect in practicality, affordability, and legitimisation by reinforcing community rights (McAuslan, 2013, p. 228). The resulting multiplication of governance arenas, however, uncovers political prioritisations, preferable reconciliation policies, and strategies.

The Namibian Constitution states that the "[s]tate shall actively promote and maintain the welfare of the people" (Government of the Republic of Namibia, 1990b, Article 95) by implementing policies that ensure access to public facilities and services for every citizen, provide benefits to socially vulnerable or disadvantaged citizens, ensure that workers get paid sufficiently for a "decent standard of living", and encourage the population to influence national policies (ibid. 1990b, Article 95). In other words, the national legal narrative anticipates reconciliation to be achieved through decentralization, poverty reduction, equity, and political empowerment. Among the most prioritised ambitions, two take centre stage: The first aspires to reconcile past inequalities through access to resources, by building on land as the foundation of a person's citizenship, reducing poverty, and offering a material basis for social upliftment. It specifically focuses on previously disadvantaged citizens (Government of the Republic of Namibia & Ministry of Lands and Resettlement, 2010) who have not had the opportunity to accumulate wealth in any form (other than customary) so far. The second advocates for reconciliation through neoliberal economic development. This latter string is often depicted as the more pragmatic one, representing a globalised, inclusive market-based perspective, as it builds on the understanding of land as the fundamental economic resource, both for personal and national competitiveness and prosperity. For this to be achieved, the promoted measures are the freedom for all citizens to acquire, sell and pursue economically viable agriculture, with preference to large-scale enterprises.

By means of the two land reform programmes, the Namibian government aims to respond to both claims simultaneously, thus all three of the land reform strategies listed by Boone are pursued: to "(1) reinforce community rights; (2) promote private property rights; (3) institutionalize user rights"

(McAuslan, 2013, p. 228). Although the synchronous reconciliation paths are all equally important and vital, yet, focusing on all three at the same time needs to be more critically understood. It was a momentous decision by the government to address these different claims within separate spaces, opening vast grounds for critique. These criticisms confront various government rationales, not least the right of TAs to exist as land governance authorities.

In order to accurately respond to the different requirements for (and of) land that have developed through a complex history, an official summary of a National Assembly (2010) states that more than one single land reform programme was required (Government of the Republic of Namibia & Ministry of Lands and Resettlement, 2010). In this manner, each social group could be provided with solutions to their respective prioritised needs. The social groups in question were identified as those who "do not own or otherwise have the use of any or of adequate agricultural land" (Parliament of the Republic of Namibia, 1995a, p. 2) who require access to freehold land on the one hand, and the "land users in the communal areas" who need security of tenure on the other (Government of the Republic of Namibia & Ministry of Lands and Resettlement, 2010). This formulation essentially ascribes different land (reconciliation) priorities to different areas, not necessarily to different (and mutually exclusive) groups of citizens. Circumventing a particularisation of citizen groups, purposefully avoids recycling sensitive categories of race or ethnicity. This circumvention, however, leaves room for manoeuvring, as it fails to identify which target groups ought to be addressed by the different reconciliation programmes. It allows for individuals who command over respective capital resources, for instance social mobility, to lodge a claim in both categories. *(→ 6.4.)* Another effect is the flexibility of the notion *communal land users*, which reflects in legal documents as a confinement-averse concept *(→ 5.3.)*. *Communal land users* may be active agropastoralists, or simple house-dwellers, pursuing a government-paid job, occupying long-established homesteads or newly-created houses. Regardless of these circumstances, everyone may raise a claim to communal land, if they are perceived as part of the "formerly disadvantaged" (Government of the Republic of Namibia & Ministry of Lands and Resettlement, 2010) group of citizens. The law makes no distinction regarding the extent of, and recovery from, their former disadvantage, what timeframe *formerly* comprises, or how these attributes are to be proven. Thus, close to no restrictions apply for applying for a communal land right. This is probably one of the most consequential and intentional legal gaps, as it provokes continuous scrutiny whether communal land exists for the right reasons.

Ramutsindela (2012) is among the sharp critics of dual land tenure systems more generally, exactly because of their reinforcement of racial categories, which prevent an approach to democratic equal rights (ibid. 2012, p. 753; also: Alden Wily, 2011). He finds the continuation of separate property and equity concepts feeding into "orthodox views of society and culture" (Ramutsindela, 2012, p. 754) – what corresponds to Platteau's ideological matrix (1996, p. 59) – problematic, because it reifies racial categories by relating them to "the success or failure of land and resource use and management reproduces racial explanations" (Ramutsindela, 2012, p. 754). This points to an inherent dilemma faced by policy makers. Whereas reconciliation policies ought to respond to segregating histories of an explicitly racial character, they may apply racial categories only implicitly, to avoid reinforcing those same categories in present policies (ibid. 2012, p. 754). Despite avoiding social categories, the government's land reform narrative reinforces racial divisions by ignoring stark economic differences among the population that is awarded a reconciliatory redress. As a consequence, a number of scholars and public voices sense political or ethnic opportunism in national policies. Gargallo, for example, concludes that the government avoids a specific prioritisation of previously dispossessed communities, for the pragmatic reason of not wanting to displease their electoral basis, the Owambo people, who had never experienced physical removal (Gargallo, 2010, p. 18; Mufune, 2011, p. 26).

Platteau (1996, p. 59) suggests, that considering “non-economic factors” around land rights when planning to include them into a foreign “social and ideological matrix”, was crucial not only for reasons of equity but also of efficiency. He argues that these considerations are fundamental in order to understand how transaction costs will be transformed through the conversion of rights (ibid. 1996, p. 59). Tapia Garcia agrees on this point, arguing that the land reform remains necessary even as a therapeutic measure, as is its continuous improvement, in order to “deal with a more profound need of the Namibian people. In this regard, land reform no longer appears as a neutral redistributive policy, but as a restitutive one” (Tapia Garcia, 2004, pp. 50–51). International players acknowledge the psychological value attached to the land redistribution question (ibid. 2004). Scholars thus widely agree on the basic need for a reform (De Soto, 2003; Cousins, 1997; McAuslan, 1998, 2013) in Africa. Despite their different strings of argumentation, both Tapia Garcia (2004) and Ramutsindela (2012) advocate for land policies as central tools of reconciliation, since owning one’s freedom and one’s country postulates owning its land (Tapia Garcia, 2004, pp. 51–52).

## 5.4. The Communal Land Registration

Communal Land Registration is the practical implementation of the Communal Land Reform Act. It is a state initiative to have land tenure in communal land protected while at the same time, staying locally governed, communally managed, but statutorily owned. In the case of this study’s context – the Ohangwena region and the Oukwanyama tradition –, it is not clear to what extent customary livelihoods were built on fixed, person-bound, and immobile land claims (Mills, 1984, p. 66). Hence it is doubtful to what extent the customary tenure system is comparable to, or in line with, the neoliberal system which the independent state adopted as the dominant ideology. The question of their alignment thus continues to be heavily debated within the bargaining of land reform (Knight, 2010, pp. x–xi; Chimhowu & Woodhouse, 2010, p. 14; Baland & Platteau, 1998, p. 644). Aside from the historical argument for reviving or strengthening customary forms of land tenure, there are further normative arguments: Promoting different forms and levels of development, subsistence needs, diversified population management, or poverty reduction, every standpoint within the debate requests different legal prioritisations for different types of land use. This was possibly one of the reasons why the communal land legislation still retains some flexibility: Either to be more clearly defined in the future, or to allow room for locally specific practices and customary governance.
A consensus document from the 1991 National Land Conference (Republic of Namibia, 1991b, p. 35) projected that the future role of the communal land would be to “sustain the great majority of Namibian farmers, especially poor farmers”, and consequentially it was advisable to retain, develop and expand communal land “for the present” (ibid. 1991b, p. 35). This decision, as mentioned earlier in this chapter, has always been a source for negative allegations towards the government. Examples are allegations of economic opportunism or neglect of the peripheral areas. The main reasoning by the government was that in order to maintain land accessible even in the former homelands, and especially accessible to the poorest citizens, it must be shielded from the free market (Republic of Namibia, 1991b). The government’s motivation may also be founded in economic self, or national, interest because any loss of existing subsistent land rights would turn into a welfare issue. In other words, the communal land unburdens the social security budget, as it keeps costs of living low, and caregiving is largely provided for by family members, outside the government’s responsibility.
Another point that can be raised as a point of contention is that the government ensures its immediate access to communal resources. By retaining ultimate ownership of communal land, it is in stronger control over how the land is used, and by whom, than if it gave out freehold titles. All those

potential or actual motives inform any debates on communal land reform. Since every dispute or discussion on who should have land rights and for what purpose ultimately concerns the government, as both the refereeing authority to the dispute, but also as a party with interests, therefore, the allocation and retention of Customary Land Rights are tied to a list of legal conditions and requirements, most of which facilitate the state's control and intrusion in the form and purpose of land use. The CLRA (Parliament of the Republic of Namibia, 2002) defines customary land rights with regards to:

- **Who** has the authority to allocate and cancel Customary Land Rights (§ 20): The Chief of the traditional community that "resides" in the particular area (§ 20.a) or any TA the "Chief" delegates it to (§ 20.b)
- **Which land use** is eligible for such a contract: Farming units, residential units, or "any other form of customary tenure that may be recognised and described by the Minister" (§ 21)
- What practices exactly qualify as "farming" is not further specified, albeit Sect. 27.b) of the CLRA adjudicates such definition to the TAs: "[A] Chief or Traditional Authority may, in accordance with customary law, cancel a customary land right […] if the land is being used predominantly for a purpose not recognised under customary law" (Parliament of the Republic of Namibia, 2002, p. 14)
- **How** they must be applied for (§ 22), namely which forms are to be completed and which approvals must be received
- What **size** of land ought not to be exceeded (or under which circumstances this may be exempted) (§ 23)
- And **the temporal limitations** of such right (§ 24).

Although never identified as such, the registration of customary land rights occurs in two main phases: In the first, the Ministry of Lands and Resettlement (meanwhile renamed into Ministry of Land Reform) actively engages in first-registration, by despatching official delegations to map and record existing land rights in detail. The presence or physical contact of the government with the local land users serves two causes: First, it establishes a direct contact with the local TAs and their knowledge of existing rights or current disputes. Second, it enables the precise documentation through GPS devices. This technical instrument imparts the government body a critical authority through possession of unchallengeable data.
In the future, registered land will be status quo, and new allocations will mostly refer to new tenants of already mapped parcels. Registering will thus increasingly become more standardised and underpinned by existing data. In those cases, identities are ideally already documented, so that the entire registration procedure can take place in the office. In cases of disputes, all necessary documents are centralised in the national database, hence decreasing in numbers and in heterogeneity of character. In other words, insecurities will be completely resolved through bureaucracy. This perspective is, however, a utopic end-product for several reasons. While the unoccupied space does, in fact, diminish, the forms of land use will not seize multiplying. Reasons to diversify territorial and resource claims will never be cut short, nor will the number of resulting conflicts. As for the institutional arrangements, processes will eventually become clearer and more imperative.

### 5.4.1. Customary Land Rights

Legal prescriptions for customary land rights reveal how they bind two highly unequal partners into a contract; a land user with limited access to legal knowledge and little room for manoeuvring vis-à-vis the central government, which defines the conditions of contract and retains the authority to change them. Through its legislative power, the state holds the highest authority to decide who deserves which right to land. The scope retained in the CLRA formulations, however, allows for a great number of claims – even contradicting claims – to find legal hearing or even recognition. This is one of the reasons why many NGO's support a middle path between securing land rights and simultaneously keeping a flexible environment for developing legislation (e.g. Werner et al., 2012). The state has hence passed much of its short-term authority, to lower-level authorities and institutions, which are commissioned to take such decisions situationally and ad-hoc. The communal land legislation may thus be summarised as a political compromise between securing land rights through formal title and retaining those rights as flexible as possible, so as to facilitate future legislative changes. This increasing scope and facilitation of the central state's interference in local governance is most likely the main transformation that the land titling introduces. Land title contracts, once established, basically elude the TAs from authoritative land administration, not formally providing them with any land-related authority rights. Graefe (2003, p. 51) already recognised in 2003 that the inclusion of TA and customary land rights into the state planning process – paradoxically – has facilitated the privatisation of periurban areas. In the long run however, this authority divestiture of TAs is problematic because customary land administration remains a fundamental legitimiser for retaining communal land as state property. A second effect of the titling is a *de facto* individualisation of communal land rights. Even though the government did not explicitly aim for individualization per se, it came as a symptom of the individualized documentation process designed for title applicants. And because the registration is designed for individual land tenure, it is not easily transferable to communal grazing areas or other communally held areas (commonages). As a result, commonages – and other areas that remain uncontracted – remain in a more precarious position, being least protected by attributes of property (Alden Wily, 2011, p. 733), which gives it the appearance of formal legitimisation. Meanwhile, this technical restriction has been detected, and extensions were retrospectively added to the registration process design. The temporal delay of assertion, however, clearly disadvantages the non-individualised title applicants.

### 5.4.2. The Political Economy of land titles

If the relative and negotiable character of land rights may be observed everywhere in the world, it is particularly striking in Namibia's communal land. The multiplicity of claims and of the claimants' capital resources stretch the perception of what rights are to comprise, while the manifold institutions and laws each add further restrictions and duties to those rights. An additional challenge is posed by the fact that the registration of communal land is unprecedented and lacks the backing of generally agreed upon practical norms and common sense. In this setting, it is crucial to inquire how the statutory provision of tenure (in the form of customary land certificates) may provide a legitimate alternative to vernacular systems of tenure. Such legitimisation is tied to the capacity of the state to provide security for individual titles in areas where it had no knowledge of individual land claims until now.

In establishing the political motivations behind communal land titling, common narratives of postcolonial states, and more specifically the leading international discourse on land resources must

be retraced. Such narratives are strongly linked through the channels of development literature and their critics between Africa (Adams et al., 2003; Alden Wily, 2000; Chinigò, 2014; Deininger & Binswanger, 1999), South America (Siegele, 2008; Ubink, 2011; Bryan, 2012; Griffin et al., 2002; Kurshan, 2000), and Asia (Griffin et al., 2002; McCarthy, 2004). One global narrative behind this intricate enterprise is the need for countering the commodification of resources while protecting customary land titles. It has been claimed that this land reform movement was largely inspired by De Soto's work (Chinigò, 2014, p. 2). To answer to this threat of the global land rush (Scoones et al., 2013, p. 469; Polack et al., 2013, p. 53; Locher, 2015, pp. 26–27), a first step is often the formalisation of rights to resources for tenure security. This is, however, tied to many further decisions on the political and economic embedment of rights, being why many scholars circumscribe them as (property) rights *regimes* (Schlager & Ostrom, 1992, pp. 249–262; Ostrom & Hess, 2007, p. 6; Gerber et al., 2009, p. 798; Arruñada & Garoupa, 2005, p. 718; Bromley, 2009, 1989). Critical voices claim that land titling programmes are always "driven - explicitly or implicitly - by […] the thinking of international financial institutions" (Nyamu-Musembi, 2007, p. 1470). Registering land titles, however integrative to customary forms of tenure their design may be, push land closer to a national and international market economy. Platteau (1996, p. 59) even goes as far as calling land titling "land market activation policies". A national interest to integrating into the global market can be assumed to stand behind all efforts to formalise land titles. At the same time, the government is reluctant to grant property rights in communal land, hence maintaining a powerful stronghold at the margins of its political reach. The following subchapters offer more detailed interpretations of these motivations.

#### *5.4.2.1. The Commons: A normative-political debate*

Tradition – or custom – and its political enactment, is the foundation of the establishment of customary areas, of communal land, its reform, and consequently the inclusion of the TA into the administrative body (Agrawal, 2007). Therefore, this section analyses how land reform reflects Namibian politics of Tradition, and the influence of varying political interpretations on customary land tenure. It is often discussed how customary tenure systems work, which claims they support, and through which mechanisms they are normatively controlled (in terms of fairness, equality, reliability) (for e.g., (Hinz, 2009, p. 84; Mamdani, 1996, p. 26; Crook, 2008, p. 132; Bennett & Vermeulen, 1980, p. 206; Ubink, 2010 and many more)). Those "Politics of Indigeneity" (Agrawal, 2007) mirror how the social heterogeneity of Namibian people is to be paid tribute to in land governance.

The title "Communal land reform" refers to "customary land rights". While the terminology is far from homogeneous, the two terms have conglomerated over the years in legal and civil practice. This is problematic, as it amalgamates two inherently different attributes. As Knight puts it, "[c]ustom is the *system* under which land is held, and communal is the *way* in which *some* of that land is used" (Knight, 2010, p. 24). In international language, *customary* usually refers to historically influenced connections between people and assets that have become legitimised by naturalisation processes. Like *indigenous*, or *traditional,* it builds on the claim of having been there before the potential competitor (Lentz, 2005). *Communal* on the other hand is contrary to individual, a right or claim no single person can raise. Its inclusion in current policies can both be (subliminally) pejorative (Chanock, 1991, 70,), but also be grasped as the only available alternative form of governance to the centralist liberal democracy of political cultural imperialism. But in fact, the two terms are used interchangeably: With the conglomeration of the two terms *customary* and *communal*, the national

discourse has naturalised the thought that African cultural assets are inherently communal, and thus non-individual in character.
This non-individuality depends, however, wholly on the scale of observation; while the Namibian state withholds direct ownership contracts from individuals, it only does so in the knowledge that the TAs take on this role of contractor, mediator and manager. Essentially, it is only through this mistaken equalisation of two concepts that pluralism can enter into a system of governance. The recognition of TAs and their role in land governance only becomes an option if the argument of the *customary* renders them sufficient local legitimisation to exert authority. And to grant traditional leaders a scope to maintain a sovereign judiciary, with the *traditional community* they are conceded a vague group of citizens as subjects. Thus, by detaching custom from individual practice and purpose, the Communal Land Reform Act creates legally undefined spaces, fields for communal and collective "self"governance.

#### *5.4.2.2. Titling under the security argument*

Whereas traditional tenure security was built upon community knowledge (and an oral, social form of knowledge at that) and respect for a claim to a piece of land of a member, land titling withdraws this information's exclusiveness from those local knowledge reservoirs, to be stored in a registry that is abstract and inaccessible for most rural residents. Shipton and Goheen (1992, p. 315) argue that "[f]ar from supplanting 'traditional' tenure, officially titled rights can conflict with more deeply rooted customary rights". The scope of this effect, however, depends on how strongly the improvement of tenure security through titling is perceived. When two arguments are raised, on the one hand that "oral land tenures led to uncertainty about the existence and extent of land rights" (Thiem & Caplan, 2014, p. 7), but on the other hand that tenure insecurity is retraceable to the century-long refusal of outsiders "to recognize the strength and validity of customary land rights" (Knight, 2010, p. 4), a pertinent question appears to be: *What* uncertainties and *which* actors were considered by the reform of land tenure contracts?
Of course, the technical aspects of titling render it the appearance of an all-embracing coat of security. This, however, turns out not to reflect the truth (yet), since the clarification of who has the right *to* a title and the security that is promised by it, and the factual provision of security, are two different matters. Larcom claims that the legal power of rights substantially depends on the scope of its sanctions. The statutory law may be effectively substituted by informal legal systems, if the latter "remain strong" (Larcom, 2014, p. 209). He even ascribes those informal systems such authority, that in those cases "it may be better for the state to recognise non-state sanctions as substitutes to their own – if they are in fact substitutes" (ibid. 2014, p. 209). Thus, the argument of security only promotes titling if a potential threat is convincingly portrayed. In official communications, the government does not specify to what kind of threat the security it offers corresponds to (→ *5.6. The implementation process*). This leads to the interesting question of where this promise of increasing tenure security stems from, and how it is being supported over the years of slow registration and reluctant legal assertion. While the security argument is deployed as one of the main explicit arguments in favour of the Registration (e.g. by the Ministry of Lands and Resettlement, Directorate of Land Reform), there are several sceptics arguing that the Reform – and the titles more specifically – decrease the tenure security of communal land users by facilitating access to landed resources (Boone, 2014, p. 310) for government and other unknown supra-local actors. Based on "the thinking of international financial institutions" (Nyamu-Musembi, 2007, p. 1470), titling in Africa reflects "an impulse to replace customary land tenure with individual title" (ibid. 2007, p. 1470). This replacement breathes life into the "dead" asset of land, "transform[ing it] into capital" (ibid. 2007, p.

1458), and turning a local, informal, customary asset of symbolic capital into a "currency" (Bromley, 2009, p. 21) that is readable and applicable on a supra-local scale. This can have a defence or empowering effect – as hoped by all advocates of titling – but by transforming from a field-specific currency that "cannot be traded outside of narrow local circles" (Nyamu-Musembi, 2007, p. 1458) to a field-transgressing one, it may become more readily accessible to outsiders, since "[t]itling change[s] the nature of the groups on which individuals rely to protect their claims" (Shipton & Goheen, 1992, p. 315).

#### *5.4.2.3. Arguments for withholding individual ownership from Communal Land*

The discourse on land ownership is made more complex by multiple and its consequences. In agreement with Lentz (Lentz, 1998), I understand property as a relative condition or claim, which completely relies on the extent to which a claim is legitimised by the surrounding actors. If, in the previous chapters, it was established how communal land titling builds on the attempt to separate land rights from economic and political moral ideas (as underlined e.g. by the FAO report (Tapia Garcia, 2004, pp. 50–51)), we must now look at how these titles in fact differ from static and absolute concepts of *property*, and what consequences this carries for land users and TAs, respectively. Communal land has been *vested* in the state since the Native Administration Proclamation of 1922 (Republic of Namibia, 1991a, p. 353), and continues as such until the present day (Parliament of the Republic of Namibia, 2002 Sect. 17.1). While some stakeholders emphasize the terminological difference between *procuration* and *ownership* (Field Diary: informal talk, February 2016), it is often denounced as linguistic flimsiness, attempting to embellish state ownership of communal land, which, as a misled legal position was "never tested in the courts of Namibia, but probably accepted by most lawyers" (Harring, 1999, p. 155). In addition, an official guide to the CLRA even equalises the two terms for its readers, its governance 'audience':

> "Section 17 makes it very clear that all communal land areas vest in (belong to) the State." (Land, Environment and Development Project. Legal Assistance Centre & Advocacy Unit Namibia National Farmers' Union, 2009, p. 7).

The tender spot of communal land being the government's property, appears in the political and practical possibility of land expropriation. With a reference to *public interest*, customary land rights may be retrieved by the President (Parliament of the Republic of Namibia, 2002, p. 10 Sect. 16 Art. 11 c)), implying that the current separation of public and private interests and subjectivities are not deemed definite. The "spatialities of public and private" (Delaney, 2011, p. 26) in communal land are thereby unsettled from a political point of view. As a consequence, communal land is maintained as state property "for the present" (Republic of Namibia, 1991b, p. 35), neither to last infinitely, nor specified when it will be transformed into other forms. It is thus suggestive that the state deliberately retains communal areas in a position which facilitates political and legal intervention, as it is not yet planning extensive further developments of various kinds.

Retaining discretionary power over communal areas is important, not merely for the national reputation of government, but for local appeals: The state assumes responsibilities towards the largely undocumented former homelands, people and their land use, which were isolated from infrastructural integration during colonial rule (Miescher, 2012; Dobler, 2008). Shielding communal land from commodification is a way for the government to have a stronger hold on potential development grounds, to quickly provide and repair road networks, power lines, water pipes, and other material services. Those in turn are a condition to make those areas accessible for executive forces of the state. As the magistrate in 1918 already argued, if the police failed to investigate

incidents occurring outside the Police Zone, those areas “would undermine the legitimacy of colonial authority in the region” (Miescher, 2012, p. 76). The same principle of trading responsibility against legitimisation applies to the postcolonial government.
The process of land titling is, hence, a constant reminder of the multiple governmental responsibilities: Securing the rights to land of communal land users, while developing the country at a larger scale, which requires jeopardising the same titles it is to secure. Nyamu-Musembi (2007, p. 1460) rightly claims that in such situations “title spells both security and insecurity”. As with many pillars of the field of plural law and norms, Namibia’s communal land titles are still a currency with limited value given the lack of full backing by the state (Bromley, 2009, p. 21). The kind of security it does increase is that of making local land rights readable to state actors, rendering them (co-)accountable for maintaining local order.

## 5.5. The Ohangwena region

The Ohangwena region lies exclusively within communal area. This means that no individual freehold titles on agricultural land exist in this region, although agriculture – of different degrees of intensity and mechanisation – is pursued by a large part of the population. The region is primarily home to a farming system that Mendelsohn (2006, p. 33) calls “small scale cereals and livestock" (*see Figure 12*), characterised by producing for domestic consumption and usually supplemented by incomes from non-farming activities (ibid. 2006, p. 9). The region is bordered by Angola to the north, the densely populated Oshana region to the west, Kavango West to the east, and Oshikoto to the South,

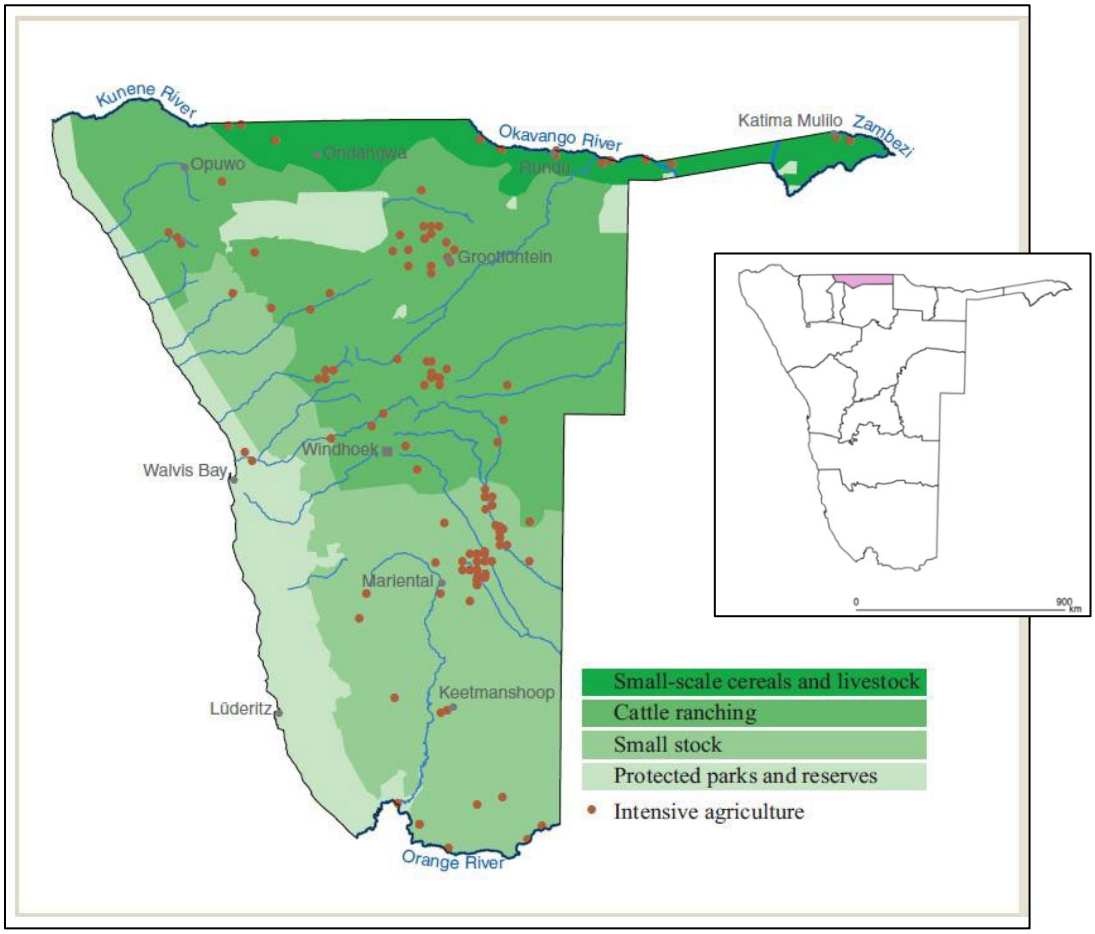



**Figure 14 Distribution of Farming Systems in Namibia** (Mendelsohn, 2006:9)

approximately encompassing 1.3% of the country's total land area (Thiem & Caplan, 2014, pp. 55–56), but it is the most agriculturally viable (Mendelsohn, 2006; see Figure 14).
The region's socio-political history is strongly shaped by its ecological properties and geographical location: Good agricultural conditions (soil, rainfall, groundwater (ibid. 2006, 23)), is one of the reasons it is among the most densely populated areas of the country (Adams & Devitt, 1992, p. 6; Thiem & Caplan, 2014, pp. 55–56; Mendelsohn, 2006, p. 33). Subsistence farming remains one of the main sources of income, being *the* main source for 26% of all Ohangwena households by 2011, with alternative main sources being "old-age pension payments (29%), wages and salaries (22%), non-farming businesses (12%) and cash remittances (6%)" (Thiem & Caplan, 2014, pp. 55–56). These numbers reveal much about the demographic characteristics of the Ohangwena region, which to a large degree consists of retired and school- aged people, who are mainly members of the non-economically active population group. This was emphasised by a report published in 1995 by Graefe and Peyroux (1995, p. 51), who investigated projected futures of urban squatters in Windhoek "to their region of origin once they retire". This projection has materialised in the meantime, resulting "in a flow of active people to the capital and a flow of inactive people to the rural regions, as is the case in many countries in West Africa" (ibid. 1995). With only two proclaimed towns, Eenhana and Helao Nafidi (Thiem & Caplan, 2014, pp. 55–56) the region is dominated by a rural lifestyle, with the among the largest and densest villages in the country (Mendelsohn et al., 2000, pp. 37–38). In consequence, a considerable share of the population remains geographically and administratively marginalised, living far off the radar of the central government and its services. This is the main cause for many statistics for living standards, which in cross-regional comparison, shows low life-expectancy, high rates of illiteracy, and little economic inflow (ibid. 2014, pp. 55–56). The last point, however, ascribing Ohangwena's "lowest annual average per capita income" (ibid. 2014, pp. 55–56) needs to be considered as only a relative indicator for living standards, as the above-mentioned subsistence farming and informal markets are also important factors in this regard.

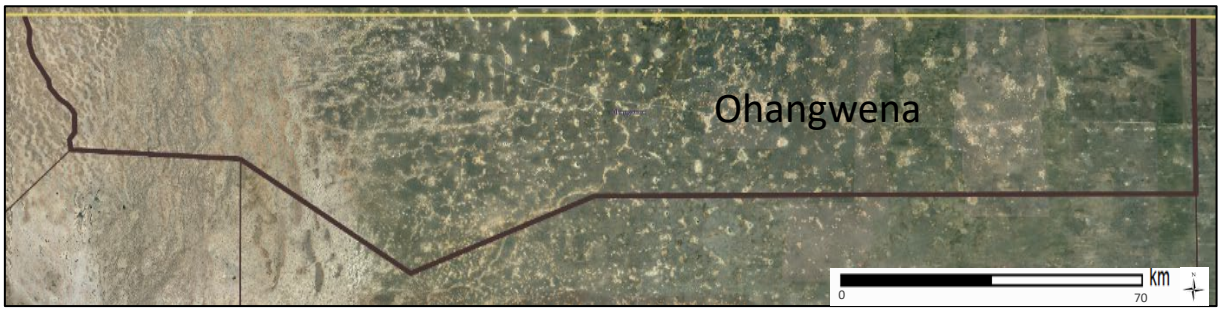



**Figure 15 Varying Population Densities in Ohangwena Region.** Density decreases along a west-east gradient in connection to water pans and related ecological conditions. (Weidmann 2019)

A further limitation of the peripheral location is the limitation of political embeddedness, meaning no voice and limited options, which also transpires in the registration and land titling process. However, although transport remains expensive and irregular, compared to other northern regions, the road network is evenly spread across the region and commercial centres and government branches – theoretically – accessible for most.

A further demographic particularity of the regions is its east–west gradient of settlement types (*see Figure 15*) (Thiem & Caplan, 2014, pp. 55–56; Mendelsohn, 2008, p. 38), which Mendelsohn identifies as three main patterns: Dense, patchy, and artificial. In the east, where permanent homesteads have

been established a long time ago, and especially in vicinity to the Cuvelai irrigation system and the urban centres that have established there, to patchy settlements that centre around the “sites of old pans, where water can be obtained” (Mendelsohn et al., 2000, pp. 37–38), and finally reaching a pattern that Mendelsohn calls “artificial” because of its recent establishment and difficult social and economic aspects. Cattle posts, as they are called in local everyday usage, are seasonal grazing areas which historically consisted of basic shelters for herder boys who were traveling to pastures in Angola and Kavango in the drier season. Over time, those shelters have become more elaborate; boreholes were drilled and consequently fenced in to protect personal investment from potential free riders. By stating that they “have developed to serve the needs of farmers or visitors that have their permanent homes elsewhere” (ibid. 2000, pp. 37–38), he addresses what proves to be among the government’s major challenges in its efforts to formalise and document individuals’ relation to land; those “farmers or visitors” are difficult to identify and their roles established, since the herd owners and the herders or farm tenders are often not the same person, at times related, at others merely in an employment relation. Thus, the “needs” of those land users are not as simple to determine but most likely not as substantial as those of their immediate neighbours.
Even before Independence, the types of land uses were heterogeneous in Ovamboland, due to pronounced variations in agro-ecological conditions (Adams et al., 1990, p. 143). While the need for a

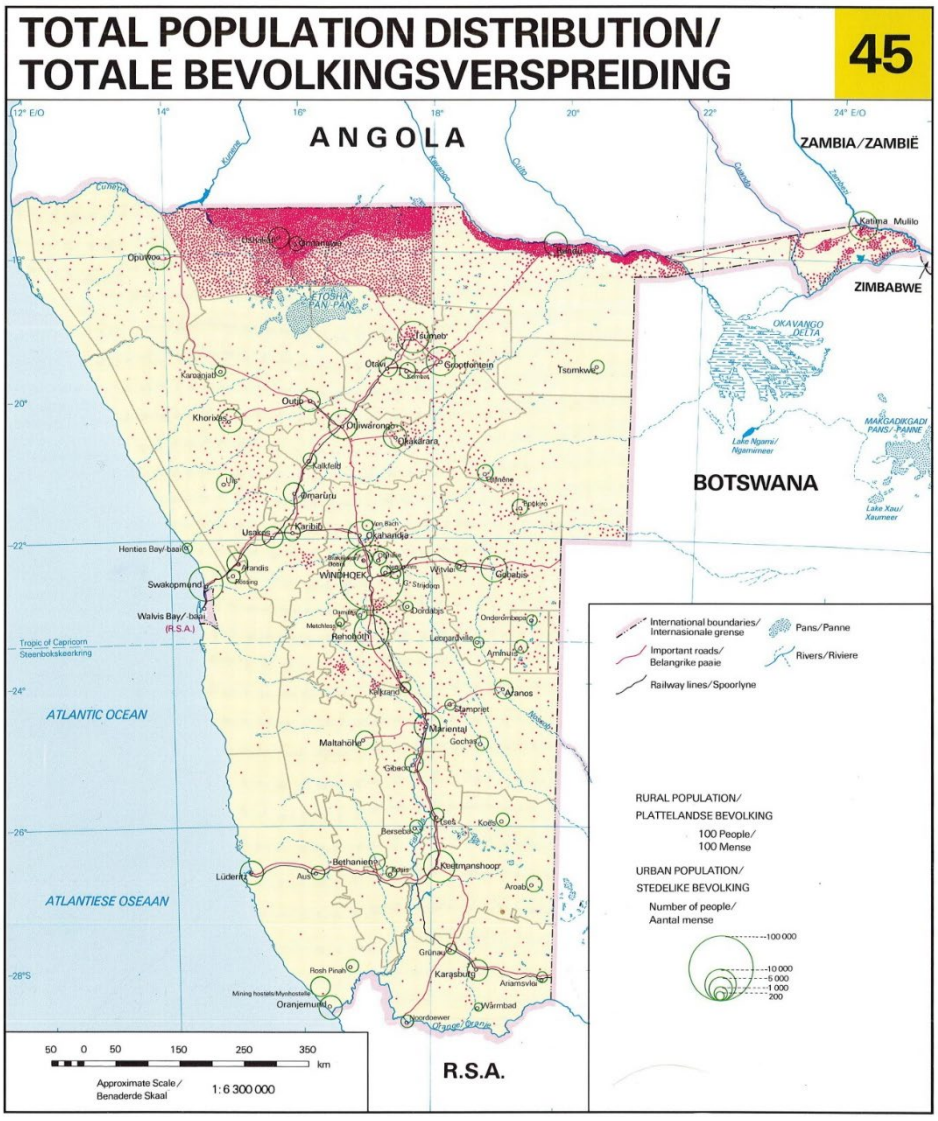



**Figure 16 Population Distribution in Namibia in 1986** (van der Merwe, 1983:45)

policy for differentiated systems of land tenure was already acknowledged, the general term "*communal*" persisted in national discourse for describing tenure agreements that were different from leaseholds, but poorly understood in their exact functioning (ibid. 1990, p. 144; Alden Wily, 2011, p. 741).

Being the area with the largest share of communal land (99% of the Ohangwena region consists of communal areas (Thiem & Caplan, 2014, 55)), the north-central regions are often used as testing ground for transformative policies on communal land. As former homeland and origin to the majority of Namibia's population (Miescher, 2012, p. 23) (*see Figure 16*), the Owambo regions receive genuine attention through reconciliation and decentralisation policies, while as the crop-growing region of the country it attracts full-fledged agricultural production schemes (Werner et al., 2012, p. 3). One of them, which plays an important part in regional and local discourse on land ownership and equal access to land, is the SSCF, the Small Scale Commercial Farming Project, initiated and supported by the CLS, a subgroup of the American Millennium Challenge Account (MCA) (Hager, 2013, p. 6). A consultancy team surveyed 2500 ha of land in Ohangwena in 2007, declaring this area as under-utilised and thus suitable for small-scale commercial farming projects (Werner et al., 2012, p. 3). Over five subsequent years, a "significant part of the area has been fenced by individual households", rendering it difficult to implement the project without relocating newly settled households (ibid. 2012, p. 3). It thus becomes apparent that many flexible variables registration and new governance systems must consider if they are to meet local needs accurately. These variations in needs and trends of land uses include ecological conditions and settlement patterns, which respond to respective signals received from the government's line of action.
The dense settlement pattern spreads, according to Mendelsohn in "western Ohangwena and eastwards towards Ondobe" (Mendelsohn et al., 2000, pp. 37–38), which happened exactly within the area which had been mapped by the time our field research commenced in 2013. Most of the land users who had their parcel knowingly mapped, had not yet received a certificate, and were

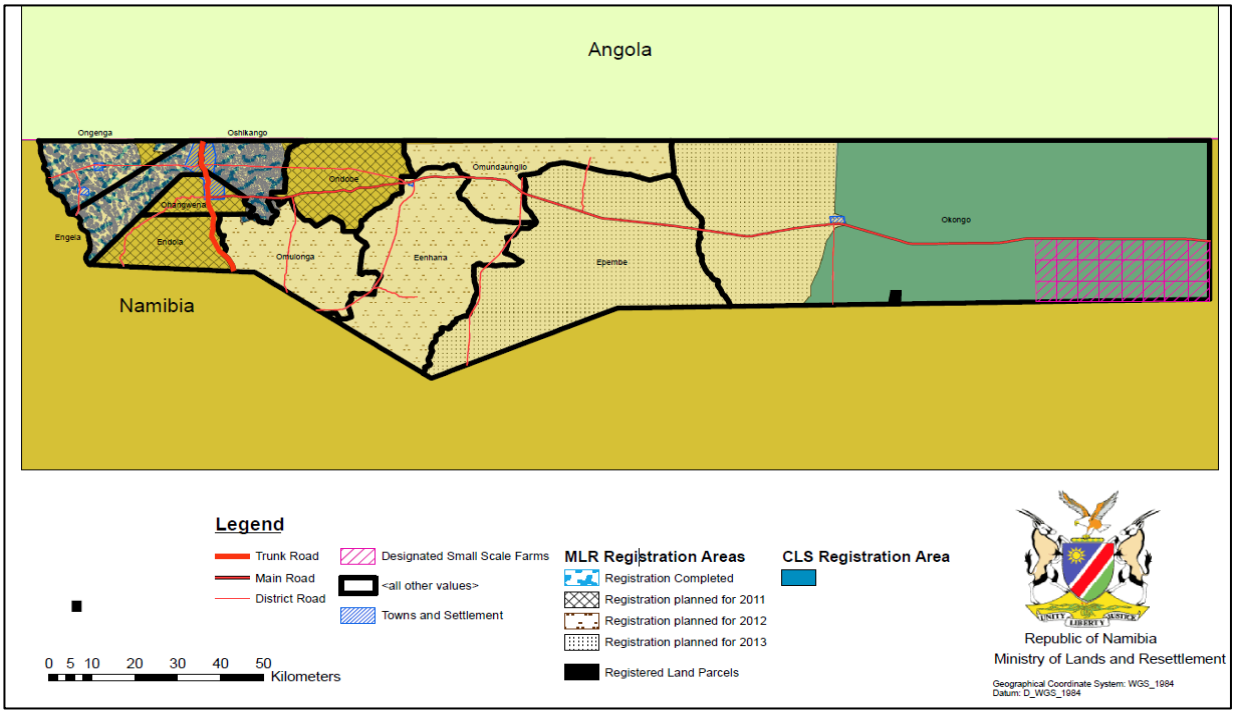



**Figure 17 State of Customary Land Rights Registration and the Variations in Land Tenure in the Ohangwena Region in 2012** (MLR 2012)

beginning to lose confidence in the benefit and even actual existence of the registration (*see Figure 17*).

## 5.6. The implementation process of the Communal Land Reform

After establishing rationales and interests behind the communal land policy and its titling processes, this chapter proceeds to analyse how the Communal Land Reform Act, institutions, and regulations take shape in and connect to local contexts. In building up to an account of how legal and formal texts relate with local realities. It is an attempt to illuminate which communicative strategies and institutional arrangements are the transporters of the communal land reform into the realities of land use, interests and governance systems in Ohangwena. This exploration forms the basis for recognising and locating legal 'grey zones', gaps, or contradictions in local and daily land governance practices. It enables an assessment of empirically observed practices, with respect to their intentions, conflict-potential, and what interests might be at play.

### 5.6.1. The communication strategy of the Communal Land Registration

The way in which land reform is communicated to regional and local stakeholders and actual recipients of land titles, strongly determines its perception, comprehensibility, and finally its acceptance. The communicative transportation of the Act to the local realities provides insight into the various interpretations, into the applicability of the Act on the one hand, while on the other, it reflects individual and institutional power strategies. The decisions of what is communicated always reflect the author's interest in and projected gains from the law. Official and unofficial communication around the land reform is hence depicting power relations and power strategies more generally. The government's communication strategy on the Communal Land Registration was given poor credentials by an evaluation report:

> Communicating the registration procedures and the benefits of CLRR to communities and other stakeholders started late in the CLRR process. Although the "Roadmap" for CLRR produced in 2006 identified communication as a bottleneck in the registration process, it took until 2012 to develop a coherent communication strategy for CLRR. (Thiem & Caplan, 2014, pp. 45–46)

The authors of this report found that in the early years of policy implementation, translations into the local languages did not exceed what was necessary to pass down instructions through radio announcements, leaving communal farmers uninformed "as to what "registration" means and what benefits it would afford them" (ibid. 2014, pp. 45–46; Werner, 2008, p. 13). This approach of withholding all potentially complex details of the registration from the addressed "beneficiaries" is further reflected in the way the issue is discussed on a policy analysis level, where it is claimed, for instance, that the "success of the programme depends very much on the quality of an intensive and ongoing publicity campaign explaining the value of communal land registration to all stakeholders" (Meijs et al., 2009, p. 26). This quote presents the registration as a rather self-serving enterprise, not mentioning how the success of the programme will manifest for the actual beneficiaries (see for the same the Information Poster on *Figure 18*).


- 1: Identify your land with the Local representative of the TA. E.g. your village headman/woman
- 2: Fill the appropriate application form and submit to your TA. Pay the 23 N$ application fee;
- 3: MLR will come to map and verify your application;
- 4: Application is displayed for 7 days at the TA Office for any objection from anyone;
- 5: The CLB will meet and decide if the application is accoding to the Law;
- 6: Certificate is printed and handed over to the TA;
- 7: Applicant is notified, verifies that the certificate is in order and pays the 50N$ document fee.

**Figure 18 Raising Awareness among Communal Land Users: Information Poster about the Process of the Land Registration** (Weidmann, 18.03.2013

According to the authors of a German-funded retrospective on land reform (Thiem & Caplan, 2014), poor communication was one of the factors as to why land registration had not taken up the speed that was envisaged in the first years of implementation. A turning point arrived when the government developed a communication plan (Millennium Challenge Account Namibia, 2011, p. 7) – a decade after the CLRA was heralded. The Ministry of Land and Resettlement started to organize meetings in villages, in which communal residents were for the first time properly informed about the content of the CLRA and about the context of CLRR itself (ibid. 2014, pp. 45–46). Also, legal training for CLB members had become more substantial as "later comprehensive training modules were developed" (ibid. 2014, pp. 45–46). Hence, even though communication had gradually become more accessible and inclusive towards the recipients, the slow pace and forms of communication (e.g. trainings, meetings, etc.), proceeded in a precipitous top-down approach from the institution as knowledge possessor to recipient as the knowledge receiver. The effect was that the political culture took on the shape of a unidirectional information flow, rather than promoting an interactive and participative governance, as a real effort for decentralisation and democratisation would dictate (Alden Wily, 2003, p. i). During my research it transpired that over the years this one-directional discourse has taken root in the perception of land reform law, among institutions as well as the communal land users. TAs und Communal Land Boards increasingly became aware of their role as administrative extensions.

The terminological choices in formal narratives reflect the aspirations of political leaders to guide the common sense towards certain logics and to embrace certain interests. One example is the

formulation of a common set of problems, to which the government then claims to offer solutions through land reform. As an effect, it then is expected to slowly integrate into the legitimising body of local common-sense understandings. One such narrative is found in the Ministry of Land Reform (Ministry of Lands and Resettlement, Directorate of Land Reform) official brochure explaining the benefits of acquiring customary land rights:

> • *Security of tenure to land holders, their spouses, children and dependants.*
> • *Avoids land related disputes between neighbours, families, clans and tribes.*
> • *Gives a legal documentary proof of the land right.*
> • *Allows one person to own a particular piece of land which rules out land grabbing.*
> • *Avails a right to compensation by government bodies when part of the land is needed for national development purposes such as roads, pipelines, power lines etc.*
> • *All communal land rights are transferable from one person to another in consultation with the Traditional Authority (customary land rights) and Communal Land Board (leaseholds)*
> • *Land holders can apply for retention of their existing fences.*

According to its propagation, the registration offers only advantages, apparently causing no inconvenience or possible disadvantages for the addressees, for instance, by simply offering "*legal documentary proof of the land right"*. Thereby, the Ministry's communication often evades any reference to the specific drawbacks of the current state of affairs: For example, it remains unspecified, whether threats to tenure security by "land grabbing" are increasing, or if government believes that the existing threats require better protection than is provided by the current customary rights. Points four and five show the government's interest being involved in communal land rights: While the land users in their – wrongly advertised – "ownership" ought to feel protected from land grabbing, while the government retains free access if it is decided that the land "is needed for national development purposes" (Ministry of Lands and Resettlement, Directorate of Land Reform). It thus declares its primary right of retrieving this "secure" land right (ibid.). While the compensation is to legitimise such abstraction, negotiation will take place between two partners of highly unequal power statuses.

The previous land governance system is treated as non-existent. This is a prudential move in the sense that such direct comparison-for-improvement would inevitably result in the discrediting of the TAs, who up to this point have been the primary land governance authority. In less formal scripts, however, the TAs' land management is subjected to more direct critique, such as accusations of unfair distributions of land parcels in size, or of haphazardly allowing (or denying) fencing (Iipinge, 2011, p. 1), and incapacitating owners to keep track of their own land right allocations (Allgemeine Zeitung, 2012). These were among the common critiques of TAs and their customary allocation. Legal documents are not only communicated through thoroughly formal, written statements, but also through their "physical" introduction in direct contact between institutions, stakeholders, and recipients. In the following, two such challenges of transition are portrayed: The barrier of language and of technical and legal knowledge. A considerable number of supportive and explanatory documents on the CLRA were not published into Oshivambo or other vernacular languages predominant in communal areas. Even the existing translations continue to be debated in regular legal trainings for TAs. During a training workshop, which was conducted by the Communal Land Support Project (funded by the MCA), a participant voiced that he was "not clear with the book [on the Communal Land Reform Act]. The translation is not clear" (Field Notes, 09.4.14). This objection triggered an emotive discussion, which again reflected the power of language and the difficult task of

the training facilitators which was not only to defend the linguistic translations, but also the legal content and inherent assumption of the TAs role and duties.
Documentation and mapping are often perceived as a means for transparency, for “communities to scrutinise the full picture and make better informed decisions on land allocations, including decisions concerning residential areas versus commonage areas” (Thiem & Caplan, 2014, p. 26). To reach this goal, however, many more steps of informing, educating, and communicating are required than is often anticipated. Resulting from an abridged path of explanation, the “mapping of indigenous lands” is often an “uneasy mix of participatory community approaches with technology” (Chapin et al., 2005, p. 619). The stark transition from wholly undocumented to high-resolution digitalisation of land rights leaves many non-experts in the dark as to both the technicalities of establishing land certificates, and the resulting benefits. It is even questionable whether the benefits resulting from such precision (e.g. of determination of boundaries) are in fact accessible by non-experts, or right holders who lack the knowledge of reading maps. Consequently, the question arises, whether the registration is actually aiming to include communal farmers in the circle of accountable stakeholders, through democratising knowledge, or if it simply serves as pretence for seizing the TA’s exclusive knowledge.
To underline its commitment to international standards of *good governance*, the government of Namibia established a legal framework which claims to embrace *public participation* as a crucial pillar of democratisation. In the case of the communal land reform, this reflects in the inclusion of the Traditional Authorities (as a sign for trust in and recognition of existing local management (and accountability-chains), as well as the establishment of a new institution which amalgamates interests and voices of all affected groups from civil society to institutional experts.

### 5.6.2. Including Traditional Authorities in the Land Reform and Governance system

The inclusion of customary laws and leaders (TAs) and their “inherited rights to administer and manage land under their jurisdiction” (Kleinbooi, 2010, p. 38) is promoted as a measure to meet the right for cultural identity deemed “indispensable for [a person’s] dignity and the free development of […] personality” (United Nations UN, 1948 Art. 22). Besides, in return for their support of the liberation struggle and contributing to the "national culture" (Akuupa & Kornes, 2013, p. 38), TAs and communities rightly demanded national acknowledgement. The Minister of Lands and Resettlement (MLR) formulated his stance on the traditional land governance in his foreword to a National Assembly document:

> In the wisdom of the African traditional leadership, land was perceived as a God-given resource for usage by the entire community. Pursuant to this belief land was accessible to everyone. Traditional Authorities served as custodians of land and to whom the right of usage always reverted back to for reallocation. (Government of the Republic of Namibia & Ministry of Lands and Resettlement, 2010)

Apart from cultural motives that ought to afford the traditional leaders moral legitimisation, there are several additional reasons for including TAs in land governance: Recognising local authority systems, allows tapping into existing governance systems, which in turn may render governance more efficient and cost-effective. It further is needed to strengthen and protect claims of the poor and to advance "national growth and economic development" (Knight, 2010, p. 4). The arguments are thus persuasive through addressing both moral and developmental logics.

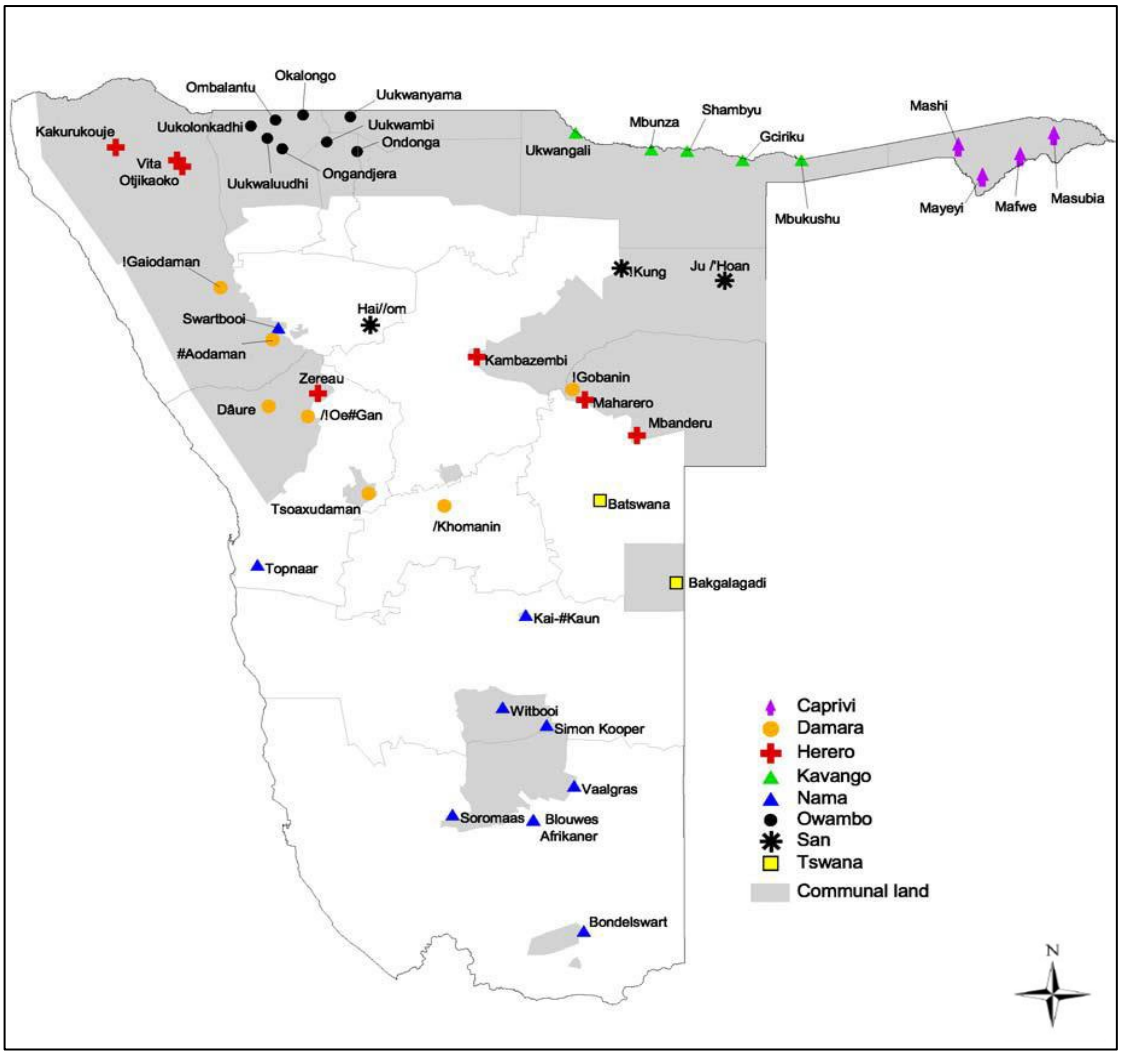



**Figure 19 Communal Lands and the 46 recognized Traditional Authorities in Namibia** (Mendelsohn, 2008:7)

Postcolonial legislation shows how the role and scope of recognition of TAs has for a long time remained drastically undefined: Only in 1995 the Traditional Authorities Act (TAA) vaguely defined the designation, recognition and functions of Traditional leaders (Parliament of the Republic of Namibia, 1995b, p. 2). These proclamations needed further refinement and flexibilization, in order to cater for the heterogeneous political systems among the many traditional communities. It took until 2002, when with the Communal Land Reform Act (Parliament of the Republic of Namibia, 2002, p. 5), the status of TAs was finally legally linked to specific rights and duties in land governance (*Figure 19*: Recognized Tas in Namibia). In the meantime, the co-existence between state and customary legislation had resulted in a range of conflicts (Diener, 2001, p. 254) "especially over questions of land use in communal areas" (Akuupa & Kornes, 2013, p. 41).

Within the implementation of land reform, the role of the TA was ambivalent: In the phase of the first registration, they are the key to transmitting the information the government needed to establish a direct connection to its citizens, and land titles. Thereafter, however, their authority status was not formally stipulated. In the first phase in which the government relied on the cooperation of the TAs, their status gained importance. A consultant summarised that "the success of the registration (process) depends a lot on the TA's goodwill" (Field Diary 4, 15.04.13, WO). This highlights the dependency of the state, on a mostly voluntary institution; mostly because some of the TAs are compensated financially by the government. Section 8 of the Traditional Authorities Amendment Act (1997, pp. 8–9 Sect. 8) specified that each recognised TA is eligible for remuneration by Parliament in the form and extent of "(i) one chief; (ii) not more than six senior traditional councillors; and (iii) not more than six traditional councillors [and] the secretary of a traditional community".

Consequently, the effects of land reform are experienced in starkly different ways by TAs, depending on their status within the traditional hierarchy. Whereas financial compensation is addressed to the higher-level authorities, which are more formally recognised (Parliament of the Republic of Namibia, 1997, pp. 8–9), the biggest increase of workload through the Reform is absorbed by the lower-level TAs. In most of the Ohangwena region, those comprise Village Headmen and their deputies and/or secretaries, who assist the Ministry in registering and documenting villagers and their respective land rights. Through their personal presence in the village, they dispose over the sought for information, while Senior Headmen merely have control over those village representatives that turn up for their meetings.

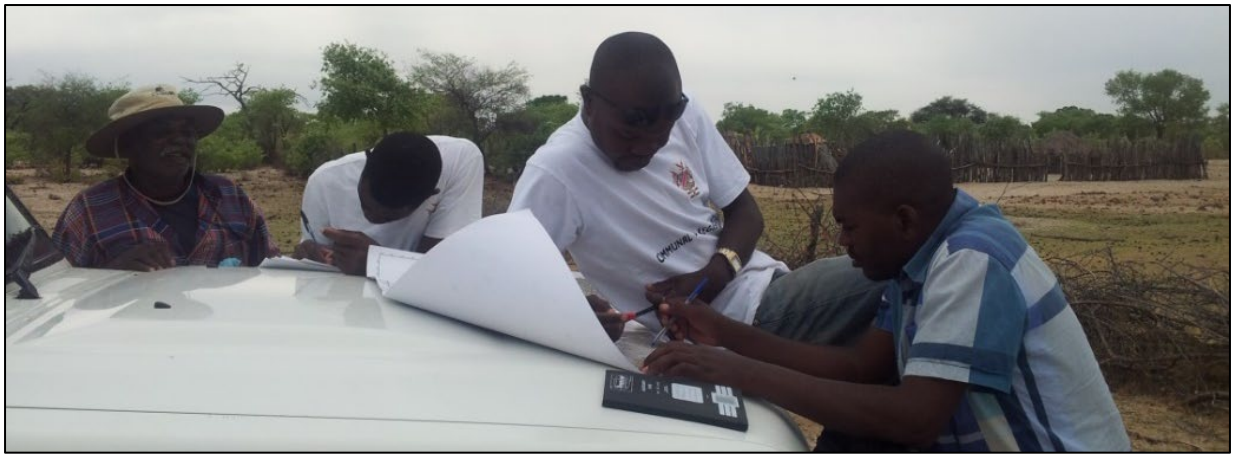


**Figure 20 *Outdoor Officers* of the MLR mapping Customary Land Parcels with the Assistance of a Village Headman** (Weidmann, 8.11.2013)

This circumstance proves that monetary compensation is not a crucial motivating factor – at least for village level TAs to being involved in the formalisation process. Possible triggers could be the hope for backing in credibility and power through representing the government's will and the granting of mutual access between villagers and the Ministry, or the assumption that their cooperation will secure the coercive patronage by the state's executive and judiciary forces, or both.

These hopes or suppositions have not yet proven themselves. The prevalence of this trust in the central and regional government is not evenly distributed across the country. Some TAs do not perceive the formalisation of land governance as a benefit to their own status of power. The most prominent case in this regard is Kavango (Sulle et al., 2014), where TAs refuse to partake in land registration – in fear of losing power to the national government. Although the reasons or reasoning for those refusals are varied across customary communities and regions, they are generally

suspecting to be less or no more catered for in a future governance system, and that the government as "foreigner" is intruding into their space of governance. At the bottom of this mistrust is the implied belief that the SWAPO government favours Oshivambo-speakers over other ethnic groups, which was "fuelled by the observations of members of Owambo traditional communities expanding their land holdings and use of pastures into neighbouring Kavango and Kunene" (Mendelsohn, 2008, p. 17).
Such political animosities reappear continuously throughout the negotiations on the scope traditional governance within the statutory system. Apart from the registration itself, a further intrusion is challenged by some TAs, namely the establishment of regional land boards which are appointed by the government:

> We don't want to end up in a situation where Government will come with their own people to impose on us. Should we sit and wait for people to be brought from wherever and decide on our land (Herero Paramount Chief Kuaima Riruako quoted in a newspaper article (Kuteeue, 2003))

### 5.6.3. The introduction of Communal Land Boards (CLB)

With the introduction of Communal Land Boards, a new institution entered the landscape of land governance, in the form of a "multi-stakeholder body" (Thiem & Caplan, 2014, pp. 25–26). Promising appraisals from Botswana (Marongwe, 2004: 25–26) were especially prominent triggers for their implementation, having proved itself as be a fruitful path for merging customary and formal tenure systems, and decentralising land governance. However, as an institution that would directly reach into the local set-ups of TA-villager contracts, the CLB is feared by many TAs. This fear is certainly justified, as the land boards are entrusted with powers that used to be main pillars of traditional jurisdiction; thus, their instatement directly affronts the TA's sovereignty. Unsurprisingly, their role was harshly negotiated during the long drafting process of the CLRA (Parliament of the Republic of Namibia, 2002).

At a consultative National Conference on Land Administration in 1996, the Ministry of Lands and Resettlement (MLR) "wanted to find common ground for bringing forward land reform in communal areas, and to prepare for tabling of a Communal Land Bill in Parliament" (Thiem & Caplan, 2014, pp. 8–9). According to the draft version of a Communal Land Bill, the TAs would not have been represented in the boards who were to receive "all powers relating to communal land […] in particular the power to grant customary rights to communal land" (ibid. 2014, pp. 8–9). These provisions were naturally opposed by Traditional leaders who feared an abrupt concision to their function and power. Counterproposals included, among others, to subject the land boards to the TA jurisdictions, which of course conflicted with the boards' role of representing the superior judiciary of the state. A compromise was hence negotiated: The TAs were allowed to participate in the board, while land boards were not subordinated to the TA jurisdiction. CLBs are constituted of representations for formally recognised groups of interest (Parliament of the Republic of Namibia, 2002 Sect. 4): Among them the (recognised) TAs who are present within the region (Parliament of the Republic of Namibia, 2002, p. 5), the regional council or officer, various regional Ministries, the "organised farming community", the conservancy/ies if applicable. Among all appointees, the CLRA prescribes a female representation of at least four women, two of which ought to "have expertise relevant to the functions of a board" (Parliament of the Republic of Namibia, 2002 Sect. 4 Art.

4.1.d)ii)) (the constitution of the CLBs is further discussed in → *5. Communal Land Boards: Authorities, Subjects and Land Users*).
Although their composition, authority, and even more so their co-operation with the TAs are continuingly debated and disputed vividly *(→ 6.4.*; examples are discussed in → 7*.2. and 7.3.*), Land Boards have meanwhile been introduced in all regions that contain communal land, all except for the Khomas region. The land board's general role is to give the registration a democratic appearance. Apart from this symbolic role, the board is assigned two main tasks: Verifying land rights to legally complete their registration, and mediating land-related disputes. The way the CLRA prescribes the functions and composition of the Board, is that the CLBs were introduced "to oversee the customary land administration system, and more specifically to ensure that land allocations made by traditional leaders meet the legal requirements" (Werner, 2011, p. 26). From a legal point of view, the CLBs thus hold a superior position in the judiciary hierarchy to the TAs, as they monitor decisions taken by the TAs, and are entrusted with safeguarding the registers of certificates that have been issued (Thiem & Caplan, 2014, pp. 25–26). In practice however, the CLBs do not (yet) dispose over enough resources or knowledge to approximately make use of the extent of their powers. In participant observations of CLB meetings it crystallised that their actual ruling authority was currently reduced to confirming the completeness of the application forms and to reject those that refer to a parcel exceeding a size of 20ha (observed in various CLB Meetings in Ohangwena and Oshikoto). The lack of previous databases to confirm with, neither allows the board to question the competence of a signing TA, nor to identify territorial overlaps or inaccuracies of issued parcel maps. The CLB members lack both time and the necessary training to access the GPS software or other digital databases to align incoming applications with existing parcels, in order to prevent double allocations, overlapping plots or other contradictions to legal prescriptions. Consequently, a large part of the CLB's responsibility and authority is traced back to the Board's Secretary, a direct employee to the regional Ministry of Lands and Resettlement. Since the board members are civilians representing subgroups of public, it is ultimately the secretary who is *de facto* accountable for aligning the mapping and certification process with the legal mandate and stipulations. This role implies numerous conferences with the central Ministry and legal counsellors. The seemingly responsible act of legally validating communal land rights in practice resembles a much less powerful position, being fulfilled in the of reading, checking, and signing the land right documentation.
The Communal Land Board is furthermore mandated to mediate land disputes that it "is of the opinion" (Parliament of the Republic of Namibia, 2002, p. 16 Sect. 28 Art 9) to have encountered among the land rights that are applied for registration (ibid. 2002, p. 16 Sect. 28 Art 9). To adapt to governance reality, however, the Ohangwena CLB has decided that it only takes on a mediating role in cases that could not be resolved by customary authorities. Also, experience has shown that an intervention by the board is impractical, if the land under dispute has not yet been certified or at least mapped, because otherwise the board's evidence, and legal validity of its "opinion" (ibid. 2002, p. 16) is meagre. This means that a land dispute case only lies within the jurisdiction of the CLB, once all required protocols and confirmation letters have been provided and signed by the traditional actors involved. In contrast, however, the CLRA also states that a land right is not to be approved by the CLB, as long as any dispute on the parcel in question is still pending (Iipinge, 2011, p. 15).
Werner (2011) identifies a problematic aspect in the CLB's role, as their tasks include substantive decision making, since their scope of perceiving "conflicting claims" or to question the "validity of the applicant's claim" (Parliament of the Republic of Namibia, 2002, p. 16) forces upon them a task of continuingly calculating "an individual's right to be free from retroactive application of the CLRA" (Werner, 2011, p. 1) against "the right of the poor, unemployed and powerless to communal lands"

(ibid. 2011, p. 1). The CLRA lacks clear procedural instructions not only for mediation of land conflicts *per se* (Thiem & Caplan, 2014, p. 27), but also with regards to how they are to be identified and prioritised within the board's general mandate. In official terms, the Board's substantial responsibility is highly underestimated. Because even if customary laws are increasingly documented and accessible to outsiders of the TA group itself, the harmonisation of (often multiple) customary laws with the state law demands a high normative sensitivity as well as legal knowledge and articulation. And not only are members of the board tasked with the harmonising of considerable discrepancies that exist between customary law and CLRA, but at times need to consider discrepancies that arise between different state laws. In brief, although essentially highly responsible, these tasks are fulfilled in a primarily bureaucratic manner. During the field research Land Board Meetings to a large degree resembled an administrative retreat, as many indicators suggested that the board Members were yet to bargain their role as experts representing their field, meanwhile working as judicial apprentices under the close supervision of the Ministry.

# 6. Subjectivities and political identities: the making of jurisdictions

Land reform, as a legal and political initiative, is designed to be implemented into a complex environment including multiple jurisdictions and political subjectivities. The purpose of this chapter is to retrace how those jurisdictions and their political cooperation are shaped in this specific postcolonial context. Subjectivities, as groups of subjects produced through a specific system of knowledge and a related discourse (Ashcroft et al., 2013, p. 251), take manifold shapes in Namibia's land governance, at times overlapping, at others competing. They are of crucial importance if we are to understand how the land reform operates within a legal and political scope, as well as in everyday interactions. More specifically, we need to ask: Who is identified through which political categories, with what agenda, and by which reasoning are those groups and subgroups sustained? The legal definition of subjectivities, their enactment, and prioritisation reflect – but also play back into – the negotiation of relative justice. Which claims and claimant groups deserve priority in the reconciliation through land reform? Is it the traditional community, the fellow war-veterans, all fellow citizens, or the family unit in one of its many possible conceptualisations?

Thus, by pointing out the political interests inherent to the formulation and promotion of *polities*, my aim is to postulate their effects on the conditions under which people fend for rights of inclusion and resources. An ascertained belonging to a judicial group always implies rights and entitlements; this is how the land reform obtains such omnipotence in the politics of reconciliation. Those rights and benefits, however, are always accompanied by compulsions of specific rules and restrictions. In the following discussion of case studies, these insights put into context what appear as gaps between legal discourse and governance reality: as the interests in land and resulting conflicts continuously multiply, they "reveal processes of exclusion, deepening social divisions, and class formation, and are deeply implicated in the shaping of nation and citizenship across Africa" (Peters, 2013, pp. 5–6).

The recognition of traditional communities as sub-judiciaries within the citizenry has undeniably complexified the subjectivities in Namibia. It establishes formal delimitations and separate rights and rules of resource access among citizens who, in a democratic logic, ought to share the same rights and duties:

> Increasingly, the argument of belonging has been brought to bear both as a claim to resources and to jurisdictions. (Lund, 2011, p. 9)

These are the reasons, among others, why conventional political categories do not do justice to African political subjectivities (Mamdani, 1996; Chabal & Daloz, 1999; Ramutsindela, 2001; Boone, 2007). In the previous chapter, I established how political categories are intimately tied to governance processes in a mutual constitutive process. Hence, they are central in reconstructing political meanings, logics, and argumentation, but are likely to have a fluid or instable character within a governance of transformative character. Due to the earlier discussed blurry line between formal and informal features and institutions, it seems legitimate to expand the term *institutions* to include any entity with institutional features (Hufty, 2011, p. 179). Thus, in analysing governance, TAs and traditional communities are bound to be treated with equal importance and organisational weight as regional and municipal offices.

The most obvious players at stake in any land governance system are certainly the central government and the citizens, the addressees or receivers of its policies and laws. In the context of communal land reform another polity is included with the recognition of traditional Authorities, and new institutions that are task to mediate between the different polities and judiciary fields. Less obvious, but with a more imminent effect on local reality, are regional governments, the state police,

political parties, Traditional Authorities, traditional communities, and finally, the *public*. The *public* and the *public interest* (ibid. 2011, pp. 24–25) are essential concepts to understand and observe land reform, which is an effort of the state to addressing its citizens. This chapter is dedicated to bringing light into the definition and enactments of those polities, and their institutional representation, in order to understand the impacts of land reform on an institutional, systematising level. To this end, Communal Land Boards are looked at from a closer angle as an example for an institution where different polities – with their overlapping or competing narratives on land rights, land use, and its governance – are confronted and merge into what is experienced as the current *de facto* governance reality.

All such actor groups require examination, if one is to successfully analyse case studies of governance practice in north-central Namibia. These cases often reflect how heterogeneous groups with different or even detrimental interests and values are treated as a unity, while actors with similar needs or backgrounds are differentiated on the grounds of legal categories. Furthermore, the multi-subjectivity of actors is to be carefully considered, with respect to the legal stipulations that assume that they are isolable and separable in individual situations. Political and legal stipulations always assume that the roles ascribed are played accordingly: For instance, in regional or national votes, in discourses on gender equality cultural rights, and the role of democratic and equal citizenship. From members of traditional communities, it is expected to adhere to customary land use at it is imagined by the CLRA, which is that whoever owns land in the commercial area is expected to pursue what the state perceives as economically profitable agriculture. Members of the Communal Land Board, as a further example, in a meeting or dispute hearing, are to represent the interests of a farmer's community, while also being a traditional subject, a land user and a business owner.

In Namibia, even though a national legal framework embraces all citizens in one national jurisdiction, as a *judicial* field it is not congruent; the differences in governance practices, legal systems, political needs and priorities are too drastic. Yet, postcolonial development discourse often imposes "fixed ideological meanings" onto "[b]oth the natives and the civilised" (Meneses, 2006, pp. 100–101), thereby foreclosing a "perspective of *inter-legality"*, and perpetuating a distinctive *legal culture*. Namibia thus certainly contains multiple juridical fields. The following chapters analyse whether the legal system accurately stays abreast to this situation by offering the necessary framework for a 'peaceful' coexistence. The relationship between jurisdictions and their respective moral fabric becomes even more complex if one of the polities assumes to be representing a "'common-sense' idea of justice" that claims validity beyond jurisdictional boundaries (Eckert, 2006, pp. 47–48). This assumption applies to the state government, particularly with regards to narratives that are supported by international cooperation partners. The distinction between "public norms" and "social norms" (Olivier De Sardan, 2008, p. 17) proves that normative pluralism is a long-discovered aspect in many postcolonial contexts. It promises constant friction between different polities in negotiating their composition and position in governance. As a result, the normative compositions of jurisdictions are fluid. While this may provide (some) actors with particularly numerous rights and benefits, manoeuvring between different frames of law and social norms may put them in a position of insecurities and even at peril if – in the worst-case scenario – no judiciary finally takes responsibility for an individual's general well-being.

## 6.1. The Government of Namibia (and its postcolonial reinvention)

The national government holds a considerable advantage by its monopoly of formal law, "the linchpin of legitimate governance" (Benda-Beckmann et al., 2009b, p. 6). Yet, the national government, just as any other actor, must find ways to secure its continued legitimisation. For a state that has overcome a long era of colonial suppression, this requires from the government intuition and readiness to address different demands simultaneously. A strategy for democratic states to actively campaign for their factual entity is decentralisation. Real decentralisation requires a deputation of government authority in both its geographical and political margins, and not only in terms of deputising administrative tasks ("deconcentration") but in transferring "power to actors or institutions that are accountable to the population in their jurisdiction", hence "political decentralisation" (Agrawal & Ribot, 2006, p. 303; see also Boone, 2003a). In Namibia, this distinction is a particularly complex version of a (double-)decentralisation through the instatement of local and regional offices, and in parallel recognising 'vernacular' customary hierarchies. Only with passing years and discussions after Independence did acceptance grow, where those institutions were likely to compete, as it was impossible to formally recognise any traditional sovereignty in governance without allowing its system of justice to exist, too (Hinz, 2008, pp. 152–153), despite its potentially competing concepts to the statutory law. While the national history has been closely accompanied by social plurality, the recognition of traditional jurisdictions keeps policies of subdividing the citizenry alive, feeding, in turn, into present policies and moral fabrics. Irrespective of whether a plural society has evolved through forceful politics of segregation or other forms of stratifications, it results in diverse interests and interest groups, each of which requires "locally accountable representative authorities entrusted with public powers" (Ribot, 2001).

Making a group of people feel or appear homogeneous in their claims, rights and duties, can be looked at as a thoroughly political act. Colonial nation building for instance, referred to as an "imperial history" narrative that built "on processes of temporal change", whilst holding space constant (Hogg, 2002, pp. 31–32). The territory of the Namibian state, however, was created in one specific moment of genesis. In order to make its boundaries remembered as a neutral fact, rather than as something that was designed for a political purpose, the creation had to be covered in a symbolic and almost mystical blur. Hence, nation-states, especially young ones like Namibia, are fictive politico-spatial entities, that have become normalised as a constant primary authority over a specific space, supplying an unquestioned framework of truth and reality (ibid. 2002, pp. 31–32). In that sense, interestingly, traditional, and national narratives differ not much in how they blend out time and political process, to mystify their original provenance. Jurisdictions are hence often beyond explicit scrutiny, even in complex settings of multiple jurisdictional layers as in Namibia, because of the inclusion-exclusion paradox. This paradox is inherent to the *Unity in Diversity*-formula, which lead to the legal institution of sub-jurisdictions, despite its undermining effects to a unified nation. Consequently, the customary judiciaries remain tolerated, but persist on a shaky moral ground against the modernists' equal rights-credo: Nearly every customary decision could be revoked by statutory courts for being discriminatory, tribalistic, corrupt, extortionary, or for violating any democratic codes.

Since Independence, inclusion has been a fundamental request by the marginalised 'natives', to finally benefit from all advantages promised by holding the Namibian citizenship. These advantages however were, and are not, consistently understood and valued among communal land users. The local situation regarding land tenure and security offers an example for how the narrative of a national entity gets caught up in complex contradictions (playing out the above-mentioned paradox):

While the individual land ownership in communal areas is prohibited under the argument to promoting *poverty-abating* reconciliation, the land registration however facilitates the access for state institutions in the name of "development" and "for the public interest" *(→ 6.3.*). These two terms are strongly stressing the *unity* aspect of a nation, muting any opposition by advocating for equal rights (to development, infrastructure etc.) and non-discrimination of all members of the public (Government of the Republic of Namibia, 1990a, p. 5).
Plural, overlapping, jurisdictions reflect the multiple boundaries of political inclusions and exclusions, namely, those of TA and those of the statutory offices (*see Figure 21*). Hence, the juridical fields in Ohangwena are a dense web of overlapping and interrelating ties, resulting in a potpourri of responsibilities, accountabilities, duties, rights and capital transfer paths. A traditional community member is part of each system, each of which is defined by a hierarchy that is distinguishable in its strictness, urgency and practicability, adapting to different judiciary situations and scales of politics.

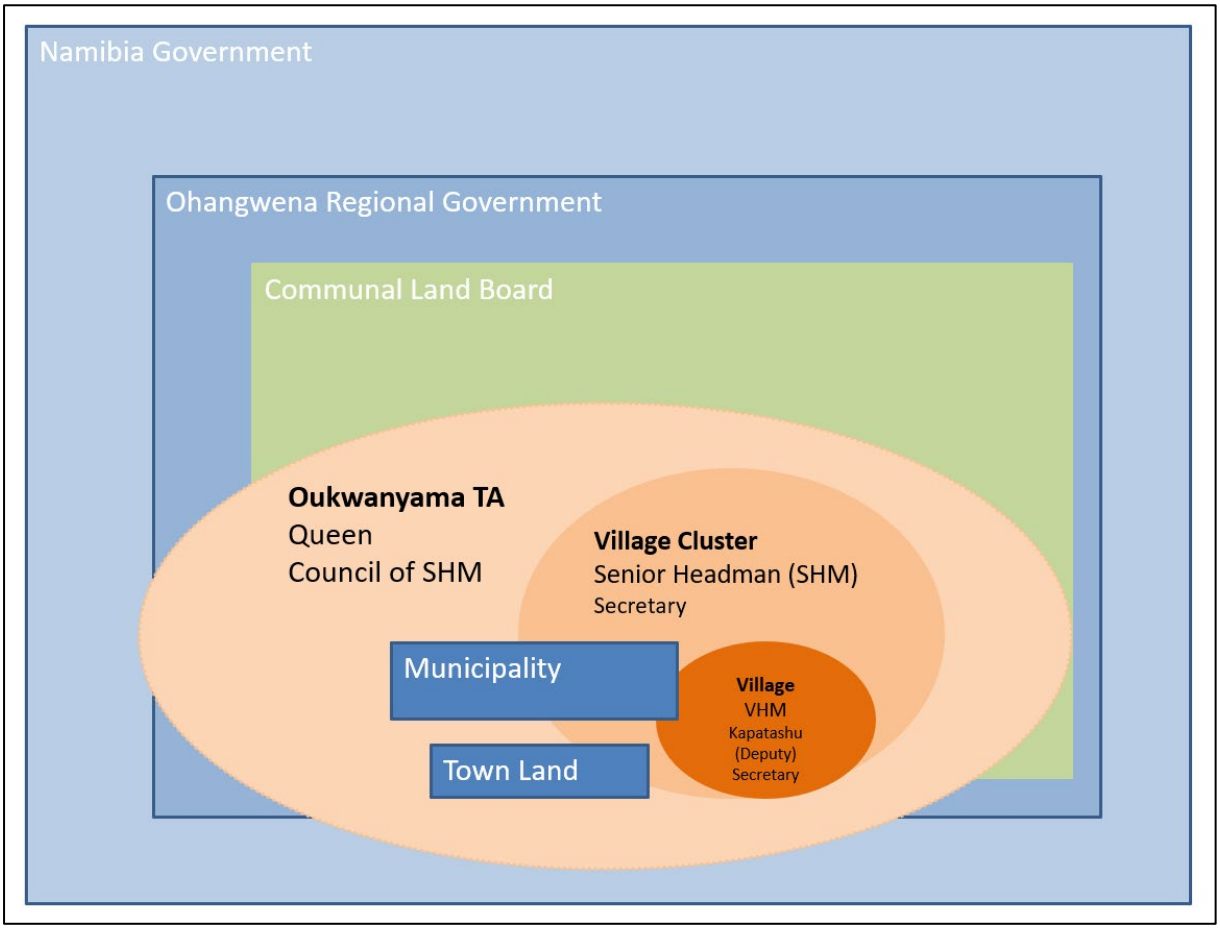



**Figure 21 An Approximate Hierarchical Depiction of Two Unsynchronised Jurisdictions.** Governmental Authorities (blue), Traditional Authorities (orange), and the Communal Land Board as a Conglomerate Polity (green) (Weidmann 2017)

The most obvious player at stake in land governance is the national government, and its predominant role is fragile due to its colonially defined origins. The Namibian nation as a legal and territorial entity is still – in theory – debatable because the borders were defined to serve the interest of imperial powers. Thus, the entity of the 'citizenry', as the most basic perimeter of inclusion and exclusion, grounds on foreign, not internal agendas. Another reason lies in its unequal service-delivery and attention to the citizenry as an entity. Public discourse is, for instance, heavily influenced by rumours and accusations of tribalism, implicating that the demands of different

political groups are differently responded to due to ethnic ties with political stakeholders (Haidula, 2015; 2015; Tjihenuna, 2015). When looking at the research field from a closer perspective, regional Ministries take an important part as ambassadors of the central government, who are also aware of local contexts and challenges. As the national government's representation, they hold considerable freedom in which their execution of laws deviates from the planned form (e. g. prioritisations, strictness with which certain laws are enforced). This is necessary, considering the amount of contradictions or incompatibilities with local realities. In some issues, single Ministries officially receive power over fundamental terms and structures of the sub-judiciaries of TAs: The Ministry of Regional and Local Government, Housing, and Rural Development (MRLGHRD) was given a powerful task of ascribing formal *recognition* to a TA, by which it "could reward or punish leaders and communities" (Lindeke, 2014, p. 85).

The history of nation-building in Namibia was accompanied by the problematic relation between claims for "Unity in Diversity" and "One Namibia, one Nation" (Akuupa & Kornes, 2013, pp. 37–38), which was, above all, a negotiation about the hegemonic scope of state jurisdiction. It can then be argued that the recognition of TA is ultimately a self-serving measure by the state to maintain its public legitimisation. The relation between ethnic and national politics has always been one of contradictions and vital sensitivity for postcolonial state-building narratives. In its policy designs, SWAPO highlighted the aim of building a unified nation, by addressing one polity and instilling a "sense of common destiny" irrespective of ethnic belonging (ibid. 2013, pp. 37–38). Independence nevertheless brought along a "(re-)emergence of 'politicised ethnicity'" (ibid. 2013, p. 41). A prevalent critique among political observers states that the government had failed to institute a "proper policy framework" and is thus to be blamed for the conflicts between customary and national law that have surfaced in the first years of Independence (ibid. 2013, p. 41). Whichever may be the reason, the situation at hand is complex. The relationship between state and tradition has, by and large, been shaped by competition over the past decades. Decentralisation, good governance, rule of law, and democracy, are all slogans under which TA may be advertised - but also rejected. The inclusion of TA is a major legitimisation strategy of the government, with the effect that *tribalism* has become a central "feature of Namibian political discourse" (ibid. 2013, p. 41; with reference to Keulder, 2010b, p. 151; Diener, 2001, p. 233).

Among the major problems arising from subdividing the population into sub-jurisdictions are the increasing mobility across jurisdiction borders, or the voluntariness of self-ascription to a certain community. Of course, the vagueness of definition of a 'cultural commonness' derives from the wish to encompass all existing and very diverse "traditions" that exist within Namibia. However, there is only a thin line for the central state to balance between over-specification and vagueness of what *Tradition* ought to embody – on either side facing the threat of opening legal gaps or overlaps, which may result in de-legitimising resistance towards the state law or its institutions.

A legal generalisation and formalisation of TAs and Traditional Communities as polities is an attempt to make up for their historical neglect, while designing the regulations in order to fit (almost) all the heterogeneous traditional hierarchies, power systems, and customary laws. It is a compromise that attempts to improve fair and equal reconciliation.

## 6.2. Traditional Authorities and their political recognition

Why are TAs officially recognized as polities, jurisdictions and, ultimately, as governance partners? What scope of authority have they attained – or lost – through their recognition? The implementation of the communal land reform is a decisive test for the central government's factual

willingness to recognise the TA as authority and to concede to them necessary discretion. In order to answer these questions, this chapter will in a first part look at a few selected legal initiatives that reveal the government's assumptions and intentions about political relations with the TAs. In the second part, I will inquire how TAs, and their shape and source of authority, are defined by their community members. This way, it will lay a basis to inquire in the following chapter (7.), how legal and political assumptions inherent to the CLRA do (or might) affect the position and agency of TAs.
The concession by the government to recognise TAs appears as a response to "the increasing ethnic nationalist movement since 1992" (Düsing, 2000, pp. 217–219). Hence, the recognition of customary law and traditional leaders was from the beginning an explicitly political act, one that constructs and reinforces boundaries of belonging and excluding "Cultural rights, described in terms of a collectivity, are regarded as tending to particularize and exclude" (D'Engelbronner-Kolff, 1999, p. 70).
If "ethnic categories [turn into] political organisations", ethnicity becomes "essentially a political phenomenon" (Friedman, 2005, p. 49). It follows that in the fragile postcolonial context of Namibia, the recognition of tradition and customary systems is subject to continued contestation: it reflects at the same time a necessity for cultural reconciliation, but also a continuation of ethnic categories within the citizenry, which carries the heavy aftertaste of the legacy of political oppression of indigenous groups.
Just after Independence had been declared, the Namibian government recognised 36 Traditional communities (Keulder, 2010b, p. 159). By 2008, their number had increased to 42 (Hipondoka & Haudiu 2008), and in 2014, the MRLGHLP identified 45 (Ministry of Regional and Local Government, Housing and Local Planning, 2014), but according to less verifiable sources, the number continues to grow, to 50 recognised traditional communities in 2015 (Muraranganda, 2015). In reference to numbers of TAs acting on a village level, they are even less dependably documented, and accordingly, the records on Village Headmen are still highly inaccurate in the core field site of this research. At the level of Senior Headmen, the official count (176) is more reliable (Düsing, 2000, p. 219; Keulder, 2010b, p. 159), because they are members of the Council of Traditional Leaders, and assigned more personal accountability through a small remuneration (Parliament of the Republic of Namibia, 1997 Sect. 8).
The Traditional Authorities Act (Parliament of the Republic of Namibia, 22 December / 2000) distinguishes three statutorily recognised actor groups within a *Traditional Authority*: The *chief, King* or *Queen* or *head* of a Traditional Authority and community, Traditional Authority *members*, and the traditional *community* as an enclosed political entity (with its jurisdiction). All three actor groups are colloquially referred to as *Traditional Authorities*. In this thesis, however, a respective reference often needs to be more refined, in which case the generalising term TA is specified along the above-mentioned terms. Each of these legal units is characterised along different characteristics, tasks and positions within a hierarchy.
The prevailing argument for including TAs and traditional communities into the national law and governance refers to their positioning "deep in peoples' popular consciousness, informing them of who they are and how they should act" (Meneses, 2006, pp. 100–101). These local needs and norms as they are often referred in literature on the value and effect of customary law (Olivier De Sardan, 2008, p. 17; Polack et al., 2013, p. 3; Agrawal & Ribot, 2006, pp. 301–302), typically remain vaguely defined, which will be addressed in this study. Bennett and Vermeulen (1980, pp. 214–215) locate their particularity not only in the legal system once it is established, but already in the process of law-creation. The authors, like many others, deduce that customary law is so resilient because it is "best adapted to the needs of the people and, thus, in accordance with their traditions and social values" (ibid. 1980, pp. 208–209).

At present, the TAs are the group that is politically most affected by the Communal Land Reform Act (CLRA 2002). This is due to their position between legal texts and local claims, to which they must respond with more immediacy than any state authority. While the Act explicitly includes traditional leaders in the jurisdictional and administrative system of land governance, the uncertainties of duties and responsibilities that arise from land reform implementation deeply transform the basis of 'traditional' legitimacy. Consequently, control over communal land is becoming a matter of insistent negotiation between the national government, TAs, and powerful land users. The ongoing need for political and legal clarification and local adaptation reveals that the official recognition of TAs and traditional communities is still marked with practical and moral contradictions. This has been noted by Lindeke, too, who observed that:

> Since independence tradition has been encouraged and discouraged. Potentially, traditional units could come into conflict with local government authorities or challenge the State in its entirety. (Lindeke, 2014, p. 85)

The following chapters will look more closely some those discouraging and encouraging moments, as they appear in arrangements between the government and the TAs, particularly the Oukwanyama, from colonial history until the current land reform project.

### 6.2.1. The historical conundrum of formalising Tradition

The discussion of the form and extent of formalising TAs and tradition is continuously shaped by the conundrum of its necessity yet incompatibility with a modern nation-state. In consequence, legal documents, but also pragmatic politics of ascribing responsibilities starkly lack in clarity.
The idea and attempts at integrating TAs in national governance systems and planning are not new: Strengthening ethnic voices in the political arena has already been promoted by the indirect rule design of the Odendaal Plan (Diener, 2001, p. 233; Odendaal Commission, 1964, 55, 61). Due to the long history of planning, however, it remains a morally sensitive topic after Independence, and the ways in which the national government deals with it, decides on the future authority and governing power of TAs. This political draft included at least two premises on legal and moral pluralism that have sustained themselves until the present day, and keep informing the discussion around ethnic polities: The first is that traditional communities are homogeneous groups with common, synchronised "wishes […] character and traditions" (ibid. 1964, p. 515), and the second premise supports the belief that introducing bits and pieces of "Western democracy" (ibid. 1964, p. 515) would not interfere with the basis of traditional government. Both of those premises do not necessarily reflect actual beliefs but are much rather seen as necessities in attempts to harmonise traditional systems with imported, generalised ideas of politics.
The extent to which traditional governance systems were interfered with in each case, depended upon the combination of the occupier's comprehension and recognition of the existing system, and their interest in acquiring any resources from the area or the community in question. Therefore, although the Owambo groups were considered most "advanced" in their political organisation (ibid. 1964, p. 515), and therefore experienced the least structural imposition by colonial administration, they remain vigilant for signs of the central government undermining the TAs authority. The reduction of TAs to mere appendages of the state, to a status "even below that of advisers in the administrative machinery" (Koyana, 1999, pp. 122–123), is a fear that is instilled by the national memory.

There is no denying that ethnic categories had been established and employed by the colonial administrators, primarily reflecting the colonial interests of dividing and conglomerating citizens (Diener, 2001, p. 236; Nitsche, 1913, p. 128; Odendaal Commission, 1964; Keulder, 2010b; Mamdani, 1996, p. 8). Many colonial regimes, as also seen in Namibia, had attempted "to carve a legal entity out of native populations" (Ramutsindela, 2012, p. 755) with the intention of reproducing and deepening divisions among the supressed (Mamdani, 1996, p. 77), and thus diverting attention from their common oppressor. This is an argumentative basis for those opposing the sustaining or resurrection of TAs. A number of authors interpret the movement towards re- or neo-traditionalisation as a new form of oppression of the African political subject (Bayart, 2009, p. 28; Ramutsindela, 2012, p. 755; Keulder, 2010a; Chabal & Daloz, 1999, p. 45). By "indigenising Africans", Bayart claims, they are inhibited from acquiring the same powers and potential that are accessible to imperial citizens. Their identity is attached to a historical sequence of inferior symbolic power to national and "panafrican" (Bayart, 2009, p. 28) scales of community, and in Mamdani's words, a politically- enforced separation along ethnic lines always creates a "variety of despotism" (Mamdani, 1996, p. 8).

A positivist approach views customary law as 'naturally evolved', consensual and decentralised (Bennett & Vermeulen, 1980, pp. 214–215; Moore, 2001, p. 96), which, if true, would make them static and easily formalizable. In reality, however, "discourses, traditions, customs and ethnicities are continually reinterpreted and reconstructed as regulated improvisations, subject to their continued intelligibility and legitimacy" (Meneses, 2006, pp. 100–101). Custom and tradition are as much legitimised by their fluid and adaptive character (Hinz, 1999b, p. 6), as they are by their reference to continuity in practices and governance.

My approach is that a common history and respective temporal references are employed as instruments to retain sovereignty, of which TAs – in their present embodiments and legitimate interpretations – are important elements. The "[d]iscretionary authority" (2006, p. 303) that tradition needs to retain to survive through evolving political, economic, social and moral ideas, contains this exact dynamic and reconstructive character. It is therefore crucial to observe how national legislation and governance (continue to) allow this sway to remain an inherent part of tradition and the TA.

### 6.2.2. The Namibian case: is recognition undermining or strengthening Tradition?

The formalisation of dozens of differently organised TAs invariably demands structural assimilations, which will affect their normative and moral fundaments. Given the different treatment of the numerous TAs in Namibia by pre-colonial governance systems (Odendaal Commission, 1964; Dobler, 2014, 2008; Miescher, 2012; Keulder, 2010b), it is unsurprising that the diversity among status of different TAs within the state governance system and their relations to government offices and programmes persist. Yet, another continuing limitation adds further insecurity or ambiguity to the process and measures of the government's formalisation of TAs: It is still torn between decentralisation and the desire to control.

The government's motives for including traditional governance systems are viewed with suspicion, for instance by those who claim it to be a pretence for the government to consign its responsibilities to informal systems of authority (Olivier et al., 2008, p. 17). The Secretary General of the UN Economic and Social Council warned that governments who "encourage informal arrangements" ought not to mistake them for "a substitute for public action in providing basic protection" (United Nations Economic and Social Council, 2001, p. 5). The alluded threat was identified by Agrawal and

Ribot (2006, p. 303) as the confounding of *deconcentration* with *decentralisation*: While *real decentralisation* requires the concession of "[d]iscretionary authority" (ibid. 2006, p. 303) to the appointed, so that they may continue to adjust their strategies to meet their downward accountability, *deconcentration* is merely a deputation of administrative tasks, defined by upward accountability and institutional legitimacy. The central task is therefore to define *how much* authority is needed for TAs to retain a necessary discretionary authority, while not decentralising more than a young and pluralistic state can afford. It is, in other words, the task of balancing between the doctrines of *One Namibia, one Nation* and *Unity in Diversity*.

It is therefore critical to reflect on how the TAs' formalisation, in its homogenising tendency, affects customary laws and ways of governing. To this end, the following chapters look at the examples of the recognition and de-recognition of tradition's dynamic character, and the reluctance of defining the TAs' territorial borders. Both these projects are analysed from a cross-scale perspective, and with a focus on the difficulties encountered, and the outcomes achieved thus far. These insights will help understand the process and effects of the registration of land rights; after all, communal land reform builds on the history and experience of all previous efforts of formalising customary governance, and is a further project aiming at formally defining the scope of TAs' formalised authority.

### *6.2.2.1. Formalising Traditional Authorities' territories*

Tradition and traditional land governance of the Oukwanyama have changed both through shifting natural conditions and political manoeuvres. The territorial definition of their community and governance system is one such extorted change. With regards to the land reform, the government is forced to make assumptions on the spatiality of customary politics when defining the TAs' role.

After it had dissolved with the death of King Mandume in 1917, the Uukwanyama kingdom was restored in 1993. This time however, the palace was built on the Namibian side of the border, although "the major part of the former kingdom" was located on the Angolan side (Diener, 2001, p. 254) (*see Figure 22)*. The Oukwanyama were forced to take a political stand in the group interest, by claiming their *indigenous* land on the Namibian side of the border, and by sharpening their hierarchy with the instalment of a king (at least representatively, as will be shown in → *7.2.4. What makes a traditional leader?*).

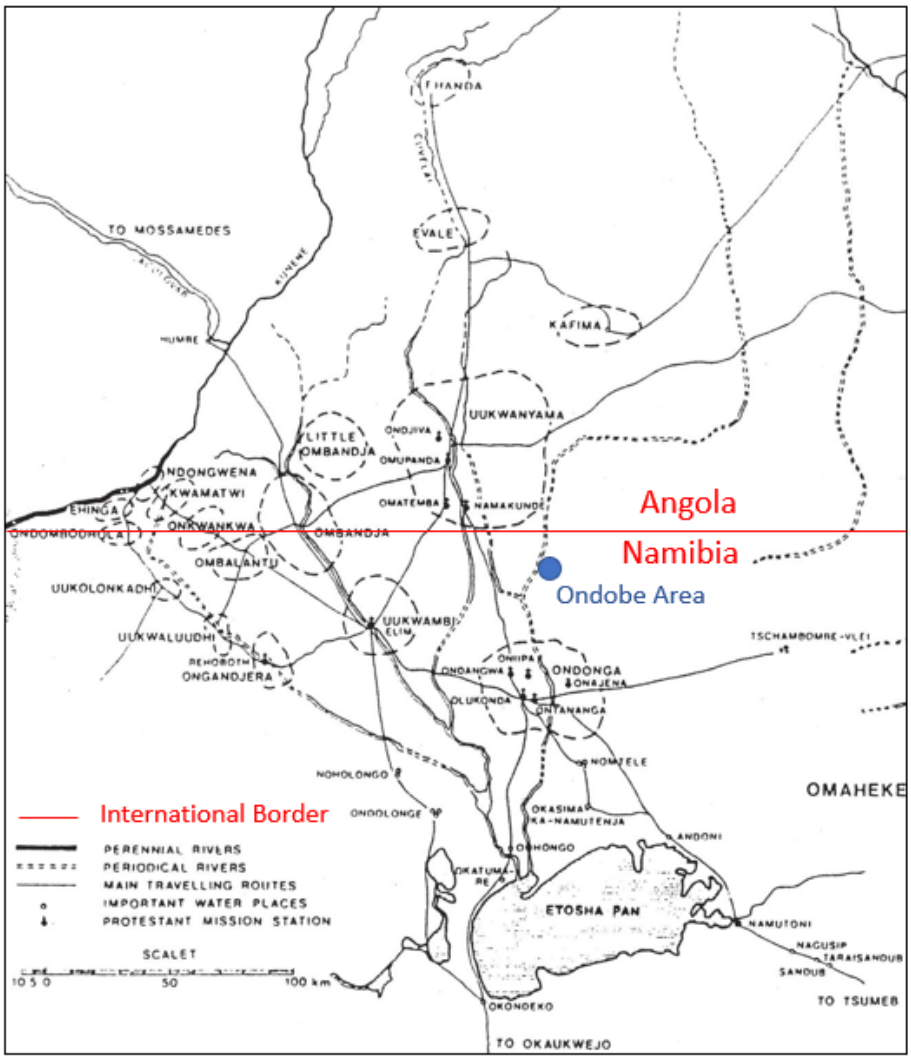



**Figure 22 Colonial Map of the Owambo Kingdoms (1918) with Today's International Border with Angola** (Salokoski, 2006:62; Weidmann, 2019)

The *Kwanyama Traditional Authority* stands as a collective term for the TA that governs, and the traditional community that is residing within the area. The re-establishment of a monarchy is an adequate symbol for the process of re-defining the Oukwanyama tradition since Independence: Its legal and political recognition and succession procedures portray the difficult relations between politics and custom, and more importantly, the normative contradictions between traditional and statutory jurisdictions and politics (Diener, 2001, p. 254; Lindeke, 2014, p. 85). Re-enforcing *traditional* hierarchies was by no means a common measure among all traditional groups, as others tried to "depose leaders - some successful, some not" (ibid. 2014, p. 85). The prioritisation and de-prioritisation of rituals, norms, and institutions that have taken place in each group separately and yet connected to national developments, are well comparable to Hobsbawm's 'invention of tradition', which attempts "to establish continuity with a suitable historic past" (Hobsbawm, 2010, p. 1). Without refusing the promises of *modernisation* and *development* by the government*, the political* category of TA and traditional community are yet studiously used to legitimise practices and

power set-ups which may be contravening to the statutory principles of good governance or democracy.

Written sources from the colonial era describe the Oukwanyama TA as retaining a relatively autonomous and expansive power over subjects and land or areas (Nitsche, 1913, p. 128; Odendaal Commission, 1964, p. 35; Tötemeyer, 1978). Land or territory were not a primary source of power (or conflicts) in these communities, since it was not a scarce resource, and buffer zones of "wilderness between the polities [that] had only been sparsely and sporadically used" (Dobler, 2008, p. 20) (*see Figure 21*). Accordingly, the Odendaal Report (1964) marked the boundaries between the Owambo Traditional Authorities as dashed lines (*see Figure 23*), thus avoiding taking the responsibility for the territorial division among ethnic groups. Yet, according to Dobler (Dobler, 2008, p. 8), the turning point towards a territorial focus came with the drawing of the international border, and the confinement of a large part of Oukwanyama's population to the land on its Namibian side, when territory started to matter in definitions of power.

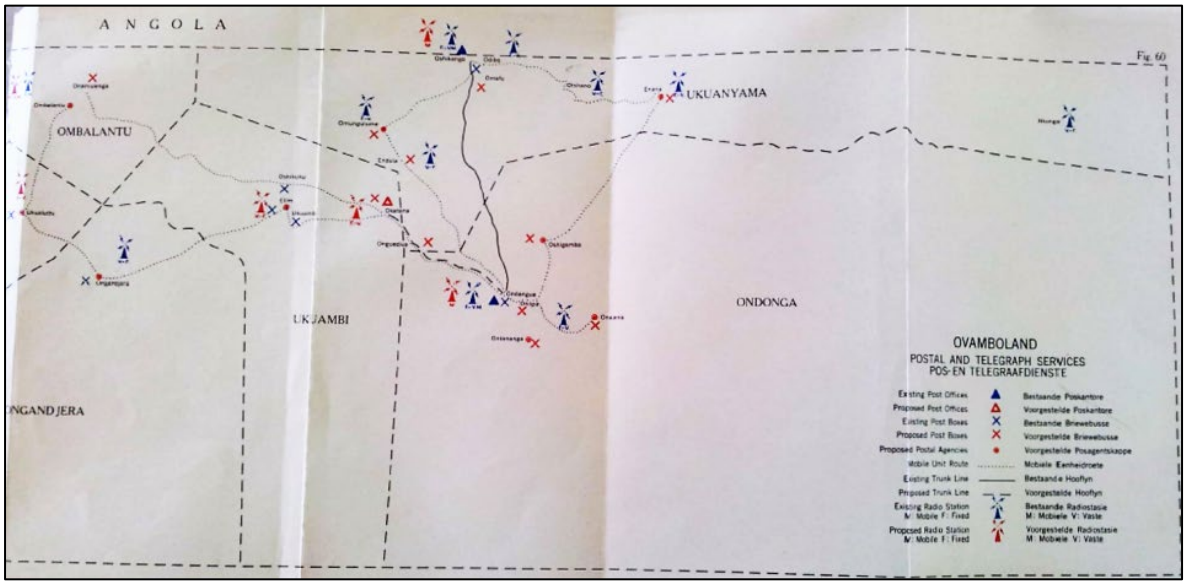



**Figure 23 The "Ethnic Groups" in "Ovamboland" as Mapped in the Odendaal Report (1964)** (Odendaal Commission, 1964 Fig. 60)

Customary governance and identities would not be able to persist without any spatial reference as the legitimising factor for their actions as leaders (Meneses, 2006, pp. 100–101) and for the "socio-spatial configuration of power relations" (Bryan, 2012, pp. 215–216). As an authority over land, the geographical definition of a community is a vital, yet merely one factor among those defining a community, and can be 'screened out' at will by those holding more power (Devereux, 1996, p. 4). Concerning this matter, a later chapter will be looking at respective spatial practices (→ *7.4. Transcending the Fields*).
In the definition of the CLRA, the term 'jurisdiction', refers to a *TA* or a *Traditional community* rather in a functional than territorial notion:

> [A] traditional authority shall […] have jurisdiction over the members of the traditional community… (Parliament of the Republic of Namibia, 22 December / 2000, p. 4 Sect. 2.2)

The frequent emphasis on the functions of a TA towards its community *members* strengthens this impression (ibid. 22 December / 2000, p. 4). The Traditional Authorities Act (TAA 22 December / 2000), however, does delimit the spatial scope of TAs to the communal land areas. This *de facto*

delimits their scale of control while simultaneously extending their responsibility to any distance a community member may travel. Thus, while legal provisions define traditional communities as judicial fields, they avoid determining their spatial and social containments. Consequently, the (self-)ascription to a traditional community fully depends on situational power mechanisms. The vague definition may play out in favour of the TAs, if they are able and willing to define the terms for themselves, which are required to be a member of their jurisdiction. This phenomenon will be scrutinised more thoroughly in the next chapter (→ *6.3. The Public*).

*Communal areas* are defined in the national legislation as "the area comprising the communal land inhabited by the members of that [traditional] community" (Parliament of the Republic of Namibia, 2002 Sect. 3). The ascertained customary law of the Oukwanyama, too, is ambivalent in its reference to spatial and social delimitations, claiming to "include members of the Oukwanyama traditional community residing outside the Kwanyama communal area" (Hinz, 2010b, p. 185). The "Kwanyama communal area" is outlined via the names – not maps – of eight constituencies that are part of the jurisdiction (ibid. 2010b, p. 185). Official documents do not define in more detail, which of the requested attributes for membership is most important, or in a list of priority they are addressed. An individual who lives on the self-declared territory of such a recognised traditional community is therefore part of the traditional community, but only if they agree with this affiliation (Parliament of the Republic of Namibia, 22 December / 2000, p. 3) – meaning, that the power of self-ascribing depends on the power ratio rapport between an actor and the respective TA. Accordingly, this self-ascription often causes disputes and contestations on land claims. Numerous examples can be found among the disputes brought to the Communal Land Board in Ohangwena, in which land users plead for their land right they were allocated by one TA but was denounced by another who claims authority over the land in question. The land user may have acquired the right from one Village Headman, whose territorial authority is, however, disputed. Such disputes are quite regular on the level of village boundaries (Interview SHM GN, 14. & 16.04.14), particularly at the southern border of the Oukwanyama TA, where the tribal territorial boundaries are yet under negotiation, and continue to lead to double-allocations and parallel governance (Interview SHM A, 27.02.14; Menges, 2013). Thus, the opinion spread that it was in the government's hands to define the borders of TA jurisdictions, and hence to conciliate or prevent numerous land conflicts (Govt Official, 24.01.14). Consequently, in 2008, the government launched an attempt to mapping the territories of TAs, which had been commisioned by the Ministry of Land and Resettlement (MLR) and the *Deutsche Gesellschaft für Technische Zusammenarbeit* (GTZ) (Hipondoka & Haudiu, 2008).

The concluding report lead to an abandonment of the project, after realising that the self-determined boundaries considerably overlapped with each other. An employee at the national MLR admitted that Ministry's attempt to map the TAs was grounded in an underestimation of the conflicts around territories:

> "We thought it was straight forward 'cause us we cannot solve these [boundary disputes]. It is not our mandate to solve the Traditional Authority… […]
> We thought we could just go out and they will show us, and we will have the map. But we find that there are too many things that need to be solved." (Govt Official MK, 24.01.14; a similar statement was made by one of the report authors during an informal talk, 3.2.16)

As a result, the report showed missing data on the eastern border between the Kavango and the Oukwanyama TA, due to the Kavango TAs' refusal to participate (Hipondoka & Haudiu, 2008, pp. 4–5), and the overlapping territories of the Oukwanyama and the Ondoga TA, as suggested by the interviewed TAs (ibid. 2008, pp. 9–10) (*see Figure 24*).

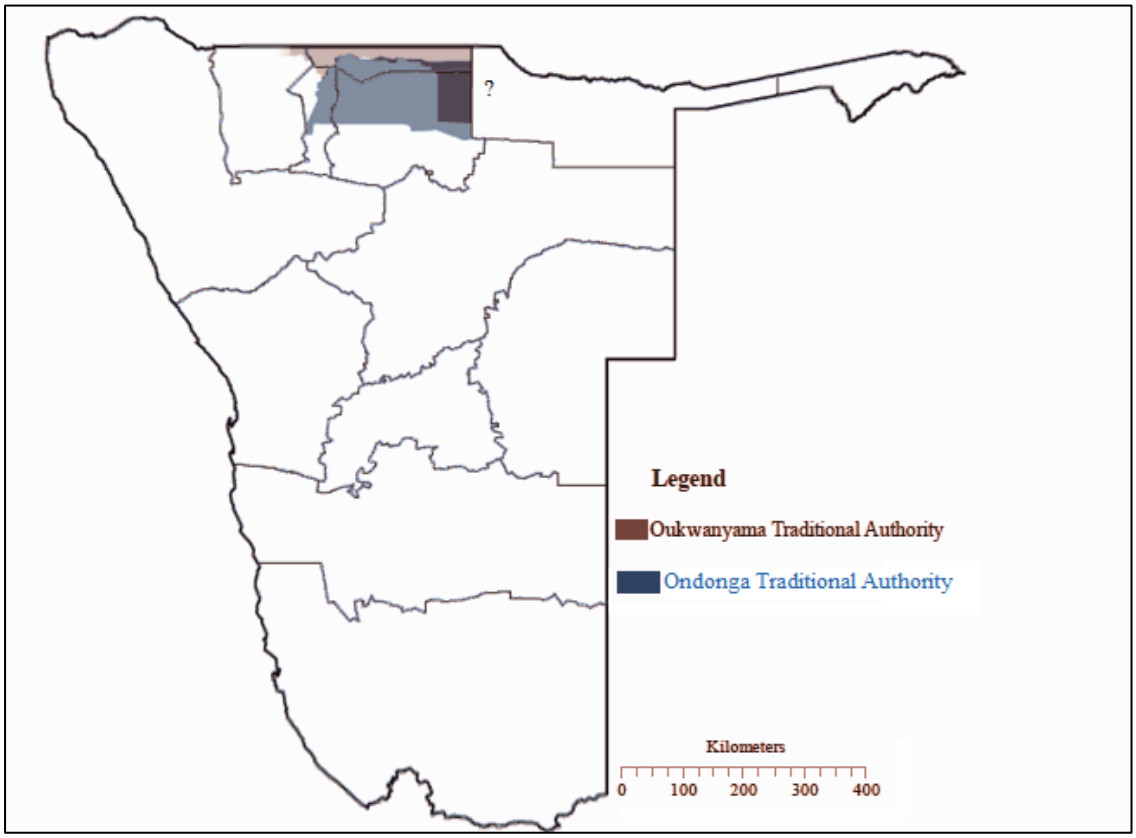



**Figure 24 Overlapping Territories of the Oukwanyama and the Ondonga TA; according to respective Self-Descriptions** (Hipondoka and Haudiu, 2008:9–10)

The author of the report continued his explanation in an interview by saying that the smouldering conflicts he had alluded to, were grounded in a wide-spread suspicion among TAs that the government was working in the interest of the Oukwanyama group (Informal talk with author, 3.2.16). Consequently, TA jurisdictions are recognised as spatially contained, but this containment is implicit, remaining partially and indirectly officialised. They do not conform to statutory territorial boundaries, however. Consequently, each Traditional community extends beyond regional boundaries, and constitutes a spatially deferred line of authority. The Ministries and the president are the next-higher institution in the hierarchy above the TAs, which often confuses and challenges regional official authorities and complicates their cooperation with the TAs on a local level. This incongruency of jurisdictional hierarchies seems an important measure to avoid a more immediate competition between statutory and customary authorities:

> "[T]here is a misunderstanding between political boundaries and traditional authority boundaries, that's why sometimes you'll find the headmen do not really understand the difference between this two. They think if the boundary, the political boundaries overlap their traditional authority boundaries, they feel like »ach, these political people, they want to overpower us, eh… because of their boundaries«. […] it's only some, who understand…" (Municipal Councillor, 17.7.2014: 8)

It therefore seems that the national government is in a stalemate position, as it cannot define traditional territories without getting involved in 'traditional matters' more fundamentally. On the other hand, by means of registering communal land rights, it does exactly that: Once a written certificate has been issued for a land right, it is simultaneously affirmation and recognition of a competent jurisdiction, for the document combines the map and coordinates of a parcel and the name and signature of the Village Headman who gave clearance for this allocation (*see Figures 25 & 26*).

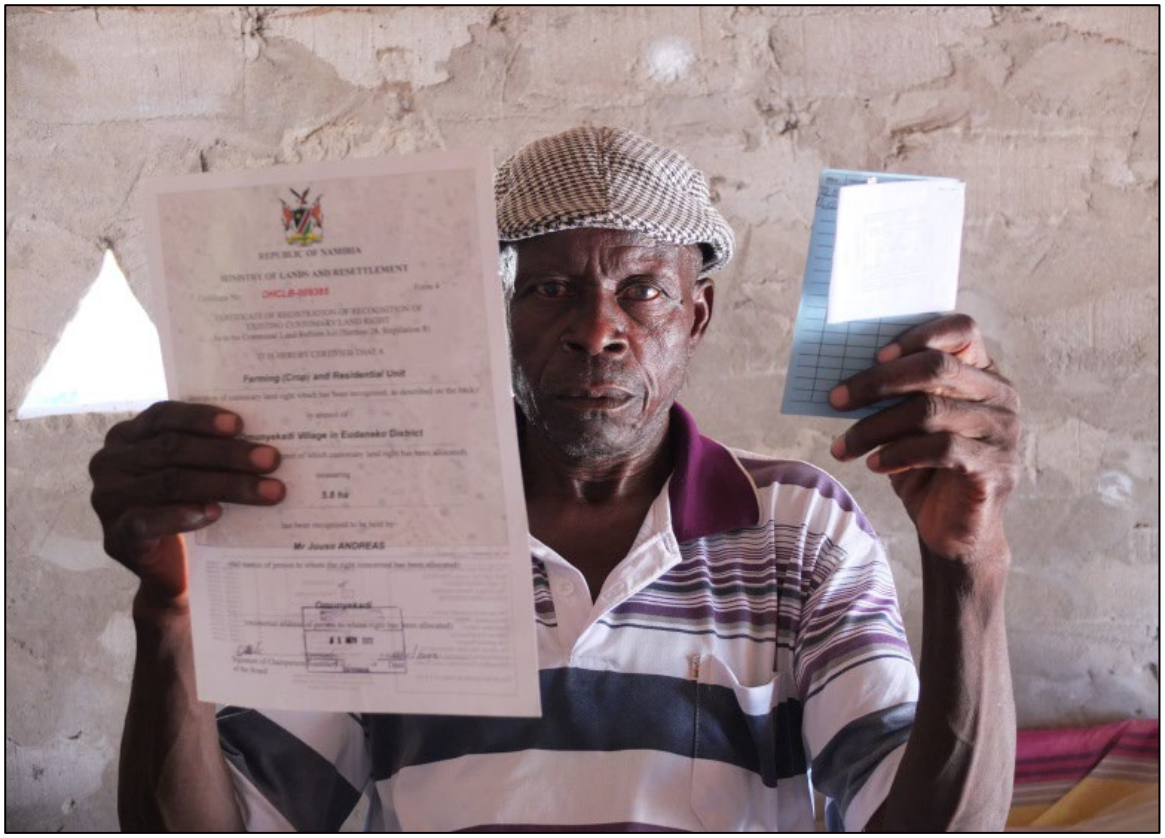
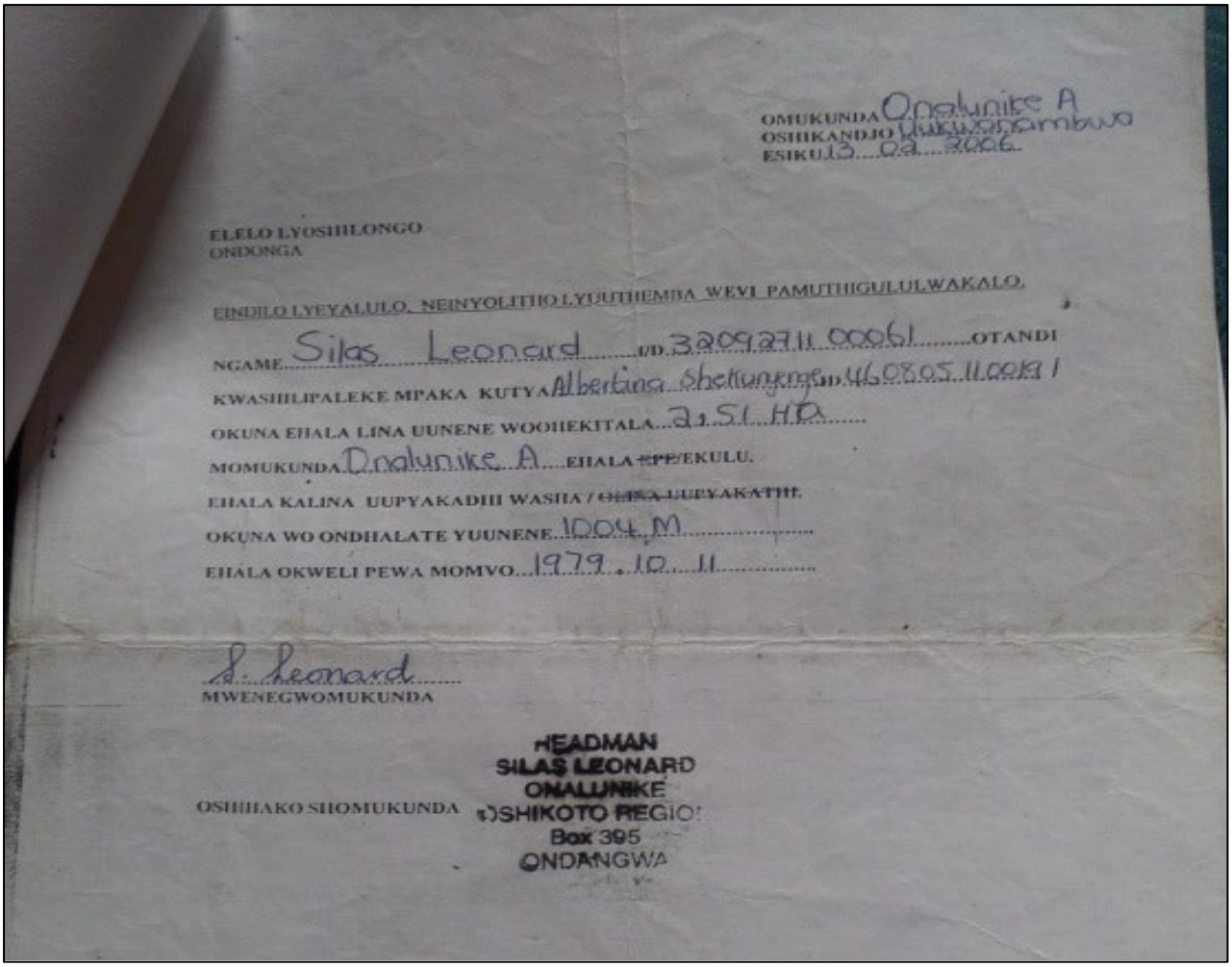



**Figure 25 Two Documents for a Land Right: The Certificate Issued by the Government and the Service Card by the TA.** (Weidmann, 27.02.2013)



OMUKUNDA Onalunike A
OSHIKANDJO Kwanyama
ESIKU 13.09.2006

ELELO LYOSHILONGO
ONDONGA

EINDILO LYEYALULO, NEINYOLITHO LYOUTHEMBA WEVI PAMUTHIGULULWAKALO.

NGAME Silas Leonard I/D 32092711 00061 OTANDI
KWASHILIPALEKE MPAKA KUTYA Albertina Shetunyenge I/D 46080511 00013
OKUNA EHALA LINA UUNENE WOOHEKITALA 21 SI HD
MOMUKUNDA Onalunike A EHALA ~~EPP~~/EKULU.
EHALA KALINA UUPYAKADHI WASHA / ~~OLIKA UUPYAKATHI~~.
OKUNA WO ONDHALATE YUUNENE 1004 M
EHALA OKWELI PEWA MOMVO 1979.10.11

S. Leonard
MWENEGWOMUKUNDA

OSHIHAKO SHOMUKUNDA
HEADMAN
SILAS LEONARD
ONALUNIKE
OSHIKOTO REGION
Box 395
ONDANGWA

**Figure 26 Application Form for a Customary Land Right: Signed and Stamped by the Village Headman** (Weidmann, 15.11.2013)

### *6.2.2.2. On the limits of codifying customary law*

The degree to which codification of customary law is enforced, illustrates the government's position or strategy on imposing on – or holding off from – the TA's judiciary responsibility. This strategy is also likely to affect the implementation process of the land reform.

> [T]he functions of a traditional authority, […] shall be to […] supervise and ensure the observance of the customary law of that community by its members, and in particular to […] ascertain the customary law applicable in that traditional community after consultation with the members of that community, and assist in its codification; […] (Parliament of the Republic of Namibia, 22 December / 2000Sect. 3.1.a))

Although prescribed by the *Act*, no codification of customary law has yet occurred by the Kwanyama TA. The moment a customary law is codified, it would be transferred from the authority of TAs to that of the parliament (Hinz, 2010a, p. 5). This shift in ownership, and removal of authority to amend the law, would seriously undermine the dynamism of custom. The Ascertainment of Customary Law Project was embarked on as an endeavour under the Human Rights and Documentation Centre of the Faculty of Law, at the University of Namibia, to support TAs in their legally defined task "to ascertain the customary law applicable in that Traditional Authority after consultations with the members of that community, and assist in its codification" (Parliament of the Republic of Namibia, 22

December / 2000 section 3(1)). The writing down of oral customary law is particularly challenging because it forecloses its inherent (and unspoken of) dynamic character (Ramutsindela, 2012, p. 757; Meneses, 2006, p. 110; Amoo, 2008, p. 93; Shipton & Goheen, 1992, p. 308; Benda-Beckmann, 2001a, p. 5705). This ambiguity lies in the fact that customary law represents an original, long-standing set of rules, meanwhile it is also inherently adaptive and changeable, and vagueness of customary rules (Knight, 2010, p. 26) surfaces in the attempt to codify them without grasping the application process or their logics of equity and participation (Shipton & Goheen, 1992, p. 308). As a result, as von Benda-Beckmann observes, documentation of customary law often leads to a de facto multiplication of legal versions:

"the [flexible and adjustable] law as it is used and maintained by the local communities themselves, and traditional law as it is interpreted by government institutions." (Benda-Beckmann, 2001b, p. 5705).

In an attempt of avoiding such double-versions, the Namibian TAs are free to decide "how much of their customary law" and of their "socio-historic environment" they wanted to record (Hinz & Kwenani, 2006, p. 213). Likewise, few directions were given concerning the "procedures to follow in the ascertainment of customary law, or about what should form part of the self-stated laws" (ibid. 2006, p. 213). These freedoms, once more, oscillate between conceding the TAs definitional power and preventing the ascertainment of any customary law that "detracts from or violates the rights of any person as guaranteed by the Namibian Constitution or any other statutory law, or which prejudices the national interest" (Parliament of the Republic of Namibia, 22 December / 2000, p. 12 Sect. 14 Art a)). This latter condition, again, precludes a binding jurisdictional submission – which would be fundamental for a functioning relationship based upon rights and accountabilities.

The codification of customary law is, for all these reasons, most likely to have a vast impact on its form, content, and applications.

### 6.2.3. What makes a Traditional leader?

Tradition, by referring to a historical "beginning" that took place "before the European arrived" (Journalist, 23.07.2014: 42), creates a truth in history, that clearly divides between insiders from outsiders. Time immemorial concedes an unchallengeable monopoly to those who own this tradition. As a code, it refers to a specific past, which informs and legitimates present claims to define land tenure, and projections of legitimate control (Lund, 2013, p. 28). However, the European intrusion and its legal and ideational amalgamation with local pasts created "more than a single past" (ibid. 2013, p. 28) and combined perspectives, which have become established as a key characteristic of TAs. Their identity, as a recognised, yet competing system of authority to that of the state, depends fundamentally on their navigation between adaptation and delineation, flexibility, and statism, and between political and alternative resources of legitimacy and power. This chapter illustrates some of the (self-)identifying features of traditional leaders.

Advocates of *nativism* claim that the "recovery or reconstruction of pre-colonial societies" is the way to decolonise a society (Ashcroft et al., 2013, pp. 82–83). However, when read more closely most have added more cautious thoughts on "tradition and […] its role in the construction of the post-colonial state" (ibid. 2013, p. 115). While a reference to tradition or "time immemorial" may be considered a satisfactory explanation in some social settings, others may require an alternative narrative, circumventing any reference to *tradition*. Thus, to maintain multiple subjectivities, it is necessary to adapt to the discourse that dominates a specific setting at a specific time (ibid. 2013, p.

251). The diverging character of traditional law and of tradition itself, lies therein exactly: That its re-creation – including such interactions with the hegemonic state narrative – has become a "widely accepted feature of traditional government" (Hinz, 1999b, p. 6), while still referring to its historically untraceable – and hence inalienable – origin. Not only is it re-created, but the discourse on political legitimacy of TA has amalgamated with the colonial administrative structure and ideals, for instance, as decentralised and "grass root representation" (Dobler, 2014, pp. 191–192) features of governance.

However, the relation between the "well developed" (Odendaal Commission, 1964, p. 35) sub-government of TAs and the national idea is far from harmonious. In the vernacular language, the Oukwanyama kingdom translates into "nation" (Interview Journalist, 23.07.2014: 44); demonstrating that traditional systems of governance – or at least the Kwanyama kingdom, too, require political sovereignty over a territory and the subjects within them in the Foucauldian sense. In this way, the traditional system of governance has not quite surrendered to its subordinate status, as this would likely signify the end of its place in the authority sphere.

A prerequisite for the two to be comprehended as compatible elements of a 'modern' state (Friedman, 2013, p. 109) is a clear distinction between tradition and politics. Although clearly an illusory ideal, this prerequisite is addressed by an overstated separability of the two systems.

The TAs' inclusion in the land governance system requires them to play in a separate game from that of state actors, with different interests and social registers at stake. In consequence, the political character (and impact) of TA is often underestimated, as they tend to be regarded as apolitical, historical mediators. The moral code of enforcement of this distinction of registers – which are undeniably interacting – appears in the form of *tribalism*. In official terms, any form of visible involvement of traditional actors in politics is negatively perceived, as it counteracts with Namibia's credo of "One Namibia one Nation" (Akuupa & Kornes, 2013).

However, it is also a fact that the continuation of TAs and tribal self-governance are an important pillar in overcoming colonial oppression of identity, and, ultimately, no governance system can operate in complete detachment of politics or in complete isolation from the other (Friedman, 2005, p. 51). This is especially proven in the TAs' connection with the valuable land resource (Peters, 2013, p. 4; Lund, 2008, p. 44; Akuupa & Kornes, 2013, p. 41; Kössler, 2006, p. 8). The process and reasons for reinstating the Oukwanyama as a kingdom was outlined by one of the interviewed Senior Headmen who was one of the figureheads of the initiative. He argued by referring to a democratic voice, when "the majority of people are saying that they need king or queen" that had asked for a superior authority, which was opposed by some of his "fellow senior headmen" (Interview SHM, 14. & 16.04.14: 36). He "went to get" the appointed heir of the lineage of King Mandume, Kornelius Shelungu. Upon their return, he "start[ed] working together with people that want[ed a] King or Queen, we contribute[d] money, we cut many poles and then we buil[t] a palace at Omhedi" (ibid.: 36-41). The monarchy was re-established in a new place, since the previous palace was located in southern Angola, in a place called Ondjiva (Shiweda, 2011, pp. 29–30). Omhedi has become the centre of Ouwkanyama TA even before the kingdom was re-established. It was a strategic place for TAs to position themselves in the same vicinity as colonial authorities, while it was created as a space during the colonial era for displaying tradition as spectacles and festivals "to emphasize the power, authority and wealth of the headmen" (ibid. 2011, pp. 29–30). This geographic relocation in a way "retraditionaliz[ed] regional politics and power" (ibid. 2011, pp. 29–30) and might have also facilitated the legitimation of newly invented assets of *tradition*. Several authors have claimed that re-traditionalisation was a tool for instrumentalising TAs to serve party politics (Kyed & Buur, 2006, p.

15; Lindeke, 2014), and to maintain their loyalty to the central government by perpetuating their position as mediator between internal divisions (Ramutsindela, 2001, p. 60).
A complete separation between tradition and politics is practically undermined by the fact that TAs are political actors, formally through their political recognition (Lindeke, 2014, pp. 85–87), and practically as they are assumed to have the power to "bring their people" to political parties (ibid. 2014, p. 86). The moral denunciation of *tribalism*, which according to a prevalent convictions has experienced a rise since Independence (NAMRIGHTS – Press Release, 2013; Diener, 2001, p. 233; Akuupa & Kornes, 2013, p. 41; Mamdani, 1996, p. 24; Keulder, 2010b, p. 151), is an attempt to hinder the transfer of symbolic capital, as authority, acquired within the customary or vernacular field into the national political field, and vice-versa. This attempt is reproduced in continuous debate, which is dedicated to differentiating the sources and forms of power of TAs from those of (state) political authorities. This debate was reproduced by government officials in interviews. Municipal Councillor for instance, assumes that his power does not compete with the legitimacy of local customary leaders, which is based on the communities' "trust in the headmen", because they are "the person who is on the ground, he's addressing people every day, or twice in a […] month" (Interview Municipal Councillor EN, 17.7.2014: 13-32). A land board member even more emphatically rejects such a competition:

> "[E]ven now they may think that ok they are not respected when it comes to land. But from my own point of view, I know that they are respected! Because they still have that power to allocate land, like, board, I mean land boards do not allocate land! We depend on them." (Interview Govt Clerk NJ, 13.12.2013)

Yet, many instances – and particularly the obvious perceptions of some TAs of being restricted in their power by the government – indicate that a competition in power is at stake. This is based in a considerable range of contradictions between democratic ideas, or rather, moral ideas underlying democratic systems, which are naturally distinct from those that guide local systems of authority or governance. Samora Machel, Mozambican anti-colonial fighter and president, has expressed his belief as:

> "For the nation to live, the tribe must die." (The Namibian, 2016)

This opinion, that state cannot thrive without freeing itself from tribal systems or even identity references, is shared in various grades of radicalism, among a number of politicians and scholars (Mamdani, 1996).
One point of disagreement in the case of recognising TAs in Namibia refers to the moral norms that define their *input legitimacy*, a term coined by (van Kersbergen and van Waarden (2004, p. 156): Are they appointed in the ways of their respective 'tradition', or is democratic election a non-negotiable element for authorities to be legitimised as such by the state? Customary ways and conditions of instalment to political office reflect a significant moral contradiction to the state fields' (democratic) prioritisation of input vs. output legitimacy. The democratic principle of election as the (only) form of input legitimacy is not easily transferable onto a customary field, which has been following the principle of monarchy as a right to political power (Koyana, 1999, p. 126), such as is the case with the Kwanyama.
Tribalism is thus an inevitable condition as long as tribal self-governance persists and fertilises competition for resources and influence on governance on all levels of the state. Consequently, TAs have to perform a constant balancing act: They are required to adapt to the dominant definition and

systems of governance, without mixing politics and custom beyond an extent that actors view as legitimate.

Their role as an apolitical mediator is constructed upon the TAs' image as the spokesman of a community that is principally consensual, or at least perfectly self-governing. They thus represent the 'local' through emotional, normative, and linguistic familiarity and relationship with "the communities" (Meneses, 2006, pp. 100–101). This role was maintained throughout colonial and postcolonial times, and continues to legitimise the actions and positions of TAs (ibid. 2006, pp. 100–101).

For outsiders unfamiliar with local conditions, moral fabrics, and power configurations, it is difficult to identify what makes a person a rightful candidate to a title and position as a TA. Two reasons are manifest: First, preconditions and procedures or application are neither formalised nor documented, and second, custom and customary laws are, and need to remain, adaptable to meet democratic requirements of the state law.

An excerpt from an interview with a local journalist helps draw a portrait of a TA member, to display the characteristics – and especially the difficulties of defining them – of what it takes to be or to become a traditional leader. The journalist draws his knowledge and experience from multiple sources and levels of governance: He is a member of the Ongandjera community, and has been offered a Village Headman status himself, which he will accept once he retires from working as a journalist (Journalist, 23.07.2014: 36 - 40). Beyond that, in his work as a journalist that he pursued over the past almost 40 years, he has acquired a multi-perspective understanding of the various moral fabrics and which logics and explanations needed emphasis to transport a situation or event from the communal areas to the outside world. Beyond these experiences, he has also served as an interpreter and then as Secretary to the Native Commission Office at Ondangwa under Apartheid rule. He testified that in his village of origin, he was expected to become a Village Headman, due to his knowledge of "these traditional things, traditional authority things set-up […], and because I grow up with it. Yah I'm from within…" (Interview Journalist, 23.07.2014: 34-40). These are the traits, he believes make him an eligible and desirable leader. A young government clerk, too, claimed in an informal talk, to be likely to be appointed a Headman position. Besides arguing from pragmatic rules of inheritance, in which he as the youngest son of a royal family may likely be appointed, he insists that he would be obliged to accept such appointment, "otherwise it will be bad luck" (informal talk Journalist, 14.10.2013). Both informants, who are likely to become Village Headman themselves one day, were at pains to explain how *traditionality* turns into a person's character trait. The journalist explains by method of elimination:

> "[Real headmen,] they are not academic, they are not church-orientated people, you see?" (ibid: 128-131)

Yet, he soon realises that this explanation remains unsatisfactory. Whether it is because he is indeed unable to make it clearer, or because he is not willing to share more inside information, is an important unknown factor to consider. This secrecy and vagueness around traditionality, I argue, is its vital strength: While it can be precarious to rely on unspecific historical references for legitimisation, I argue that this blurriness or disorder may be turned to avail, for it shields a hierarchically inferior system from external control and allows for internal flexibility to cater for changing, multiplying, or even contradicting interpretations that arise from discussions on *tradition*. The inscrutable code of *tradition* preserves an appearance of unity to cover the absence of a complete internal consensus. This fluidity and its delineation from academic argumentative logics (Journalist, 23.07.2014: 122) constitute one of *tradition*'s special traits. This claim is related to the

approach by Chabal and Daloz (1999), who uncover the employment of disorder as a political instrument. This fluidity or lack of self-evidence of traditional leadership has been observed in the Kavango region by Fumanti (2016: 69) as for many other southern African scholars (ibid. with reference to Comaroff 1978; Comaroff and Roberts 1981; Kuper 1970; Wylie 1990). Cases that put traditional and political practices and capital forms in direct interaction, contradiction, or even mutual cancellation, will be outlined more thoroughly in the following chapters.

Another interesting aspect in history of tradition that reflects its intermixing with other social registers, concerns its relationship with religion. While at traditional festivities and invitations it is customary to serve and drink *traditional* alcoholic beverages made from the Marula fruit (e.g., *Omarobu* or *Omahongo*) (Informal talk VHM AA, 22.11.13) – clergy and people who consider themselves religious would have to decline to participate (Journalist, 23.7.14: 133), because the consumption of alcohol is considered un-Christian (Informal talk VHM AA, 22.11.13). Interestingly, despite this apparent incongruity between the two fields, it was a group including prominent clergymen from the area who spearheaded the initiative of reviving the Oukwanyama kingdom (Shiweda, 2011, pp. 225–226). This moment symbolised the beginning of intermingling the registers of politics, religion, and tradition, despite the common knowledge that they stand in deep moral conflict with each other. In the eyes of the journalist, this fundamental character of "mix[ing] the things up" (Journalist, 23.7.14: 133), is the disturbing factor in many negotiations on customary leadership and laws (ibid.).

Adding to its unclear character, *tradition* is used as a multipurpose concept: it is both attributed to people as a specific single characteristic but may also serve to describe a person as a *type* (Interview Journalist, 23.7.14: 124; Government Clerk DK, 14.11.13: 148). Yet, the journalist adds, that it is not sufficient "to know something in books", but that one must act accordingly to be considered legitimately *traditional* (Interview Journalist, 23.7.14: 124). Hence, the acquisition of knowledge on tradition equals the acquisition of traditional capital itself. If one behaves in accordance with alternative moral ideas, this traditional capital can, however, be relativized or rendered useless, as the quote shows above, or if applied in the right situation and backed by vital members of the traditional field, it may bring new 'traditions' into play.

A further notable point is that the narrator's personal relationship *with* and the knowledge *of* the TA and Tradition is demonstrated in all his accounts, by mentioning specific names, recounting a person's actions, networks, kinship and/or history. The journalist describes one Senior Headman as belonging to the traditional group from his appearance, but "now he's influenced by maybe by other guys", if he were "in this other group", then "he could be a good headman" (ibid. 126-128). Personal and emotional relationships are therefore not only desirable, but also an explicit precondition to approve of the person's ability to lead. This is a stark contrast to the western moral ideal of democracy, in which a person becomes eligible for office by dedication to the public purpose rather than the personal interests. The tumultuous governance system, however, further necessitates questions on who this public is, who it includes and what 'its' interest is.

## 6.3. The public in its different shapes

Despite being inherent sub-divided by the communal land reform tenure, many laws and policies still strongly emphasize their reference to the citizenry as the *public*, and the public's interest:

> Public interest is defined in terms of subjective jurisdiction of the state. It is this that has led Amoo (2000) to argue that considering Namibia's historical legacy land resettlement and land reform are legitimate public interests. (Mufune, 2011, pp. 24–25)

Some theorists suggest that the *individual* as the basic unit of analysis is inappropriate to apply in African (postcolonial) contexts, where "cultures are considered collectivist" (Eaton & Louw, 2000). Whether this belief stems from, or gave rise to, the European interpretation of local land tenure systems as "corporate ownership" (Baland & Platteau, 1998, p. 644), is uncertain. What is certain however, is that there is a considerable uncertainty or at least complexity around the concept of public in postcolonial African contexts, and that it often stands in close connection to the urgently debated land tenure regime, and whether it is the state or a collective that ought to be responsible for protecting land rights (Devereux, 1996, p. 1). This discourse is closely linked to the moral concepts on law and legal subjects, which has been identified as a variable and non-uniform factor in the communal land areas of Namibia. Ekeh (1975, p. 106) offers an interesting approach by identifying two co-existing publics in postcolonial contexts "that tend to grow together". "The primordial public is moral and operates on the same moral imperatives as the private realm", it is thus tied and coordinated with the moral fabric of a group that shares "sentiments and activities", and a set of interests, which unfolds in a "public interest" (ibid. 1975, p. 92). The "civic public" on the other hand is detached from "African" experience and moral fabric, and instead "historically associated with the colonial administration and which has become identified with popular politics in post-colonial Africa" (ibid. 1975, p. 92). Apart from the fact that a dualism oversimplifies the phenomenon, there is indeed a double standard when it comes to a moral assessment of certain actions (corruption, selling or buying communal land) or regulations (democratic elections e.g.). But, on the other hand, the confrontation of *primordial* or *vernacular* communities vis-à-vis the imposed ideas of a nation state that originates from "metropolitan cultures" (Ashcroft et al., 2013, p. 172), often meet the risk romanticising the 'commons' as harmonious democratic units (Peters, 1998; Ostrom, 1990; Agrawal & Benson, 2011; Alden Wily, 2008b, 2008a). After all, it is merely a matter of perspective, whether one detects internal oppositions, struggles for power and acknowledgement of claims and governing authority, which invariably occur, or, as Dobler puts it, "No system of domination is without opposition and uneasiness" (Dobler, 2014, pp. 191–192). For successful self-governance, it is a prerequisite to accept that it is not necessarily equal to consensus and harmony, because even the most skilful self-governance does not "guarantee that solutions to all problems will be achieved" (Ostrom, 1990, p. 149). It takes not only shared problems, but also a shared image of those problems, practical norms that guide the way those are to be approached and subdivided, and, finally, that the "legitimacy of diverse interests" is recognised (ibid. 1990, p. 149). The design of a self-governing system – and the scope and significance it attributes to *"each-for-oneself-ism*" – is plaited into a community's practical norms (Olivier De Sardan, 2008, pp. 17–18), and pre-shaped by a moral fabric.

Although owing to my ethnographic approach and the concepts of capital and (individual) strategies, I, too, adopt a Western perspective of individualism and of the individual as a unit of analysis, this study aims at taking a critical stand toward this and other units of analysis. Therefore, the research focuses on how individuality and interest groups are pursued and formed through negotiating moral ideas on participation, on voicing option, and legitimated norms and punishments for behaviours. Additionally, I aim to critically scrutinise the limitations of these units by adding more levels of political and legal units to the inquiry. Each jurisdiction must therefore be inquired in its provenance and to what end it was created: Was it established bottom-up, and was it established by a group who

claims specific support or reconciliation? Or was it a top-down design, established to be governable entity that is to comply with a commonly shared set of rules and duties?

The “quasi-fictive entity *on whose behalf* state actors act” (Delaney, 2011, pp. 87–88) accurately describes a problematic of every governance field: Despite the unitary democratic state narrative, the legal frameworks and practical accessibilities of legal and other state services are not directed equally to every individual within the *public* or the *citizenry*. Delaney suggests that, at times, being recognized as a "member of the public" can be used to deny any person an individual voice. At the same time, or in other instances, “"the public" may signify a social collective” (ibid.2011, pp. 87–88; also reflected on by Gitonga, 1988, 8). The *public* is culturally invented and situationally adaptive: It refers both or either to the *state* itself including its government, and/or to a “quasi-fictive entity” that is represented by government (Delaney, 2011, pp. 87–88). Ultimately, it depends on the status of an actor within this entity, and how he or she may employ their membership for their own purposes. In the Namibian state, the multiple constellations and sub-divisions of such *public* lead to an extraordinary multiplication of the layers in which the national public is united and marginalised, included and excluded, recognised and ignored.

Because it pre-assumes such a moral commonality, some scholars convert the concept of *public* into a flexible and situational response mechanism to the emergence of a particular problem: “The emergence of a public is just a particular way in which an issue is articulated” (Donaldson et al., 2013, p. 606). More often, however, where a jurisdiction is termed *public* it is experienced as a top-down ascribed entity, which requires a political interest of a certain authority level. A jurisdiction forestalls the possibility for a *public* to create and define itself from within, to formulate its own rules and political authority that personalises their “collectivity and the instrument for its preservation” (Coicaud & Curtis, 2002, p. 14). By conglomerating a group of people into a jurisdiction, solidarity is not only presupposed, but henceforth coerced. The basic solidarity within a jurisdiction is underlined and strengthened by a promise of fair judiciary treatment, and mutual responsibilities and accountabilities. These responsibilities are normalised through laws, which in turn originate from a collective authorship that are never egalitarian or even democratic in the idealistic sense. All interests and interest groups can never be included in a legislative process to an equal measure. Thus, the questions gain pertinence: When comes which membership into play? And how can one be suppressed or emphasised when need be? And by whom? Legal pluralism creates multiple layers of legitimate publics, which leads to a co-existence and overlapping roles between citizens and subjects; equipping the rural Namibians with a “Janus-face” between being citizens of a State, and being subjects of different ethnic kings, chiefs or leaders (Diener, 2001, p. 255).

It is a necessity of every state to treat its citizens by an equal legal standard (e.g. Thévenot et al., 2000, p. 246). However, the deliberate vagueness of legal definitions regarding communal areas, the constitution of TAs, and their territorial and jurisdictional scope within their communities offers a particularly easy target for criticism and evasion. If, for instance, the government officially assumes – via the Traditional Authority Act, that all members of a certain TA agree on *one* customary law and *one* jurisdictional and executive procedure (Bennett & Vermeulen, 1980, pp. 214–215), or if it assumes that all members of a traditional community share their leader’s idea of their rights and duties towards each other, this means that the central government refuses any liability towards these conflicts, and they are excluded from the formal political stage. Therefore, law and practical norms must continually strive for increasing agreement because conflicting interests successively challenge existing legal entities, be it to claim recognition for a new TA, and subdividing an existing customary jurisdiction, or to request equal rights and benefits as those received by members of another jurisdiction (in the name of egalitarian citizenship). It is in this pattern that the “slow

assembling of the interface between the State and its citizens meanders on" (Diener, 2001, p. 255). Consequently, units of analysis are particularly blurry in the communal areas in Namibia. Multi-layered, overlapping, and hence "fuzzy" actor-resource relations become especially prevalent when it comes to land claims. Such fuzziness transpires "when different aggregations from the same pool of individuals exercise distinct claims over the same resource or commodity" (Devereux, 1996, p. 1).

### 6.3.1. The citizen and the subject

Within a democracy, all members of society should have a citizenship (Griffiths, 2011, pp. 181) that is an 'access card' to equal treatment, on the conditions of course, of what the moral fabrics dictate as 'equal'. Many, if not all Africanist authors have embraced the phenomenon of various concepts of *equality* within a state, and Mamdani's work needs mention: He asks whether African people are equally *citizens* and *subjects*, and what interests are served by this bifurcated political identity (Mamdani, 1996). In western political cultures the term *the people* is saturated with the meaning of a homogeneous player, of a ruled and a ruler who have the same interest in their democracy (Gitonga, 1988, p. 8). Of course, this anticipated homogeneity is never complete, but declaring a group as a political entity amounts to declaring its members as equal in their rights and duties. This requires a collective common sense – or moral imaginary – on *law* and *moral*. If somebody is caught stealing and consequently punished, the system relies on a common understanding and acceptance by the public; if this is not the case, the punishment defies its purpose:

> The democratic ideal or model proposes that the people be the rulers. The people be the rulers of whom? Of the people: of *themselves*. The immediate and critically important implication is that the people should have their destiny, and that of their society, in their own hands. They should rule themselves; order, organize and manage their own affairs. In a word, the people should be free. (ibid. 1988, p. 8)

This ideal is exactly that, because it accounts for no heterogeneity – neither in interests, in needs, nor in political representation. The TAs, on the other hand enjoy a more explicit freedom of designing and adapting criteria for inclusion and of 'equality' in their community, one that corresponds to the moral fabrics they refer to. There is no legal regulation or documentation on how this decision must be made in a case of legal prosecution. Hence, who is to be submitted to a customary court order and who is not, remains in the estimation of the authorities present at a given time. And while the CLRA states that a member of a traditional community requires "accept[ance] by the community" (Parliament of the Republic of Namibia, 1995b, p. 3), the reality of land registration ascertains the power of the TA who signs or refuses a persons' land right.
Within the customary system of governance, actor-relations remain deliberately vaguely-defined, on the grounds of permitting self-governance and maintaining the appearance of distinctive "traditional" and "modern" registers of society (Meneses, 2006, p. 116). This means that state-level democratisation remains unassertive, because the government abstains from ensuring equal opportunities and rights to its citizens, which retains them in an unstable and always-moving space between customary and common law.

One, among many, examples that show how the central state struggles with real decentralisation of this kind, is the ambivalence with which customary law is legitimised as instance of authority over "land and tenure rights" (Wicomb & Smith, 2011, p. 446). It would require an official "recognition of

customary communities as ‘peoples’ whose rights to development and resources deserve protection” (ibid. 2011, p. 446), however, the state reserves its right to make inroads into customary tenure by allocating or changing ownership relations of land under TA authority. In effect, this is not abolishing the powers of TA directly, but indirectly through suspending “customary law rights” (Hinz, 1999a, p. 213). Hinz clarifies, that “[t]hose expropriations may have been justified according to the empowering law” (ibid. 1999a, p. 213), which takes reference to another logic of fairness, of public, and of public interest.

> Men's custom is not always women's, elders' may not be juniors', and the traditions of the rich may differ from those of the poor - or be made to look as though they do. (Shipton & Goheen, 1992, p. 308)

This is also valid for the imported moral ideas on politics of fairness in social division; but in contrast to the traditional the latter applies different rules to why and how to distinguish those groups. A new tendency, for instance, in how a heterogeneity of the ‘people’ is perceived, was reflected in the President’s introductory speech to the 2nd National Land Conference, when he emphasised the importance of giving a more attentive ear to the young delegates, “since they are custodians and implementors of the outcomes, they will undoubtedly inherit the outcomes of this watershed conference” (The Villager Newspaper, 01:30-02:05). Giving more weight to the voice of young people is a clear contradiction to, and/or requires a modulation of, the customary moral distribution of power between age groups. In this context, the emphasis was placed on rising national narratives, especially on issues as significant as land and land equity. Ultimately, the national conference was another reminder that, as citizens, traditional communities and their leaders remain under statutory law and shifting moral ideas.

Statutory law, however, is antagonistic toward the realisation of customary rights and forms of governing in fundamental parts. The use of the term *jurisdiction* for a TA is only one of many ambiguous hints within the governments’ discourse. It is not defined whether such *jurisdiction* is interpreted as a territorial reference or an abstract subject-matter of responsibility, when the Traditional Authorities Act (Parliament of the Republic of Namibia, 22 December / 2000 Sect. 2.2) awards the TA the “jurisdiction over the members of the traditional community in respect of which it has been established”. Similarly, what is written of the customary law of the Oukwanyama is ambivalent in its reference to spatial and social delimitations:

> The laws of the Oukwanyama Traditional Authority shall be applicable to all persons and families deriving from exogamous clans which share a common Kwanyama history, cultural heritage, language, customs and traditions, and who recognise a common Traditional Authority and inhabit a Kwanyama communal area in Namibia. They shall also include members of the Oukwanyama traditional community residing outside the Kwanyama communal area. (Hinz, 2010b, p. 185)

A demarcation of the “Kwanyama communal area” has occurred merely through naming eight constituencies within its jurisdiction (ibid. 2010b, p. 185) and recognising a respective Senior Headman for each. Beyond this, no more detail is officially provided on the most decisive factors for ascertaining membership to the group. A statement by a Senior Headman for instance showed how covert and personalised the knowledge of demarcations and respective decisions remain:

> “I: We have walked along that side of Okahenge and we did some interviews, but it remained unclear where the Etope and Oilyateko boundaries are, because there is a house which was supposed to be in Ondobe but it is in Etope? Is that true?

> SHM: There's only one house that was in Ondobe and they now say it's in Etope. […] But they've discussed the issue, because Etope is in Ondonga. They just took it. They took it, it's only that house.
>
> I: How does this process work? […]
>
> SHM: I will go and get the truth from people that know the boundaries very well and if we did not solve it here, we will take the case to Ohangwena and the queen committee will come from Ohangwena will listen to the information and the witnesses and decide that no you are taking away the house [of] this one. These are the problems that we solve every day and they are there every time." (Interview SHM GN, 14. & 16.04.14)

Again, the vague definition and oral transmission of information likely plays out in favour of the TAs, by maintaining a distinguishing appearance between "Traditionalism" and "Western modernity" (Meneses, 2006, p. 116). This way, they succeed in retaining their power to define who conforms to the terms of membership. Factual problems for this power of definition arises in case a person is meant to be included and held accountable, but remains physically absent, or resists jurisdictional submission, as will be shown later (→ *7.4. Mobility*). Those different layers of jurisdictions, "publics", fairness, inclusion, social responsibility, criteria for acceptance, have a strong impact on local land governance, on strategies necessary and available to protect one's rights and interests.
Those groups of citizens who are to benefit from communal land rights are firstly "the traditional communities residing in those areas" (Parliament of the Republic of Namibia, 2002 Sect. 7). The law makes further statements on priorities, which, however, are difficult to harmonise: While the CLRA aims to benefit "in particular the landless and those with insufficient access to land", the same Section emphasises the need to support commercial endeavours by well-off land users who are investing in more *efficient* land use practices, in stressing communal land as a measure to "promot[e] the economic and social development of the people of Namibia" (ibid. 2002 Sect. 17). In consequence, the Act shoves off the responsibility of prioritising onto local and mostly traditional authorities. This results in a further confrontation between moral criteria of exclusion and inclusion, and the meaning of a membership status. It retains the oppositional, binary arrangements "in the social anatomy" (Mamdani, 1996, p. 34) such as the parallel statutory and traditional authorities, and hence, the bifurcated political identities of people as citizens and subjects (ibid. 1996).

### 6.3.2. Normality: legal assumptions on land use

The "cultural characteristics and living conditions of […] indigenous communities" (Committee on the Elimination of Racial Discrimination, 2008, pp. 5–6) are often assumed a harmonious and static relation between people and environment. This inevitably leads to wrong assumptions about customary governance and governing, but also about what constitutes communal land *use,* and, hence, communal and customary *life*.
In order to comprehend the heterogeneous character of land use and its embracing field of governance, it is helpful to gain a rough typological insight of the study area in which livelihoods range from primarily subsistence farming (Thiem & Caplan, 2014, pp. 55–56) and permanent presence in the homestead, to a livelihood completely based on wage labour, which entertains merely symbolic ties to the communal areas and what is commonly described as *traditional*

livelihoods. Instead of promoting a prototypical understanding, I suggest these two examples as respective extremes of a broad continuum of land use types, and how we may identify a certain individual's or homestead's relation to land. Along the continuum we find a multitude of various forms of land uses, with some of them characterised as following to support an understanding of the heterogeneous character of land's role in local livelihoods.

Different types of land users were already mentioned by Mendelsohn et al. (2000) in their atlas on north-central Namibia, in which they referred to "three distinct patterns of settlement and density" that are to be found along the west-east gradient of the Ohangwena region and beyond (Mendelsohn et al., 2000, pp. 37–38). It distinguishes the "densely populated Cuvelai", from less dense settlements around seasonal water pans, and from the artificial settlements that were originally founded as grazing areas for cattle posts, without any formal settlement character and with a respective lack in infrastructure (ibid. 2000, pp. 37–38). Among the informants from Ohangwena those latter settlement patterns were often referred to as "that side of Okongo" (Interview Villager, LJ, 05.03.2013) or *ofuka*, which translates into area of wilderness (Nghitevelekwa, 2017, pp. 91–92). While Nghitevelekwa (ibid.) doubts that this category is still valid in a present of fast-spreading numbers and sizes of proclaimed settlements, it remains certainly a discursive marker to describe socio-political origins of customary migration of agropastoralists and respectively grown land claims. This typology reflects the geographic and demographic patterns of communal land use, it is, however, not to be separated from socio-economic localisation of a household and individual members. Similar to Kreike's dualism of *ofuka* and *oshilongo* (human-created environments) (ibid.; Kreike, 2004) the authors Mendelsohn et al. also draw a main distinction between *rural* and *urban households*: the former "living largely off the land", and the latter disposing of cash incomes (Mendelsohn et al., 2000, p. 64). The author group especially emphasizes the prevalence of mixed households in reality, so that "most households have several incomes", drawing from wages, pension and remittances each of a single household member (ibid.).

When identifying different livelihood and income patterns, we once more face a problem of scale: A clear distinction must be drawn between the household and the individual level, especially since the bundles of rights among household members and kinship and inheritance rights are all defined by specific and not yet widely comprehended moral fabrics. Such complex interrelations have been scrutinised in a comprehensive manner by Nghitevelekwa in her PhD thesis *Communal Land Reform in North-Central Namibia: Implications for People's Lived Realities and Social Equity* (2017) among others. The notion of *land users* can be used to refer to an individual or a household-unit, but a persons' type of land use is necessarily linked - but not identical - to that of other household members. Livelihood diversification is hence a reality among and within households. What connects the options of analysis on both scales is the interrelation between capital-sets and possible strategies. These potential conditions are identified in the following typologies:

- Type a) essentially depending on farming and natural resources by direct consumption and/or sale
- Type b) economic activity that is not directly depending on natural resources, but implies a need for land and space and vicinity to infrastructures (small businesses, bars, hair salon etc.)
- Type c) no income from natural resources and lives for the most part of the year – and working life – in urban zones, but reserves (agricultural) land in communal areas, either to gain compensation payments for it, or to reserve it for future generations and/or family members, who can use it in any of the above-mentioned ways

These different land use types are characterised by specific sets of capital forms – those they depend on and those they result in. For some communal land users, cultivation and harvesting resources off the land remains an essential part of their daily labour and consumption. An increasing proportion of households, however, derive their livelihoods primarily from monetary sources, be it through the sale of farming produce, wage labour in rural or urban contexts, government pensions for elders, or through orphans and vulnerable children. Exactly because all three types are strongly socially and spatially interconnected, oftentimes even intersecting within a single household, it is necessary to analytically distinguish perspectives on households from individuals. Empirical data, combining visual and discursive statements on land use allows identifying such emic propositions from various perspectives.

### The Normalities of Communal Land Use – Two Examples from Ondobe Village

**Figure 28** Brick houses with windows, two-storey building, gates and guard dogs. House owner is absent. No cattle, no crops (Weidmann 2013)

**Figure 28** Traditional fencing, housing and land use (Weidmann 2013)

The pictures above show a high disparity in land use and sense of property and security within a relatively small spatial scope (*see Figures 27 & 28*). Such high discrepancies are rarely built on similar capital sets. In other words, such blatant inequalities of capital between neighbouring households is fundamentally informed by the asset of mobility and the resulting option of capital transfer across a considerable distance and from a different playing field, governed by different sets of rules and moral fabrics.

It is to be noted, at this stage, that there is no 'normality' of land use and needs that applies even within the small groups of citizens who are consolidated as *traditional communities*. This is the reason for the earlier announced misassumptions on communal land use that transpire prominently through the implementation of the land reform. The Namibian Institute for Democracy listed the following examples: Residential plots are given no priority in registration "as the ownership of these areas is rarely contested" (Meijs et al., 2009, pp. 19–20); this contestation may, however, drastically increase with an accelerated shift in land use patterns and instances of private land grabbing (Vlachos, 1995, pp. 12–13; Boone, 2014, pp. 2–3). Ambiguous guidelines for common grazing areas leaves them often unregistered and hence "open to tenure abuse" (Meijs et al., 2009, pp. 19–20). While the TAs are legally obliged "to ensure that the members of his or her traditional community use the natural resources at their disposal on a sustainable basis and in a manner that conserves the environment and maintains the ecosystems" (Parliament of the Republic of Namibia, 22 December / 2000, p. 5 Sect 2.c)), common use areas such as those for grazing cannot be registered other than

as an individual right, because no group rights are *de facto* conceded thus far. Self-governance of traditional communities is at the same time assumed but legally undermined, magnifying the "Tragedy of the commons" comprehensively outlined by Alden Wily (2011, p. 733, 2008b, 2001). Compared to other communal areas in the country, in the north central regions the CLRA is most accurately applied as intended (Meijs et al., 2009, pp. 19–20) because local forms of land use and governance most accurately correspond to the legal suppositions. One such assumption concerns crop production being viewed as a main source of subsistence, which is simply not feasible in other parts of the country than the north (ibid. 2009, pp. 19–20). But even here, legal insecurities imperil those who rely heavily on customary fairness and norms in land use, and even more so those whose needs and practices diverge from legal stipulations or assumptions.
This is a glaring reminder that asymmetries of power within polities are enhanced by downplaying the agency and struggles within the shell of jurisdictions: Euphemising *governance* as a concept (Offe, 2009, p. 557) is often accompanied by a lack of acknowledging the political character of its description of 'groups'. In reducing them to their visible "organizational elites" (ibid. 2009, pp. 557–562), governance discourse ignores power asymmetries within polities, re-producing exclusions.

### 6.3.3. « Public Interest »

Even though the formalization of customary land rights is a national project of high priority, the titles constitute a low obstacle for the expropriating portions of land, to which "The State" is explicitly authorised "in the public interest" (Government of the Republic of Namibia, 1990b Art. 16; Hinz, 1999a, p. 213). But who is this *public*, and what are *its* interests? By dividing national territory into communal and commercial areas, legislation presupposes a two-fold *public interest*. Thereby, it contributes to multiplying the layers of publics, and the layers of interests in land within communal areas. *Public interest* is a vital and recurring code employed in arguments on land policy. It reflects, in essence, what forms of land use deserve automatic legitimisation. As a term, it is mainly used by government officials and its ambivalence has been mentioned before, with regards to the government's retainment of authority over communal areas to serve future shifts in framing the *public* of which it aims to serve its interest. The variety of the "publics" that co-exist in Namibia today, reflect the multiple groups of beneficiaries the government ought to address. The term *public interest*, on the one hand, is a way to avoid premature exclusion of people from a politically addressed group and their benefits. On the other hand, it renders the government's task of identifying the *de facto* addressed public and account for their access to the respective political measures, services, and initiatives more difficult. Yet, a look at the CLRA demonstrates how legal formulation circumvents a clear statement on which public was targeted:

> [A]ll 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. (Parliament of the Republic of Namibia, 2002, p. 10 Sect. 17.1)

An early insight that I gained during fieldwork was the irreconcilability of permanent residence in communal land with economic development; for one, the officially assumed communal land use is necessarily uncommodified, and also due to a lack (or at least scarcity) of investment capital. Thus, an inherent truth is reflected in this legal section: Economic and social development are nearly

impossible without a diversified livelihood within households, whereas the annex on priority of poverty eradication refers to individual status. It reflects contradictory concepts of political units (Peters, 2004, p. 283) and the absolute necessity of addressing them all for reconciliation. The question ultimately remains at the discretion of the executive officials – state and traditional authorities – whether the *public* is conceptualised as tax-paying citizens, as beneficiaries of developmental or decentralization services, or as *demos* sharing one common ground and actively participating in political decisions and discussions. As Berry concludes, in "post-independence struggles over nation-building and governance, competition over land has […] intensified public debate over […] the accountability of public officials to the citizenry at large" (Berry, 2000, pp. 639–640).

The outcome of these multiple (state) measures also leads to an even wider range of available strategies, leading across, or acting *in-between* those policies, and their respective addressees. Such strategies are prone to be criticised as "unfair" (New Era, 2016a) or "manipulative" (New Era, 2016a), especially from a point of defending the pro-poor emphasis of the CLRA. Some people, for instance, were reported to be applying for communal land, only (or primarily) to receive financial compensation from the government. Such cases were bewailed in surrounding areas of proclaimed towns or settlements, which are expected to expand farther in the years to come:

> "Okahenge is now growing into a big settlement, even though it is not officially proved that it's a settlement. And business people and some individuals are coming in to get to a land. […] Behind everything is money. And you find some individuals are selling land by their own! Without even the intervention of the headman. Because sometimes the headman doesn't know whether there will be a plot somewhere, in a field of someone, it was maybe accidentally that a headman would see a plot in a certain field of someone." (Interview District Councillor EN, 15.3.14: 5)

This strategy allows communal land right holders to gain economically from a trade the government has put in place to compensate individuals who surrender their land – and (assumed) basis of living and subsistence farming – for the public interest. Another informant gave evidence that an allotment of her land was taken away, in the public interest. Building a petrol station within the Mahangu field of an elder lady clearly addresses an interest of a public different from the *public* it requests sacrifices from, as she depends on her harvest and does not drive a car (Interview Villager EN, 06.12.2013: 63-68). Such examples depict how the *public interest*-narrative may be used to achieve redistribution of resources which is not equitable; at least not equitable in the sense that the ones who sacrifice, are also benefitting from the same initiative.

Here, a further fundamental question opens up: Who defines the public? And to what sense of fair (re)distribution is it committed to? To draw a clearer picture of the multiplicity of understandings of, and actions in the name of public interest, the term *interest* should also be analysed and differentiated more vigorously. In light of the multiple forms of law and governance that are exhibited in Namibia, the government officially recognises plural interests, of different (parts of) the public. The prioritisation of public interests – with an emphasis on the multiplicity of interests – is a field of power in and of itself. It can be detected in each political or non-political, statutory, traditional or private discourse on law, rules, or norms. The Namibian constitution assembles a set of basic interests or social values, while also the CLRA of 2002 defends the position of combining even quite contradicting fundamental values: for example, the Namibians' entitlement to poverty reduction *and* to development. Of course, *development* is a very relative term, and in nation statehoods like Namibia, there is an immense breadth in claims towards developmental governance.

*Public interest* stands for a (hypothetical) consensus; one that is never matter-of-factly, but rather a political estimate or assessment of a prominently prevailing interest. It is a guide to designing policies and administration. This process or formula of consensus directly depends on its scale of political organisation. Thus, when colonial politics commenced harvesting the administrative powers of the chiefs, it put the traditional leaders into a role of "double consultation": While their authority remained strongly rooted in their consultative relation with the community, "the administrative powers of the chief were made accountable to "a new consensus"" – one that was determined by the state government (Mamdani, 1996, p. 45). The consensus on the meanings of land, as has been addressed in earlier chapters, is non-existent, or multi-layered along the different groups who each lay claim to another of Namibia's reconciliation strings: the neoliberal development or the redress of past inequalities and poverty (→ *5.3. Land Reform: A means of Reconciliation*). Communal areas are designated to a public different from the commercial and the state land, however, always lacking a straight-forward clause of exclusion. The narrative of 'public interest' extends across all areas, in each case carrying a specific notion of who this public is.

## 6.4. Overlapping polities and interests: a portrait of Communal Land Boards

Today in Namibia, most members of executive and legislative levels of government are also members of recognised traditional communities. Each of those memberships is accompanied by certain interests and political requests, which feed into their everyday lives and behaviours. The problem expands disproportionately in a context of legal pluralism, where overlapping political fields and polities make it difficult to retain an image of a distant, objective expert, or to separate customs from politics, or monetary transactions from political status. Even the president acting at the time of this research, Hifikepunye Pohamba, is a Village Headman, and would in this function be subordinate to a Senior Headman or even the head of any recognized TA across the country. Most importantly, through this dual role, the President reflects his interest in the recognition of tradition and traditional governance, as well as his understanding of north-central livelihoods and needs (Plan, 2012).

Thus, amid such variegated publics, interests, and political endeavours to amalgamate them through land reform, the Communal Land Boards were introduced as a platform of mediation. They consist of government representatives, TAs, and 'common' land users, but also land users with a certain profession (and connected interests and knowledge of an industry or Ministry), and government representatives who are in a direct relation of authority with a TA and their communities. As such, Communal Land Boards are a semi-statutory institution, or one of the "new hybrid institutions to continue to standardise and make [customary tenure] more legible" (Chimhowu, 2018, p. 6). Among other aspects, Communal Land Boards reflect the heterogeneity of actors and authorities involved in land governance. Their incongruencies and insecurities that appear in the process of implementation often mirror general problems in translating state law into local realities; their task is to align official norms with local practical norms (Olivier De Sardan, 2008, pp. 3–4). Recognising Communal Land Boards as an institution that was recently immersed in this negotiation context, allows one to observe and analyse comparably new forms of interactions, through how they enact and reproduce power and legitimacy. It is a stage on which to observe how gender, education, personal attachments to state or customary authority network, and many other forms of capital are played out.

The composition of the Board is instructed in detail by Section 4 of the CLRA: Representatives of various Ministries (Ministry of Regional and Local Government and Housing, Ministry of Lands, Resettlement and Rehabilitation, Ministry of Agriculture, Rural Development and Water, Ministry of

Environment and Tourism), of the TAs who are located within the region to which the board is accountable, of farming conservancies and farmers organisation are to be appointed by their respective organisation (Thiem & Caplan, 2014, pp. 25–26; Parliament of the Republic of Namibia, 2002 Sect. 4). In order to respond to gender equality standards, at least four of the Land Board members have to be women (ibid. 2002 Sect. 4). The choice of words in the Act sheds a conciliatory and inclusive term, raising all representatives – and particularly women – onto a level of expert, in ascribing them an "expertise relevant to the functions of a board" (ibid. 2002 Sect. 4). Compositions of Communal Land Boards are a representation of what the government acknowledges to be sub-groups of the "public" involved in and affected by the communal land tenure system. The CLB establishes rural life of communal areas on an institutional representative stage, in which customary and national democratic guidelines and procedures are attempted to be peacefully merged.
Despite this thoroughly democratic design and intention, various aspects of the CLB's composition, its tasks and procedural rules give evidence of a highly ambivalent dedication to those values: The appointment of CLB members is not a democratic process, but one that provides the institution with a certain self-governance (Marongwe, 2004: 25–26). A further query into the CLB's effective power and balance in participation is raised by Werner (2011, p. 1), who highlights the Board's double-assignment between technical and substantive tasks. While the former task is, to a large extent, a merely bureaucratic one, checking the numbers, signatures and completeness of application forms, the latter carries – depending on the extent of interpretation – great authority and responsibility, through decisions that need to be taken with regards to fundamental stances on equity, fairness, and reconciliatory priorities. The substantive task "essentially entails a 'balancing act' with regard to an individual's right to be free from retroactive application of the CLRA, i.e. the abrupt divestment of land which a person lawfully acquired on the one hand", and on the other hand to ensure the powerless, unemployed, and poor access to communal land (ibid. 2011, p. 1), as intended by the CLRA (Parliament of the Republic of Namibia, 2002, p. 10).
Even in the present day, scepticism of the CLBs and their intentions persists, particularly among defenders of traditional governance sovereignty (Nghitevelekwa, 2017, 176-191 offers a range of respective cases of conflict). The more direct action a land board takes in active land governance – such as destructing fences or withholding land rights – the more they get into crossfire for directly imposing 'foreign' values onto local matters, with some frustrated TAs who did not get recognition threatened to take legal measures against the Land Board, instead of "sit[ting] and wait[ing] for people to be brought from wherever and decide on our land" (Kuteeue, 2003). A related but more structural critique against land boards has been raised by scholars in international resource development, who question the actual democratic and inclusive character of land boards. A common suspicion is that the appointment procedures again privilege the local elite "at the expense of the wider local community" (Marongwe, 2004: 25–26). In the context of Ohangwena, a regular topic of sensitive encounters is the mediation between the Oukwanyama and the Ondonga TAs, who still have discord on their common boundary and on the authority of land allocation in those areas. On a larger scale, however, the Board is predominantly appreciated as a direly needed support in authority and administrative reinforcement:

> "TA must remind their people to remove their illegal fences, give them a deadline, and let the CLB take action if they don't comply with that deadline." (Village secretary at a Village Cluster Meeting 01.02.14: 57-61; a similar statement was made by a SHM GN, 14. & 16.04.14: 222-227)

Land Board meetings offer an immediate opportunity for mediation between statutory and customary leaders, law, and moral fabrics. Land-titling advocates claim that "[t]hrough appropriate institutions where government representatives sit side-by-side with customary authorities, it may be possible to negotiate the best ways of implementing these principles (given local conditions) and to verify that they are duly abided by" (Platteau, 1996, p. 76). This design of immediate cooperation, however, would require that the government interferes only "when local practices involve efficiency or equity costs which are deemed excessive" (ibid. 1996, p. 76). However, by its simultaneous promise of equal treatment of its citizens, the Namibian government cannot negotiate with the flexibility required in local contexts.

In fact, despite being composed of members of the public, the practice of Communal Land Boards takes place at a distance from customary land users: Although it takes decisions of granting or denying their land rights, its composition and procedures are unknown to many 'common' villagers. As an institution that is physically and legally acting within the Ministry of Land and Resettlement, it often remains unseen by common villagers. Except for private acquaintances of the board members, or those who are summoned to testify in a case, no direct contact is foreseen between the land user and its right-granting authority, and even more so when personal relations disqualifies a board member of participating in a discussion due to conflict of interests (Parliament of the Republic of Namibia, 2002 Sect. 9). This threshold between involvement in the group one represents, and being biased by respective interests, is yet subject to profound negotiations: During Land Board training, a discussion was continuingly present throughout the week, on whether it was a conflict of interest if a TA representative to the board signs consent letters for land rights on behalf of his TA, while those same letters are then received by the Land Board to be considered (Land Board Training November 2013: 215). The question was not ultimately answered, possibly because a system that allows organisations to appoint their own representation, risks such a constellation. This example, once more, illustrates how patchy and at times contradictory the land reform process is, and what multi-level transformations it triggers on a local level of governing and claiming land rights.

# 7. Transformations of Legal, Political and Social practices

The communal land reform provokes an intensified interaction between the state and the customary "fields" – between two legal systems and their underlying moral fabrics. This chapter scrutinizes how this approximation affects local land use, livelihood choices, and land authorities. At the centre of this inquiry are the ways by which land reform is effectively transferred into local land governance in north-central Namibia, and, more specifically, how it affects the position of TA.
The hypothesis of this chapter is that a strict containment of communal land governance as a Bourdieusian *field*, and thus the "constitution of reality itself" is yet under construction (Bourdieu & Terdiman, 1986, pp. 830–831). Local land governance is still finding its shape among plural laws and referees, and through continuous negotiations to reveal what behaviours in land use are legitimate, and which are not. Transforming the role and status of TAs are thereby deemed to be crucial signifiers of the normative shifts that occur on questions of communal land. The aim of this analysis is not to confirm *that* reality differs from political-legal concepts, and diagnosing a failed state (Herdt & Olivier De Sardan, 2015, p. 4), but rather to understand the *process* and *effects* of such technical and often downplayed interventions of legal reform. In the already dynamic settings of a postcolonial state, the stage of re-arrangement of land governance will be inquired through its individual and institutional negotiations on power relations and land tenure contracts.
Shifts in local land practice and governance surface in an immediate and condensed manner, in different fora of dispute mediation, and at various levels of public discourse. Both sources of discourse highlight confrontations between differing ideas of appropriate land claims, proper land use, priorities and conditions in land allocation, among many other issues.
Whereas customary dispute mediation is (primarily) preferred by an audience that claims active membership of a village and claims for interests in the line of 'tradition', news and social media provide an alternative stage to participate in these negotiations for socio-demographic groups that are more removed/distant (physically or socially) from the traditional field. From a fieldwork perspective, any such ascertainment, negotiations, and challenges of social positions were of interest, as they disclosed aspects of ongoing negotiations of common sense knowledge among a diversifying population in communal areas.

The chapter shows how governance is *practiced* in between the fields of the state and that of custom, along diverse practical norms that are constantly renegotiated in their relation to each other and to the official rules and narratives. The analysis reflects how local practices and relationships – intentionally or unintentionally, directly or indirectly – absorb or inhibit the legal provisions of the communal land reform, and how this in turn affects the TAs' room for political manoeuvring and strategies. The fields differ with regards to the currency they can accommodate, and the sets of rules governing their game.
The case of the communal land reform serves as a window into a political culture, the local nomoscape, and its various forms of enactments. Transformations or turbulences of the field are analysed along several socio-political aspects of life in communal areas that proved to have considerable effect on the position of TAs within the context of land governance. In a first part *(→ 7.1. Land Tenure, Power, and Property in Transformation*) the ways in which control over land and over people is transformed by the communal land reform and especially by its accompanying land registration process. A particular focus is dedicated to the moral negotiations on concepts of traditional leadership and customary land tenure by the CLRA, to draw formalisations and national

centralisation. In a second part *(→ 7.2. The Role of Law in Transformation*) the role of state law and its prioritisations are scrutinised in their taking effect on land governance. In addressing and adopting certain ideas of customary tenure and neglecting others, it creates legal 'gaps' or grey zones. Land governance thus remains a fertile zone for informal or semi-formal practices, which are scrutinised as effects as well as causes of these perpetuating gaps. A third chapter *(→ 7.3. Concepts and Practices of Justice*) inquires how justice – as an institution and an idea that seeks sovereignty – is maintained and applied within a plural judiciary context. It looks at statutory and customary systems of justice, at their points of contact and their ideal and practical interferences and contradictions. Subchapter four *(→ 7.4. Mobility between the Fields*) enquires the arguably most immediate threats to the TAs positions, besides legal stipulations: money and mobility. Social diversity is, and always has been, a reality in traditional communities. In this era of transformation, however, communal land holders – and with them capital in different forms and currencies – are migrating at a high pace. This new scope of cross-field mobility between commercial and communal areas (and their respective legal fields) leads to new conglomerations of capitals to improve and secure the use, access, and governance of land. In the last subchapter, a focus lies on the elites and their strategies in using and claiming land, and in offering legitimisation to the TA and state institutions. At the periphery of a centralistic state that yet features legal vacuums on the spatial, temporal, and economic axes, inviting manipulations of the law, and stretching of the 'common'-sense; in this space the scope of the elites' power is considerable.

## 7.1. Land, power, and property in transformation

In order to understand how different moral fabrics are currently competing or syncretising – to understand transforming common-sense knowledge – in the communal area of Ohangwena, it is indispensable to examine how "local narratives of legitimacy" (Davies, 2014, p. 24) have come into being. Any claim to land is closely tied to a specific narrative of power (Lund & Boone, 2013; Lund, 2011). By understanding land title as a currency, Bromley (2009, p. 21) emphasises the connection between a land right and the government or institution that allocates it: A title is only as strong as is the authority to reward it and the power to defend it. Just as (institutional) decisions are rationalised and legitimised (Emirbayer & Mische, 1998, p. 983) through established routine-webs within the social field, so are all practices connected to land access and political authority. However, in this transforming context those routine-webs undergo shifts and need re-settling among new and newly arranged sets of normative and legal references and land use patterns. As several authors have pointed out, such stable legitimacy is a requirement for building effective and reliable social insurance for a claim (e.g. Meneses, 2006, pp. 102–103). For instance, land would not be used in a forward-looking manner if the right was not reliably protected. The same holds true for authorities who are insecure of the scope and reliability of their position; they would struggle to reliably and equitably provide their services. In an unsteady context such as the field of Namibian land governance, it is crucial for land users, as well as authorities, to correctly estimate which practices and capital forms serve them more as stable currency, and which may – or ought to – remain dynamic and adaptable.

Legal, political, and institutional transformations disrupt the common norms and their moral fabrics, which served as guidelines to what practices – in land use, land transactions, land allocations – are deemed naturally legitimate and illegitimate. This generally leads to more flexibility towards what is an acceptable practice, but also triggers moments of open negotiations thereof, at times erupting as disputes or conflicts. This room for negotiation is not only reserved for customary laws, but also for

transformations of daily lives and livelihood patterns, which require adaptations of the land governance system or are given rise to by changing governance forms. In the case of this thesis' interest, legitimisation practices render local (land) authority status as much as individual claims and rights (to land) visible, and as a first step, these practices are illuminated in their references to custom.

### 7.1.1. Legitimising paths to authority and rights to land

The norms or paths that lead to legitimisation reflect the social preconditions for authority, and in a way, they reflect the politics of naturalisation, of land rights, land tenure, and authority. The same process is inherent in performed land claims and authority over land:

> "I: Before you had your land certificate, was it the headman who remembered which land was yours?
> AN: Ja! Because the first headman here has gone! The second headman is gone! Now is the third.
> I: So, when the headman changed, did you have to fear they will forget about your land right?
> AN: No, no! They will not forget. Because they are all from this place, also!"
> (Interview Village secretary AN, 08.03.2013: 174-178)

It is necessary at this point to look at how the customary relations between land and people are conveyed. Laws and the authorities who enact them are foundational to the reliability of land rights: Successfully provided tenure security, in turn, consolidates the trust in this authority. Thus, for a right, or an authority, to reach a relatively stable acceptance, legitimisation needs to be achieved by "the effective manipulation of social networks and political power" (Lentz, 2005, p. 176). To get to the bottom of how an authority or a right attain the reliability and legitimacy needed, it is necessary to inquire which sources and paths to legitimacy were employed by local authorities. For example, whether an actor ought to emphasize her input or output legitimacy, and referring to which moral fabric, and how co-actors respond to such strategies.

> "I think young people are better to become headman. […] If they want that person who stayed in the village for 2 years it can just be possible. Because they may think that that person can give them advice, can go to attend meetings and come back to report." (Interview VHM ML, 15.03.14)

The woman, who is a Headwoman herself but is about to retire due to her blindness, highlights the importance of a Village Headman's task to keep the village up to date with legal and political developments of the statutory and the traditional system of governance. This knowledge and information are important in her eyes to give accurate advice and benefit from recent services provided by either line of authority. When asked about the importance for a Village Headman to know the borders of and within the village, the same woman said:

> "Something of that nature a person to become a headman should know. Like if a person is new in the village and is appointed by villagers (people who live in that specific village), someone who knows well the village can take that newly appointed headman for a stroll (walking around) in the village and show him where the boundaries are." (Interview VHM ML, 15.03.14)

Being a genuine "traditional man" (Journalist, 23.7.14: 131) is hence not a necessary or exclusive condition for a Village Headman to fulfil his role. TAs often make use "of various non-chiefly sources of authority" available to them (Davies, 2014, p. 24), and in many cases they retreat to employing a mixed approach to appeal to legitimisation partners in all directions. The legitimisation of a TA's authority is at risk of being contested from both ends of the governance spectrum: From superior national authorities, and from their subjects. Narratives that are employed to fundamentally question their governing schemes are for instance the appointment of their members. By denouncing this practice as being thoroughly 'undemocratic', critics directly attack the basis of customary input legitimacy. Legal-official statements enact this critique merely as an undertone by providing instructions to resort to majority elections, if no rules or any uncertainties or disagreements exist about "the customary law on the designation of traditional leader" (Hinz, 1999b, p. 8; Parliament of the Republic of Namibia, 22 December / 2000 Sect. 5 (10)). Nevertheless, communal residents take up the narrative to resist or oppose a traditional leader:

> "Nowadays, because you know of this democracy issue, one can also be nominated from the […] clan, that family, but the community there, they can resist! That we don't want to be led by this person… That's where they probably came up with that idea of that, ok, if you don't want these people, if you don't want this family to lead you anymore, let's stick to elections. […] But… culturally it was not like that! It was just nomination." (Interview VHM SK, 16.02.14)

"In traditional ways" – or what he later refers to as "normally" –, the Village Headman further explains, "to become a traditional leader, you have to be nominated within your clan" (ibid.). Once this name has been decided, it will be presented to the council of the Senior Headmen at the palace, to ensure that the appointment was approved by those who are rightfully in charge. The Village Headman in question claims he himself had been elected unequivocally. When asked about who at the time was eligible to vote, however, he replied vaguely: "the elders" (ibid.). The democratic process was thus still limited by a restrictive concept of the *demos* or the *public*, comprising merely those village members who support of *traditional* leadership and appointment.

A culture of critique on customary political and property ideals by members of the community is a salient issue, especially through references to corrupt practices. This narrative ascribes a more morally condemning undertone to the customary laws of designating leaders, as they are not only undemocratic but often also involve payments in return for status. Such payments also extend to land rights allocations. The matter of payments for land and authority is analysed in more detail further below (→ *7.1.3. Commodified Land Rights and Authority*).

The *de facto* consequences of a land right – as well as a land authority – strongly depend on a power and capital disposal of all actors who (potentially) influence the legitimacy and security of that right: the right holder, the authority and the neighbours and potential competitors. Equality standards which are presupposedly inherent in a land rights certificate may be undermined if their holders fail to apply them in the intended ways. If, for example, a person holds a certificate over a certain mapped area but lacks the knowledge to read it, or the means to pay for a lawyer who can interpret and stress the rights connected to this contract, the paper remains *de facto* meaningless. As a result, there are communal land users who hold great expectations from the land registration process to secure their land rights, while others have no expectations in that regard, and fill in their application forms merely because they are told to. A village secretary expresses the deep conviction of tenure security through customary systems:

> "I believe this is our land, because we came here a long time ago." (Interview Village Secretary MH, 20.02.13)

The *stickiness* of socially constructed situations through assemblages of the "past, identity and rights" (Lund, 2013, p. 29) is a fundamental character in traditional, pre-registration ways of legitimising land claims. Among the informants, often references were voiced to the long span of time that passed since this plot became theirs: Through relatives, being member of a church, de-bushing a 'new land', or, in the case of married women, by settling on the land of her husband's relative. Such customary ways of achieving legitimate land rights build on a different set of premises than those who argue in favour of the new, 'modern' way of documented registration of land rights (Ministry of Lands and Resettlement, Directorate of Land Reform). It is based on a commonly shared and upkept memory, on oral contracts, on continuous control over and partaking in each other's lives between and among villagers and their leader. It is, however, possible that the common sense loses its stickiness, as those premises loosen through absenteeism and other shifts in migratory patterns, diversified livelihoods and diversified incomes, different land uses, and investments on land.
One land user for instance is alleged to have fenced off a larger tract of land than he had been allocated. This claim was stated by several of his neighbours, one of which is the village secretary:

> "When my neighbour came, he extended the land [he was given …]. He fenced off all the land that was used by the villagers to pass with their animals, in order for them to go drink water or for taking the to the cattle post in Angola ...
> We made a complaint with the police and the senior headman. They told us that the headman should handle the case, so the headman told him to remove the fence and the thorns, that are blocking the way. He did so. [But] after a week he placed them back. Then we told the senior headman again. He said he will send a committee to come and handle this situation. They came and removed it by force. So as time went by and the headman passed away, he fenced it again and he told them that 'this is the land I got from the headman'. Since [the headman] is dead he cannot speak for himself." (Village Secretary MM, 13.03.2013)

In the course of this dispute, the matter of disagreement has expanded from a focus on land and the fenced-off area, to a general frustration with the land user's uncooperative behaviour. The registered land right holder was absent at the time, but his wife was willing to answer my question, which referred to the large size of land she occupies:

> "I: Are you not afraid that the jealousy of the neighbours may grow in years to come?
>
> NN: Jealousy will be there. But they were told to stop with that because it's not our fault; this land has been here for a very long time." (Interview Villager NN, 13.03.2013)

Even though the woman herself, who introduces herself as the third wife of the land 'owner', has only arrived at the village in 2008, she readily applied the historical narrative to support her husband's land claim. By referring to the customary allocation of which she has only heard through oral sources, she mystifies and *historifies* the origins of the land right, using a customary narrative of legitimisation. Of course, her argument includes many unspecified references, as for a 'land to have been there' refers to a certain connection to a person or a lineage 'to have been there' with the land. Her formulation, however, underlines that the binding contract of the parcel's allocation reaches far back in time, to such a degree that the exact point in time has ceased to matter. The statement also makes clear that she was not present at the time of the transmission, which lessens her own

personal claim to the land, but at the same time strengthens that of her husband. The neighbours, however, suspect that the land user is counting on time to maintain his borders until the registration has legalised them. This strategy may work out in his favour, but only if the present Village Headman agrees to sign an application for those boundaries he claims. As soon as this claim is officially registered, all objections with reference to oral customary knowledge would be unlikely to be considered in a court of the state or at the Communal Land Board.

The translation or migration of customary land right contracts from the customary to the statutory field of law and judiciary hence brings considerable changes in capital values, narrative codes, and legitimate strategies to gain recognition. A special example for how a mix of political and traditional narratives may reliably work together, is offered by the former president who was simultaneously a Village Headman and national leader. Understandably, his set of capitals was unrivalled by those of his fellow headmen. Hence, his *de facto* authority deflected from that foreseen for a Village Headman, which would place him beneath the Senior Headmen and TA heads across the country. A newspaper article for instance concluded that it must be suspected that the president received favours in the form of "communal land from the Ukwangali Traditional Authority", in return for helping to evict members of other traditional communities from their land (Plan, 2012).

Being "called to govern by the said traditions" (Hinz, 1999b, p. 4) awards a traditional leader both systemic and personal authority, and with the execution of this authority he, in turn, reinforces those traditions. A similar circular legitimisation is visible in the statutory field, its narratives and institutions. Another similarity is that they both build on abstract ideas; on temporally undefined roots "before history began" (ibid. 1999b, p. 4), or on constitutional ideas and parliamentary processes that are unknown and out of reach to most communal area residents respectively. Apart from those considerable similarities, one fundamental difference between the two fields of 'authority' is their source of legitimisation: in one case an undocumented history of a normative community, and in the other a highly documented one. Even if it is arguably only a rhetorical distinction, these different sources may be a prerequisite for a co-existence of the two authority types.

### 7.1.2. Land Registration: a point of contact between the 'Government' and Communal Land users

Any path to legitimise a claim requires a capital input: While symbolic capital is more adaptable than political capital (Casey, 2008, pp. 6–7; Benda-Beckmann et al., 2009b, p. 12), the latter owns the reputation of carrying a more permanent legitimacy, if it is constituted through formal title or derived through formal procedures and networks. Formalisation, this chapter argues, holds – or at least aspires – a monopoly status among legitimisation paths for land rights and authority. It is an attempt to "translate … the ''illegibility'' of local knowledge into a consolidated, easy-to-administer system of ''seeing'' as a means to impose order" (Chess et al., 2005, p. 272; with reference to Scott, 1998). As this process aims to impose a closer control by the state, it inevitably threatens customary legitimisation paths. Whereas customary systems of governance build on historically generated and validated power, a global shift in ideals is also perceivable in the Namibian context, suggesting that formalisation as the ideal – or least deficient – path of naturalisation, although derived from a foreign 'common-sense', is pushed by a persuasive narrative (on expertise and technology).

If the registration of land rights, in its logic and its process, fails to gain legitimisation within communal villages and their existing governance systems, the government's attempt to outstretch its

controlling arms onto the peripheries is seriously hampered. In this context of transformation, it is a matter of bargaining between state and customary authority, and what shape is assumed to overpower the other in the competition for legitimacy. While some communal farmers fully subscribe to the urgency of a nationwide data-base and regulatory administration for land titles and title holders, others perceive it rather as one step within a greater, unknown plan of development (Cheeseman, 2014; e.g. Interview Village secretary AN, 08.03.2013: 174-178), and although respondents largely trust in the good intentions of the government, they remain sceptical and unsure of the actual benefit of registering communal land rights.

Apart from readily accepting and actively supporting the formalisation scheme, some (attempts of) refusal have occurred so far. A region where the registration, and the government itself, lack sufficient legitimacy is Kavango West (Haosemab, 2018, 11, 33-34). The TAs of the region resist participation in the land registration, based on the question why people ought to "register something that is theirs" (Sulle et al., 2014). Observers believe they feel threatened by the Owambo-dominated government and fear the loss of authority over land, which was "a sign of power that they have been maintaining for centuries inherently" (ibid. 2014). The resistance to legitimise this governmental initiative is comparable to the suspicion that prevailed toward the colonial government when it introduced a national initiative of cattle vaccinations. As an act of "establishing ownership", branding was a foreign measure that neglected "the complexities of actual ownership tenure" (Miescher, 2012, p. 119) and gave rise to a fear of setting the path to dispossession. On a lower scale of refusal, a mapping team of the MLR has experienced a number of municipal councillors who refused or delayed their cooperation. One Municipal Councillor for instance, at first refused to inform the communities via radio announcement of the visits of outdoor officers and to instruct Village Headmen to cooperate with them. The mapping officials recount that he claimed not to have been made aware that the initiative was directed to all parts of his constituency. The suspicion by one of the outdoor officers was that the councillor was not at good terms with the TA that he did not inform (Field diary 08.11.13).

Refusals of the registration by individual land users were difficult to identify, for it was never certain, if a person has simply been out of reach to apply or to hear the call to do so. Rarely has anybody openly raised concern about the registration during our interviews. Repeated warnings and reminders by TAs at village meetings indicate that there remain individuals who have not yet submitted their application forms. It is unclear, however, what those villagers' reasons may be, because with the high number of absentee land holders, some may have simply not returned to their homestead since the forms were circulating in their village. Among the interviewed farmers, all have stated that they have applied – except for those who have not been informed by their TAs (e.g. MN, 05.03.2013). The way the information was passed on by the TA often left no room of choosing not to comply. At a village meeting for instance, the Village Headman warns his community – not for the first time – to apply for a land right with the TA. Even if one has a *Cuca shop* (small, often informal and makeshift "drinking places" (Dobler, 2014, p. 147)) or a hair salon in Okahenge, he accentuates in a slightly threatening tone. Because, "if Okahenge becomes a town, you will need the TAs' consent to apply for a certificate" (Interview VHM AA, 30.11.13). By this statement, the Headman highlights the urgency of registration, as well as that of respecting the TA's, at least for their gatekeeping role in the process. It is emphasised that, despite changing land use contexts, a minimal tribute of respect and legitimisation toward the Headman is critical in order to secure one's land right:

> "Usually people, before they put up a fence, they must call us [the Village Authorities] to be witnesses so that we can see [and confirm] the boundaries." (Village Secretary KK, 11.03.14)

A village secretary emphasises the above-mentioned premise, that gives the village authorities definitional and confirmatory power over their subjects' land boundaries. This power is of course undermined, or at least impaired by the establishment of a central data base on land user identities, land rights, and village borders. Enclosure of land parcels are thus a strategy to surpass a TA's sovereign power of definition, and to legally degrade them to mere witnesses or accusers, if those enclosed borders are contested.

Locally, the registration of land rights is met with varied reactions: Some land users feel it is an urgent step in securing their assets, and several TAs also mentioned the advantages of sharing the authority and the responsibility over ever-growing communities. Other, mostly female, respondents stated that their land rights are sufficiently secured through customary leaders and their knowledge of the ties between a person and a parcel of land.

This security through the Village Headman's memory is believed reliable to the extent – and on the condition of – their personal relation to the village leader. Especially elderly women, but also elderly men and young children, who lack access contact to authorities beyond walking distance, the Village Headman is at times the only, and therefore highly legitimised source of information, also with respect to the registration topic (MN, 05.03.2013). To this population group, Ministry officials, in contrast, may appear like foreign intruders. A village secretary recalls the day when the documentation team arrived, creating a wave of suspicion and fear:

> "[R]ecently there were people from Ministry came to measure the land. And they called me that they would get me to go to the headman, because I am the one who knows the houses. And when they came people saw the Ministry [employees], they ran away. Because they thought it's the police." (Village Secretary MH, 20.02.13)

This reaction illustrates the perception of government in peripheral rural contexts, which not one of a trustworthy and reliable guardian in any situation in life. And the flow of information from the state to the local communities, or its obstruction, are decisive for state legitimacy in customary village systems, which are still dominated by strong social ties. For many Village Headmen and villagers, social and political-legal capital are tightly related, in their quest for local legitimisation.

An analysis of the hegemonic role the state aspires in the field of justice permits a better understanding of the ruptures and continuities in terms of the legal framework from the colonial to postcolonial times. By looking at who is authorised and – or – favoured by the land reform and its registration, and what knowledge is tolerated or suppressed, recognised and deliberately left unknown, it is possible to get a more profound idea of the political logics at stake. This implies an analysis of what different categories of leadership enjoy recognition in the two legal fields: The registration of land rights is, after all, an explicit transition from a contract that is held between a TA and a communal resident, to one in which the state becomes the main contractor, possibly replacing the TA in the longer run.

### 7.1.3. Transforming "customary" tenure

In view of this fundamental shift of communal land right contracts, it seems pertinent to ask: How does the registration of communal land rights interfere with – or change – their 'customary' character? One of the first logics to appear in the CLR project is the continuation of communal areas as non-freehold property tenure. The argumentation is borrowed at least in parts from problematic yet self-sustaining conceptualisations of indigenous land holding as fundamentally different from the western logic of commodification, which is fundamentally uncommodified, immaterial, and communally managed. Yet, the registration imposes certain ideas of individual landholding, which add a new manipulation to the character of what is seen as customary land rights.

The character of what is defined as 'customary' land rights and land tenure seems always in transformation by the actors in the legal field. Accordingly, when colonial discourse and politics consistently distinguished customary forms of tenure from what they maintained as their 'western' patent of individual property, this not only distorted the character of customary tenure, but also employed it as a marker for legal exclusion of "native populations" (Ramutsindela, 2012, p. 755). The narrative of customary land tenure as being anything but freehold individual ownership was further solidified by the perpetuated image of *custom* as a stationary concept (Mbembé, 2001, p. 4). This take on tradition argues by means of retrieving the agency of time by stating "it was always there," "since time immemorial," "we came to meet it" (2001, p. 4; terms also mentioned by: Shamena, 1999, pp. 324–325; Koyana, 1999, p. 125). However, the argument is not merely applied by the opponents to the interests of tradition and custom, but also appropriated by its proponents as one among different possible narrative tools, comparable to those of formalisation and expertisation serving to legitimise imported political doxas. Accordingly, "narratives of legitimacy" (Davies, 2014, p. 24) serve to producing authority, particularly in small-scale and oral governance, where tenure systems rely on narratives that "connect the history of particular plots, fields, and territories to a broader regional history of migration and settlement" (Lentz, 2005, p. 176).

Thus, just as "customary rules can be ambiguous" (Knight, 2010, p. 26), customary land rights must remain flexible and negotiable, and adaptable to individual navigation and scope of manoeuvring. One prominent example is the expansion of the government's offer to register not only "existing customary land rights", but also "new customary land rights" – the latter admitting the fact that customary land rights continue to be allocated after the enactment of the CLRA (Ministry of Lands and Resettlement, Directorate of Land Reform, p. 13). Furthermore, the CLRA allows for limited commodified practices by allocating leasehold rights, for purposes other than agricultural and only if consented by the TA (Land, Environment and Development Project. Legal Assistance Centre & Advocacy Unit Namibia National Farmers' Union, 2009, pp. 35–36). TAs have further diversified these leasehold rights, in accordance to the capital available to those enterprises for instance: At a village cluster meeting the secretary announced that from here on, Cuca shop owners who sell *tombo* (a traditional beer made from Marula fruit) will pay a service fee of 40 Dollars to the TA, while the rate for beer sellers remains at 100 NAD (Village meeting 01.02.14: 51-55).

It is a widely-spread belief, that indigenous, traditional, or customary tenure is based on a profoundly different logic than the western, capitalist property logic. The contextualisation of this difference ranges, however, from an idealist, romanticist view of communality as a "form of egalitarianism and justice, an access for all to the basic means of production" to a cultural Darwinist perspective of communality as a "lack of advancement; an 'early' state" (Chanock, 1991, p. 70). The wide range of interpretations – whether employed in favour or against claims of sovereign tenure systems by

indigenous groups – is based on a fundamental lack of understanding of pre-colonial land ownership (Noyes, 1994, p. 241).

#### *7.1.3.1. Commodified land rights and authority*

To protect local resources like land from national or international stage of claims, it may seem an inevitable measure to translate customary tenure into a property statement. This belief is tied to the concept that all economies gravitate toward capitalism, so that if the ties between resources and people remain unspecified and undocumented, eventual expropriation and forceful commodification is the sure outcome.

Despite the scholarly debate on whether it serves or defies the purpose of saving customary tenure to define it through market-based property notions, the political reality is succumbing – at least in parts – to the pressure of international advisors, as the government is pushing for an increasing conceptual identification of customary land rights. Advocates for the recognition of common property, in the form of 'customary tenure' as legally binding property, claim that indigenous forms of tenure are equivalent to property rights. And that claiming otherwise would appear as a tactic to legitimise land thefts – previously used by colonial authorities, nowadays by the elites (Alden Wily, 2012, p. 751). Communal lands, probably due to their lack of documentation and group internal power imbalance, were "more easily politically and legally" expropriated than the rights of individuals (Chanock, 1991, p. 70). Other scholars (e.g. Peters, 1998, p. 352) on the other hand, reject the imposition of a property notion *per se*, because in measuring all forms of resource management – even "pre-property or nonproperty forms" – with private property, puts them in an inferior position, even though "they differ in concept and practices".

One resolution by the Land Conference in 1991 stated that "Communal area households should not be required to pay for obtaining farmland under communal tenure for their own subsistence", and that "all payments for land [which are to be requested in the case of "land for business purposes"] should be made to the government rather than traditional leaders" (Republic of Namibia, 1991b, p. 36 Sect. 16). The main argument to back this resolution was that many farmers in communal areas could not afford the fees, and that no service was provided in return (ibid. 1991b, p. 36 Sect. 16). The Communal Land Reform Act included this resolution in Section 42, where it forbids the payment or claim of any "consideration of any nature, whether money or goods or any other benefit of an economic value" (Parliament of the Republic of Namibia, 2002, p. 28 Sect. 42). It exempts, however, "compensations for […] improvements", as well as "any fees, charges or other moneys which are prescribed to be paid in respect of any application or the issue of any certificate or document or for any other purpose in terms of this Act" (ibid. 2002, p. 28 Sect. 42). This ought to illustrate the ambivalence inherent in seemingly strict and clear legal stipulations.

In the CLRA, TAs are identified as key decision-makers and source of information with regards to the allocation of land rights. They are the guardians of their subject's identities, kinship, land rights, and their use of land. Their role is a specific and delicate mixture of patriarchal chief and provider, who controls 'his' land and people to the degree and style of leadership that is tolerated by his subjects. According to customs, leadership implies a form of property (Interview VHM JM, 04.04.2014: 76-79; Govt Official FS, 17.07.2014: 69). A municipal councillor articulated this relation, when he referred to a Village Headman as "the owner" of a village (Interview Councillor EN, 17.7.2014: 7). A Headman must pay about six and a Senior Headman twelve head of cattle respectively, in exchange for the leadership of a village or a village cluster. This exchange occurs when a new village is founded (at the moment when at least one other family settled in the area which was claimed to be discovered by

the claiming Headman), if the previous Headman passed away and a new leader takes over (either through the appointment by the previous leader or by a superior traditional committee), or if a village is subdivided (mostly due to an increasing number of 'subjects', so that one Village Headman would only be responsible for a certain number of community members). This price (*ombadu yekaya*) was paid for both the village land, as well as for the power over the people who live on and off this land.

Several informants across all social strata and professional backgrounds, mentioned that the customary price of 600 Namibian Dollars was still widely applicable. Despite its illegality, land users, TAs, and government officials were aware of this semi-formal pricing practice. On the one hand, the booklet of the documented Kwanyama customary law explicitly prescribes for land allocations to request and pay 600 Namibian Dollars. This normalisation has even reached a point in which the Minister of Land and Resettlement (MLR) has stated in a meeting with Oukwanyama TAs in 2014, that "the government is not intervening in the fees and is not disagreeing with the 600 since that is customary law" (Informal talk: Expert on land issues RN, 10.5.2016). The state law on the other hand, prohibits the selling of land to communal land users, stating that "no consideration of any nature, whether money or goods or any other benefit of an economic value, may be paid or delivered or given, or may be claimed or received, by any person as compensation for the allocation of any customary land right" (Parliament of the Republic of Namibia, 2002 Sect. 42.1).

The reliability of the authority a TA ought to receive in return for such payment, however, has decreased considerably. The legal prohibition imparts deeper into the customary cycle of land management and transfer than is acknowledged in official discourse, turning Village Headman from a *de facto owner* into a mere *administrator* of the land: By this prohibition the TAs are forced into either loss or illegality, by either deciding to renounce their customary share of the exchange, or to insist despite its prohibition (*see Figure 29*).

This prohibition and its effectuating dilemma unveil a further disparity in logics, with respect to the ways authority and commodities are intertwined. While the customary cycle of symbolic payments for symbolic power is based on a paternalistic power design which attaches authority strongly to a personality, the authority concept advertised by the government emphasises systemic power that tasks a labour force with administrative responsibility. However, customary payment for land allocation continues to be widely practiced (Villager HS, 16.03.2013: 59-60; ET, 28.02.13: 10-13; LH 12.3.14:32-33; Govt Official PA,

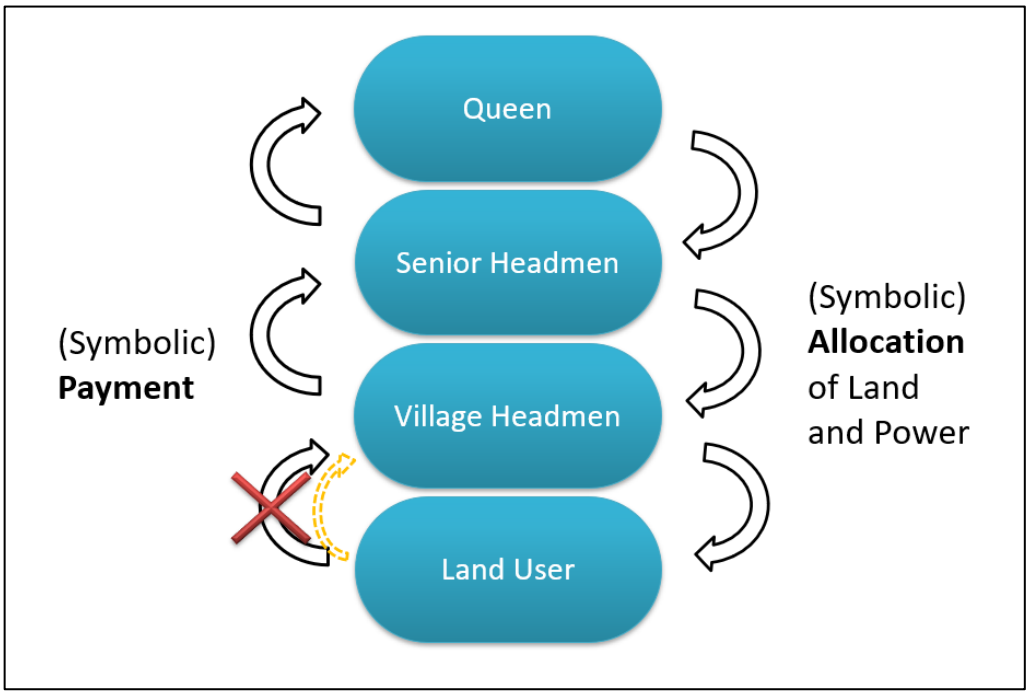



**Figure 29 'Customary' payment and land allocation: Disrupted by Legal Prohibition, yet informally Sustained** (Weidmann, 2018)

6.12.2013: 60). Interestingly, the opinions on this practice are highly varied: While it is a major obstacle or hardship for some land users to afford it, it is a minimal output, and compared to their wealth, merely a symbolic amount for others. This difference appears among villagers as it does among TAs and cuts a social rift across customary hierarchies. Thus, the appropriateness of continuing customary transaction causes heated arguments, yet mostly voiced only in neighbourly conversations (Interview Villager VP, 14.03.2013: 17-22).

The involvement of a monetary transaction can lead one to assume that customary land transfer was devoid of any social contract. However, a social relation is prerequisite, as the buyer depends on different scales of legitimisations:

- The agreement of the seller with the payable amount and the provisions of the contract;
- The community's agreement that the seller rightfully disposes over the authority to sell this land;
- The seller's acknowledgement that this transaction is exclusive;
- And, that the transferred land right corresponds to the right expected by the buyer.

These social contracts are at times broken if a land is allocated – or 'sold' – to more than one subject. Such cases were reported to occur on various levels: by a household head who sublets a part of the plot to his nephew without first informing his wife that she is now to share the plot (Interview Villager PP, 8.3.13), by a Village Headman who is so eager to receive the 600 Namibian Dollars that he re-sells the same plot twice (Interview SHM GN, 14. & 16.04.14: 326); or, in a few cases reported to the CLB a plot was allocated by various Village Headmen, who each claimed custody over it.

State involvement in communal land management has introduced a control instrument to proceed against abusive handling of 'customary' land payment, which is, the narrative of 'corruption'. If villagers disagree with practices by the Headman, they now dispose over a more direct pathway to socially threaten or even indict their leader of corruption. As a result, customary beliefs are affected by the inroads made by 'modern' and 'developmental' narratives, turning them into a less reliable authority basis for the TA. And, if 'corruption' is defined as "the exercise of power for private gain", then the TAs' clientelist power basis is in fact an example of "institutionalised corruption" (Ingram et al., 2015, p. 10), with customary systems of transactions under constant threat of being indicted through such definition. The moral language of corruption, democracy, or gender equality is a way to force the government to intervene and undermine customary governance principles. This strategy may be used if a headman indeed abuses his power, but also, to support the personal aspirations of a villager. All such manoeuvrable scopes of either engaging in, or incriminating somebody else of corruption in land payments, ultimately depend on an actor's legal knowledge. There may well be a point at which a land buyer feels so superior in his knowledge of the law and certain of the legal prosecution's weaknesses, that he feels unaccountable towards the TA and other local authorities. A newspaper relatedly reported on the "problem of non-legal land payments", which quoted a traditional leader who stated that "his office frequently receives complaints about traditional leaders dishing out land to the elite and acquaintances, at the expense of the poor [who often] cannot afford the fees they are asked to pay […]" (New Era, 2016a). The governor of the respective area agreed with him by stating that "Communal land is not for sale. The N$600 that you are giving is a mere token of appreciation" (ibid. 2016a), which again refers to the acknowledgment of a moral difference between acceptable and illegitimate transactions for land. He further warned that such "unfair distribution of land, [would allude] that the fight against poverty would be void and meaningless if communal land continues to be commercialised" (ibid. 2016a). Others, however, employ the argument that a "regulated land market for customary and leased land" is the only way to provide

tenure security for communal land users within a state-led governance system. Because, in this line of argument, formal land titles are only the first step to achieve tenure security, for "cash-strapped" land holders who do not qualify for a loan while their rights are un-tradeable (Werner, September 6th, 2018, p. 2). Besides, according to the national and supra-national perspective, commodification is the direction land tenure can evolve in:

> "The goal of the government is not to keep the communal land communal. But the aim of course is to commercialise it!" (GIZ Consultant in a formal discussion, 27.01.2016)

The diversified land use, however, introduces a further argument in support of flexibilization of a fixed price of 600 Dollars. Some Village Headmen already apply respective rates for land that is used for commercial activities like trade, which "can go up to 1000, 2000" (Interview VHM SK, 16.02.14: 185-195). State law, too, tolerates the commodification of communal land in certain instances, as shown in the legal issuing of leasehold rights. Under the condition that both the TA and the CLB agree to the form and extent of its use, "a leasehold may be granted for a period not exceeding ninety-nine (99) years" (Kaakunga & Ndalikokule, 2006, p. 5). However, the instruments and mechanisms to grasp those rights and effective competitions and needs for infrastructure are still in a process of testing, evaluation, and refinement.

Yet, in general, communal areas remain officially declared zones of non-commodified land, where land sales are prohibited by law. Although permeable in implementation, this legal systematism demonstrates a political will to divide *commercial* from *traditional*, even if it requires to artificially uphold a belief in a non-commodified resource use and management. Effectively, however, the rural population acts in reference to multiple moral systems, which as a conglomerate appears incoherent and renders legal prohibition and enforcement especially difficult. This is at least part of an explanation why land payments are still extensively practiced, despite their largely illegitimate status in state legislation. The currently applied argument to circumvent legal confrontation portrays it as a symbolic transaction, a token of acknowledgment and respect for the traditional authority in charge (Knight, 2010, p. 39), with an admission fee to the community and to the services that are accessible as a result. Often, such legal argumentation is however not required, since 'traditional payments' are widely accepted, or tolerated, an anticipated and "habitual part of everyday life" (Chabal & Daloz, 1999, pp. 99–100). The distinction between traditional and 'corruptive' practices in this regard is blurred, whereby the transaction achieves a curious level of inter-legality. Legal detection – let alone prosecution – of corruptive practices is therefore very slow and reluctant. Even the processes determining and naturalising of commercial or semi-commercial islands within communal areas are yet inconclusive (town lands, SSCF areas; leaseholds), which indicates the challenges of legally and morally arranging traditional land payments in conformity with national moral codes.

People communicate through their accounts that the logic of transaction is in a fragile state between symbolic and market-oriented convictions. Some interviewees opined that the amount of 600 NAD ideally ought to be adapted to the person's ability to pay. The land size appears not to count as a factor to determine the amount of payment, which is already a slight disaccord with western-bound expectations for a developing land market.

> "I: Did people not pay according to the size of their land?
> OK: That's how it was in the olden days but not anymore.
> I: Why did they change it?
> OK: We really don't know why, it's just the new law that's implemented.
> I: Should land be divided according to the number of people living in a household?

> OK: It just depends on the availability of land it does not matter how many people live in a house." (Interview OK, 16.03.2013: 56-63)

Customary land transactions differ strongly in their social and symbolic meaning from the market-led thought of commodification. A transaction forms a widely respected way of entering communication with the Village Headman and the whole village. In the moment of transaction, at least, legitimisation is performed towards the Village Headman as the rightfully allocating authority over the land. However, the symbolic payment for a plot in some cases fails to curtail arbitrary land appropriation. One argument in favour of letting this exchange practice be continued, stresses that it may be a crucial source of income for some headmen (Interview Regional Official FS, 17.07.2014: 69). Solely depending on such income generated by land allocation, is a further risk of unduly practices, such as double-selling of the same land parcels or allocating more village 'commonage' than is quietly tolerated by the community:

> "[N]ow that some headmen are over 80 years, 90 years, (…) if you give them that 600 he will just drink up the money and again tomorrow when someone comes he will just give him that same land because of that money they get." (Interview SHM GN, 14. & 16.04.14: 326)

With "drinking up" he uses a derogative formulation to say they are spending the money quickly, and without the prospect of being affluent again to pay it back in case of a contract cancelled. At times, however, Village Headmen really do rely on this income, and the prospect of land allocation authority being retrieved from them poses a substantial threat. This is a time of transformation, of uncertainties, "a time of 'hesitation' as people find themselves between two systems and two periods: a time not long ago when customary principles were the point of reference; and an uncertain future, in which new rules and norms seem inevitable, including the commercialisation of land" (Knight, 2010, p. 39 reference to Mathieu 2006). An official who works at the regional branch of the MLR and is rather knowledgeable of the legal provisions and the legal prohibition of payments for customary land rights, explains quite comprehensively how he finds and arranges himself between the two systems. As an applicant for a plot on communal land, he paid 600 Namibian Dollars:

> "I know that it's not the right thing to do, to pay for your land rights, because I know what I'm supposed to do is only to pay the twenty-five dollars for my application. But then we are talking about, mmh… customary practices, it's the customary lands, and when in terms of customary, that's how people have been doing it, (…) there is no one here in Owamboland who has been given a piece of land just for free. All those houses that you see, people have given something, either 100, 600, a cow, an ox, depending on what the person asked. So, and you don't also want to create that uhm, to create you know, tension […] meaning that they will give you, then you tell them no, they ask you 600 and you say no, but 600 is not allowed what what what, … and you won't let them do what they are doing. And when you are there now, you advise them that this thing of asking people to pay it's not really allowed in terms of the, of the communal land reform Act. What you should do we are not saying you should not charge money because remember there is the Traditional Authority Act […], I mean the community trust fund, you advise them. Instead of saying that money is for that board that they

> are giving you, they will just say: 'We ask you to contribute for our community trust fund', you see?" (Interview Govt Official PA, 06.12.2013: 60)

And despite an explicit documentation of those 600 Namibian Dollars in the customary law, many transfers considerably exceed this amount, with this unstable and unlimited character owing to the plural moral references that they may be tied to. Oscillating between logics of symbolic transfers and market-inspired prices, the practice is described as "selling land" (e.g. Municipal Councillor EN, 17.7.14: 5), a "tip" (informal talk KN, 12.10.2013), a "thank you" (Tjihenuna & Haidula, 2015), or an unfair way to benefit from a monopoly position, in which "the traditional leaders are pricing themselves" (Interview VHM SK, 16.02.14: 185-195).

One aspect of customary land payments is particularly opposed: One headman "do[es]n't like this practice any longer", that children, partners or the parents of a deceased head of household are asked to pay again for a land they already live on (Interview VHM SK, 16.02.14: 185-195). One woman who has recently lost both her parents, stated that this custom has put a strain on her finances, and she feels even more unduly charged because she heard that people in other villages are not asked to repay for land if their parents have already paid. She therefore believes that her "headman was the one that put up this law" (Interview Villager VP, 14.03.2013: 17-22). The Village Headman who is convinced that this custom is outdated and grants the headmen undue benefit, has supported a group that had recommended an explicit prohibition of such claims in the Traditional Authorities Act (TAA) (Interview VHM SK, 16.02.14: 185-195), which was, however, taken up only indirectly with the option of submitting the names of dependants on a certificate. His concept of legitimate property or claim to a land is illustrated further, when he explains that "if the land was already bought somebody had already debushed the area" (ibid.), a person has earned a right to the land by turning *ofuka* into arable land. Consequently, he believes, it would not be right for the Village Headman to still consider it as his property, and to take it back at his own discretion. He advocates for a different concept of land tenure, making the land (right) contract between TA and land holder a collective liability rather than an individual one. By having made a plot arable, a household – not an individual – has earned the rights to a land. This right is less strongly tied to the individual than other interpretations suggest, delimiting the TAs persisting authority over the plot. In contrast to the elderly Village Headman referred to earlier, the one who opines for this loosening of the TA authority is himself an absentee from the village, employed by a government office, he is not relying on land-related incomes and social subjection of villagers to him, like the former. The practice of payments for villages is at times voiced, at others rather concealed, depending on the status of the law in a specific situation. The interest in its mentioning increases, for instance, when Village Headmen witness or suspect that they are being left out of compensation transactions between government and land users. Because, such statutory compensation transfers are not designed to recognise and recompense any 'ownership' of land – not by land users and even less so by TAs – ignoring the symbolic and economic character of their territorial claim.

It was maybe lucky that TAs spoke to me openly about the payment they had made for their status, or maybe the shamefulness of the topic was removed with the governor's official acceptance of the practice. But in interviews for another research project, the narrative of most TAs differed to that effect that they "agreed that homes may be sold, but not the land on which they are built" (Mendelsohn, 2008, p. 45). Also, to deny a TA the right to request payment for land allocation would interfere with the cycle of exchange between material goods and symbolic power, which had begun by the headman paying for the village. Compensation to a Village Headman will only be paid in return

for his own homestead, “but he will not be compensated for the village” (Interview Regional Govt Official FS, 17.07.2014: 69).
Although the exchange of monetary goods for customary land rights offers a constant threat of fusing with, or turning into a market-based, substantial commodification of land (Knight, 2010, p. 39), the Minister of Land and Resettlement has given oral concession that the government would retain a blind eye on this legal loophole, since the custom was provided for in the documented customary law (Meeting between MLR and TA Kwanyama 2013). Customary land payments are an example how the plural moral references can weaken each other. In this case, it seems that state law is effectively undermined by a naturalisation of illegal – though ambivalently condemned – customs. The urgency felt by customary leaders to retain this transaction may indicate that it has substantial effect on their power and coercive basis. This need coincides with a lack of agreement among state institutions on how to deal with such hard-wearing customs. While it remains unclear whether a transaction follows the logic of liberal commodity-exchange, or a symbolic-traditional exchange, it remains ambivalent whether it falls under the provisions of illegality. The plural reference systems leave room for interpretation and for either governance system to take charge in assessing it as legitimate or illegitimate. After all, government intervention needs to be carefully balanced with the need to retain the TA’s authority at a level which retains their necessary influence as governance partners. So long as no decision is taken to broadly apply more restrictive control, this transaction is increasingly naturalised as part of the ‘reformed’ governance system.
Thus far, this chapter has looked at how land transactions are changing in response to laws, narratives and practices. The following chapter attends to the aspect of individualised land rights, which also experiences a shift through the process of registration.

#### *7.1.3.2. Formal land titles: benefits and threats*

Private ownership seems to increase an interest in law enforcement (Foucault, 1994, p. 108), connecting the position of a (land) owner directly to the state through a contract of tenure. Whereas the customary oral land rights are – or were – embedded in multiple and personalised social relationships, one single-contract partner is more immanently responsible to defend a land right which has been formally bestowed by him. Property is therefore a unique melting-pot where legal and political aims are compared and tested. This is even more true in plural legal contexts, “because of the multiplicity of institutions competing to sanction and validate (competing) claims in attempts to gain authority for themselves” (Lund, 2011, p. 10).

As long as communal areas are not reclaimed by the state, the responsible TA may allocate it to any claimant and for any form of use that are in line with their personal intentions. Only once the respective allocation undergoes legal certification, may a statutory authority draw a judgement on it. In a zone around town lands, where land is progressively reassessed from an agricultural communal resource to urbanised, freehold land, this transformation of land tenure has a pragmatic advantage: Some land users expressed that their main concern was to have security of compensation, when their lands are absorbed by the town zone. A Village Headman explains that without their certificates, his villagers’ “right is violated in that way” (VHM JA, 15.04.14). Since the future land management and accountable authorities are yet unknown to the villagers, a certificate is indispensable “because even if they are going to evict you, it is clear that this particular land belongs to you” (ibid.). For other people, particularly those who live further afield from town land, the formal acknowledgement and documentation of their land rights play a more marginal role.

There are legal contradictions on whether compensation payments for customary land rights are legitimate or not. By declaring the State as the formal owner of communal land (Parliament of the Republic of Namibia, 2002, p. 10 Sect. 17. (1)), the government reserves its right to "potentially acquire communal land for nothing" (Odendaal, 2011b, p. 3). Even though the CLRA ensures that "Land may not be withdrawn from any communal land area […] unless […] just compensation for the acquisition of such rights is paid to the persons concerned" (Parliament of the Republic of Namibia, 2002 Sect. 16. (2)), the definition of such "just compensation" is yet irregularly specified. In a brochure, the MLR, although being the very institution that enacted the CLRA, claims that a customary land right "[a]vails a right to compensation by government bodies when part of the land is needed for national development purposes such as roads, pipelines, power lines etc." (Ministry of Lands and Resettlement, Directorate of Land Reform). This reflects the ambiguity among official narratives between considering communal land as property and non-property. In comparison to the fundamentally different and clear legislation in commercial areas however, the basic feeling of insecurity among individual land holders persists, given that "the state could potentially acquire communal land for nothing" because it *de facto* already owns it, while freehold land is traded at market value. Just like Odendaal feared, this "undermine[s the] delicate power relations between government, communities and their traditional leaders" (Odendaal, 2011b, p. 3).
The documentation and registration of land rights holds a danger of making common villagers feel of liberated from their (social) responsibilities towards the TA and the community. By the government's intervention and appropriation of data of individual actors in communal areas, land users are bound to believe that their duties and accountabilities towards the statutory law is overruling their customary ones. Another village secretary accordingly states:

> "People in this village they do not really fight for land. But the fencing… because the certificate just came last year, we have a case with someone who put up a fence and there is no trespassing [allowed]." (Village Secretary KK, 11.03.14)

Examples like this confront fellow communal land users of the fragility of customary or local norms or common-sense.

#### *7.1.3.3. Fencing: securing tenure despite lack in legal assertion*

Fencing is a prominent topic in communal areas, which is also a practice that moves within a legal grey area. For although fences ought to be registered, the process is in fact not (yet) taking place because resources and specifications are missing, creating a severe legal delay. It is a measure taken by land users who neither fully trust the efficiency of customary, nor of statutory protection of their land rights, or to have an intermediary protection while waiting for a certificate. This practice has increased in the years of anticipating certificates, said the village secretary (ibid.). Enclosing has arguably become a way of taking de facto possession of a land parcel in communal areas, of circumventing or rather shortcutting the scope of TA co-governance. Fencing is both or either used as functional protection from free-roaming livestock and /or for symbolically stating individual property. In other cases, however, the Village Headmen proceed in the same manner, fencing off 'illegally'. In many cases such an extension might be accepted by the community and tolerated by neighbours. However, in one case, a person was especially aggrieved, as her land was enclosed by the Village Headman's fence. Consequently, addressing the Communal Land Board in a complaint letter, a Senior Headman accused a Village Headman of having enclosed a person's land, and of blocking village paths, forcing people to take long detours. The complaint letter further states, that the Headman

seldomly appears to the meetings, even upon explicit invitation (CLB meeting Ohangwena, 06.2014). The fact that a senior traditional leader addresses the CLB for help reflects both the urgency of the case, but also the legal capital of either the accuser or the Village Headman.

Hence, fencing of communal land is an issue that has gained urgency through the formalisation of land rights, and that yet lacks legal assertion and coercive efforts. Whereas the CLRA retains that it "does not allow new fences to be built [or] an existing fence to be kept without proper authorisation" (Land, Environment and Development Project. Legal Assistance Centre & Advocacy Unit Namibia National Farmers' Union, 2009, p. 53; referring to Parliament of the Republic of Namibia, 2002, p. 28 Sect. 44.1), a widely prevalent matter is being avoided by the legal scripts, namely, how to treat those fences that have not yet been authorised, due to a bureaucratic backlog in the registration process. The backlog is particularly striking, because fencing applications have been deprioritised for the benefit of focusing administrative workforce on land rights. Executive and coercive action is not only developing very slowly, but crucial unclarities exist beyond that, about which specific institution oversees the implementation of fencing laws and is authorised to apply which punishment:

> Contentious issues, such as 'illegal fencing' are often passed between the [Traditional Authorities and Communal Land Boards], each claiming that the other has not performed its duties, for example. Many of these comments stem from an underlying power tussle between customary and statutory boards, the former reinforcing its 'ownership' of communal land, while the latter attempts to establish its 'control' over the same land. (Millennium Challenge Account Namibia & Millennium Challenge Corporation, 2011, p. 13)

The "power tussle" expands onto many more stakeholders, as close observations show. A farmer who holds a cattle post in the eastern part of the region explains how he acquired the rights to it: Together with the previous owner they visited the Village Headman to tell him that he will take over the plot from the other. They agreed that he paid 600 plus "a tip of maybe 700" Namibian Dollars. Then the Village Headman sat under a tree, while the Kapatashu and the secretary walked from one tree to the next, along the perimeters of the plot. Later, the applicant and the previous owner went to the Ondobe police station, to sign a contract of transfer for the fencing material (Informal talk KN, 12.10.2013). Hence, the act of transferring of a piece of land from one user to the next, expands onto two separate judiciary routes with different concepts of materiality and ownership. And yet, the contract of transfer of the material, once accredited by the police, implicitly and simultaneously applies to the 'immaterial' claim to the land inside this fence, too. And thus, the land holder now has acquired the approval by both – potentially competing – jurisdictions.

While the registration process is still underway, however, the proper authorisation is not yet fully complete. The next example illustrates how fencing can be a valuable substitute in naturalising land claims, when neither legal system does so. The case became famous as a precedent for a CLB decision being ruled unlawful by a High Court (High Court Namibia, Main Division, Windhoek, 2013). The case started out about a man who claims a land in the eastern part of the region, where cattle herding is the main form of land use. It is located within the area that is competed for between the Kwanyama and the Ondonga TA, each claiming it to be its own jurisdictions: While one TA claims to have allocated the land to this man, the other denies them the authority over this jurisdiction. The lack of an official demarcation of the TA territories makes this case highly vulnerable to be subjected to the continuing competition, and almost unresolvable for institutions such as the CLB. Probably knowing that this dispute was likely to drag on for a long time being a precedent, and delaying the

registration of his plot almost infinitely, he erected a fence around it. By the choice of quality and durability of the fencing material, and by its length (surrounding 4354 ha (The Namibian, 2013; Thiem & Caplan, 2014, p. 112)), the fence represents a symbolic and economic stabilisation of his claims, while he was awaiting a legal decision.

At this point, neighbours began to lay complaints with the CLB against his fence which they claimed to be illegal (Interview Govt Official NJ, 13.12.2013: 110). The CLB held several meetings and deployed investigation committees, finally ruling that the fence was indeed illegal and had to be

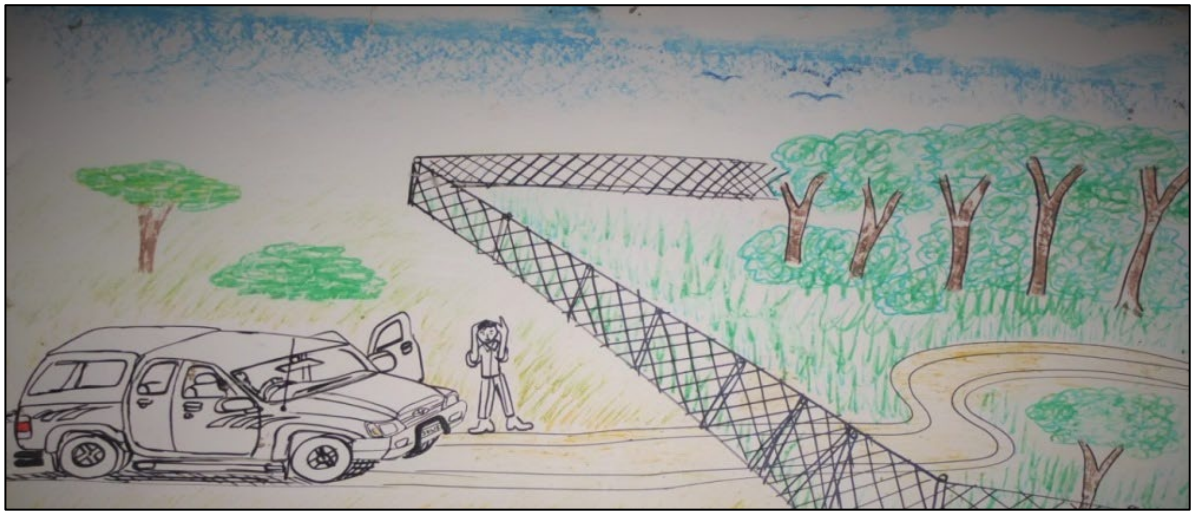


**Figure 30 Fencing off Common Space: A Recurrent Symbol of the Difficulties in Communal Land Management.** A drawing used as educational equipment in the legal training for TAs by the CLS (photo by Weidmann, 2014)

removed. The man appealed the decision at the High Court, accusing the Land Board of damage to property. The High Court rendered the verdict that the Communal Land Board was to re-install the fence and pay any material damages to the accuser. By allowing material property – in form of the fence – to take *de facto* priority over the verdicts and coercive actions of the CLB, the High Court annulled and unsettled the executive authority of the institution. The case shows that the process and authority of allocation can be completely omitted if the narrative is shifted away from the multi-layered and vaguely provable land claim to the exclusive material aspect of this same claim. This High Court judgement further demonstrates how a *de facto* property of land can be achieved in communal areas, despite an explicit anti-property narrative: If we assume that property is defined by the legitimacy of the institutions that sanctions it (Sikor & Lund, 2009, p. 1), a land use right may assume the status of property the instant it is sanctioned with the vehemence worthy of the defence of a property.

In Communal Land management in North-Central Namibia it remains unclear at this stage, which institution will persist as legitimate authority in the future. To reliably sanction and validate authority and land title, the support of an efficient controlling and executive system is indispensable. On the one hand, title givers who lack executive power cannot offer any security; on the contrary, their titles may even increase insecurity on rights and accountabilities. On the other hand, a land holder with a steadily legitimised land right, de facto *owns* it in the sense that he may *govern* its use and further distribution to the extent his legitimacy allows. Such de facto ownership may, however, be gained despite social unacceptance, by instilling fear through high investments, as has been shown by the case of TW. The Ondonga TA officially requested the Minister of Lands and Resettlement to “stop the

removal of fences by the respondent until a border dispute between the Ondonga Traditional Authority and the Oukwanyama Traditional Authority had been determined" (High Court Namibia, Main Division, Windhoek, 2013, p. 8), officially giving preference to fences over customary mediation and communal land governance. This indicates that a fundamental distinction of power and property in this customary, yet plural legal context is inadequate.

Community acceptance or legitimisation of a practice or a leader is of course stretchable according to certain contexts, or to personal relations; land payments being one example of such stretch-ability. Community consent is also an important marker (and limit to) the power discretion of a traditional leader. The more competing set of capitals and resources his village residents have, the more a Village Headman is restricted also by his superior authorities in both the traditional and statutory hierarchy. Consequently, if a leader esteems his status of authority strong enough to be independent of such immediate consent, he may act with less consideration for the community's agreement. Or, in the opposite situation, when a leader finds his authority decreasing, he may engage in unaccepted practices in a strike of resignation, by way of selling too much (commonage) land or pricing excessively, for example.

In the case of land payments or transactions, the traditional norms remain a strong reference for the legitimisation of transfers and their partaking actors (Stryber, 2001, p. 8700). Only when community members feel too harshly affronted in their interests by a land transaction, will they attempt to bring the case to the alternative source of legitimacy – the state law. This of course does not mean that every transaction that is not officially challenged is consented with by all community members. When asked about the status of land in their village, many informants responded:

> "There is not enough land anymore. The headman has sold all the land […]." (Interview Village Secretary LH)

When people stated that the TA is "selling land", it remained unclear whether this transaction was done in an explicit financial exchange, or whether it occurred in a more covert way, which could not – or was not aimed to – be addressed by the national concepts of law. Such references left room for interpretation as to whether they described an illegal act or a common tradition, which was merely impossible to translate (or deliberately mistranslated). The sense of 'true tradition' could be further strengthened by the lack of an accurate translation, perpetuating its mysterious or unknown character (→ *6.2.4. What makes a Traditional Leader?*).

Land payments do not only occur between TAs and land users, but increasingly also among land users and sub-users. Thereby the arbitrariness in the ascription of TA status is exposed or exacerbated, leading to a considerable anxiety among TAs, according to media reports (Nandjato, 2016; Ashipala, 2016). In a meeting between Ministry clerks, CLB, and communal farmers from the zone gazetted for the SSCF project, the comparison has been made that as a *headleaser* (a term that was employed at the meeting to illustrate the different positions (and claims) of first- and late-comers) who has given parts of his land to other people, their relationship was similar to that between Village Headmen and villagers:

> "If you gave them land, it's yours, they are your people." (Field notes Okongo Meeting CLB and SSCF: 30.11.2013)

The legal vagueness of a TA status allows common land users to make use of the legal grey zone around land payments by subletting parts of their plots to generate an income:

> "It's like that committee [of TAs] doesn't have power. Since the owners of the field are selling land all by themselves. Even the law does say that there's nobody who's having the rights to […] sell the land to anybody else. Unless the headman, unless you're surrender the land to the headman and the headman have that right to sell it to someone else." (Municipal Councillor EN, 17.7.2014: 6-14)

The conditions and mechanisms involved in legitimisation for land rights, and for achieving the authority to allocate such rights, are highly volatile at present. With different institutions competing for such authority, each of them is exacerbated in its *de facto* reliability. The *stickiness* of land securing arrangements is relaxed by their multiplicity and mutual undermining of fundamental headstones of land transactions and the role of material goods.

## 7.2. The role of law in transformation of Land Governance

This chapter enquires into the role of state law in the transformation of local land governance: Is state law protecting communal land rights and customary governance or transforming TAs and their tasks in land governance beyond recognition? In either case, it will not leave traditional communities unaffected:

> [T]he legal provision of the nation in which an indigenous community lives as well as those of the international order affect how a particular indigenous community presents itself and the kinds of identities it assumes. (Merry, 2000, p. 127; quoted in Griffiths, 2011, pp. 182–183)

While legal reform projects are a crucial symbol of the government's assuming responsibility of communal land tenure, its implementation inevitably creates new transformations that affect the common sense of law, and the value of formality.

Land governance in north-central Namibia exemplarily reflects the postcolonial habitus as described by Comaroff and Comaroff (2007): Although practice is "saturated with self-imaginings grounded in the law", it is as common "to be trafficking outside it [as] within it" (ibid. 2007, p. 143). Apart from moral and socio-economic changes, the legal framework itself is one of the main causes for the ground on which informal or semi-formal practices are created. As has been established earlier, the *governance field* not only includes legal texts but also other, less permanent and formalised structures and procedures. Examples are law-making, territorial and jurisdictional agreements, registration process etc., many of which are influenced by extra-legal factors, illustrating the transformation law is subjected to during the implementation process.

The postcolonial design of law represents vividly the struggles connected to harmonising or assimilating state law to vernacular systems of laws, norms, and governance, and the pre-assuming western moral politics. The main challenge in that matter is the requirement for law's efficiency, which lies in the extent to which it actually "guides behaviour" (Krygier, 2001, p. 13404), and in the case of land rights, provides reliable compliance and recognition among potential competitors. However, it has been repeatedly recognised that the realities in rural population groups have "failed to conform to the assumptions embedded in schemes designed for their protection" (Li, 2010, p. 385). Furthermore, for accessibility, clarity, and practicability, a law needs to guide behaviour (Krygier, 2001, p. 13404), and is already claimed by customary and other locally produced legal and normative frameworks, by which behaviour used to be guided in the past. In consequence, governance practices are complexifying due to an excess of norms (Herdt & Olivier De Sardan, 2015, p. 4), which continuously transform into new normative conglomerations. Legal 'gaps' are an

ambivalent phenomenon: a threat to law's reliability as a stable reference framework (Bourdieu & Terdiman, 1986, p. 806; Benda-Beckmann et al., 2009b; Comaroff & Comaroff, 2007), by sparking confusions, insecurities and conflicts, but simultaneously a necessary means to remain adaptable to transformations in norms and behavioural patterns in local land tenure and governance. Ascribing the state law too much, or too exclusive value in local governance would amount to ignoring many facets of reality.

This approach builds on the apprehension that many legal provisions are not (yet) implemented to the intended degree in the area in focus. This is in part due to the great number of socio-political issues that must be addressed with similar urgency in this phase of transformation from a colonial to a democratic state. Of necessity, some issues are deprioritised or delayed although being declared urgent in official discourse, which results in law always lagging the pace of social transformations. Legal 'grey zones' are thus a consequential (side-)effect of the communal land reform, and they constitute the field at least as much as formal laws and institutions. To cater for its plural context, Namibia's national legislation necessarily entails a room of legal non-regulation and imprecision that allows for local interpretations of diverse land use patterns, ecologies, and customary regulations. Those are intentional legal gaps, which are a reminder that 'legal gaps' do not always epitomise a shortcoming of law and its implementing authorities, but, instead, some flexibility is often necessary to retain law's legitimacy through maintaining it adaptable to diverse and changing local "moral reasoning" (Diescho, 2008, p. 39) and transforming moral fabrics. The design of legal implementation and the management and control of those flexibilities are a matter of political prioritisations. Some of these prioritisations occur on a legislative, others on the executive desk, but others also develop in *ad hoc* situations. This was exemplified at an instance where a municipal councillor had allegedly forgotten to announce the mapping process to a Village Headman he does not like, while he did inform the others in his district (→ *6.2.1*.). Of course, informal spheres always are as much a potential benefit as a potential threat, depending on the status and strategic capitals an actor has at hand to defend his interest on the informal stage of negotiations. Unintentional gaps, on the other hand, tear open where legal stipulations are de-prioritised in their execution. Reasons may be a lack of resources or inefficient communication. It is never quite clear whether resources or information are consciously withheld or genuinely absent. Access to legal knowledge and assistance (Woolford & Ratner, 2010, p. 5), but also to immediate civil services such as police response, is continuously delayed at the peripheries. At times, this delay roots in substantial – not merely administrative or communicatory – difficulties, or if a law is directly competing with local (practical) norms. This holds a severe insecurity for legal rights in general, and for land rights in particular.

Both intentional and unintentional legal gaps lead to beneficiaries as well as disadvantaged. The intentionality of any issue addressed by law, is directed at a specific actor group. Quite often, however, they affect other groups in ways that were either not expected or hazarded in the politics of priorities. Finally, whether an actor suffers or benefits from a legal gap, is determined by his or her resources and strategies to respond. One factor to be inquired for instance, is the legal anticipation, which can be a vital resource to strategize, to make 'informed' investments of capitals and adapting one's land use accordingly, if an actor's legal and political knowledge allows such estimations.

### 7.2.1. The international influence on Law and transformation

International moral discourses have a powerful impact on Namibian legislation and legal implementation. Following on the wide-spread acknowledgement that international discourses and

normative orders have a strong grip on Namibia's postindependent state-building process, this chapter enquires into the effects of the hybridisation of international, national, and local institutions (Graefe, 2003, p. 54), and their respective moral fabrics on practices of land governance and the legitimacy of its legislation. It scrutinises how some of those discourses enter daily local governance and how they feed into the priorities that shape legal and practical transformations. Many evaluators of land registration processes across Africa have reached the conclusion that instead of increasing tenure security and pro-poor development, land registration may increase social inequality in tenure security (Werner, 2015; Heita, 2018; Sender & Johnston, 2004; van der Merwe, 2018; Haller, 2010):

> The advocacy for formal titles is an example of the persistent quest for ideational hegemony. […] All legal arrangements, whether titles, bankruptcy laws, property rights arrangements, or family and divorce protocols are the evolved – and evolving –manifestations of a complex pattern of scarcities, priorities, power relations, and local circumstances. To suppose that a tiny piece (titles) of that complex cultural and legal fabric can be transplanted into a new web of complex relations and work as it seemed to work elsewhere is naïve in the extreme. (Bromley, 2009, p. 26)

This fundamental discrepancy between (official) legal intentions, often based in western (hegemonic) ideology, and effects call for a thorough scrutiny of how these projections and prioritisations ideas of land tenure are progressively converging from international and local sources.

The political shaping of land reforms in Africa and beyond is considerably induced by international logics and interests. Yet, few scholars attempt to or succeed in drawing the actual weight of international discourses in land reform or local effects thereof. And although it is neither the goal of this thesis, it is important to at least identify a few cornerstones through which international politics and moral convictions find entry into national and local reforms and governance. Peters rightly stresses that the combination of "a sharply unequal world trade regime", a rising diversity of land uses, and quantitative demand, by local, national and international actors has contributed to the present role of land as "a fulcrum of competition" (Peters, 2013, pp. 5–6). This competition, she claims, gains momentum by a simultaneous increase in modes of land transfers ("rentals, leasing, sales") and countermeasures of protecting the land from access by outsiders, "labeled strangers or newcomers" (ibid. 2013, pp. 5–6). From the perspective from a Village Headman, the number of land disputes has risen considerably of late:

> "But mostly, nowadays, as traditional [leaders] we only deal with land problems. Land issues. And then you know that people become too many and land becomes too small or scarce… so… they're always just fighting for land!" (Interview VHM SK, 16.02.14: 72)

Land conflicts and discourses "reveal processes of exclusion, deepening social divisions, and class formation, and are deeply implicated in the shaping of nation and citizenship" (Peters, 2013, pp. 5–6), turning local land governance into a negotiation platform, also for trans- and international actors. While the national government works towards shaping political culture in which it defines decentralisation and democratisation to its own discretion, international players and their normative logics severely impact its credibility. Because for law to be effectively adopted in local (land) governance, it is required to be "public, understandable (by someone—it might take a lawyer), and relatively clear and determinate in its requirements" (Krygier, 2001, p. 13404), but this clarity and determination of law is undermined by the ambiguous legal prioritisations emphasised by the diverse stakeholders involved in land governance; from the international to the local scale. It is therefore

inevitable to adapt those imported international norms, before plausibly implementing them, for they "have largely been patterned on Western models" (Olivier De Sardan, 2008, p. 4).
Since the beginning of the formulation and implementation of a postcolonial land governance system, however, this adaptation was never fully completed in all legislative details. Some of the laws that were introduced thus remain exceptionally foreign to local realities and lack local acceptance and practicability. It is essential to consider supra-national interests and how some of them interfere with local norms and practices in a way that establishes serious crevices in the application of land governance.
Namibia's postcolonial land regulations are shaped by the multiplicity of actors and moral fabrics that are involved in their legal establishment: All involved stakeholders import their own experiences and logics, legal foci, and preferred strategies, and this holds true also for the international actors who were – and remain – involved in defining the terms and forms of state-building (Diener & Graefe, 2001; Dobler, 2008). Development agencies are often part of land reforms in postcolonial states, and the transnational support appears as a symbolic act of reconciling former colonies with their former oppressor-nations: Respectively, it is predominantly agencies from Germany, Scandinavia, and the US, who have so far been involved in the Namibian land reform, through major funding and personal engagements. The German Agency for International Cooperation (GIZ – then called GTZ) became involved in its implementation in 2003 through a programme called "Support to Land Reform (SLR)" (Thiem & Caplan, 2014, p. 2). After 2014 this programme was concluded, partially transferred to the "Basket Fund", a common institution by the Namibian Government, the KfW and the EU (Werner et al., 2012, 1; 15), and in parts replaced by another programme with a specific focus on urban areas (Parliament of the Republic of Namibia, 2012). The US Millennium Challenge Account (MCA) contributed to the communal land reform in its first years of implementation administratively and substantially, through its Communal Land Support programme (CLS) (Millennium Challenge Account Namibia, 2011; Government of Namibia, n.s.). Its proclaimed focus was to contribute to and support the communication of the law to the citizens, allowing "many Namibians to engage in the discussion" (Field Notes Meeting between CLS and regional officials, CLS consultant, 7.11.2013).
International "partners" in land reform are rarely simply generous donors of resources but reinforce their status as holder and preserver of knowledge. A report shares the understanding that "[i]ts support of the communal land reform process for the past 11 years [has] afforded GIZ a unique opportunity to undertake a review of the process over that period, and to discuss the lessons learnt" (Thiem & Caplan, 2014, p. 2).
Discussions and analysis of the advancing implementation by similar authorship is of course filled with normative assumptions and expectations. The narrative of *Development* is a crucial instrument to conceal such political and legal interests by highlighting technological and infrastructural advancements, which are meant to lead toward objective, expertised, betterment (Ministry of Land Reform, 2017, p. 1). The *Programme for Communal Land Development* (PCLD) for instance, perpetuates this narrative of development, assuming a general lack – at present and in the near future – of a reliable legal or normative framework that would provide a basis to make informed and confident decisions. Such assumed lack is unearthed through phrases such as that the "MLR is addressing some of the core developmental challenges of Namibia […]; and reducing the lack of, and the lag in the provision of core infrastructure to better manage and utilise land as a productive resource" (Government of Namibia, n.s.). The blame in such communication is often circumvented altogether, or is directed at the colonial system and its "legacy of skewed access to land" (ibid. n.s.). This narrative concludes that communal land allocation and governance was formerly unrecorded, unlegislated and hence resulted in "many land related disputes". Because it acknowledges at the

same time, that land management was in the hands of TAs, the narrative implicitly accuses them of lacking the necessary skills and legitimacy to keeping those records and the disputes at bay (Pack & Nkolo, 2012). Hence, this combined narrative is perpetuated in government and ministerial communications, especially those that are directly supported by a foreign organisation.

The involvement of international organisations is not only restricted to the development of the legal framework, but often extends into operations on community level. Effectively, their local presence oftentimes outweighs that of national government (see e.g. Thiem & Caplan, 2014, p. 2). Being more decentralized than the national government, but less tied to the postcolonial accountabilities of state-building and the general political culture, they represent a third significant layer of actors and interests in governance. This is one important reason why "[i]nternational agencies take on governing roles that enter deeply into the internal affairs of national states and affect the lives of their citizens" (Benda-Beckmann et al., 2009b, pp. 6–7).

International projects, actors, and ideas infuse into governance on all scales, for their decentralisation is more efficient than the statutory one, among other reasons because they are less indebted to provide for all citizens equally and at equal pace. Thereby, they can detect challenges or dissatisfactions – often resulting from legal gaps – in local land governance more quickly than national counterparts. Although they put effort into publicising them in national and international discourse, their reflection on what may cause those gaps in major part excludes their own influence on the governance field. Yet, the decision whether to consider these findings in new policies and laws and with what urgency, remains in the hands of national legislative powers. This results in a procedural delay that is often denounced by exactly those organisations which have more immediate access to knowledge and promote their insights in a seemingly objective discourse. One important distinction between the two governance layers, however, lies in the scope of accountability to a reconciling nation, one which requires the government to engage in a perpetual theoretical debate on the land reform's pertinence. It cannot afford to argue from an exclusively technical and developmental approach, as is suggested by supra-national actors.

Besides development, other narratives on land are treated as global common-sense, for instance *sustainability*, *resilience*, or *productivity* (Lawry et al., 2014; Place & Hazell, 1993; Davidson, 2009; Government of Namibia, n.s.). In consequence, they all reflect the internationally dominant interests and priorities in land management, use, and its inclusion as a tradeable resource. By assimilating local and national land narratives to international ones, a land market is designed to become understandable – and hence potentially accessible – by everyone, even on a global stage (Bromley, 2009). As will be discussed further on, such widening of an understanding audience may both protect and threaten land rights, depending on the geographical scale of market access and politics of legal response.

International players take an important role in naturalising the communal land reform – and the inherent formalisation of land titles – as a central statutory focus. This is done by continuously and insistently appealing for more technocratic discussions on the implementation, instead of continuingly "debating the pertinence of […a] land reform programme" itself, as is underlined by a FAO report (Tapia Garcia, 2004, p. 51). The central argument here, is that it would be dangerous "to interrupt the process without providing an alternative to the increasingly high demand for land in the country". Such appeals to pragmatism, however, delegitimise any scholarly or other critical inquiries on land, on its social meanings and demand, and on how those are interwoven with different social fields, their specific histories and most of all, their moral fabric. Instead, they insist that the most significant task of the land reform is to address "rural development and poverty alleviation" (ibid. 2004, p. 52). By this technocratic emphasis, international actors promote the formalisation process

as an apolitical measure, whereas simultaneously denying the TAs to take any role in it, because clearly they "lack technical expertise to map [and] record land rights" (Pack & Nkolo, 2012).
This method is increasingly adopted in land disputes, where interests of private "development" or "investment" compete with interests in *traditional* communal uses of land, water wells or simply to be able to pass through. Whereas those interests ought to be defended by TAs, some TAs adopt a similar narrative themselves to defend their own private investments; in the following case, a Senior Headman proudly recounted how he established a commercial zone with his own business:

> "You know I'm the one that has created Okahenge. I'm the first one to put up business there and it was just a corrugated building and then Special (Supermarket) also came. After Special we built our business with bricks and people keep on coming." (Interview SHM GN, 13.4.14)

Another example is given by a farmer who is in dispute with the TA whom he accuses of subletting portions of his plot to strangers. He argues to be the rightful owner because he had "developed" his place "gradually, putting up infrastructure, including a borehole" (Hilukilwa, 2016).
Conflicts of this kind arise through a lack of communication or the neglect of legal adaptation, between different (political) moral fabrics. Therefore, reflecting on the involved international actors and logics helps to understand the roots of conflicts, or even incompatibilities between local practical norms and internationally influenced lines of arguments. Such clashes are not necessarily destructive, as in some cases they merely speed up the eruption of pre-existing confrontations, and hence accelerate their solution. One important issue to which this development applies is the issue of inheritance disputes, which will be discussed further on in this chapter.
A collective edition published by the World Bank on *Innovations in land rights recognition, administration, and governance* (Deininger et al., 2010) broadly illustrates the dominant moral references in international discourse to refer to technical expertise, and thus seemingly apolitical solutions. The claim, for instance, that land registration was a short-termed project is enhanced by statements that praise the initiative for being "efficient and cost effective, because transport and logistical requirements are lower through the area only being traversed once" (Meijs & Kapitango, 2010, p. 78). This quote suggests that the surveying and mapping process is the only moment that requires direct government presence in the villages and that it is the main and concluding effort toward a formalised and more secure communal land tenure system. These assumptions, however, contradict reality so bluntly, that CLB members were reminded at the beginning of a training, that their task was to "*manage communal land* in [the] region, and not only its registration" (Field Diary 28.10.13).
The imported international norms are further strengthened by their principles of democracy, division of powers, corruption, expertise, and documentation (D'Engelbronner-Kolff, 1999, p. 69*; → 2.3.6.1. Documentation and Expertise*). This is reflected in the mimicry of institutions within the scope of 'traditional' governance, which will be inquired in more detail further on in this chapter, for it offers an opportunity to reflect on further results and impacts of the legal reach or shortcomings in the north-central peripheries of the state.

### 7.2.2. Reasons for the limited reach of State Law

As has been mentioned earlier, national law is under pressure to address an array of different reconciliation claims, including calls for moral reconciliation issues and for the advancement of the

national economy (→ *4.3. Land Reform: A means of Reconciliation*). This results in an enormous number of newly introduced laws, among which some are inevitably prioritised over others. Regulating transformation through law is a protracted and challenging task. Challenging because *Law*, similar to *Tradition,* is built on a ridge between keeping up appearances of a static construct that ensures a fair and reliable treatment to its subjects and remaining flexible and adaptive to transforming contexts and needs. It ought to reliably represent the national political agenda, whereby grasping the needs and common-sense of the local population. The spatial and moral distance between the political and judicial centre in Windhoek and the realities at the north central periphery of Namibia leads to delays in formulating, adapting, and implementing laws that meet these conditions.

The effort of enacting and defending political-legal narratives, logics and discourses multiplies with the inclusion of TAs, for the legal pluralism itself – and each of its land reform projects – is subject to continuing negotiation. State resources are always *scarce*, which forces a further layer of prioritisation onto the process of implementing law and protecting rights. Moreover, local power systems destabilise the predictability of state law, due to their interfering of or contradicting to some fundamental logics of state legislative, as was illustrated with the example of land payments (→ *7.1.3 Transforming "Customary" Tenure*). In such cases, law has wrongly assumed the rural realities (Li, 2010, p. 385) failing to address matters that are important or instituting limitations that seem disproportionate.

A strong persisting social cohesion within a community for instance can hinder the government in imposing alternative rules, scales, and institutions. A strong community cohesion, claims Agrawal (2002, p. 69), requires a combination of "[i]nterdependence, social capital, and low levels of poverty promote well-defined boundaries for the group and the resource". Although average poverty levels in rural Ohangwena are certainly considerable, a group with a shared level of poverty and economic outlooks, which applies to elderly women for example, are likely to invest in social capital as a substitute. In addition, a sense of community vis-à-vis the central government, which, historically still requires further proving of its good intentions, certainly strengthens whenever a law is proclaimed that seems unnecessary or impracticable from a local perspective. Functioning existing community management systems on a village level may be an obstacle or impediment for state legitimacy at the peripheries.

The temporal delay between the proclamation of the CLRA and its influence on communal land use reality has a significant impact on local actors' room for manoeuvring. Delays through neglected, or de-prioritised issues in communication, implementation, and enforcement, lead to spontaneous, informal enactments of power, in which actors are to speculate and strategize along their assumptions of what may be – or what may eventually become – legitimate within a certain governance community. The operative land law as it reaches a local scale, exhibits a collection of priorities which includes both legal under- and over-definitions. This chapter aims to analyse some of those legal gaps, how they are created and what effects they have on local practice.

The gaps are categorised as delay of legal formulation, delay of implementation, and legal over-definitions.

Delays of legal formulation arise from the ongoing legal construction around communal land governance. The government continuously modifies its spatial and legal definitions, which results in a lack of legal confidence among communal citizens. This concerns especially communal land users, because both, customary land rights and communal land as a legal space yet lack reliable and clear definition in terms of what rights, services and future changes they convey.

Delays of legal implementation and enforcement weaken the communal logic because resources experience an increased demand and the narrative of private ownership is adopted on a local and regional scale, while the rights yet remain largely unprotected. As a result, instead of protecting existing rights, they are made more fragile through delays in the registration process, both in the process of mapping and even more so in the issuing of certificates (Pack & Nkolo, 2012; Thiem & Caplan, 2014, p. 123). The slow proceeding in issuing the promised land rights has vital effects on the demand for land and the practice of allocation through TAs. Such socio-demographic transformations again complexify and delay the registration process, perpetually rebutting the assumed instantaneity of land registration.

These details are widely circumvented in official political communication, which is to advocate the project as an instant-recording of reality. The map illustrates a technical perspective on land reform, often adopted by international organisations who thus explain short-term or short-period employment of consulting experts. It portrays the land reform as a temporally contained and one-time project, frequently synonymising the "Reform" with the registration process. This narrative explains the footing of an interest in a map, which depicts the progress of 'mapped areas', instead of the actual issued certificates, which would mark the completed registration (*see Figure 31)*. For it is a strategic move by NGOs and governmental organisations to commend the process at any stage, even if that requires emphasising other steps than the certification that is yet incomplete and delayed for an undefined time.

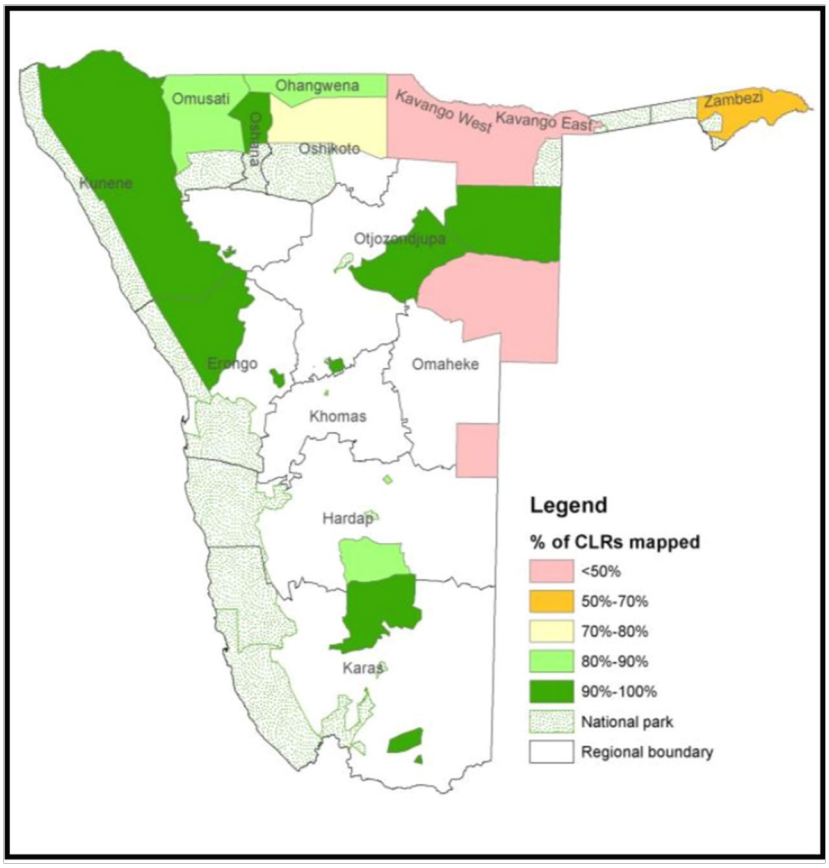



**Figure 31 State of the Mapping and Digitising Process of Customary Land Rights in 2017** (Ministry of Land Reform, 2017:2)

Legal over-definitions are a legislative realisation of what the law-makers assume common reality in all communal areas, but prove to be applicable only in specific settings, e.g. with respective geographical, demographic and environmental features. Those over-defined or overgeneralised premises on what land governance ought to look like, are absorbed into law, resulting in a further bundle of inconsistencies and gaps between law and local norms. They are a source of insecurity for local practices, because local norms or practical contexts prevent a smooth implementation. Thus, like under-definitions and delays, they pose a threat to the law's aspired position as a universally applicable and accurate system of order. Examples for such over-definitions are the desire for

individual land rights, or the description of the maximum size for customary land parcels of 20 hectares (The Minister of Lands, Resettlement and Rehabilitation, 2003 Sect. 3).

Communication is an important stage in legal implementation, where prioritisations occur, where delays and over-definitions are re-arranged. Being at the mercy of how official law is communicated, communal land users or even local authorities often receive ambivalent communication, even from high official levels, such as the pamphlet by the MLR that has been introduced earlier *(→ 5.6.1. The Communication Strategy of the Communal Land Registration*). It is both oversimplified and contradictory with respect to the ambivalent goals of the government projects onto communal areas *(→ 5.3. Land Reform: A Means of Reconciliation*). Many such contradictions concern the assumed needs and solutions for land tenure in communal areas, but they already begin with the assumption that all citizens could be reached and controlled simultaneously. Selective dispersion or withholding of information – whether it occurs intentionally or unintentionally – leads to an unequal access to legal information and to law itself. The inequality is further consolidated, if those reach individuals with different information channels, of which each circulates different legal priorities, as is the case among the Ohangwena citizens. This discrepancy in access is most striking at the spatial and communicatory peripheries that remain marginalised with regards to communication services. Thus, access to legal knowledge and assistance relies vastly on an individual's capitals.

Translating the Communal Land Reform Act into Oshivambo and other vernacular languages has taken considerable time, and the outcome is yet not univocally approved. During a legal training for TAs that was conducted by the Communal Land Support Project (funded by the MCA), a traditional leader voiced that he was "not clear with the book" – referring to the Act –, that it was "not making sense" to him, for "the translation is not clear" (TA Training, 09.4.14). This objection again reflects the power of language as a filter of knowledge in legal implementation. In addition, the difficult task of the training facilitators was not only to defend the linguistic translations, but the boundaries between conceptual and linguistic increasingly blurred, as the discussion revealed that some assumptions about local necessities were considered absurd. The lack of knowledge on local conditions combined with tenuous language gave some of the attending TAs an impetus to protecting their common traditional norms and language, and according to one of the training facilitators, these type of discussions on the quality of translation were raised frequently by TAs. She further raised the suspicion that it may be a means for older men to revolt against the young women who work for the government and made the translation. By stressing that the language was incorrect, or not 'properly traditional' anymore. One participant even offered to assist in re-translating the Act (ibid. 9.4.14). This repugnance allowed the traditional leaders to reverse the power relation in the setting of their training, if only for the duration of this specific discussion: For their gender, education and age clearly disqualify the young female government delegates from being experts on their own field of tradition, customary narratives, knowledge, and law (*→ 6.2.4 What makes a traditional leader?*).

The list of arguments published by the MLR on the reasons why people should register their customary land rights, promises a "[s]ecurity of tenure to land holders, their spouses, children and dependants" (Ministry of Lands and Resettlement, Directorate of Land Reform). With this statement, the government implicitly denies that any form of tenure security had previously existed in communal areas. This belief is, however, not supported by every communal land user, as has been previously illustrated. It goes on to specify the problem of land inheritance in which persists an explicit contradiction between many customary laws and the constitution. A widely known example are the women's rights, which, based a survey in the four O-regions in preparation for the National

Conference on Land Reform and the Land Question in 1991, were declared an issue that needed major legal inroads into customary practices:

> The continued importance of this issue should not be belittled, but it must be stated that […] the eviction of widows from their land has declined dramatically since Independence, and is no longer as widespread a practice as in the early 1990s. Cases of eviction were almost uniformly regarded as the exception rather than the rule. (Werner, 2008, p. 21; with reference to Parliament of the Republic of Namibia, 1991, pp. 216–217)

In the recent years, the issue is regularly raised – or maintained in the public focus – with considerable support of international NGO's. A two-day workshop was held in the northern town Ongwediva in October 2013, for instance, explicitly addressing the issue of Gender Equality and Access to Land. This workshop was supported by a Scandinavian-based Organisation (ORGUT-COWI) (*see Figure 32*; Field Notes, Workshop Gender and Land, 30.10.2018).


**Figure 32 Workshop: "Promoting Gender Equality Law Reform and Access to Land and Developmental Resources in Namibia"** (Weidmann, 30.10.2013)

From a high-level official standpoint, wife and children of a deceased land holder are to be allowed to continue living and cultivating this land they have utilised thus far. On a more local and immediate scale of practice, moral arguments seem less clear-cut. One controversy concerns the issue of what formality standard a marriage must fulfil, in order to be considered a univocal heir to the land right. Customary marriages remain at times undocumented, especially polygamous ones, which are prohibited by national law. Despite its undocumented character, this form of marriage is still practiced, and customary wives are at least as much involved in working the land of their husbands and making it a home and subsistence resource. Yet, they lack the legal basis to lay a claim with a state court. Such cases are then often addressed to the CLB, which, once again, is to mediate between constitutional moral ideas and long-established webs of routines and their moral and logical justification. In a training for CLB members, an MLR official exclaims:

> "We from the MLR are not accountable to apply Oukwanyama customary law. It is not applicable anymore, that the man dies, and the youngest son's nephew is taking over." (Field Notes, CLB Training: 29.10.13, 776-777)

However, she goes on to explain the reasons why the issue is a source for perpetuating conflicts: There is a contradiction between the CLRA, which "says a spouse does not have to be registered", but if they have lived together for a long time, a woman can rightfully inherit the plot. However, in terms of "inheritance rights the registration of marriage is held high" (ibid.). Some informants indicated that they had suffered from the customary inheritance rules, the registration, however, only offers valid protection to those family members who are documented on the application form. Some of the women I interviewed were denied even seeing the application form, and consequently they do not know whether they are listed on the certificate of their husband or parents. The newly provided security of tenure through the national registration is thus limited to those members of a household, who were officially identified as such, either by the applicant or the TA.
A further promise stated by the pamphlet is that land titles prevent "land related disputes between neighbours, families, clans and tribes" (Ministry of Lands and Resettlement, Directorate of Land Reform). This is an optimistic projection of the impacts and effectiveness of the rights promoted. Empirical insights suggest that until this point disputes have not diminished – let alone been avoided – through the land registration in communal areas. Certainly, this result is not to be assigned to the registration idea itself, for it is yet far from complete. What can be said, however, is that the promise of security is tied to a categorical waiting time because formalisation project is unable to deliver instant protection. In face of the opportunity offered by this waiting time, more candidates rush to acquire customary land rights before all land is tied to individual names, leaving future desires for land with unknown prospects.
Although the legislative formulation and implementation create additional insecurities and new transformations, the land registration undeniably is an attempt to offer protection of tenure. It yet remains unclear however, when this land title will be handed out, and what its exact value will be. And, with the present backlog in implementing formal land titles the path from applying to *owning* may again alter and exacerbate. Furthermore, this ownership or tenure remains a vague promise of legal communicators, suggesting more property protection than the state is presently capable to provide.

#### *7.2.2.1. Legislative delay*

The political idea of recording a snapshot of land rights by means of the registration, was already undermined by the necessity to recognise new customary land rights, hence land rights that were allocated after the enactment of the Act. With the delay of registering parcels that are under dispute and a yet missing solution how communally-used zones may be recorded, the formal registration of the communal area remains patchy and thus leaves the respective land users at the peril of TA's despotism, which the government had warned about.
The perpetual re-formulation of communal land law, in the process of which previous priorities are re-evaluated, are a distinct source for legal insecurity. Individuals with political and legal insight or knowledge have an advantage in estimating future legal developments and the impact of a specific strategy or behaviour, for instance, to decide what investments to make, which land use to pursue. Yet, even to them, the local effects are rarely completely predictable, for prioritisations take place in all domains of legal application, even in ad-hoc situations, which I would like to emphasise with the following anecdote:
A first judiciary ruling by the Communal Land Board deemed TW's arguments invalid, deciding that his fence was illegal and ought to be removed by force. The High Court judge, however, revoked this verdict on the basis that "it would be premature and contrary to the Act for a communal land board

to have the fence removed while someone still had time to apply for the authorisation of the fence" (Menges, 2013). The judgement also highlights the time of construction of the fence as an important detail, when deciding on how much patience a land user is to be granted.
This deadline itself is, however, shifting over time, as an amendment to the CLRA attempted to renew its strictness on the prescription of registering fences, by rendering it illegal to retain any "fence of any nature which existed upon the commencement of that Act on any portion of land situated within a communal land area […] after 28 February 2006" (Parliament of the Republic of Namibia, 2006, p. 4). Equally unsteady is the deadline for applying for the authorisation for a fence. The flynote on the High Court judgement respectively referred to February 2014, as the expiration date for registration (High Court Namibia, Main Division, Windhoek, 2013, pp. 1–2). However, the registration process was further decelerated by the responsible authorities, namely the CLB and the Ministry of Land and Resettlement, who in cases of plots exceeding 20 hectares, need to be consulted. This is also emphasised by the High Court, which acknowledges TW's attempt to apply for authorisation for his fence "during 2005/2006" with the Oshikoto CLB (which he wrongly assumed to be the "relevant board"), however, without having received a reply (High Court Namibia, Main Division, Windhoek, 2013, pp. 6–7). The delay in explicitly identifying regional borders, in combination with – in parts resulting – legislative and executive delays, thus weakens the practicability and credibility of any illegal status for any fence.

> "[It is fair to ask:] why is only Mr. [TW's] fence that should be removed, there are lot of fences there. The understanding of the [Communal land] board is that all fences have been illegal, even those ones that have been erected before the commencement of the Act, which, based on the […] interpretation of the law, by the judge, is wrong. … In terms of the […] judgement that [was passed on the case], the fences that have been erected before the commencement of the Act, those fences are not illegal. You see? That's what the judgement says." (Interview Govt Official PA, 06.12.2013: 109)

The case of Mr. W is particularly interesting, for it unveils legal uncertainties and legal gaps or room for manoeuvring on various arenas and scales of governance. In the Ohangwena Communal land board, the case has added to a dispute that was brewing between a TA representative and the other members: As a representative of the Ondonga TA, he inevitably takes the side of TW, for his TA alleges to have allocated the land to Mr. W rightfully, whereas the other members of the CLB may avoid to take such a subjective stand on the issue. A government official explains that the case made the members fall into a dispute over this case, for the Ondonga representative had raised the concern, why the board was targeting this person but not others, who allegedly engaged in similar fencing practices, and ultimately, "whether the concern is right or wrong, depends on the interpretation of the law by the judge" (Interview Govt Official PA, 06.12.2013: 109 - 115). As long as a strict deadline – and concrete administrative resources and control – are missing for registration of a fence, the legal-illegal binary is inexistent. It remains inexistent, as long as the executive cannot respond to the question: Why am I prosecuted but my neighbour is not?
The communal areas as a homogeneous field of land governance is deconstructed by legal gazetting: Town lands, conservancies, and commercial development projects, are only some of the variations in land tenure that are under implementation in the region. Much of the legal flexibility is based in the government's interest to retain land contracts adaptable, in case priorities are shifting. Customary land rights may be allocated in the form of a right to a farming or a residential unit, or to "any other

form of customary tenure that may be recognised and described by the Minister by notice in the *Gazette*" (Parliament of the Republic of Namibia, 2002, p. 11 Sect. 21.c).
Leaseholds, on the other hand, are foreseen to cater for commercial land use, preferably with agricultural aims (ibid. 2002 Sect. 30-36). With the support of the CLS, the MLR has initiated the Small-Scale Commercial Farming project (SSCF), as part of the project 'Accompanying Measure for the Support to Land Reform and Infrastructure Development in Communal Areas' (The project provides infrastructures and administrative support to establish commercial agriculture in a (provisionally declared) zone in the east of the region (*see Figure 33*).

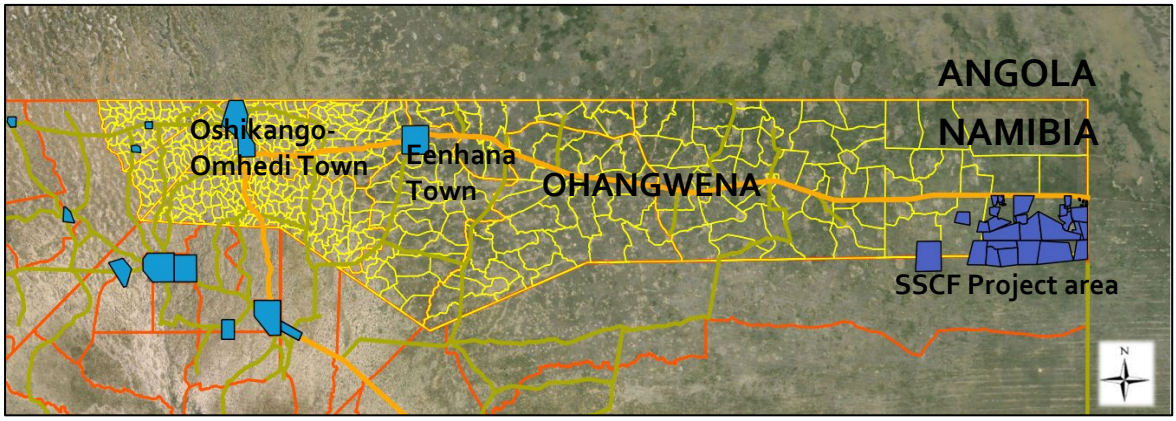



**Figure 33 Different Land Tenure Regimes in the Ohangwena Region** (not to scale; Weidmann, 2019)

Apart from the ongoing process of zoning of the project area, a further challenge to be tackled is to identify the existing holders of the land parcels. Since those areas lack a tradition of TAs below the level SHM, the land management occurs on a more private scale. Attempts by official institutions to address all concerned land holders have failed, leading to growing frustration among them. A string of meetings was convened first by the CLBs and later with international NGOs as mediators. At one of the meetings, the task was given to the leasehold applicants to offer ideas on how the SSCF communities were to be organised administratively. Their arguments offer an insight into their understanding of their own power as land right holders – although officially yet only applicants – and on their expectations of the government in the area.
Leaseholds are another example for rights that are yet insufficiently defined in their scope of rights and state protection. At a meeting between leasehold applicants within the designated small-scale commercial farming project, a round of discussion was initiated to establish the applicants' thoughts on what makes a rightful *head leaser* (Okongo Meeting CLB and SSCF: 30.11.201), while it ought to be kept in mind that the discussants of this participatory event were only head leasers. The first group opined that a head leaser system ought to be supported in order to ensure "fair control" of the area and over subleasers. And that instead of delaying the issuance of leasehold rights, the "CLB must support the Head leasers" as they are already confronted with necessary adjustments that need to be made in the area. Another group stated that because the "TA gave the land to only one person […i]t would be shifting things too much if [the late-comers] would now get the same rights as the ones who came there first", and somebody added that, after all, the "Head has played a major role in developing the infrastructures in the farm". This last argument was, however, invalidated by the regional councillor who pointed out "that the infrastructure provided by the head is not as important, as the government will be providing and bringing infrastructure" as part of the project, namely boreholes and fences.

The promise for development, yet delayed, is also a pressing issue in the surroundings of proclaimed or anticipated local authorities, such as town lands or settlements. Although land sales among land users is illegal, it is yet practiced for the supply-demand idea that has permeated the commercial-communal border, establishing a transition zone of practical norms between commodified and not (yet) commodified areas. The legislative basis to decide upon the establishment of local authorities causes ambivalence and confusion. An area may not be declared as "a town, unless […] an approved township […] or a town exists in such area which in his or her opinion complies with the requirements of an approved township" (Parliament of the Republic of Namibia, 1992 Sect. 3(2.b)). Beyond that, the Minister must be of the opinion that the town council is able to "perform the powers, duties and functions conferred" on it and to be – or to be able to become – financially independent in terms of those functions (ibid. 1992 Sect. 3(2.b)). All these legal stipulations indicate that the gazetting of a new local authority and thus a commercial zone follows when – or as soon as – structural and administrative requirements are fulfilled. Consequently, this stokes people's confidence in the prospects of attaining commercially viable land rights and pay off for (any investments made on) communal land (Interview villager PP 8.03.2013; Informal talk LH 25.03.14). Such examples are indicative of issues in land management, which in the eyes of local tenants or authorities are insufficiently prioritised by national legislators and legal implementors.

Legal gaps persist mainly on issues that the statutory executive deems of low priority or if simply no agreement could be found. Further examples for delayed legal definitions are the yet unmapped TA boundaries, the yet undefined executive powers of the CLB, or the lack of an exclusive definition of beneficiaries of each land reform. These delays are all sources of ongoing disputes. For instance, between land users who were allocated a plot by a 'wrong' village authority or TA, or reluctant CLBs who are expected to remove a fence that was found illegal, but then risks being ordered to re-install it by a higher court; or complaints by villagers about a neighbour who was allocated a plot while owning other communal or commercial farms.
One delay or deliberate vagueness in legal definitions concerns who identifies as a beneficiary of one land reform or the other. It is an implicit common understanding among policy-makers, that the Communal and Commercial (Agricultural) Reforms are addressing separate groups of people: those who were left economically vulnerable and rely on land for subsistence on the one hand, and others who are ready to engage in economically viable agriculture on the other hand. This assumed logic is, however, easily transgressed because the exclusion of economic elites from communal land deviates from present realities and from customary ideas of society and grounds of entitlement to land. Effectively, holding one land parcel in each land reform zone is not explicitly illegal, but against the "principle" – or the inherent assumption – as the spokesperson of the Ministry of Land Reform explains:

> The principle is that, once you are resettled you should relinquish your crop field and grazing rights in the communal area. The objective is to reduce grazing pressure in our communal areas. (New Era, 2016b)

He acknowledges that the recipients of resettlement farms often do not follow this principle. Various TAs have expressed that they fail or refuse to understand this logic. Legislators' assumptions have failed to materialise, not only with regards to the geographic separation along lines of wealth or income, but also concerning the readiness to invest towards an efficient agricultural land use (Parliament of the Republic of Namibia, 1995a, 39-41 Sect. 41.6.b). The Ministry's spokesperson concludes that "the 99-year lease period is too long" and leads – in combination with other systemic

factors – to an inefficient land use, because beneficiaries are inclined "to relax" in view of the securities provided (ibid. New Era, 2016b).
However, the government indeed has rather specific ideas of how resettlement farms ought to be used, namely as farming units that are to be "develop[ed] and work[ed …] beneficially" (Parliament of the Republic of Namibia, 1995a, 39-41 Sect. 41.4). The commercial zones land use is anticipated crucially different from that practiced in communal areas; this expectation is, however, utopic, seeing that most of the resettled farmers previously lived in communal areas – or at least ascribed themselves to a traditional community – before they had acquired a commercial farm, given that the commercial land reform, too, addresses citizens "who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices" (ibid. 1995a, p. 2). Because, as the cases of double-land holdings show, the wealth accumulated and expanded in commercial zones is still transferred to and employed in the strategic markets of communal areas.
Another interesting case of spatially transgressing (new) customary land use and governance takes place in the commercial zones within communal areas – those formerly known as cattle posts. A wealthy farmer invited me to see his land parcel, which he was allotted for permanent cattle grazing. Over time, he had subdivided the plot and given out pieces to his nephew and other relatives. Within this parcel, he defines the conditions of land use, of access to his borehole and other services that in more long-term settled areas would be provided by a TA. The farmer in question, as well as his nephew, engage semi-commodified cattle farming, which he circumscribes as "selling some cows in better years for profit", while normally he farms livestock "for the fun" (Informal talk with SN 12.10.13). In recent years, he started to have Mahangu cultivated, with the intent of making his cattle herders more self-sufficient. However, the harvest in the area has become so productive (due to the land size and high fertilisation by cattle dung) that some land 'owners' have started to take a few bags of harvest with them back to the cities. (Field notes, talks with SN and KN 12.10.13)
The race for communal land is accelerated by the formalisation process, more often in the surroundings of town lands, but increasingly across all parts of the Ohangwena region. Because the process of mapping and registering communal land rights lags considerably behind the information process, land reservation has gained popularity and proliferation. 'Banking' multiple land rights has become a practice for land users to take the initiative in their own hands, acquire the authority to decide who ought to benefit from those lands in the future. An argument that is often employed emphasises the number of family members, who will, in the future, need a place to stay (CLB Meeting Ohangwena 18.01.2013, Motivation letter: 5). This race impends the TA's option to decline newcomers the allocation of land, if they seem potentially unaccountable or a threat to the social cohesion within a village. This development is partly due to an increasingly mixed moral argumentation that is used by candidates, and partly due to their increasingly competitive capital sets. Different narratives or arguments of customary value, such as a reference to the long history one shares with a plot of land, the kinship one shares with the present holder, are sometimes innovatively intertwined with 'modern' arguments, like investing or developing in the land or the business, thus ultimately benefitting the village. Such multiplication of application arguments, combined with uncertain perspectives in communal land governance – which no less concern the Village Headmen and their future power to allocate land –render it unattractive to deny land, and claimants are often allocated parcels without background-checks on eventual further (commercial) land rights.

#### *7.2.2.2. Delay of legal implementation and enforcement: the example of fencing*

North-central land governance is not only delayed through legal formulation and lack of communications, but also by deferred implementation and enforcement. All four factors are certainly interconnected, as an unassertive distribution of legal knowledge leads to a wide-spread lack of legal confidence, which makes people unsure of their rights and the procedures available to defend them. However, it became clear that legal-administrative processes that were initiated with priority, and at first remained relatively unopposed, were increasingly met by cases that required their re-evaluation. Thereby, they were considerably slowed down, which is reflected in the often-used saying:

> "Justice delayed is justice denied" (Facilitator at the TA training by the CLS, 9.4.2014)

In a context saturated with new policies and legal standards, law enforcement and its priorities are an important test for local farmers to estimate the relative weight and urgency different legislations are ascribed. Some disputes in communal areas require urgent and immediate solutions – not only for the benefit of the stakeholders directly involved, but for the integrity of the land reform process more generally. Examples are conflicts that arise from delayed legislation, such as the delayed definition of TA boundaries, or delayed legal judgements on illegal fencing. A further source of conflict is also manifest in the successive zoning of commercial zones, such as the small-scale commercial farming (SSCF) areas.

Critically observing constellations of plural legal systems, Haller and contributing authors concluded that "the state, which is taking over the management of the common-pool resources, creates de facto open access, because it lacks the financial means to enforce laws and is not able to monitor or exclude immigrant users" (Haller, 2010, p. 413). In addition, however, a reason for the government's reluctance to enforce law may also be a lack of political will to interfere in the TAs' field, in order to maintain them as an intermediary to, and the "political control of the rural vote" (Chimhowu & Woodhouse, 2010, p. 14).

Another example is that CLB are not supposed to be involved in any cases of disputes before the TA has considered the case at all hierarchy stages. This reluctance is at times perceived as an active withholding of justice, as was voiced by a leasehold applicant at a conference with representatives from the CLB and the MLR: Reacting to the suggestion of a land board member, that the sub-leasers were supposed to be invited to such discussions, too, he emotively responded that "while some conflicts between head- and sub-leasers […] are still outstanding", the delay of registering all leaseholds "punish[es] those who have no disputes" by not giving them their leasehold certificate (Field notes, Okongo Meeting CLB and SSCF: 20.11.13). He also expresses the fear that "if we want to solve all problems, we may not succeed. Because there are new disputes coming up, once another one is solved" (ibid.). A SHM, who is also a member of a CLB of another northern region, also stated that if a dispute is addressed to the CLB, things will be painfully delayed. For instance, if a person is ordered to remove his or her fence by the TA, and "he doesn't remove, that's when it takes long!" (Interview SHM & CLB member A, 27.02.14: 233). This reluctance of CLBs to pronounce and execute their judiciary verdicts or ideas is certainly aggravated by occurrences as the described case of Mr. W *(→ 7.2.2.1.*), where the CLB verdict was revoked by the High Court. It had taught the CLB that the urgent pleads addressed to them by the local farmers need more legal and judicial probing, especially as there are no precedents to almost any issue they are confronted with (Interview Govt Officials NJ, 13.12.2013: 110).

The slow formalisation process has the effect that the rights and duties for the newly integrated 'citizens' at the peripheries are neither simultaneously applied nor equally 'distributed'. This leads to inequalities and creates opportunities for those with high or easily transferable capital, strengthening and re-selecting the 'local elite' (→ *7.4.3. Shifting Character and Currency of Elites*). A communal farmer who is at odds with several of his neighbours about his borders, felt that he was left out by the mapping process and, according to his wife, angrily "decided to go to the ministries himself so that he can register his land, because people are jealous of our land they say it's too big" (Interview Villagers NN, 13.03.2013).

In certain contexts, however, those gaps and the slow pace of decentralization strengthen the social bonds within a village, for the statutory attempts of delegating political and administrative powers to the rural north is less convincing than the local TA's efforts to serve the community. Many TAs, by their association with a locality and specific community, and their attribution "of a profound familiarity with the feelings, existing norms and language of the communities" (Meneses, 2006, pp. 100–101), continue to enjoy legitimation as authoritative actors in governance, also because they personify customary law and thus take a role of intermediary between the national government and "the needs of the people […] their traditions and social values" (Bennett & Vermeulen, 1980, pp. 208–209). Land users who are socially integrated, who dispose over social capital, are less dependent on economic capital for accessing land and protecting their land rights. This is illustrated by the way different fences are built around differently used land parcels, in the Ohangwena communal areas. The delay in the registration and enforcement of customary land rights is undeniably one reason for the increasing fencing practice. It has certainly begun before the proclamation and the commencement of the CLRA, but it has never slowed down the development thus far. Fencing is mentioned by many TAs as a tenacious issue which they often struggle with and for which they require more government support (Interview SHM DH 14. & 16.3.14; Field Notes TA Training, 7.4.14).

Scholars emphasise the importance for legal reforms to take "processes of social cohesion and mutual support" into account, which are inherent in "vernacular systems" of rights (Mnisi-Weeks, 2011, pp. 823–824). It is a common mistake among postcolonial states to underestimate the 'vernacular' priorities for rights, and the importance for legislation and enforcement mechanisms to remain stable and thus stabilise a community's social relationships. This stability is however not provided so far, fences are continuedly erected and encouraged by the absence or reluctance of any judiciaries to execute punishments. With every case of a fence that is not prosecuted, more actors are inclined to follow suit, because every additional fence puts the unfenced plots more at risk of damage from unattended livestock. The CLRA foresees no direct line of cooperation between either TA or the CLB and the police, which was explicitly criticised by one informant:

> "They're supposed to give the power to the land board to… just direct to the police. If someone doesn't cooperate you just call the police and we go and remove that fence!" (Interview SHM & CLB member Ak, 27.02.14: 233-235)

In a meeting in 2012, however, the CLB's were advised by the MLR "to lay charges with the Namibian Police" (CLB Minutes Jan 2013: 4). This order was formulated only with regards to three specific cases of suspected illegal fencing. In another instance of counselling on the topic more generally, a facilitator at a legal training for TAs emphasised, that in case Village Headmen find their villagers' fencing unnecessary, they should write a letter, invite the community for a meeting, issue an ultimatum that charges 30 NAD per day passing without removal of the fence, and to ultimately "not be afraid to take the person to court" (Field Notes: TA Training, 7.4.14). In reality, few cases of illegal

fencing are brought to court by TAs. One reason is certainly the required effort (mobility, availability, presence), and the relative uncertainty of their own position within a court. Fencing is one of the issues on which the CLRA divides the authority to decide between TAs, CLBs and the Ministers (Parliament of the Republic of Namibia, 2002 Sects. 18; 28), which also provokes the CLBs to create new protocols and lines of procedure:

> "The Board further resolved that the Secretary shall write a letter to the Majesty Queen of Oukwanyama Traditional Authority proposing to meet the Board members in order to discuss the issue of Senior Headman in Oukwanyama Traditional authority who are allocating land and allowing people to fence off the area in Okongo contrary to the Communal Land Reform Act." (CLB Minutes Sept 2013)

**Figure 34** A wired fence with high quality material (poles and wire), Ondobe (Weidmann 7.3.2013)

**Figure 35** Fence with wires, poles, and planted cacti, Etope (ibid. 25.02.2013)

The fence on the first picture (*Figure 34*) borders to the village road to the right and private land to the left. It has the decisive advantage that it prevents also larger animals like donkeys and cows from entering – or from exiting – the area. The private fenced-in land is obviously not cultivated. It may be reserved for any purpose, from a private grazing ground to the future construction of buildings or new homesteads. In the second picture (*Figure 35*), the material and location of the fence shows the customary way, or commonly acknowledged range of protection, namely that of the cultivated area. It immediately surrounds the cultivated crops, protecting it from roaming animals. Some less affluent homesteads, in absence of a fence, are forced to protect their crops by their own presence, which is often deputised to the children of the household (Interview Villager PP, 25.11.2013), or by using natural materials, such as thorn, branches, or cacti (*see Figures 36 & 37*).

**Figure 36** A wired fence and thorn bush twigs surrounding a crop field, Ondobe (ibid. 21.2.2013)

**Figure 37** No fence, but a visual statement and demarcation, Omunyekadi (ibid. 16.02.2013)

The fencing strategy reflects an actor's capital forms and the aim a fence is to achieve, which is a protection against human trespassers or cattle requires considerably more economic capital, than a protection from goats and chicken. Fencing off illegally, but without immediate consequences, strongly symbolises the gap between politico-legal aspirations and a lack of coercive priority, or agreement on responsibilities. With the statement that a fence must be "erected in accordance with customary law or the provisions of any statutory law" and that it ought "not unreasonably interfere" with the community's use of the commonage (Parliament of the Republic of Namibia, 2002, p. 8 Sect. 28.8.a-b), the CLRA expresses a non-definite standpoint, allowing the government to remain passive on the issue. This passivity allows for the coining of individual understandings of 'customary law', of 'provisions of any statutory law', and of 'unreasonable' interference with the commonage.
Further inhibiting factors are the slow advancement in passing verdicts on fences that are considered illegal, and a widely-spread respect for and acceptance of the displaying of material property (→ *7.4.)*. TAs and village members experience how claims – despite not being approved by local authorities or neighbours – are normalised through the time that passes without reaction. Those who are consequently locked out from roads or grazing areas, or even of what used to be their 'own' parcel, are denied justice through a paralysis of the bureaucratic procedures. From a closer look, communal areas are not as homogeneously governed as the whitepapers of the Reform may suggest.


**Figure 38 Satellite Image of Okahenge, an Informal Commercial Zone within the Region's Communal Area**
(Google maps, 2014)

Communal, or de fact non-freehold areas, much rather are interspersed with commercialised and statutorily administered 'islands' in the form of declared town lands, settlements, and small-scale commercial farms. Each of these freehold zones is spatially defined by the President or by Ministers and are projects and spaces that appear 'under construction', meaning that their territorial boundaries are non-definite. This problem is also present in the surroundings of commercial centres, areas that are in the process of developing informally into unofficial commercial centres, such as is the case in Okahenge, for instance (*see Figure 38*). Such informal commodification requires TAs to install a governance system to cater to the regulatory needs of a town, which strains their authority and administrative capacity:

> "Fights for land are very common… Mostly the fights of land occur in the village and mostly in Okahenge it also started occurring when people noticed that Okahenge is becoming a big town. At first there were only few people here with shebeens, later some people started realising that Okahenge have customers and it's a good land and everyone wanted to fight." (Interview Villager K, 22.02.14: 24)

The number of conflicts, combined with a lack of respect for traditional village leaders (Interviews TAs: AA, GN, L) and a lack of will to be included in the village community, has brought new challenges that customary leadership is not prepared for. The *Men and Women Network* is one of the

organisations that are an important support as an instance of semi-formal social control in TA governed zones. Their task is to observe and document complaints, to be present and witness disputes as they are happening (Village Meeting 01.02.14: 71-73).
A further uncertainty for communal land users is added by the government's open intentions to continuously declare and gazette new municipalities, towns, and villages. This, on the 'receiving' end of law, renders it difficult to estimate the future of tenure rights, their value, and the chances of profit from any investments. Under such circumstances, inequalities are growing in respect to access to information, legal knowledge, and political influence. These assets are decisive for taking informed decisions on land uses, and to estimate the future legality or illegality of certain practices. Most TAs lack a comprehensive awareness of – or in this case confidence in – the scope of their responsibility, and especially on how to cooperate with other authorities. This again gives land users the opportunity to choose their practices of land use and the authority they are to refer in their action (e.g. to which authority they preferably address for judgement of their own legal accountability → *7.2.3*.).
As introduced in the above-mentioned example of TW, some elite members with considerable economic or political capital apply their knowledge of law and legal loopholes successfully, in a quest to secure their personal interests as best as possible for a future of uncertain land protocols. Thiem and Caplan (2014, p. 110) argue that those anticipations were instrumentalised not only by elite land users foreclosing their "de facto private land" titles, but also by traditional leaders who anticipated their "income opportunities drying up" through the increasing land enclosures in their territories. Soon after the implementation of land registration began, it became clear that the expectation by legal planners that legal certificates would increase investment and agricultural output would remain unfulfilled (Odendaal, 2011b, p. 3). On the one hand this may emanate from a less strongly perceived security increase than was intended with the land right certificate. On the other hand, the problem remains that communal land rights are not accredited any collateral value to retrieve a bank loan and to consequently invest in more productive agriculture (Werner, 2015, p. 7). (Although in 2018, the CEO of Agribank took to the media to announce his project to provide loans with no collateral for communal farmers, in order to offer needed development in communal areas by "provid[ing] loans to unemployed farmers … so that they can be productive" (Muyambe, 2018).) Hence, the "legal documentary proof" of formal land titles, which is one of the advertising treats of land registration (Ministry of Lands and Resettlement, Directorate of Land Reform), is only of value if it is locally and trans-locally acknowledged. Presently, this seems to not be the case, because these contracts lack any coercive accountability, and are instead a stage for negotiations on ambivalent prioritisations. Ultimately, it can be stated that the ambivalent political logic on the present and future role of communal areas is the cause for many legal delays, which seriously harm legal credibility and the value of legislation as a social order.

#### *7.2.2.3. Legal over-definitions*

Apart from the described delays of legal definitions, or of law enforcement, legal definitions also hamper the credibility and legitimisation of law. Generalising assumptions on land use under customary tenure render law inflexible and unable "to address local land tenure problems" (Meijs et al., 2009, p. 19) in their variegated and transforming shapes. Whenever such generalisations turn into laws, I call them over-definition – unnecessary, overly specific assumptions which are made to apply to all the diverse communal areas. Also, and possibly more importantly for local land users, such over-definitions or over-generalising laws at times transform local land tenure systems and the role of TAs. The flyer by the Directorate of Land Reform, for instance, formulates challenges and

interests, which it alleges to solve through land reform, as if they were shared among all communal land users. One of the benefits it promotes is that it "[a]llows one person to own a particular piece of land which rules out land grabbing" (Ministry of Lands and Resettlement, Directorate of Land Reform).
The demand for such individual land tenure, however, as well as for others of its benefits, vary according to ecological conditions, land use practices, and customs of kinship, marriage, inheritance, and many other factors. Such contextual differences are even necessary, if it is assumed that land management is a cornerstone to the TAs' authority. Tenure rules necessarily vary between villages, in order to cater for this specific community's needs. Thus, a strict legal definition of what is considered "customary land use" is incompatible with real village governance, which is acknowledged by legislators who successively expand the zones for commercial practices.

In fact, when looking at what aspects these over-definitions are targeting, it is less contradictory than it might appear. According to Mejis et al. (2009, pp. 19–20) the under-defined aspects are in tendency connected to procedural authority and accountabilities, whereas too strict specifications are often implanted in substantive laws by assuming the contexts of application, too narrowly in the form of land use. Such over-definitions do not only pose a challenge for the CLB, but also for the TAs who frequently struggle to align their allocation power in balance with the CLRA's inflexible prescriptions on "land uses and cultural requirements" (ibid. 2009, p. 19), and the changing local environmental and cultural norms. When looking at such legal shortcomings vis-à-vis local realities and needs, it must be considered that those are relatively few within the area and population of research, as in the establishment of the law the Owambo governance systems were more carefully considered than other traditional communities (Gargallo, 2010, p. 18).
One example that shows this relative vicinity is the prioritisation of registering "land used for residential and crop production purposes", whereas in some areas of the country residential space is more pressing than farming space because "[c]rop production is only feasible in the higher rainfall north central and north-east areas of the country; elsewhere it is irrelevant and the land is used solely for […] extensive grazing" (Meijs et al., 2009, p. 19). In those areas where people rely on intense livestock farming, the lack of rights to apply for communally used areas results in vast zones with unsecured and vulnerable status of tenure (ibid. 2009, p. 19). In a related thought, the subject (entity) eligible for customary land rights are restricted to individuals who, by the power of a TA – were allocated a personal plot. This assumption fails the cases of commercially used lands (that are to become recognised as leaseholds) or differently structured traditional communities. The San for instance (Devereux, 1996, p. 4), would prefer to register for group rights, according to an intervention at the MLR by the CLS (Community Lands Support Sub-Activity & Millennium Challenge Account Namibia, 2014, p. 3).

Another example for over-definition is the assumption on an accurate maximum parcel size that would be applicable to all customary land rights across all communal areas (The Minister of Lands, Resettlement and Rehabilitation, 2003, p. 6). With internationally funded technology of aerial photography and geo-information systems, customary land parcels are measured and mapped with high accuracy. This renders land rights legible in a way they never were because customary explanations of parcel limits, on the other hand, are anything but accurate. Thus, if the customary 'truths' are challenged in state court, maps will likely be considered as a more reliable proof, for they consolidate and visualise previously illegible knowledge (Chess et al., 2005, p. 272). For land users with vulnerable arguments like the woman quoted above, however, peace with the TA and the community is a more reliable and secure than the official certificate. The maximum size of 20

hectares for customary land rights is a legal over-definition, instating a numerical logic of equality (Aristotle referred to by Schnegg et al., 2016, p. 581). This logic, however, is stretched by a too rough speculation and generalisation of subsistence necessities: The 20 hectares are suggested to suffice, regardless of specific agricultural and ecological preconditions, or of how many members had to be supported by a household. An applicant, who wants formal recognition of a parcel that exceeds those 20 hectares, can do so, although with great additional administrative effort. He or she is required to submit "adequate reasons and motivations", that need to be supported and actively forwarded by the TA to the CLB, who send them to the Minister for personal consideration and approval (The Minister of Lands, Resettlement and Rehabilitation, 2003, p. 6 Sect. 3.2). On the one hand, this stipulation further delays the issuing of land titles, which, as the secretary to the CLB pointed out, was even prolonged when the process was put on hold for several months while it underwent administrative changing (CLB Meeting, Dec 2013: 14 - 18). On the other hand, the motivation offers room to illustrate one's personal conditions and aspirations as a communal land user. In sight of these ambivalent perspectives, communal land users often carefully consider the value of this additional effort. During one CLB meeting two appeals by communal land applicants were noted, each in response to the discovery that their land exceeded 20 hectares. One farmer appealed for his parcel to be remapped, for he had subdivided his plot. In the minutes of the CLB meeting it was summarised that:

> "Mr. S[…]'s letter states that at the time when his land parcel […] was mapped, it had 39.9 ha which exceeded the maximum prescribed size. Mr. S[…] had reduced his land by dividing the land into two land parcels. […] therefore Mr. S[…] requested the Land Board to allow his land to be remapped by the Ministerial staff" (CLB Meeting Ohangwena 18.01.2013: 5).

The CLB decided to grant the request and instructed the remapping of the parcels and advised Mr. W as well as the newly appointed land holder to "reapply for recognition of their customary land right as per section (20)" of the CLRA (ibid.). This is a common strategy, at times actively suggested by the Village Headman or the mapping team (outdoor officers), to avoid the procedure of applying to the Minister, and to complete the registration more swiftly.

The second land rights applicant was motivated to retain his 24 hectares by emphasising the structure and efficiency of his internal land management, which he provides for a large herd of livestock. He emphasises that their number does not exceed the carrying capacity of the land and that "this is the only land that he owns" (CLB Meeting Ohangwena 18.01.2013: 5). In a last point, he highlights that of his nine dependants, many "may need a piece of land" in the "near future" (ibid.). A motivation letter offers room to raise individual arguments, which however depends strongly on the applicant's legal or political knowledge and rhetoric adaptation. In comparison, oral argumentations in interviews often referred to a need of space for family members, often named "children" (Interview Kapatashu MN, 15.03.14; Villager NN, 13.03.13), who will eventually build their place on the land. As a single argument however, it is doubtful whether this would suffice for the Minister's approval. Like many others, an older woman who occupies a parcel of about 36 hectares, defends her land right (or rather: that of her uncle, who is the official owner of the plot) on the grounds of following a long line of kin on the land and the insurance of the Village Headman to remember allocating it to their family:

> "I have the right and I have a service fee card, plus all my documents. I wouldn't be afraid if I get anyone said that this is their land: I'll show them proof and ask why the headman didn't come and tell me he gave you a piece of land from mine. The

> headman should tell me himself that he gave a piece of land from mine if the person is claiming it's their land." (Interview Villager FS, 15.03.13)

Such arguments referring to the knowledge of the Village Headman or those of a long family history in the settlement would not be quoted in a motivation letter to an official addressee, for they are illegible and insignificant in the statutory legal field. These cases, in contrast, are to show the value of knowledge on legal and political rhetoric and logics, as well as the pragmatic decisions that must be taken between receiving a title quickly or to risk further delay in favour of a land that deviates from the legally assumed norm.

The role of the TA, or rather the Village Headman, is condensed in the process of deciding on the number and sizes of land allocation: Whether he allocates parcels big enough to carry some livestock, or if the village policy foresees grazing as a collective space, has an important impact on the future options of land use for the villagers. In any case, it is again at the mercy of the Village Headman and how strongly he withstands new requests for allocations and potential financial incentives offered. The power comes with a responsibility to decide on moral priorities, too; for instance, the argument of needing land for one's children has brought different arguments to the surface.

> "[E]veryone would like to have a land for his children, to have a land that include his kids. Let's say I took land that include my kids, and one will give a reason like: 'Me to stay in the forest? No way.' Another one will say: 'Me, to take care of cattle and whatever? No way, I don't have time for that.' Another one will say that 'there are food and maize in the shops why should I waste my time on this farm?' If he then took a land where he included his children, Tate [*Mr. TW*], will do the same, me and you too. It will be that all the land is fenced off without anyone to occupy it." (Interview Kapatashu MN, 15.03.14)

Some village leaders from the east of the region have thus reported about disputes that arise from land reservations, which never culminated in a factual presence – and accountability – of the children in whose name it was reserved (ibid.). The challenge is to estimate how seriously those children are interested in farming communal land, and how long the parcel will be left unused. In a group discussion among villagers, a woman stated that land should be given with priority to those who are "big and ready to get married. You just can't give land to a young one [...]" (Group Interview Villagers, 16.03.13).

**Figure 39 A Parcel about to be turned into a Homestead:** Bricks lie prepared in Ondobe (Weidmann, 30.3.13)

Another Village Headman, as recounted by a CLB secretary, has interpreted the law that everybody was now entitled to 20 hectares, and every villager, "from their 2 hectares that they had, another 18 hectares should be added. And these 18 hectares should be from here to there from here to there, it will include, [this person's] house, [that person's] house, but they should move, because it's my 20 hectares" (Interview Govt Official DK, 14.11.13: 120-123). By means of this example the official emphasises that the legal restriction on the sizes of land ought to be abolished, because "it's not regulating, it's just making confusion" (ibid.). In view of the recent intensification of the demand for land, it is however questionable how her proposal of simply "register what you have" (ibid.) could be implemented.

These mentioned cases of legal over-definitions yet again point back to the fundamental dilemma of the land reform logic: The communal areas are (theoretically) intended for those who want and need to perform "traditional" land use, if law is to secure these practices, however, they need to remain static to a certain degree, and refraining from innovative and modernising transformations. Whether with good or bad intentions, land formalisation is based on the idea of protecting and preserving indigenous communities and their use of and relation to resources. But, as has been shown, traditional land governance and land use has – most likely – never been *communal* in the sense of a completely peaceful, equitable, and sustainable resource management. Furthermore, a traditional community as a governance collective is constantly transformed by ideas of 'foreign' moral origins, as has been discussed on the example of *property* and *power*, and of legal standards and priorities that permeate its containing and 'protecting' boundaries.

It is therefore fair to ask: Is the present web of legislation and implementation conserving or transforming the TA's status? In connection to legal definitions, also legal prioritisations, gaps, and delays hold insecurities for the authority status of TAs. Some legal sections directly cut into the

authority of a Village Headman or of a TA in general: The prohibition of corporal punishment or customary inheritance rules that disadvantage widows and children of a deceased male head of household, as well as bureaucratic procedures that permit circumventing social cohesion and control, are only some of those incisions with wide-ranging effects on the governing power of TAs. Apart from being at the mercy of spontaneous prioritisations in politics and communications, unintentional effects of law are a further threat to the authority basis of TAs. Illegal practices such as unauthorised land extension, sale, or fencing for instance, are accredited the time to normalise and to be internalised as a legitimate practice by the slow registration process and the reluctant coercive reactions by the police and state courts.

### 7.2.3. Transforming the spectrum of (Il-)Legality

For a legal pluralism to exist in relative stability legal gaps are necessary, otherwise there would be no room for a second system to act in. This chapter has illustrated how the plural administration and laws work together, how they complement or contradict each other, and which cases neither of them seems prepared or accountable for. The points raised in this chapter indicate that whereas some transformations are anticipated and addressed, others are newly created or enhanced by law or legal implementation. Examples such as the intensified pressure on unregistered communal grazing areas, for which no effective security mechanism is in place, or the lack of an accurate tenure contract for mobile groups such as the San, who struggle to make their customary land tenure system be acknowledged by the existing registration process, show the failure of legal stipulations to halt insecurities or exclusions.

In the previous subchapters I presented some examples of illegal or semi-formal behaviours, and how they are taking the shape of practical norms that fill the gaps left by state law. Those gaps either evolve from legislative over- or under-definition, or impractical or unadjusted previsions of implementation. In effect, if no law is suited to replace an existing norm, or if no official authority is willing to take accountability of legislating and controlling a certain issue, informal regulations become naturalised to a degree that people lose awareness of and interest in its legality. Substituting illegal or semi-legal practices or mechanisms may solidify, if they are either not disputed, or not detected. This creates a semi-legal sphere within land governance. Over time, such norms may be absorbed in legal texts in attempts of filling legal gaps, while others become an organic, common-sensual complementation to the law. This solidification serves to render the field more accountable to its players, by ensuring wide-reaching and reliable adherence through a commonly acknowledged normative reference.

Legal gaps certainly lead to informal practices that benefit certain individuals or extended families, as occurs in cases of land banking and enclosing practices. Such *ad hoc* enactments by powerful land users lead to a widespread apprehension that legal gaps or deficiencies often benefit the local elite or “powerful local people” (Haller, 2010, p. 413) who strategize to harness those legal or coercive weakness to their advantage, thus transforming, eroding and weakening “local rules”. However, some informal practices are more broadly accepted and beneficiary, for instance the customary payments for land allocation, or commercial land use in communal areas.

At times, semi- or illegal practices become locally or communally regulated to such degree that surpasses a status of a momentary and micro-social acceptance. The *Men and Women network* or other committees that are established to assist traditional village leaders, illustrate the need and expansion of strategic mimicking of formal institutional design. This is an important strategy to

solidify (practical) rules, despite their contrariness to legal stipulations or logics. A Village Headman with considerable access to political spheres and knowledge, for instance, has instituted in his village "a committee which we call a *Developmental Committee*". It serves as a think-tank in which "youngsters" are encouraged to "come up with some new ideas of how to develop our village" (Interview VHM SK, 16.02.14: 71). He has adopted certain governing concepts or logics into his strategy, and others have copied similar approaches. The arguments reach from administrative assistance to embedding expertise and social involvement. What is certainly a conclusion to be drawn from such governing dilemmas, is that in the spectrum of 'semi-formalised' rules where statutory law fails to represent all interests at stake, aspects of space, polities, and social contracts need to be considered carefully. In the study area this spectrum is particularly complex, where the moral fabrics are still fragmented, and where the reach of state control is weakened (or even suspended) by various factors, many of which are based in, or perpetuated by, the co-existence of plural moral references and plural laws. Therefore, there is not a harmoniously spread and settled "*legal culture*" (Bourdieu & Terdiman, 1986, p. 806) across the Namibian territory. The "multiplicity of institutions competing to sanction and validate (competing) claims" (Sikor & Lund, 2009, p. 4; also Berry, 2000) are the formalised expressions of these various (sets of) rules. They have been widely discussed in post-colonial property regimes as "negotiable and fluid" (Sikor & Lund, 2009, p. 4) constructs, which give the powerful scope for accumulation (Peters, 2004, p. 283).

Delays, uncertainties, and practical incompatibilities of state law, lead to local power systems or spontaneous mechanisms to take their place and may result in the loss of legitimisation of formal law and other authorities who rely on a state-oriented symbolic capital market. Any of the over-definitions that have been listed so far spur accusations against the central government, that it is avoiding 'proper' decentralisation and delegating power to the TA or the CLB. These accusations even go as far as alleging that government prioritises certain ethnic groups over others, for instance in the dispute on Owambo communal farmers "expanding their land holdings and use of pastures into neighbouring Kavango and Kunene" (Mendelsohn, 2008, p. 17). In this regard, a Namibian scholar and member of government warns that more emphasis should be accredited to the "*social contract* with the governed" or connecting "moral reasoning and political justification" in African governance systems, for those were key to effectively embrace the 'modern' premises of the rule of law and judicial independence (Diescho, 2008, p. 39). It is therefore necessary to maintain legal discussions and definitions in negotiation, which is done by means of promising a new land bill (Nakale, 2016), that is expected to make urgent adjustments.

Legal delays and limited resources that grow from the multiple simultaneous claims would urgently require transitional and emergency laws and judiciary support. Because those are absent, however, the arguments and disputes are perpetually complexified. In addition, various layers of tenure contracts and security standards are promised to communal land users, yet often not provided. One reason is certainly the foreign origin of this version of tenure security, of land valuation and resource management, which is applied without concern for how those might affect locally evolved logics and norms. The implementation of the Communal Land Reform Act illustrates how, despite an effort and will to include customary leaders and laws (Hinz, 2008, p. 160), the state has to act as a central power, in order to maintain a trustworthy image as a reconciliatory advocate, with different aims and different strategies, however, without obstructing any citizen's move towards 'development'. The centralising and hierarchic construction of Namibia's state judiciary, but also the formal inclusion of customary judiciary process that seemed compatible, have considerably transformed the judiciary logic and processes in the country. This subject is going to be analysed in the following chapter.

## 7.3. Plural concepts and practices of Justice: a challenge for Land Reform

This chapter aims to show the differences between statutory and customary concepts of justice and their judiciary proceedings. By illustrating the ideas and history of each, the significance of the communal land reform implementation will be further underlined as a thorough and continuous exercise of mutual alignment. This chapter attends to the question: How does the coexistence, or rather competition, between the two concepts and practices of justice define land use and governance in communal areas?
A distinct focus is directed at how land reform is legally and institutionally absorbed in the existing local judiciary system and normative discourse, and to what extent it serves as a stage to negotiate the custom-state nexus in governance authority.

In order to morally reconcile Namibians with the discriminations of the past, and to credibly promise a democratic and culturally diverse future, an efficient judiciary is pivotal. In this attempt, the Namibian government has recognised customary jurisdictions and sanctions as substitutes or complementation to its own (Larcom, 2014, p. 209). Each of the two judiciary fields, the Namibian government and the Kwanyama TA as a sub-juriscdiction, promote a different concept of *justice*. *Justice*, in this setting, is not to be understood as an absolute ideal – as its plural use indicates – but refers to a situational and referential *sense* of justice. The system of plural recognised *laws* and multiple land reforms underlines that the government, too, considers multiple senses of justice being at stake. The acknowledgement of these (sub-)systems or fields of customary justice are of special interest, since on one hand it is viewed as evidence of society's "transition from a period of violence and oppression into a more just future" (Woolford & Ratner, 2010, p. 6), but on the other as a hapless attempt to sustain colonial structures, (Mamdani, 1996; Ramutsindela, 2001). This chapter particularly focuses on how these *justices* and their respective judiciary logics and processes confront each other and challenge local governance actors in daily life.
And as a matter of fact, statutory and customary processes exhibit different takes and prioritisations of causes, mediation and solutions to conflicts around land disputes, expressing ultimately the distinct concepts of justice. Legal and judiciary pluralism implies a multitude of dispute settlement fora, each of which defines the "norms or legal codes" it refers to, and "the legitimacy, authority and fairness of the procedures used" (Crook, 2008, p. 132). As a result, "various actors draw upon a range of, often competing, jurisdictions in their attempts to settle land claims" (Evers et al., 2005b, p. 6), even if mostly only in discourse rather than action.
Land governance in the Ohangwena region provides evidence that indeed both judiciary systems and their normative, at times competing, references are subject to controversial debate. This chapter offers exemplary lines of disputes, and strategies of negotiation and (re-)adaptation. Judicial subjectivities such as traditional communities, TAs or Communal Land Board members inevitably consist of individuals who move between fields and thus between different concepts of justice. Despite these obvious fluidities, the Community Courts Act (CCA) (Parliament of the Republic of Namibia, 2003) was an important and long-awaited step to allow for transfers of cases between the community and the magistrate court (Friedman, 2013, p. 265) but it yet fails to provide clarity for the process and terms of judiciary transferences, and to eliminate some of the "underlying constitutional contradictions" (ibid. 2013, pp. 115–116). Land rights are among the most evident examples of such contradictions, because disputes related to land often involve subjectivities and argumentations

from either normative field. The CCA has thus merely served to create a technical connection between the statutory and the customary field, without bridging any deeper logical gaps.

### 7.3.1. Traditional and statutory concepts of Justice

The co-existence of two judicial fields can take momentum against the formally defined priorities. After all, both the national as well as the customary logic of jurisdiction base their legitimacy on the claim to be representing the community's normative standards (Coicaud & Curtis, 2002, p. 14). Yet, they each draw from a differently grown moral fabric: Land disputes, when brought to a court, often epitomise a persisting contradiction between local norms and state law, and at times their underlying moral references to justice. Dispute cases can, therefore, be seen as windows into governance logics, uncovering the differences in the ways statutory and customary land governance institutions negotiate and prioritise cases, how they approach, mediate and solve conflicts on land.

The image of customary leaders as inherently fair and unequivocally legitimised within their communities or jurisdictions is one example of different fairness and justice fundaments: Gender equity initiatives for instance, have long highlighted the unequal treatment of men and women, in customary inheritance rights of land. Yet, the CLRA ascribes the TAs a responsibility to manage land in a sustainable and fair manner (Parliament of the Republic of Namibia, 22 December / 2000, p. 5). The official assumption on the fairness of a TA is inflicted by their personal interests, disposal of capital and networks, and ultimately, by what they see as their authority's fundaments, which often contradict the alternatively advertised 'western' discourse on justice. The latter brings ideological clashes between certain customs and statutory narratives to light: be rich, but not corrupt; be male but defend equal rights for women; be an active member and participant in village life but a detached impartial administrator; be a TA but also a citizen; be *traditional* but also economically resourceful; be conscious and respectful of customs but avoid tribalism. Among the many conceptual frictions between what customary and statutory courts consider as *just* or *justice,* two topics will be looked at in the following: How in either judiciary the subjects identified and prioritised with regards to their access to mediation or even to participate in the negotiation of justice or verdicts, and what they aim to achieve by their judgements. These perspectives are to give insights into how each concept of *justice* prioritises different violations, people whom it ought to be restored for, and who is to *pay* what kind of retribution.

#### *7.3.1.1. Different concepts of a judicial subject*

Customary and statutory jurisdictions conceptualise their subjects and subjectivities differently, in relation to their respective character and prioritisations of *justice.* Rules of *kinship* (Knight, 2010, p. 26), inheritance and *belonging* more generally (Lund, 2011, p. 9) are some of the social rules that define a concept of justice, and that also have a high value in negotiating claims "to resources and to jurisdictions" (ibid. 2011, p. 9). In governance systems in which rights to resources rely primarily on social networks and capital, such as the customary land governance system of the Oukwanyama, the value of social rules is likely to be of more weight than in those that rely on documented titles and formalised institutions. Arguing along this separation, scholars frequently highlight the "social embed[ment]" of customary land rights (Knight, 2010, p. 26), deducing that customary rules tend to ambiguity, which enables manipulations of land rights and kinship relations (ibid. 2010, p. 26;

referring to Quan, 2007, p. 53; Berry, 1993). However, it would be misleading to overstate this difference, for there are certainly ways to manipulate and negotiate within the formalised state judiciary.

Several scholars have called it trite that African law is inherently community-based and thus adverse to individualisation, that it is "a community-based system of law in which rights are generally relational and not held by individuals as atomistic beings, but as members of a group and relational to the other members" (Wicomb & Smith, 2011, p. 427; arguing along similar lines: Claassens & Cousins, 2008; Olivier De Sardan, 2008, pp. 17–18). Instead, I argue, the difference lies deeper: in the extent to which interpersonal relations are formalised and regulated in the statutory field, which has abruptly adopted legislatives that have slowly-grown in European politics. However, the statement is right in its implied consequence that submerging customary rights with individualising terms of contract – as the communal land registration is about to do – will fundamentally change their meaning (Wicomb & Smith, 2011, p. 427). The example mentioned earlier, of the attempt of naming head- and subleasers within commercial farming areas, illustrated how formalising customary titles and terms of tenure are prone to be met with suspicion, both from those who fear to lose status through the new conditions and others who see it as an opportunity to improve their position. The attempt of translating the patriarchal relations between land users in the cattle post areas into a language that is accessible to the state judiciary, is an unsatisfactory and unsettling enterprise. The most fundamental fear relates to the overall lack of knowing the consequences, as these types of titles are unprecedented in the region, and unique in many aspects in the world.

Traditional procedures refer to a subject differently than is done by state law and institutions. When it comes to determining a customary fine and personal rehabilitation, an Oukwanyama court does not treat accused an offender as an individual in his decisions, actions and accountabilities. Instead, relatives are often held co-accountable, and are expected to enact a particular role during mediation as well as after the passing of a verdict. If a convicted person is not able to pay the fine, family members or relatives are expected to step in to pay the debt:

> "[Y]our family will actually pay, your uncles everyone, they will put things together and pay." (Interview Govt official S, 17.7.14)

And in case an accused cannot attend trial, family members, instead of being called as witnesses, take the role of the accused and perform (self-)defence. Consequently, the verdict and public denunciation is also extended beyond an individual perpetrator: In a community court hearing, during which a man was found guilty in absentia, I observed that his parents and siblings attended as his representatives and were treated as co-responsible of the crime. This became particularly blatant when one of the jury members in the community court, in reference to the mother of the accused, exclaimed:

> "Meekulu [*the mother/old lady*] is a liar. Just like her son!" (Field Notes: Customary court, 04.12.2013)

After the payable fine was settled by the jury, the same mother immediately stood up and handed over a first down payment. Thus, customary judiciary mediation is certainly more removed from the concept of "each-for-oneself-ism" (Olivier De Sardan, 2008, pp. 17–18) than statutory procedures claim to be.

In contrast to the formal basis of international judiciary values, this customary format of mediation and conviction offers a more material and immediate reconciliation for the victim. And such priority of compensation clearly illustrates the power of social pressure and communal enactment of common-sense norms and values. This leads to a second characteristic of a non-individualised

responsibility: If the focus of mediation lies on reconciling the victim rather than on punishing the offender for a legal trespassing, the naming and blaming of an individual is less significant than it is to find a person to pay compensation. Such shared responsibility or extended judicial subjectivity is founded in a perception of individual personalities as solidified, unchangeable, and ultimately ascribable to the person's familial belonging. This can be observed in the common use of typification of individual characteristics:

"**He is stubborn**"

(Interview HJ 13.3.13; similar: VHM AA 22. + 26.11.13; Govt officials PA, 19.7.14; and DK 14.11.13)

"**he is a thief and will always be a thief**"

(Informal talk Police officer, 10.5.14)

"**there are those [people] that are good and there are those that are really bad**"

(Interview VHM AA 22. + 26.11.13: 44-45)

Such solidified images of a subject contradict the logic of state justice, which highlights equality in opportunities, as is proclaimed by Human Rights and other universalised normative frameworks.
A particular confrontation is inherent to the question of gender equity. In customary justice, a thoroughly geronto-patriarchal principle not only define the concepts of a judicial subject, but also of judicial authorship. When a Senior Headman turned to a woman who was involved in a fight that took place at a shebeen, he strengthens and renews respective loyalties and power divisions:

"People are now wondering: Are you not married? When does your husband eat?"
(Field notes: Traditional district meeting, 19.07.14)

Statements of this kind intrude into a deeply personal, even intimate realm, within which legitimately commenting on or mediating is foremost reserved for family members. Consequently, one must presume that women are deemed addressees – not authors – of the expressions of *public* opinion that is negotiated in such meetings. They appear to be treated as inherently partial. Consequently, the criteria defining who is "actively involved in the creation of new law" (Bennett & Vermeulen, 1980, pp. 214–215) in the customary sphere, is built on a geronto-patriarchal logic. And while it is clear that no jurisdiction includes "all members of the community" (ibid. 1980, pp. 214–215) in the creation and defence of its law to an equal extent, yet, the neglect of female and younger community members raises increasing opposition. Backed by a growing prevalence of the gender equity-narrative in local discourse, they increasingly fight for a status as participants and fully co-authors in traditional governance and justice.

These fundamentally different, and even competing, expressions, and enactments of concepts of judicial subjects are a source of confusion and judiciary complexity in communal areas, where each person is subject to both jurisdictions.

#### *7.3.1.2. The problem of parallel jurisdictions*

Due to their multiple occurrence in every actor, judicial subjectivities cannot be contained neither spatially nor within one judicial field (Lamaison & Bourdieu, 1986, p. 119). The practice of justice and legitimacy in the area of this study is majorly affected by the lack of a defined *area* of jurisdiction to

their correlating traditional (judicial) authority (Berry, 2000; Kaag, 2005). As a result, most formally recognised TAs are crossing into multiple regional government territories and their hierarchies correspondingly. The only formal definition of spatial attributes of a TA jurisdiction occurs with their inclusion into the regional Communal Land Boards. However, this ascertainment does not offer any spatial definitions *within* that region. The fact that customary 'territories' do not correspond with those of regional governments adds a further complication to field-transgressing procedures and laws.

The lower courts in Namibian judiciary are the magistrate Courts which on different scales of the territory represent state law (criminal law, and beyond regional level also civil law), and the Community Courts, which were established to "give legislative recognition to […] the jurisdiction of the traditional courts that render essential judicial services to members of traditional communities" and align them to a certain extent with the procedural and technical requirements of state courts (Amoo, 2008, p. 90). The jurisdiction of a Community Court is "to hear and determine any matter relating to a claim for compensation, restitution or any other claim recognized by the customary law", provided the matter "arose within [its] area of jurisdiction" and among actors who relate to the customary law it represents (Parliament of the Republic of Namibia, 2003, Sect. 12 a)b)). Thus, community courts have civil and criminal powers, but are limited in their jurisdiction through prohibition of custodial sentences (Amoo, 2008, p. 91). Officially, the line of appeals from community courts reaches via the magistrate to the High Court (ibid. 2008, p. 92). The Community Courts Act, however, states that cases may be transferred from the Community to the magistrate courts, if:

> [T]he community court […] is of the opinion that [it] does not have jurisdiction to hear the matter; or (b) for any other good cause, […]. (Parliament of the Republic of Namibia, 2003 Sect. 21. 1.a)b))

The magistrate court, too, may in turn pass the case on to "any other community court or […] magistrate's court of competent jurisdiction" or return the case to "the community court which referred the matter to it" (ibid. 2003).

In some administrative issues, such as the registration process of land rights, TAs, or even Village Headmen, are directly subordinated to the Ministries of the central government (Parliament of the Republic of Namibia, 2002 Sect. 23). However, in daily governance, Village Headmen first respond to and deal with lower state institutions, such as the municipal or regional officers. This exemplifies in the case of an elderly lady, who stated that her parcel was shifted from Ondobe village to the neighbouring Etope village. Being suddenly relocated to, and left at the mercy of another TA jurisdiction, authorities she cannot surely identify, she feels uncatered for, even threatened. She claims to be lacking any social ties within the new village, which would be necessary to receive information and raise claims towards this authority (Interview villager EN, 6.12.13: 13). The urgency of unsolved territorial matters is – despite the assumed vicinity of TAs to their subjects – of course more strongly perceived by those directly affected than by TAs, who are not facing threats to their immediate homestead. Therefore, although the village boundaries are unquestionably under the authority of the TA, land users sometimes seek the assistance of alternative authorities in solving a dispute. Villagers who turn to the municipal councillor in such cases (Interview Municipal Councillor EN, 17.7.14: 6-14), may for instance be hoping for a more attentive listener whose authority is embedded in a different logic of loyalty, priorities and accountabilities. As a formally elected and fully paid employee and political representative in the state apparatus, the councillor is (ideally) constantly present and reachable, without being bound to familial, geronto-patriarchal alliances as

are most Village Headmen. This alternative option for villagers is perceived as a direct threat by some Headmen:

> "There is misunderstanding between political boundaries and Traditional Authority boundaries. That's why sometimes you'll find the headmen do not really understand the difference between these two. They think if the boundary, the political boundaries overlap their Traditional Authority boundaries, they feel like ach, the… these political people, they want to overpower us, eh… [with] their boundaries." (Interview Municipal Councillor EN, 17.7.14: 6-14)

To avoid conflicts with the Village Headmen in his district, the councillor usually refuses to get involved with land disputes (ibid.: 13-32), because it is not an explicit area of his competence.

Spatial incongruities between such multiple and arguably parallel jurisdictions certainly add to the confusion about responsibilities. It can lead to institutions mutually pushing a case toward another, delaying the solution of legal requests or accusations. This delay, although at times certainly impinging on the extent of justice evoked, can also be an opportunity: By forcing more institutions to engage with the case, its underlying narratives gain a broader audience and may reach a platform upon which its logic or common-sense bases may be negotiated.
This (different concept of justice) certainly complexifies the TAs and CLB's task as justices, as they act as members in both fields – sometimes at once – while mediating and judging a single issue of dispute. A TA member for instance, is by definition, part of his community (Parliament of the Republic of Namibia, 1995b Sect. 3.1; Parliament of the Republic of Namibia, 22 December / 2000 Sect. 4.1), and TA representatives at the CLB are, by definition, simultaneously both part of a statutory institution, and also of the TA they represent (Parliament of the Republic of Namibia, 2002 Sect. 4.1.a)). This increases the judicial complexity disproportionally as compared to contexts with only a single official judiciary in place.
In theory, both, state law and customary law ought to apply equally to each of its citizens or subjects within their respective jurisdiction. In both fields, however, equal access to decision-making institutions is restricted in physical terms, due to a lack of infrastructural embedment of peripheral communities, but also by norms of procedures and judicial codes, which require certain knowledge and/or demographic features, as will be shown later. Such inequality in physical access adds to an already blurry, multi-layered judiciary scene. The boundaries of jurisdictions reflect the same blurriness as the division of tasks and authority among institutions and hierarchies.
This results in a judiciary backlog, frustrations and uncertainties among TAs, regional, and municipal clerks, but also among village members. Actors with the necessary political and legal capital, however, may transgress and 'play' these fields to their benefit. The next chapters investigate how such benefitting practices take place, and how they implicate the TA's discretion of power as they test their preparedness for negotiations of norms, common-sense, and justice.

### 7.3.2. The particularities of customary justice

This chapter is dedicated to the question what features of the customary justice and judiciary allow it to coexist with the state judiciary. In both bodies of law, statutory and customary, substantive laws (or '*substance matter jurisdiction'* Siegele, 2008) are well-defined – and at times over-defined. Procedural laws, in comparison, tend to lack clear formulation, and are completely absent from

documented customary laws (Hinz, 2010a). As a result, many decisive procedures remain inexplicit, such as the translation of cases to state courts, to the Communal Land Boards, or even at which levels of judiciary lawyers may be involved (Amoo, 2008, p. 92). Clearly, this is partially owing to the unequivocal string of hierarchy that was outlined earlier. The absence of procedural rules makes it unclear how and when different judiciary institutions and authorities may be addressed, as is shown by the many cases of requests which are received by the CLB but redirected back to the TA. By their transferring from one field to another, cases and practices become subject matters to both jurisdictions, but also to a *plural legal dimension*. It is thus of essential advantage for any disputant to know about both judiciary fields and their procedural rights, when negotiating the most agreeable judicial procedure and outcomes for his/her own case. This knowledge is particularly substantial to employ an "argument of belonging […] as a claim to resources and to jurisdictions [… and] in order to pursue [one's] interests" (Lund, 2011, p. 9).
Although a further cause for delayed implementation of state law, these differences in definitions and prioritisations may be necessary, if it holds true that the imposition of state court procedures on customary law inevitably transforms its "substantive rules" (Benda-Beckmann, 2001b, p. 5707). According to this line of argument, neither of the two justice concepts would be practicable if their connections and transgressions were explicitly outlined. Another position relativizes the extent to which procedural justice requires formal prescription and control, emphasising instead, the role played by *norms* in mediating between notions of justice and policies (Henham, 1995, p. 233).

Although the TAA commends the TAs of Namibia to ascertain their customary laws (Parliament of the Republic of Namibia, 22 December / 2000 Sect. 3.1.a)), this instruction did not explicitly include procedural laws, to which state law (CLRA) only mentions this:

> In any proceedings before it a community court shall apply the customary law of the traditional community residing in its area of jurisdiction […]. (Parliament of the Republic of Namibia, 2003 Sect. 13)

After this proclamation, oral testimonies would be a legally acceptable instrument to the procedures and decisions of customary courts (Amoo, 2008, p. 92). The acceptance diminishes, however, when a case is transferred from customary to the state judiciary field: State law insists that the community court is a "court of records", implying that it would be held accountable to treat cases "within the mainstream of the [state] judiciary in Namibia and subject [its] proceedings to formal evaluation and review by the superior courts" (ibid. 2008, p. 90). A further dilemma of this kind lies in the issue of legal expertise. Judges in community courts are not required to be experts in common law, and consequently their cross-field accountability by far exceeds their expertly resources, when treating them as judicial authorities.

Subsequently, some habits of documentation and formalisation are adopted in customary proceedings, however, in a non-uniform and irregular way. Evidence and testimonies in customary hearings and mediations for instance are of different quality, as they usually lack technical, documentary, and expertise resources. At a community dispute hearing, a stone that was presumably thrown, and a tuft of hair that has been pulled out, were presented as pieces of evidence for a fight that was mediated on the level of a customary district, which – without the option to consult expert analysis – would fail to meet the statutory standards of judiciary procedures. Possibly due to some people's awareness of this contradiction in logic, an extensive discussion emerged about the legitimacy of such artefacts as proof in the ongoing meeting.

Yet, customary courts must at least be prepared to respond to both perceptions of justice: They have to offer subjectified, personalised customary hearings on the one hand, but on the other hand, their decisions need to be 'objectively' reproducible in case the matter is challenged and appealed before a statutory institution. On a village level it was regularly discussed in a rather open forum, how much documentation and formalisation of procedures was necessary and acceptable by community members (Village Meeting 01.02.14: 57-61; 71-73). On the level of community court, however, this tightrope walk seems to cause latent insecurity and tension. At a hearing, a relative of an absent suspect was scolded and fined one head of cattle for taking notes during the proceedings:

> "Why are you taking notes here? It is not allowed. Why should you write [things] down now, as if you were the secretary? You can write in Windhoek!" (Field Notes: Community Court, 04.12.13)

The reference to Windhoek invokes a direct comparison with – and distinction from – state law, state courts, and their respective proceedings and expected behaviour. The fine was a symbolic reminder that the customary way was different from the statutory, and it was perceived as arrogant to be preparing for an appeal by taking the task of documenting into one's own hands.
Discrepancies between vernacular and imported ideas of justice and judiciary procedures are further observable in the way the public is involved in the process, and in the definition of who constitutes this public. Collectivity plays an important and distinctive part in customary judiciary procedures, both with regards to community's voice in the enactment or redefining accurate procedural norms, and in the ways how a victim and/or the community requires reconciliation through the judiciary process. The following chapters look at the features of procedures and verdicts that are characteristic for the customary judiciary, illustrating the difference between the justice concepts at stake, and how those differences affect land governance.

#### *7.3.2.1. The proceedings of justice*

Exploring the customary judiciary proceedings and their embedment in local everyday life, aids in understanding the impact of the state's legal and judiciary expansion in communal land governance and individual land tenure contracts.
On the question of who was providing order and security, an elderly villager and former village secretary replied that any matter of discontent was always first sought to be settled by the household elders (Interview with a retired Village secretary AN, 08.03.13: 111-118). Only if the issue cannot be solved within the household is it brought to the TAs, first to the Kapatashu (the deputy Headman), and then to the Village Headman. Lastly, "if something has happened, which the Kapatashu and headman cannot overcome, then… we go to… the police" (ibid.). However, he is quick to emphasise that in most cases it was unnecessary to involve the police, because the informal and customary systems of mediation worked rather consistently. Illustrating its parallel status to the police, he then goes on to explain in detail the TA hierarchy:

> "To the police we only go if we cannot solve our problems. Ja. Many times, we solve our problems in the houses, we go to the headman. And… if not possible… Sometimes we... We have also the senior headmen. If […] the headman himself cannot solve it, we refer our cases to the Senior Headman. Ja. And… if not … [we go t]o the Queen! Yes!" (ibid.)

While the hierarchies within each field are clear, his quote unveils an unclear distinction of responsibility between them. Another informant, a Village Headman himself, illustrates the lower end of the TA hierarchy with a slight adaptation: In his version, if a dispute cannot be solved within a household, a Headman would also take on the role of an informal mediator, basically without exceeding the level of a household. Referring to his own case as an absentee Village Headman, he underlines that his absence from his village merely shifts the location and the demographic group addressed by his mediating services, but not the depth of contacts to his subjects:

> "Those people from my village, some of these young[st]ers who are working in Windhoek, [they come] to see me anytime they want to see me! We meet, we discuss… Ja, we solve some problems directly here." (Interview VHM SK, 16.02.14: 95-101)

This way, a matter can be mediated and solved, before it develops into a publicly perceived dispute. This eases the community members' reluctance to seek their leader's consultation, in turn strengthening the leader's knowledge on intimate familial matters - his powerful "social weapon" (Gluckman, 1963, p. 311). Knowledge of this kind requires the reliable confidentiality of its guardian, and endows a Village Headman with personal, even intimate information on group members, which is unattainable by state authorities.

Another important distinction from the statutory judiciary can be observed in the fora and co-authorship in judiciary negotiations. Whenever a dispute cannot be solved through intra-household mediation, the TA calls for a public meeting, where the case, and the TA's opinions, are tested against common-sense norms and spontaneous reactions by the community, the judicial co-authors. In this case, a TA's co-authors of legislation are elderly men in the community who have acquired a position in what in some instances was called a village council. Thereby, a Village Headman's community membership is clearly an advantage for their assumed leadership skills, whereas in the statutory field, such references would trigger accusations of bias, conflicts of interest, corruption, and other normative transgressions.

Norms are constantly changing, and customary meetings or dispute hearings offer a special platform for establishing and testing their re-calibration. To this end, the Headman or the respective hosts often instigate a discussion at the beginning of a village meeting regarding behaviours they have witnessed in the village and identified as problematic: For instance, deploring that people tend to spend all day at the shebeens during the rainy season instead of working in their fields (Village meetings 30.11.13; 11.02.14; 19.07.14; Community Court hearing 4.12.13).

It is a way of exploring the current state of common values, priorities, and concerns in an immediate dialogue, and for (re-)establishing and re-testing a judiciary logic. General observations of this kind at times stimulate present community members to raising a specific case they have witnessed personally, or what they suggest as a solution. This way, the process of litigation is informal, even comparable to the idea of *gossip* as a tool to deliberate and maintain the "unity, morals and values of social groups" (Gluckman, 1963, p. 308). Clearly, such procedures are only applicable with a limited number of participating members.

Based on such intimate knowledge as a fundamental pillar of a TA's legitimacy, it follows that subjectivity is openly referred to and emphasised during customary hearing. When judging a community member's entitlement to access the judiciary discussion, reference is taken at their personalities, or rather at their interpretations by leaders and village elders. A young man asks for

instance the present leaders at a village meeting why he was denied attending a meeting with the councillor, in which his own case was discussed, to which the Village Headman replies:

> "We know that you're always going to bars and staying until past midnight. We don't know if you might want to stab the councillor." (Statement by a VHM at a village Meeting, 30.11.13: 29-30)

This way of characterisation of subjects is also observable when a Village Headman gives with regards to land allocation:

> "People should not just put their shebeen where they find others. They must ask for permission from the owner of the plot. Behaviour and history of the person decides on whether they will get the ok. They should also give some money." (Statement by a VHM at a Village Meeting 1. 2.14: 40-45)

Such explicit personal subjectivity in judgement follows up on a widespread conviction that nobody knows a person "as well as the neighbours" (Field notes: Village meeting, 19.07.14), and that consequently those neighbours are the most reliable judges of a person's guilt. With those instructions, the Village Headman passes down authority to his subjects (recognising that land sales are already a reality), but at the same time appeals for adhering to the customary logic of assessing people's requests to join the community. It may be seen as an attempt at including the loyal community members more strongly in the retaining of traditional land allocation principles. Especially among younger community members, such as the young man appealing his exclusion from the meeting, who have become accustomed to the state's formalised and declaredly objective norms of equality, such subjectivised authoritarian rulings increasingly lose legitimisation. Consequently, they often rate the TA's judgements methods as "biased" (Interview Govt Official S, 17.7.14: 121-129) or "not fair" (Informal talk Govt Official FS, 17.07.14). In response, traditional stakeholders were observed to increase the severity of their verdicts against those young who lack respect for customary law and its representatives, as which they see themselves. When discussing the case of a fight between two boys at a village hearing, an elderly man complains:

> "The older boy does not have manners. The way he answers to our questions is so aggressive." (Field notes: Village meeting, 19.07.14)

The boy was ruled to pay 1500 NAD to the injured boy, and an additional 1000 Namibian Dollars to the TA, with the explanation that he had shown insufficient respect. After the verdict was passed, an elderly man addressed the mother of the injured younger boy:

> "Is he not a trouble-boy? You never know your boy as well as the neighbours." (ibid.)

In one sentence, he rhetorically asks the mother about her son's manners, and, without waiting for her to respond, detracts her potential answer of any legitimacy. He takes the opportunity to publicly educate both the mother and her son about the community's behavioural norms, re-enforcing the geronto-patriarchal social structure. He further emphasises his male superiority when he directs another rhetorical question to the boy himself:

> "Boy, are you calling the other one *Blacky*? Are you his father to be the one naming him?" (ibid.)

The pedagogical task within the patriarchal social system that still prevails may easily be dishonoured as despotism, and indeed, this form of personal rebuke indicates a strong intention of serving

emotional redress, rather than aiming for a judiciary process that ground on detachment and objectivity. However, a closer look reveals that these mediation procedures, too, aspire a neutral outcome, albeit neutrality and detachment are located on a lower scale: Family members are explicitly disqualified to negotiate a judgement, and argued to be complicit if not in the crime itself, yet in their failure of raising their child or preventing them from doing what they did. A certain degree of detachment of a judge from its subjects, is arguably a prerequisite to pass a fair trial, also in customary mediation. Another indicator for efforts to neutrality in customary dispute mediation is the emphasis on peer-control:

> "If there is something that I cannot handle, I always seek help and guidance from [neighbouring Village Headmen]; I cannot only talk to my children or the community about it, if I know I cannot really figure out something I ask for assistance." (Interview VHM JK, 8.03.14: 114)

This description illustrates how customary procedures are seeking a compromise between a customary particularisation of cases, while seeking advice from other TAs. It is likely an attempt to raise their legitimisation by state norms of unbiased and fair mediation. A Village Headman's daughter – who is also his village secretary – specifies that this peer-controlling system has become an integral part, as a monthly meeting brings together 36 village headmen from the TA district with their Senior Headman who provides "guidance" (ibid. 116). This narrative is likely to be the result of an upward accountability that has been adopted from the state bureaucracy.

TAs hence include aspects from both judiciary fields in the process, which at times appears contradicting, for instance when a TA commences a traditional meeting by giving instructions like these:

> "People who came for a hearing should sit with respect and ought not to disobey. Just like you'd do in a magistrate's court. Show respect to the elders, as this is a traditional meeting." (Field notes: Traditional district meeting, 19.07.14)

This statement shows clearly the ambivalence of having a strong normative competition from the state judiciary, while highlighting the distinction of the court's fundamental power and legitimacy: That the basis of authority lies with the geronto-patriarchy rather than with technical and legal experts. The constant reinforcement of geronto-patriarchal logics and structures occurs through its continuous denial of a voice to young and female community members in the negotiation of cases, of laws, and of social norms. A young woman for instance is convinced that her female-headed household is being taken advantage of by neighbours who have fenced off part of their land, because of the way her community views women:

> "You know, they only do this because we are women but if male relative agreed to remove those poles, nothing will stop them […]. It's just us ladies, we have soft hearts and just as my mother is saying: 'Peace is all that really matters; don't fight for a land'." (Interview Villager CK, 25.11.13: 38)

Customary justice is not only unequal to genders in its procedures, but women are even deterred from raising a case as they could not 'win' on this platform – it seems they must decide between peace and insisting on their land rights. And, according to the informant, this would not be changed by a certificate from the state.

This chapter has shown that although customary mediation offers target for accusations of being partial, subjective, and biased, it also exhibits strong democratic and participatory features, due to the public character of mediation and passing of verdicts. A TA's behaviour is continuously and immediately checked for conformity "with the opinion expressed by the community", and in case of failing to adhere he risks a "reputation of arbitrariness" (Bennett & Vermeulen, 1980, pp. 214–215). But the understanding of who this community is, and how it is best represented, is certainly transforming with the increasing presence of statutory and constitutional concepts of equity and citizenship. With a focus on customary verdicts, the next chapter further illuminates how customary jurisdictions aim to meet the needs and ideas of their community through their judicial verdicts, ideally more successfully than their statutory competitors of judicial services, if they are to maintain a clientele in the future.

#### *7.3.2.2. Customary verdicts: delivering justice to whom?*

The procedural differences raise again the question: which concept or outcome of justice is aspired and promoted by traditional leaders? And, after having acknowledged the need for a judicial distinction, despite some field-traversing norms: How are distinctly *customary* verdicts framed? In state law, legal transgressions need to be punished for the sake of representation of the law's power and universality (Foucault, 1994, pp. 64–65), as a crime is primarily interpreted as an attack of the respective judiciary and the government it represents. A customary court, in contrast, aims to order redress for an injury to a victim, as a pragmatic appeasement among the subjects. Certainly, customary mediation processes contain a normative negotiation beyond the single case, too, however, with a stronger emphasis on the immediate social and temporal validity. After all, they cater for manageable-sized jurisdictions, in which "explicit 'legal' rules more closely conform to implicit social norms" (Fuller, 1994, p. 11).

> "Your neighbour is the most important person in your life: keep him closer. Because if this house burned down, he will be the first to come to your rescue." (Interview Villager CK, 25.11.13: 2)

This "traditional saying" was recited by a villager, when she explained how she coped with her neighbour who had taken trees which she believes belonged to her mother. This is one of many instances, in which I have come across such an attitude of resignation towards a conflict. Especially among older women, peaceful co-existence, and maintaining social cohesion, appears to be the primary aspiration. This resignation is by no means intended to simply forfeit all claims or rights. It is merely a sign of prioritising other (potential) needs for support higher than to legally reclaim one's resources (or even only the formal rights over them). In return for allowing some boundary shifting to happen, the neighbours are expected to offer help in moments of more urgent need. Such expectations of mutual rights and responsibility however require a fundamental condition that all involved parties are present. Otherwise, the neighbourhood relation could not be accountably engaged in by both parties. This community cohesion, and with it, the imaginary of such neighbourhood relation, seem to be slowly fading due to widespread absenteeism among the younger and more urban-oriented demographic group. This is a challenge for the Village Headmen and TA in general, who strongly rely on community cohesion and mutual responsibility not only in judiciary procedures, but also for the effectiveness of their verdicts.

Customary fines, for instance, considerably lose effect, especially with legally knowledgeable and/or wealthy members, who could easily afford the 'prices' named in the documented law. For those

individuals at least, it seems an absurd translation of bodily harm into money, and they refuse to comply or are not deterred by the fines. At a village gathering, a Village Headman gave an example for the disrespect prevailing among young members of his community for their customary verdicts. He recounts a traditional hearing in which a woman was found guilty of assaulting her father in law. When she was told the amount she had to pay, "she replied that she should have killed him, so that she could pay more" (Field notes: Village Meeting 30.11.13: 39-43). With her statement, the lady expresses her anger toward her father in law, but also disrespect toward the Village Headman's verdict. A young town clerk holds a similar view about the limited deterrent effect of the customary fines:

> "[I]f you kill someone […], you only pay 12 cattle and it's done. [… S]eriously, […] it's very weak. And […] I don't think it would even reduce crime and that." (Interview Govt Official S, 17.7.14: 121-129)

Actors who are not impressed by customary fines – and the authority who delivers – also deny them the social reinvigoration which is an important side-effect support to the verdict itself. It hence appears that different forms of collectivities are being established, for those who support or truly suffer from customary verdicts, and those who do not feel affected by it. This is relevant because the key addressee of a judiciary outcome in customary mediation is the immediate collectivity rather than an abstract and anonymous 'public'; and this collectivity is now dissolving into groups of different hybrid justice models and common-sense knowledge.

Customary fines however represent another layer of complexity that was introduced by the state involvement in customary governance. Compensation fees in cases of physical harm are the predominant issue that was documented in the effort to ascertain customary law, as prescribed by the TAA (Hinz, 2010a, p. 5; Parliament of the Republic of Namibia, 22 December / 2000 Sect. 3(1)). And although these standardised amounts seem fixed, verdicts may still be adapted to particulars of the case, or of the attitude of the accused or the accuser. This adaptability is necessary for traditional courts to keep acting "within terms of the value of reconciliation, not impartial application of rules" (Bennett & Vermeulen, 1980, pp. 212–213). Upon being asked, how he determined the amount of compensation exactly, a Village Headman states:

> "It will depend on what the person did. Well there are those who accepted their fault and they may even say I was drunk when I did this. So sometimes it's good when someone has accepted their mistake, their punishment is more lenient." (Interview VHM AA, 22. + 26.11.13: 20-21)

This statement gives the impression that customary verdicts are adaptable to similar criteria as the statutory; a difference, however, lies in the extent to which the argumentation is objectified. The difference between customary and statutory verdicts is comparable to Foucault's description of pre- and post-reformist punishments in Europe: A plural, non-linear and spontaneous punishment and oppression was replaced by a function of punishment "with more universality and urgency, anchoring the rule of law more deeply in the body of society" (Foucault, 1994, pp. 104–105). The same Village Headman vehemently denies considering a person's wealth when deciding on a fine (Interview VHM AA, 22. + 26.11.13: 20-21). This interpretation of equity or justice is not shared by other interviewees, such as the young, male government official quoted earlier, who opines that a punishment should relate to the resources of the convicted, in order to be appropriate and effective (Interview Govt Official S, 17.7.214: 121-129).

The dilemma for traditional leaders is based in the multiplicity of concepts and fora of justice. Whereas a TA acting in sovereignty "could decide how much you had to pay", and consider a crime in connection to details of his own choosing, now, their subjects have gained a basis to "question their traditional leaders about" fines that do not correlate with the documented fine (Ubink, 2011, pp. 325–326).

Customary verdicts and the social cohesion they rely upon, are not only challenged by the increasingly heterogenous character of communities, but also by legal and administrative undermining through state law. In one of the observed villages in particular, the Village Headman laments that the fundamental sense of collectivity and cohesion has eroded (Interview VHM JM, 4.4.14: 72). In his eyes, the spatial permeation of town authorities into his village jurisdiction is a major cause for this decrease, because their procedures allow new people to attain land without introducing themselves to him; maybe, he adds, they were not even aware that their new home is under traditional jurisdiction (ibid. 69-72):

> "Because I have seen that there was a wedding in those modern houses, but no one came to inform me about it. What if now someone got injured there, where are they going to report the problem?" (ibid. 68)

Of course, the speaker is aware that the police would be responsible and available to diffuse such situations. Rather, he rhetorically underlines people's failure to engage in community rituals undermines his efforts of fulfilling his duties as a leader (ibid. 96). He feels side-lined and ineffective in his efforts to maintain a stable community network of characterised and interacting individuals, when new settlers fail to report to him and avoid entering the collectivity. Similar complaints were made in areas where informal commercial practices are on the rise, as business owners now feel uncommitted to the resident village community (*→ 7.2.2.2.; → 7.4.2.4.*). In either of these cases, the customary jurisdictions are basically depending on voluntary self-ascription by its members.
As a result, the coercive effect of belonging to a traditional community has diminished through legal pluralism in implicit and explicit ways: Explicitly, state law prohibits any forms of corporal punishment, and implicitly, it undermines social contracts and networks of community by offering an alternative moral fabric and market for capital. Confronted with these restrictions, the customary judiciary is forced to adapt, at least in parts, to a shifting priority from local, situational knowledge to documented, universalised justice.

### 7.3.3. Transgressing the judicial fields: unveiling a competing and complementing Pluralism

After an outline of the differences between the customary and statutory practices and underlying concepts of justice, this question gains urgency: How are these unequal ideas applied by land users to lay claims and define their status and defend their rights, especially to land?
Pluralism in law and regulators, says Larcom (2014, pp. 208–209), can be unproblematic, even harmonious, if they do not induce "rivalrous compliance". As the previous pages have shown, this harmony is facing numerous challenges.
Even though the state judiciary does not formally allow or encourage free choice between different judiciary fora, actors with the necessary political and legal capital at disposal may navigate towards either a state, or a customary, judiciary mediation. While most matters, particularly those involving

land disputes, are to be treated by a community court in a first instance, a disputant may strategically prepare for a statutory judiciary process. Any verdict by the community court may be appealed to the magistrate, and in a next instance to the High Court (Amoo, 2008, p. 92). As has been illustrated in the previous subchapters, the customary judiciary is put in a legally vulnerable position, because any of its judgements may be revoked or overruled on the grounds of not complying with the constitution and state law, such as impartiality of the judge, or the procedural integrity of an investigation or decision. The dilemma leads to the question: How can a state jurisdiction, which respects the principle of the "independence of the judiciary" (Hinz, 2008, p. 160), recognise a verdict that was rendered by an authority that holds undivided powers? From a conceptual standpoint, the answer would be that the two judiciary systems are incompatible, and that, consequently, the scope of authority customary leaders hold in judicial matters seems bleak. A young man explains:

> "[Village Headmen,] they have …, they don't have physical power, but they have that power that is uhm, that they are given by the traditional authority yeah. […] They only have that. Because if it's not working here then [a person] can report it there... and there it even becomes something else!" (Interview Govt Official S, 17.7.14).

However, despite these clues that customary coercive practices are slowly being undermined, the Namibian judiciary system still relies on customary mediation. It ought not to be forgotten that the author of the above quote is himself a "commuter" among a (semi-)urban lifestyle and capital market, and a local community (Pauli, 2019: 24), which places him in a favourable position in both games (Bailey 1990).

By officially including "informal justice counterpublics" (Woolford & Ratner, 2010, pp. 5–6), it has clearly stated an interest of retaining the customary mediation system working and effective. The concrete judicial practices, however, are more often undermined by state law, even if only by its mere presence. Thus, when it comes to preserving or re-designing customary practices of justice, so as to adapt them to transforming legal and practical contexts, TAs are left to their own devices, their capital forms and strategic actions. Strategies to reinforce their judiciary authority are manifold, including mimicry of state logic, discourse and mechanisms, the retreat to the power of knowledge on the community, or finding "market niches" within local community's demands from a justice, which state judiciary cannot provide.

#### *7.3.3.1. Mimicry as a tool of bridging legitimisation*

The option of appeal against their judgements of course implies a considerable pressure for the TAs, because their customary judiciary systems rely heavily on *ad hoc* testing of values against a specific case, rather than on a fixed system of rules. A Village Headman reaches the conclusion that their custom of fully relying on personal testimonies and the memory of present witnesses is now becoming a major impediment to the legitimacy of its thus established laws, verdicts, and rights.

> "That's where we… also lost some… value in running our communities. Because there is nothing documented." (Interview VHM SK, 16.02.14: 263-265)

This lack of documentation in customary governance, however, only appears as a disadvantage – or "loss" – in cases that are transferred from the traditional onto the state judicial field. Because once a dispute matter is brought to a state court, the customary form of spoken evidence is of little weight,

if it has not been confirmed in writing, he claims (ibid.: 1). Thus, some TAs react to this potential vulnerability like him, by increasingly adopting standardisation and documentation in their customary mediation practices, to be armed to meet the requests for accountability, transparency, and traceability.

The tradition of oral testimonies is tightly interlinked with the legitimacy of situational, personal assessments. Other customary governance practices such as the fees for land rights, are equally becoming more transparent and equalised within far-reaching areas (→ *7.1.3.1.*). This equalisation, however, is criticised for not being fair with respect to land size for instance. In this argument, the price for land would require adaptation to ecological conditions, infrastructural servicing, and other factors, which inform the number of resources necessary to provide for a household's subsistence. A legal expert emphasises the problematic effects in practice if "customary law conflicts with the bill of rights" (Interview expert WO, 15.04.13), such as in his eyes happens to the valuation of *knowledge* and *documents.* While both are treated as inherently different values by state courts, customary jurisdictions used to treat them as equal:

> "Our belief is, that when [some]thing [has been] discussed, then it [is] agreed. Then the people they were only making references: Kaulinge was there, Andrew was there, who was there. Then that becomes the truth!" (Interview VHM SK, 16.02.14: 263-265)

At village meetings it was often discussed how governance or judicial procedures could be adjusted in order to meet the new requirements introduced by state logic. Suggestions included the documenting of observations (Village Meeting 1.2.14: 71-73) or the deploying of witnesses when issuing summons or verdicts:

> "*Village secretary*: TA must remind their people to remove their illegal fences, give them a deadline, and let the CLB take action if they don't comply with that deadline.
> […]
> *Villager*: Those people don't come to the meetings.
> *VHM*: We must bring witnesses when we invite them [to the hearing]." (ibid.: 57-61)

Mimicry of the state's "discourse of legitimacy" (McConnell et al., 2012, p. 806) is a reactive strategy to deal with – and retain authority amidst – a lack of power, decreasing respect and simultaneously a growing upward-accountability. At the same meeting, the *Men and Women Network* was introduced, a volunteer collective that assists traditional leaders in controlling their subjects. A further task in which they support the TAs, it was explained, is to write down complaints and disputes on matters such as alcohol abuse among young people, or the abuse of state allowances like pension money and orphan support (Village Meeting 1.2.14: 71-73). This way, the TA can refer to documentations as well as witnesses, when dealing with the respective cases. To a limited extent, such measures serve to mimic a separation of powers, in order to hide some of the most evidently unconstitutional of features of customary justice. The mimicking strategy is a delicate manoeuvre: An overly accurate and extensive imitation could risk delegitimisation, too, as it might call the idea of a pluralism itself into question. For example, the stone and the tuft of hair that were presented in a village hearing *(→ 7.3.1.2.*) could well be employed as visual support of the case, whereas a laboratorial analysis of the artefacts would not integrate smoothly into the process of a personalized mediation.

This kind of artificial approximation of customary practices of justice to statutory logics adulterates the basic principles of flexibility, personification, and situatedness, which fundamentally characterise and legitimise the customary judiciary. Yet, it is also an efficient tool to gain legitimisation from those

social (demographic) groups who are increasingly convinced by the logic of the state system, its laws, concepts of justice, and procedures necessary to maintain them.

#### *7.3.3.2. Legal knowledge, rhetoric skills: keys to access justice*

By "construct[ing] and produc[ing] the most convincing story" (Evers et al., 2005b, p. 6), almost any matter may be translated into a case that is considered pertinent in either or both jurisdictions. The challenge is to know and apply in each field the proper juridical language, a system of codes that reflects which categories are acknowledged as "properly legal arguments" (Bourdieu & Terdiman, 1986, p. 835). For an actor to navigate between those two jurisdictions, consequently, knowledge on each field's legal and logical underpinnings is critical.

The case of TW, which was mentioned earlier in relation to its reflection of legal gaps and insecurities about legal authorities (→ *7.2.2.1.*), is a good example how such knowledge on state justice system expands the scope for legal and judiciary navigating between and across the logics and procedural codes of the two fields. The case took across the margins of the customary field, through the CLB, until it reached the High Court (Thiem & Caplan, 2014, p. 112), adopting a variety of rhetoric foci on the way. As his case was transferred from the customary to state judiciary, Mr. W was able to reverse his position from the accused to the accuser. The rhetorical fragmentation of the case was a crucial pillar within the process.

A member of the CLB recounts that they were alerted by community members and pressured to act by the police, who claimed that the issue gave rise to violence and death threats within the community (Interview Govt Official NJ, 13.12.2013: 110). The Board ruled that the fence was illegally erected after the prohibition of such fences came into act, and, with the help from "officials from the lands ministry, […] the traditional authority and the police", removed it (The Namibian, 2013). When the case was later brought to the High Court, the land occupant accused the CLB of having overstepped their authority with this action, because he was yet to be given more time to have his fence registered (The Namibian, 2014). By ruling in his favour, the High Court underlined how effectively a case of dispute may be altered in its formation, if it was skilfully fragmented into the fields' judicial language and arguments. And in this case, the material property ultimately surpassed the customary and statutory attempts of limiting fencing in communal areas. The decisive factor was that Mr. W had not only good personal knowledge on the state law, but also access to good lawyers, both of which are worthy instruments to successfully employ judicial language of the statutory field and fragment a dispute to become relevant and urgent for its jurisdiction. This example shows how a process can be manipulated at every stage in the judiciary hierarchy. A CLB member openly admits that she and her colleagues felt insecure about their role and their authority when the case proceeded to the High court. She also voiced her suspicion that their testimonies and "evidence" they had given as a Board were not considered in the trial (Interview Govt Official NJ, 13.12.13: 110).

The fact that almost any matter can be fragmented in such a manner allows nearly any feeling of injustice to be translated into a legal argument that is valid in either of the two jurisdictions. However, this option of transgressing the judiciary fields by re-focusing of a case is only available to actors who have the knowledge and mobility to access either judiciary:

> "[I] think the most poverty we have is the lack of knowledge! So… our laws are [made to] protect the weak people, but the people don't know about that!" (ibid.: 154-158)

Yet, the fact that the customary judiciary remains more accessible for rural populations in terms of knowledge, means, and accountability, makes it an important addition to the statutory system. It could be argued that the unequal distribution of services, mobility, information, etc., even calls for different justice mechanisms. Accessibility to knowledge on state law and jurisdiction is still hindered by basic factors such as illiteracy and language barriers but also delays and restrictions of the flow of information, which affect many marginalised citizens on the peripheries. While mobile citizens become less dependent of the TA's gatekeeping and may find ways of legal and judicial forum shopping, the most isolated – in relevant literature often referred to as the (rural) poor (Ubink, 2010, pp. 7–8; Alden Wily, 2012, p. 751; Röder et al., 2015, p. 343; Knight, 2010, p. 4) – yet remain fully dependent on TA's as their gatekeepers to any services. International organisations have recognised how this lack of information further marginalises already vulnerable groups, but their Convention papers and Voluntary Guidelines, too, fail to reach those most isolated (e.g. the Guidelines on Land tenure by the Food and agriculture organization of the United Nations, 2012, p. 6).

Exactly because each of the fields owns its particular laws and concepts of belonging, resource claims, and justice more generally, dispute cases are prone to be fragmented in the process of transfer, in a way that highlights the claims and arguments most valued in the respective field. This complexity of navigating a judicial case between different fields and procedures exposes vast socio-economic and -demographic differences: Many of the land dispute cases recorded by the Ohangwena CLB are brought forward by young and/or well-educated people, assumedly because they are most likely inclined and able to engage in a state court procedure.

#### *7.3.3.3. Plural forms of punishment: competition or coexistence?*

It is a strong conviction among state representatives, law-makers, and scholars of South African politics that TAs have the power to control and punish their subjects according to their traditional habits (Bennett, 1999, pp. 17–18). However, many Village Headmen and Kapatashus stated that their powers are increasingly challenged by statutory ideas of fairness and legality.

> "Long time ago when someone was not behaving well, … he was just told to leave the village, or the headman will find him a place which was far from people. But now no one has the right to chase someone out of the village because of human rights. He or she will go [and] report you to the Ministry of Gender." (Interview Village secretary MM, 07.12.13: 76)

Eviction to "the margins of the civilised areas" used to be a customary practice of punishment (Dobler, 2008, p. 12). It was applied to "girls [who fell] pregnant before their wedding, thieves or simply persons who had angered the king", who consequently were denied all benefits attached to a community membership. The decreasing availability of real 'wilderness' (ibid. 2008, p. 12), and the subjects' membership of and access to two jurisdictions have abolished this option. Especially the constitutional principle of non-discrimination has been absorbed as common-sense. But the reasons for headmen to renounce from these practices may be of a more pragmatic nature; it may be simply too big of an effort on even a risk of their own role's scrutiny to defend their verdict before higher courts. Their role as administrative civil servants at times leave TAs hamstrung, indicating that their power – and the coercive effect of their laws – have succumbed to a variety of socio-demographic, economic and political shifts. A similar effect is weakening the legitimisation of corporal punishment. Corporal punishment – or "the intensive use of the whip" – used to play a large role in (re)producing

hegemony of a TA (Bayart, 2013, p. 92), not only through constant forceful application, but as a means to achieve "legitimate domination" (2013, p. 92). This statement is supported by many informants in the Ohangwena region, upon being asked about what changes he had experienced over the past years concerning coercive powers of the TA, a village secretary strongly affirms:

> "There is a difference because now no one can be forced and now we have a lot of knowledge and offices that can help. People of long time (ago) they used to do things by force." (Interview Village Secretary MM 07.12.13)

A young government official explains that the power of Village Headmen was nowadays "becoming a little bit weak…

> …But in the past, it's something else. Because you get fined, you get um… In the past, you can even get killed if you're not adhering to the laws and regulations" (Interview Govt Official S, 17.7.14).

Accounts of traditional practices, such as this, may have become exaggerated myths, since it's now common knowledge that no institution, apart from the state, is allowed, by law, to use physical force. The state is built on its "monopoly of legitimized symbolic violence" (Bourdieu & Terdiman, 1986, pp. 837–838). When an incident of physical assault is to be dealt with in communal villages, says a member of the Men and Women Network, the police are more readily involved than in less physical matters:

> "[F]or example if people were to fight in my village and they both have guns, or one has a gun, then I will have to call the police but not the headman because this case involves weapons. But if it's fist-fighting, that case we take to the headman." (Men and Women Network member Ka, 22.02.14: 39-42)

The peculiarity of the customary system's "restorative form of justice" (Woolford & Ratner, 2010, pp. 7–8) is, that the larger community is not of primary interest when a verdict is passed. The statutory judiciary, in comparison, in order to substantiate its role as protector of the entire citizenry, is required to provide a *punitive* justice (ibid. 2010, pp. 7–8), as it aims to protect the society from a (potentially recurring) perpetrator. The Namibian state undermines customary logics and legitimacy, possibly without intent, by failing to truly recognise their sanctions "as substitutes to [its] own" (Larcom, 2014, p. 209). The *de facto* power of the customary judiciary to enforce decisions and rulings now depends primarily on their social legitimisation, and in effect it mostly mediates pragmatic compensation for the injured party.

The social cohesion, which the customary justice system so much relies on, is also affected by people's increasing awareness of their belonging to the statutory jurisdiction, and of the rights and duties this offers. Hence, customary verdicts need support of other nature, at times even by adding authority through referencing statutory punishment. A Village Secretary recounted that a TA had coerced their customary verdict by threatening that, if the accused did not comply and pay his customary fine, they would bring the case to state court (Informal talk LH, 8.2.14). The accused was sentenced to a monthly compensation payment to his daughter, whom he was accused of having raped and infected with HIV. Thus, the TAs took advantage of the severity of a potential state punishment, positioning themselves as gatekeeper between the disputants and the statute, in order to extort compliance. This strategy undermines the universalistic judiciary logic of the state.

It is overly optimistic to assume that the parallel and overlapping jurisdictions could take the form of peaceful coexistence between punitive and restorative justice forms (Woolford & Ratner, 2010, pp.

7–8). Instead, this coexistence is pervaded by a constant trial of strength between the judiciaries. As each pursues coercive power and legitimacy, they scarcely act without compromising the other's coercive effectiveness. The next chapter discusses how such competitions nevertheless offer opportunities for the customary judiciary to sustain its position within this complex setting between competition and complementation.

#### *7.3.3.4. Resilience of customary justice*

The main arguments in favour of maintaining customary judiciaries as coexisting with that of the state are, that capitals of knowledge and accessibility of state judiciary are still restricted among communal land users, and that either field aspires different aims through their punishments.
The characteristic flexibility of customary judiciary is a means to achieve – or maintain – a locally relevant and immediate form of justice. This justice "derive[s] from a relatively decentralised procedure" (Bennett & Vermeulen, 1980, p. 218), which indicates a democratic alignment of norms, justice, and laws. Many authors accordingly suggest that customary law is particularly decentralised, hence its contextual adaptability (Wicomb & Smith, 2011, p. 427) must be preserved and needs to remain undocumented (Bennett & Vermeulen, 1980, p. 218). The absence of documentation of judicial procedures, for instance, is not only a de-legitimisation factor, but can well be regarded by some as a most accurate form to provide for distinct traditional justice. It allows for *ad-hoc* interpretations and prioritisations, which contradict a justice concept based on expertise and objectivity but respond to the needs of immediacy and accessibility for those at the peripheries.
A young government official explains that in his perception of justice, a victim would benefit more from state coercion than from a customary compensation (Interview Govt Official S, 17.7.14: 121-129). This assessment, however, is opposed by other interviewees, indicating that what is considered 'winning' is itself variable according to different field references:

> "The police never make you win, as a victim: They will punish, but they won't ensure that the victim will be paid compensation. Therefore, some go to Police *and* to the TA." (Interview Villager TS 17.03.13: 33)

What this latter person refers to as 'winning' is a direct compensation payment from the perpetrator to the victim; displaying a *restorative form of justice* (Woolford & Ratner, 2010, pp. 7–8). This restoration occurs certainly not merely on economic terms, but the payment works also symbolically as a confession of guilt before the community. Therefore, even a Village Headman who otherwise represents ideas of modernising and assimilating customary governance considers customary punishments of criminal acts against the body as a necessary complementation to statutory justice:

> "You can even kill, bump somebody on the road. TUK! That person was on the wrong side. Whether you're arrested by the police, or they make you a case, you go to the court, normal court, then… the court says you are not guilty on this issue, go home. You're a free man.
> Coming to… to the family of this person… because we believe that a human being can not just [be] lost like that. So, you have to give something to the family." (Interview VHM SK, 16.02.14: 596)

Thus, in certain severe cases, it seems necessary to pass both a statutory and a customary punishment over a verdict in order to meet the demand to appeasing the involved parties (with

legitimate inclusion of a biasedness, or emotional involvement with the parties), as well as penalising infringements against the system or the public.

The government official further emphasised that the customary fines were too low to be effective as a deterrent (Interview Govt Official S, 17.7.14: 121-129), which is only partly accurate. To him, as an individual, the effect might indeed be lost, due to his level of economic capital and knowledge of the statutory legal and political system, which give him with access to either field. In addition, however, he is not an active member of a community at this moment, living in the regional capital, and he is neither accountable not relying on the social legitimisation by his village members. While to someone in his position the fine of 12 head of cattle to compensate for a death may appear as a mere economic transaction – which moreover can be paid in monetary form (at a ridiculously cheap one at that) – those of his family members who are still active members of the village would suffer immediately from his wrongdoings, as would be socially prosecuted and penalised as his *substitutes*. Hence, the cross-generational and familial accountability in customary justice is one of the reasons why customary judiciary mechanisms are so difficult and slow to disassemble.

The plural judiciaries hence transpire to take a particular role in the transforming governance. Centralising physical coercion and raising the accountability of TA, continuingly draw towards subordinating the verdicts and procedures of traditional courts to those of the state. However, in order to co-exist as a dual legal system, and to maintain a basic legitimisation for both, the state is compelled to compromise on its claim for sovereign judiciary power. In turn, state law itself is weakened by tolerating judicial procedures which contradict some of its constitutional liabilities.

On a local level of governance, some common practices may run counter to state law, but still be judicially accepted, turning customary law into a more well-serving alternative, semi-formal justice programme. What this field lacks in the scope of coercive power, it makes up through accessibility and flexibility to local requirements. However, on a larger scale of citizenry, its lack of 'verifiability' and documentation becomes a more severe drawback. Hence, the main difference between the two judiciaries is not so much rooted in their fundamental judicial goal – whether it is to settle a dispute, take revenge, or receive reparation – but rather in the scale of the addressed collectivity, both in a spatial and temporal dimension.

It appears that the parallel existence of customary laws and TA with the statutory system, necessarily results in ambiguous understandings on assigned competences. Consequently, it seems fair to assume, that legal pluralism can never be completely unproblematic (Larcom, 2014, pp. 208–209); at best, it can coexist harmoniously for a limited time and within a specific topical capacity. This judiciary transformation phase will last at least while the government has yet to acquire and compose the identities and tenure relations of all its citizens, only then may it achieve a status as *de facto* supreme judiciary authority. Because, as long as these aspects remain variable, the "argument of belonging […] as a claim to resources and to jurisdictions […] produces a broad array of processes in which people may engage in order to pursue their interests" (Lund, 2011, p. 9).

In the meantime, the span of possible justices is broadened by multiple combinations of justice concepts and narratives of belonging. Young men, and even more so, women, who tend to feel victimised by the geronto-patriarchal TA system, are now empowered to appease their sense of justice through statutory institutions and narrative. Such jurisdiction-shopping however remains limited by political and legal knowledge, economic and spatial capital; which therefore become the pivot point for new social asymmetries. Those capital forms, and ways to employ them to transgress the field's borders, are addressed in the next chapter. At this point it is to note that the different

concepts of justice, promoted by the government and the TA respectively, take a considerable role in the shaping of local demographic strata, and in tendency force TAs to respond (also) to modern, democratic principles of equity or justice.

## 7.4. Transforming spaces, mobilities and their effects on land use and local governance

Thus far, I have illustrated how the land reform introduces new concepts: of land tenure, informality, and justice to communal areas, therefore transporting concepts from national and international stages into local contexts and practices. This chapter, however, focuses on an agency-centred perspective on politically and legally ignited transformations. It attends to the question of how mobility between fields of state and of traditional leadership, logic, politics, and law, enables new practices within the realm of land rights and governance, and how those relate with the land reform's objectives and legal framework. It uncovers the ways in which spatial practices and capital are becoming defining markers of social inequality: Dividing between those who can transgress borders between the two legal fields and those who lack the necessary capital in state *currency*. This idea builds on the observation that land use practices, value, and valuation of land strongly depend on the scope of an actor's spatial mobility, as well as their social status within customary community and national society.

Social and spatial mobility are both effective tools in power negotiations and accessing land. In the context of this study it is particularly interesting how spatial practices, although a longstanding integral part of customary land use and livelihoods, experience new shifts through the reforms of land tenure and governance systems. To this end, this chapter investigates different spatial practices, their grounds of acceptance or legitimacy, their effects on communal land use, and on challenges for authorities.

Although mobility has for a long time been part of customary livelihoods, land reform has created a context in which mobility is increasing in intensity and in numbers of respective options. These transformations are a further factor that provokes (re-)consideration of current concepts of customary land use, and how it is governable by TAs. In this chapter, I show how patterns of presence or absence of communal land users influence a TAs' authority and land governance strategies, and how much – or which form – of mobility is legitimate and manageable by mechanisms of customary governance.

The ability to transgress the boundaries of legal fields at will to access institutions and knowledge, has been framed as a person's "possible mobilities", or "spatial capital" (Rérat & Lees, 2011, p. 127). The factors contributing to such possible mobilities are numerous, however, the close entwinement of field-transcending capital with elite-status is striking. At least since colonial times, spatial capital has been closely linked to the creation of elites: It has introduced a considerable factor for imbalance between communal households who have personal ties to, and receive remittances from, commercial areas, and those who do not. Those remittances may be in the form of economic capital but also other capital forms, which hold value in either field. For capital to be applicable in both state and traditional fields, it requires a certain convertible character. Knowledge on political and legal matters on a national scale, economic capital, and traditional capital (networks through land rights and village membership), for instance, are types of capital that are easily converted and reinvested in other fields. These convertible capitals facilitate an actor's field-transgressing mobility and lifestyle, since they are avid tools to defend ones' claims (to land or otherwise) in either field.

The following cases are therefore shed light on how cross-field mobility influences customary realities, and communal land users' common-sense knowledge of spatial practices, justice, and authority. And what requirements (and challenges) for local governance systems and authorities those result in.

### 7.4.1. A local history of mobility and the Common-sense of absence

Spatial vicinity between traditional communities and their authorities is an important stake for their retaining functioning governance relations. As was shown in the previous chapter, they rely on regular interaction and exchange of information between the two. Yet, spatial mobility and its relation to social mobility – or the shaping of elites – has been part of the Kwanyama ways of life since pre-colonial times (Miescher, 2012; Dobler, 2008, 2014; Hayes & Haipinge, 1997). This constant pull between individual economic needs, and the requirements of a governance system that relies on personal relations and oral testimonies, has long been an integral aspect of communal land governance in the North-central regions. What keeps changing however, are the patterns of movement and the type of elites they (re)produce.

This chapter is about discovering in what ways the communal land reform and other state interventions in local governance have shifted strategies and legitimacy of spatial and social mobility. Historical practices of spatial mobility have shaped the common-sense, or practical norms, about legitimate reasons for being absent from a communal village: Examples are the practice of pastoralism, that is believed to have begun well before colonial times (Nitsche, 1913), and labour migration to occupied cities and the mines (Dobler, 2014), which were highly motivated, in parts even enforced, by colonial politics, and the numerous exile biographies that were inscribed in the local population (Metsola, 2007) during the liberation war. These histories of mobility have progressively introduced absenteeism into the everyday, the habitus, and into a sense of legitimacy of the local population. A historical view on how certain variations in economic and other positions of livelihood have become absorbed among the Oukwanyama in the past, also sheds light on what form and extent of elitism is considered legitimate and manageable through customary governance. This legitimacy is crucial in deciding whether an individual may claim land rights or other community benefits despite being absent and only restricted can be held accountable by TA rules and judgements

One highly legitimised practice that involves spatial absence from one's customary field was introduced during the liberation war, by those who fought as "Freedom fighters," and were forced into exile. Upon their return, they claimed customary land rights based on the argument that they had fought to keep this land from their exiles abroad. Their demands introduced a fundamentally different argument from those that are applied, for instance, in South American discourses, which endorse a long-term physical relation to land as their claim (Bryan, 2012). Since freedom fighters were forced to leave and fight for their land from afar, the connection between presence, claims of belonging, to resources, and to authority was significantly de-territorialised.

A former exile and pensioner in the area is exemplary for many fellow freedom fighters, who, since Independence, returned to their country as educated and politically well-connected and respected actors. His story displays one of the historical reasons why absenteeism has become commonly legitimise or naturalised in communal areas: During the liberation war, when he was forced into exile, he left his land in his brother's trust. Keeping strong ties with his family and fellow fighters in

Namibia throughout the years of his absence, he was dutifully returned his plot upon his return to Namibia and his village. However, by the time he returned, he found more people had settled in his home-village, and that consequently his plot had decreased in size. Yet, it was still big enough to provide for subsistence cultivation. His cattle post and livestock were also reserved and looked after during his absence. And it was still commonly accepted that this land in the village and the place for his cattle was reserved for him as a member of the community. An essential part of the north-central population was, like JH, pushed into exile, forced to leaving their land and property behind. Many also returned to their country without having a personal homestead, effectuating a sudden rush for communal land, a shift in the social composition of villages, and the creation of new ones (Interview SHM DH, 14.03.14: 1). 'The struggle', having become "pervasive condition of local social relations" in "Owamboland" (Metsola, 2007, p. 134; with reference to Cliffe, 1994), provided them with the status of heroes. This status helped naturalise the belief that people, while absent, may work for the wealth and 'development' or even liberation of the community or the society at large. The habitus of local communities had absorbed that a person's absence from their community is no reason to revoke their claim to land. This is an increasingly-voiced obstacle for Village Headmen in their task to manage their communities. Their *de facto* authority (although accredited by state law) to withdraw somebody's land right, if they do not approve with a person's use of the land, is factually undermined. A TA called their particular form of symbolic capital, a "We fought for this country mentality", and it is so strong, he complained, that it renders "it difficult for traditional leaders to execute their duties" (New Era, 2016a).

The long history of labour migration is another factor contributing to the habitual acceptance of absentee traditional community members. To this day, the once colonially induced and extensively facilitated (and even pressurised) dependency of communal life from economic transfers from commercial areas (Dobler, 2014; Miescher, 2012), has not abated. While dependencies and exploitation have certainly become alleviated in their (racial) explicitness, it is not uncommon for any communal citizen to spend much of their working lives away from their families and from the place they consider home (Informal talks with government officials MK, 19.01.14; and MI, 29.3.13). And, this absenteeism persists despite decentralising state services which have created more job opportunities in communal areas, thus, theoretically, it diminishes the distance between commercial and communal areas. But because those local jobs are still scarce, and possibly due to the historical embedding of absenteeism in local lives, absenteeism remains a common fact in communal villages, and career civil servants are still required to be mobile across the country. Historically, a communities' habitus was that people, while absent, work for the wealth and 'development' or even liberation of the community or the society at large. This narrative is shared by the liberation fighters and labour migrants: It is one a sacrificing absence to serve the interest of those who stay at home, preserving and improving their home, village, and even whole areas (Interview VHM SK 16.4.14). A physical absence of a person from their communal farm is hence not perceived as a disreputable behaviour and reason to evict a person's claim to the land, despite its stark effect of community agreement and reliability. After all, even among the Village Headmen, many are working absentees. When asked how they felt about the absence of their Headman, the villagers seldomly complained, but underlined the importance of a leaders to be able to "assist the people with goods" (Interview Journalist OS, 23.07.14: 135).

Although the common-sense knowledge and habitus of travelling long distances between work and home is only slowly dismantling, increasing job opportunities in communal areas do have a transforming effect: It attracts people to settle in communal areas for other reasons than subsistence

farming. Thereby, multiple livelihoods are taking shape in-between fields, and in-between declared commercial islands and 'conventional' customary land. This diversification of the meaning of land and place challenge traditional ways of governing. As Agrawal (2002, p. 69) puts it, a maceration of group and resource boundaries destabilise the management of common-pool resources, by diminishing the "levels of interdependence among group members". But it also challenges state governance, for the claims and identities remain vaguely documented and thus unattainable for statutory judiciary reach. Such maceration occurs through the increased mobility of actors and capital forms, and the consequent intermixing of capital currencies, which have evolved separately in commercial and communal areas and structurally persist due to the plural land administration.
As was shown by the presented examples of war, exile, and labour migration, the increase of such hybrid forms of land use and lifestyles exposes a gap in preparedness by the state and traditional governance systems. The basis for legitimacy of such field-transgressing lifestyles between career aspirations and claiming land in communal zones stands on a shaky ground and thus calls for elaborate securing strategies: Examples such as fencing or employing residents or relatives to look after ones' homestead or cattle, will be inquired more closely in the following subchapters.

### 7.4.2. The mobility of ideas and Capital: commodification of Communal Land and Customary Land use

Amidst all uncertainties and changing agricultural lifestyles and land uses, the process and conditions to access land in communal areas is noticeably easy, as rights to communal land promises gains with little to no investment. Therefore, and in sight of a rapidly decreasing availability, everybody attempts to ensure as much communal land as possible, ideally even multiple plots. This interest in land is, however, as the following chapters will show, increasingly detached from a will to commit to a community or to invest in traditional agriculture. The spatial approximation of the plural legal fields has simplified the mobility of actors and of capital between communal and commercial fields, such as economic income and spending opportunities. Meanwhile, as traditional pastoralism and crop cultivation are spatially divorced from settlement zones, these practices become more expensive in relation to the national capital rate, in terms of necessary spatial, social, and economic input (Interview VHM SK, 16.02.14: 463-466) (this issue is more in-depth analysed in chapter → 8.2.1.). Communal social capital becomes more costly with increasing absence, and ecological factors threaten output or lead to bigger necessity of economic input. Amid this shift in currency rate, traditional land use practices, which form part of a more comprehensive lifestyle-concept, lose implicitness and attractiveness. Consequently, the demand for land is rising, meanwhile land use is increasingly deviating from what was understood as customary land use, at the time the CLRA was articulated.

A consent letter from the respective TA is given, if only the person is deemed a (existing or valid new) member of a certain traditional community, which may or may not be accompanied with a monetary offering. Depending on a Village Headman's financial needs and the attractiveness of a financial offer, the membership condition is at times overlooked, as testified by the many accounts of land allocation to politicians who belong to other TAs (e.g. Plan, 2012). Especially for the absent elite, small investments can seem worthwhile, and are increasingly practiced among lower middle-class households. A similar pattern appears in strategies of land use, not merely its acquisition, but in an attempt of replacing social transactions with economic ones.

Meanwhile, the interest in communal land remains unabated. The motives and intentions increasingly diverge from patterns of living and producing as those widely described as traditional by oral and written accounts (Parliament of the Republic of Namibia, 2002, p. 11; Mendelsohn, 2008; Thiem & Caplan, 2014, pp. 57–58; Mendelsohn, 2006). Much rather, *traditional land use* remains a narrative identifier as a "rear projection" (Nghiulikwa, 2008, p. 74), a common sense of belonging and returning. Amidst the transforming and insecure reality, a pursuit of multiple livelihood options in multiple places is further encouraged.
Spatial capital gives an actor an undeniable advantage in exploiting assets of both land reforms (and acquiring further capital). It is a major advantage to gain knowledge on legal and political intentions and plans, and to access institutions, and thus bargaining power to push one's personal interests. In other words, mobility between legal fields is an important gate to choosing one's lifestyle within the plural governance systems and moral fabrics.

#### *7.4.2.1. Affording absenteeism: fencing and deputation*

Customarily, the social introduction of a new communal farmer to the village used to take place through the "labour assistance which he gets from other homesteads" (Mills, 1984, p. 18). In case of a first-time settlement of a plot, this includes the "debushing", or the clearing and arable-making of the land (Interview VHM SK 16.02.14; Notes CLB Meeting 26.6.14). The growing number and frequency of movements of communal members, and especially the long-term absences of complete households, seriously undermine such community enactment, and the maintaining of an active common knowledge and accountability. In this way, diversification of land use practices, or rather diversification of claims for access and a constant increase of the number of such claims make conflicts an ever-increasing threat. In such a context, wealthy land users are again in the advantage, as it allows securing their resources despite a mobile lifestyle.
A fence is probably the most immediate way to apply economic capital to strengthen a basic land claim – irrespective of the use or planned investments. Those who can afford it, declare their occupancy as an untouchable and non-negotiable fact. If, in addition, those with a fence are absentees, they may be aspiring to substitute the social accords and relations with neighbours or TAs, by means of a physical sign of their claim. And, at least in some cases, it appears successful: as Mr. W has managed to convince the High Court that the materiality and property of his fence are prioritised over verdicts of not only community members and TAs, but also CLB (→ *7.1.3.3*.). Often, a fence is already reverentially considered by the mapping and registration team of the MLR: A fence facilitates the proceedings, as they are often considered as definite proof of a border. Once a land certificate has been issued, theoretically, the land tenure contract would henceforth remain a bilateral issue between the land right holder and the state authority.

The type of fence thereby symbolises the form of protection that is aspired. Especially in homesteads where most or all members are absentees, and yet unknown to the community, high wire or wire mesh fences were common sights. Across my research experience, a connection became visible, that the standard and 'price' of a fence appeared in correlation with its owner's absence and non-participation with the community and local leaders. The highest economic investment is required to build a mesh wire fence, which, apart from materials also includes professional labour of plugging cement blocks into the ground, onto which the steel poles are mounted (*see Images in Figure 40*).

**Figure 40 Different Fencing Types, depicting different Lifestyles and Resources** (from top left to bottom right): Single wire fence around the plot of an absentee land user, Ondobe; Wire mesh Fence, Eenhana area; A fence around an (apparently) unused plot, Ondobe; Wire mesh fence with steel poles, Ondobe (Weidmann, 2013-2014)

Although it represents an aspired level of protection, the effectiveness of a fence is crucially determined by the respect and legitimisation of immediate neighbours, of the community. After all, they hold considerable power through their physical vicinity to the resource, and in some instances, they do make use of it. A case was recounted by an elderly woman, that while she was at home cooking,

> … "later on, you will just hear the fence been cut by the children, so they make way for their cattle to come graze in your land." (Interview Villager CK, 25.11.13)

A fence is thus not only necessity for absentees, but with rising pressure on lesser grazing spaces, even present land holders are required to increase their self-protection measures. Fences alone – if they are destructible – are insufficient protection, even for present land holders. In some homesteads, all members of the household of an income-generating age are absentees. In those cases, it was often observed, that the land right holders chose to be deputised either by a relative or stranger, through a labour contract or another form of remuneration. As a rule, this type has only limited interest in quantity or quality of the plots' agricultural output, and often surrenders a major part of the harvest, as it is part of the compensation for the employees. While the latter are arguably poorly paid, they are usually content with any payment they may receive for a lifestyle they are leading anyway when, "in the North," including partial subsistence agriculture, looking after the house and preserving the homestead as a place of living.

The engagement of a deputy occupant may well be to upkeep social capital, in the form of reputation and solidarity, within the village. This is especially true for those holding the intention to preserve a land parcel as a future space of livelihood after retirement, sometimes like to signal their continued association with the communal ways of life and production. By allowing someone to stay in their house, at times working the field for their own benefit, they install deputy occupants who act as community members on their behalf, or, at least, as a messenger to the owner about occurrences in the village. During our stay in Ondobe, at one point a furious man arrived at our door; he inquired what our reasons were for visiting his homestead while he was away. In the course of discussion, it crystallised that the young lady who greeted us in his homestead, informed him about foreign visitors. The deputised woman is a distant relative of his, who had lived in the house for a year and did cultivate a small Mahangu field for her own use (Informal talk, 24.03.14). Her role in the village is negligible, without knowing the Village Headman, she stated to rather go to the police than the TA if she encountered any trouble. The same proved to apply to the land right holder, as he brought a police officer to query upon our intentions – instead of consulting with the traditional village leadership (Field diary, 24.03.14). He explained that he became suspicious due to his high position within the SWAPO party and he feared espionage (Field diary, 30.03.14). This example shows that while the deputation of communal land use and occupancy may sustain membership legitimisation to a certain degree, it is still marked by a persistent feeling of insecurity by absent land tenants. In his case, protection calls for a readiness to travel to the north from Swakopmund on short notice, as a replacement for inclusion in the local community network.

#### *7.4.2.2. Migratory and deputised pastoralism, or: the value of cattle*

The migration between homestead and a cattle post is probably the most ancient remains of the (agriculturalist) mobile aspect of Kwanyama lives and holds a high legitimacy among customary land practices and claims. Even though rich cattle owners were often not migrating with the animals, it was their *potential* mobility – their spatial capital – that ensured their control over herds (Dobler, 2008, p. 13). Pastoralism, like the other presented historical reasons for absence, blurs the line between socially included community members and spatially absent, at times socially isolated elites. Traditional pastoralism, or rather, holding cattle in communal areas, is a symbolic ascription, or avowal of loyalty, by investing economic capital (that has been acquired in the commercial field) into the communal field. It is thus a symbolic identity ascription, and simultaneously a demand for communal 'banking space' in the form of 'communal' grazing.
Subvention and prescription of mandatory primary schooling have contributed to a perceivable decline in labour availability by children to help in the fields and herding cattle. Therefore, absentee land users regress to employing labour for support in their farm work.

With the increasing demand for land, more spatial capital is required to sustain pastoralism. Communal grazing areas in the region, and particularly in longer-established zones of settlement such as Ondobe area, are diminishing due to the increasing demand for land rights. Due to its vicinity to social services and infrastructure, the grazing, and increasingly also the crop farming practices and spaces are being displaced, giving way to the demand for residential land. Thus, grazing grounds in the vicinity of settlements diminish, deepening the socio-economic division of the community: As customary elements of farming, crop and livestock holding, become spatially separated, the rifts in social inequality are deepening. This development undoes customary pastoralism from its practical role in a subsistence farming scheme, as with the spatial outsourcing of livestock, the crop fields do not receive the much-needed fertilizers from cattle and goat manure. With this decoupling of

practices, and the prevention of seasonal period in which the farming zones overlaps by increased fencing, spatial customary subsistence farming is seriously undermined. One of the principal factors in the process of the decoupling may lie in the way the CLRA defines customary tenure as either “a right to a farming unit” or “a right to a residential unit” (Parliament of the Republic of Namibia, 2002, p. 11 Art. 21 a)b)).
The inequality increases along lines of capital, which permit investment in regular mobility and in the necessary infrastructure such as fencing, boreholes, and herding labour. Those who do not dispose over enough capital to maintain a cattle post, are forced to choose between new strategies of accessing grazing areas for their cattle or selling their cattle to those who can take care of them. Those who have access to cattle posts and dairy and meat produce, on the other hand, may increase their prestige – or “patronage” (Dobler, 2008, p. 13), through sustaining social relations by contributing cattle to festivities, while those who cannot afford mobility to access grazing, let alone grazing in the commercial area – remain trapped within the customary market of capitals exchange. This market has been coined a *moral mode* by (Schnegg and Bollig 2016) as a system of binding reciprocity among different social strata by resource transfers across different domains (social and natural) and over long stretches of time (Schnegg et al. 2016, S. 585). While this social division is not new, the required mobility increases, as grazing grounds are veered farther away from settlements and their accessibility becomes more exclusive. Hence, the gap in economic output is imminent to increase.

The accumulation of cattle has always carried a wider meaning than being simply a means of nourishment: It is a form of visualised wealth, a promise to the family, even to the community, that resources are available to feed, to celebrate, to pay tribute in funerals (Salokoski, 2006, p. 118), in exchange for patronage subjection (Dobler, 2008, p. 13). It is thus a welcome means, also for the younger generation of (aspiring) elites, to strengthen their currency of symbolic capital in the customary field. According to various informal and medially shared testimonies, cattle posts at the margins of infrastructural servicing – “in the bush” – are often rather an economic liability than a reliable investment, due to numerous incidences of cattle theft (Informal Talk JH 12.4.2014). The fact that elite interest in this high-investment farming practice remains strong, indicates that they desire to maintain a status in the customary field, while adapting their interpretation of customary pastoralism to the shifts in tenure zoning and land availability.
The spatial segregation between pastoral, agricultural, and residential land use, makes the mobile elites, who hold multiple land parcels, less vulnerable to increasing pressure on the well-serviced areas. By having access to several livelihood strategies and sources of income they avoid the risk of losing everything at once. A settlement place in a certain village is in their case an important tie to their community of origin and identity-factor, but from a subsistence and survival point of view, they are much more flexible towards their settlement place. On the other hand, the actors who lack mobile capital have everything to lose if their settlement space is diminished or further isolated from transport and knowledge routes.

#### *7.4.2.3. Land reservation*

People take note of how agricultural practices are changing, but as long as the option exists, they will try to ensure their children’s access to land. This is one of the reasons why the communal land reform seems not to succeed in its expressed goal of promoting higher investments in agricultural development *and* poverty reduction. Even though the registration leads to a steady or even rising interest in securing land, this interest does not lead to immediate agricultural activity – or any

immediate land use at all. As a result, the rising number of fallow yet reserved, parcels pose new challenges to local communal land authorities. Private land banking is a pressing issue, which is aggravated if absentee land occupants (as they neither own nor use the land in the direct sense) who build expensive and durable fences leave them and go back to their city lives. A Senior Headman from the Okongo area offers the example of a pastor, who came to ask for a piece of land, a long time ago:

> "[T]his man he even fenced off more land than he was given. He fenced everything off and he put a padlock and lock it. Now with these hyenas and other wild animals they make this place their habitation, and they go out and eat people's goats or chickens in the neighbours and now people come to complain […] and I have been looking for this man until now I have not seen him and is now 15 years." (Interview SHM DH, 15.03.14: 25)

Unable to contact this man, and not daring to destroy his fencing structure that they estimate to cost around 36,000 NAD, the Senior Headman remains without a means to fulfil his management responsibility towards the community. His frustration is not hidden:

> "[W]hat we want is cooperation. The way he came to us to ask for a land is different with how he is doing things now, we just never knew that he is a deceiver in this way." (ibid. 27)

A Kapatashu from within his district supports his complaint, adding another case, in which a land was fenced in and left fallow:

> "[T]oday I'm just waiting for some boys that at Walvisbay and they have a land here. And after, that boy did not want it anymore. He left it and [sold] it to a friend of his, and the new buyer just keep[s] quiet thinking that is his own land…" (Interview Kapatashu MD, 15.03.14: 19)

The transaction took place in complete absence, giving land the form of an investment, an exclusively symbolic asset. This kind of land use – or rather *un*-use – poses a distinct challenge to allocating TAs. It is socially disruptive to their community, and, as in the above-mentioned example, even poses ecological threats, as two leaders have reported that one of the enclosed parcels had become a sanctuary for hyenas amidst the village (Interview Kapatashu MH, 15.3.14). At the same time, however, the applicants often do not disclose their exact intention with regards to land use to the TAs. When they are forced to, it seems that the social norms of customary tenure are inventively stretched in different directions. For instance, the tradition of passing down a section of one's land to the children, is at times strained along the axis of time, when land is acquired for a child who turns out to be still a toddler (ibid. 34:22), or in a quantitative axis, when a plot of 4354.8 hectares (High Court Namibia, Main Division, Windhoek, 2013, p. 4) is motivated for at the Ministry on the grounds of being responsible for 55 children and 11 grandchildren (Motivation letter discussed at CLB Meeting 20.3.14).

With an increasing spatial division of land use in communal areas, multiple land rights are becoming a persistent side-effect of the dual land tenure system. Although a legal statement indirectly acknowledges the holding of multiple land parcels as a potential need for legal limitation (the CLRA states that the Minister may limit a new allocation under the aspect of "the total extent of other land, whether communal land or otherwise" the applicant holds (Parliament of the Republic of Namibia, 2002 Sect. 23.2.c)). A Village Headman summarizes this stretchability of law:

"[P]eople they disrespect the law… and the law is not really strict." (Interview SHM DH, 15.03.14: 27)

The legal toleration can be explained with a pragmatic, as well as with a moral line of argumentation: Pragmatically, it exceeds statutory resources to conglomerate registries and check an applicant's existing land rights. From a moral point of view, the commonly shared discriminatory past entitles everyone to be freed of barriers to personal economic fulfilment. It is surely due to intensive lobbying by the spatially mobile elites, that this moral argument is applied in favour of economic development (instead of poverty reduction), by maintaining strategic room at "the margins of the formal economy" (Melber, 2007, p. 116). And especially the interest of the Oshivambo-speaking elite are strongly backed by the government, because they form the SWAPO's electorate "home base" (ibid. 2007, p. 116). And to acquire wealth, in the customary field, means accumulating cattle, which in turn requires more grazing land. However, this argument for individual economic development is now in direct confrontation with those who depend on the uncommodified character and availability of subsistence from communal areas.

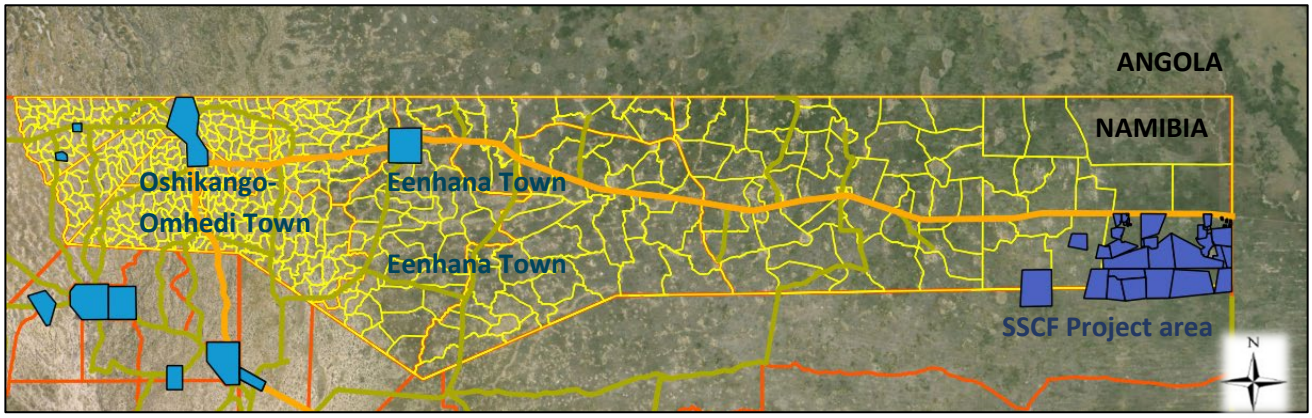



**Figure 41 Ohangwena Region and its Commercial 'Islands'** (Not to scale; Weidmann, 2014)

This dilemma on how to legally act upon multiple land rights, is once more grounded in the very aims of the CLRA, to achieve a secure, poverty alleviating tenure system, while simultaneously "promot[ing] economic growth" (Werner et al., 2012, p. 1). The small scale commercial farming project, in short SSCF – was accordingly designed to support and attract commercial and subsidised farming in delimited zones within communal areas (ibid. 2012). Communal farmers had well-formulated their demand, in asking "that they obtain commercial farms to relieve pressure on grazing land in communal areas" (Odendaal, 2011b, p. 3). Thus, a zone for commodified customary pastoralism was not only accredited official legitimacy, but strongly subsidised through boreholes and fences (→ *7.2.2.1. Legislative Delay*).

Since the project has started to take shape in the late nineties with discussion on "the commercial use of the forest between Eenhana and Okongo" (a proposal first recommended by the South African administration) (Hinz, 1999a, p. 201), local land use had notably shifted: The premise of an under-utilised or *virgin* land (Werner et al., 2012, p. 1) was toppled when the regional consultation between 2007 and 2011 concluded that the plans needed to be re-adapted in order to avoid "large scale relocations of households" and to ensure that the water from boreholes would be also accessible to "local residents" (Werner et al., 2012, p. 17). By the time the grazing zones have only started to be serviced, many land seekers have found it to be an adequate place for settlement. Consequently, the setup of SSCF tenure contracts and infrastructure keeps lagging behind the demand, since it builds on

and solidifies an outdated selection of land use and selection of beneficiaries. The example shows how shifts in land use and rising demand occur in a much shorter time-span than the legal implementation was equipped for, and that this divergence benefits those who have invested in informal cattle farming and are now retrospectively legalised and even compensated. The SSCF renders the practice of customary pastoralism more commercial and more exclusive for the wealthy.

Meanwhile, the future relation of space and law in communal areas remains uncertain, so that agricultural investments, such as livestock, fertilizers, and machinery, bear more uncertainties than ensured benefits. One Village Headman recounts that, despite having an additional field in the commercial area, he still cultivates his field in the village. However, this is merely a symbolic façade, as he calculates that instead of subsistence benefits, this practice is at a financial loss. His prognosis for communal land tenure is, that subsistence farming will become obsolete, once educational, social, and health services will be accessible to all people in communal areas (Interview VHM SK, 16.2.2014: 113). For now, however, those who do depend on agricultural outputs for subsistence, in most cases lack both mobility and access to the knowledge on state services. Some of them are frustrated when they see that others fail to adhere to the norms of customary life, of which presence and cultivation efforts are named most fundamental. According to an interviewed woman, there are people who fail to value customary agriculture, and thus to provide the necessary presence and labour on their land:

> "[S]ome people are really wasting land. Some lands are good for [cultivating] but they are just waking up to go to the shebeen rather than working. When you look in our houses [homesteads] now we do have a lot of young adults, but they do not come and work during Christmas [holidays] they just want to stay in Windhoek and do nothing. But us when we used to stay with our parents, we worked in the field..." (Interview Villager VP, 3.12.13: 21)

Complaining about the disrespect of younger generations for the traditional ways, the woman describes a latent conflict among different land uses and their immediate competition in the demand for the "free" resource. Land is still interesting as a reserve, but investments decrease, likely in resignation from an increasingly risky and expensive practice. It is risky, due to a threat of roaming animals and natural liabilities such as droughts; and expensive in terms of required labour, time, and other resources, like social capital. The trade value of the traditional combination of settlement and cultivation is shrinking, due to its increasing price of investment, and its increasingly insecure future value.

#### *7.4.2.4. Peri-urban land use: transition zone between Communal and Commercial governance*

Mobility is not only increasing in its spatial reach, but with increasing commercial zones in communal areas, the mobility between the fields intensifies. Thus, moving between communal and services of the commercial field – as in access to basic social services such as schools and health institutions – becomes cheaper and simpler. Not only elites have understood the importance of having access to both markets of symbolic capital. Without disposing over a lot of spatial capital in the form of private transport, the most convenient way to access the commercial field, is by securing a communal plot at short distance from declared town or settlement (*see Figure 42*).

**Figure 42 Town Land with its Characteristic Infrastructure such as High-quality Fences and Water Towers** (Weidmann, 11.7.2014)

The decision to settle near town land, however, is not likely seen as an alternative, but in addition to a rural homestead, thus again multiplying cases of dual livelihood strategies. Increasing 'modern' land use and settlement is therefore not a sign of depleting remote areas, but of the spreading of diversified land use strategies as shown by an explanation of a Village Headman, whose village is bound to be integrated into the expanding territory of Ohangwena town:

> "[S]ome of us, [and] specifically me, I already searched my place at far East. […] Even if the town comes and they happen to give me a piece of land; on that piece of land, I will just build my house for my kids [in this case he means nephews] when they are schooling, and so that we can be close to hospitals." (Interview VHM JA, 15.04.14: 1)

Such plots in peri-urban areas are often of a less constant and secure character, by no means replacing a 'customary' permanent farming and living place. The interest in a base close to services and economic opportunities is to reduce the costs of mobility for work, education, and health services, but also any other tradeable resources. The customary lifestyle and the corresponding

parcels of land, however, are not rendered obsolete, as the commercial access is still only an addition to the customary home. A town council officer explains:

> "The way I look at towns, … they're just towns to give people rights to own land. Because you find some people settling in Eenhana, but it's not necessarily where they want to settle, but it's the only place they can build a decent house. Because if you are [outside town land], you cannot get a home loan. So, if you need to get access to funds, you need to be in a town. And so, people come to Eenhana…" (Govt Official S, 17.7. 14: 159)

Thus, town land or settlements, as centres of services, knowledge, infrastructure, judicial and economic markets, represent nodes or meeting points between communal and commercial fields. Particularly interesting are the border areas, set between commodified lands and their surrounding communal areas, where, theoretically, any economic transaction and ownership of land is officially prohibited. In these spaces, the confrontation between different authorities takes a peculiarly salient shape: TAs are confronted not only with the spatial intrusion of new authorities, but with the immediate confrontation on a level of authority logic. In many cases, such as in Eenhana or Ohangwena, those border areas stage a clash between different authorities, as they are superimposed on a zone of highly transformable and diverse land use types (*see Figure 43*).

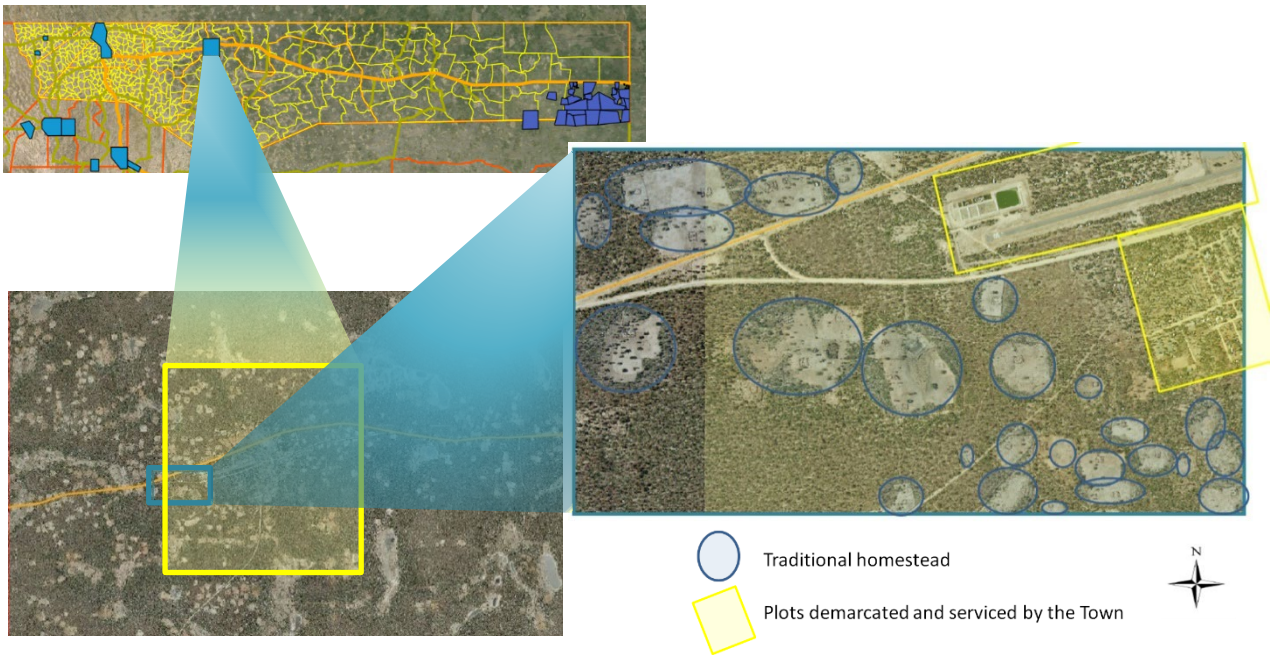



**Figure 43 Diverse Livelihoods and Land Uses at Town Land Borders.** A satellite image of an enlarged extract of the border area displays different settlement and livelihood patterns on either side of the demarcated borders (not to scale; composed by Weidmann, 2019 based on data from the MLR 2015)

This image illustrates how the spatial delimitation of one authority area does not immediately exclude the other. This defies the political idea of the communal-commercial binary, not only in a spatial but also in a temporal dimension: Due to the ongoing process of declarations and extensions of settlements, the communal-commercial field boundaries are not merely a territorial matter, but rather representable by a continuum that describes increasing commodification (informal and formal) and servicing of an area. The field boundaries are not only blurry in a spatial, but also in a

temporal dimension, as adaptations are continuously made through either informal commodification or political recognition in irregular succession. Similar contentious zones were observed in settlements that are not officially declared commercial but have long started becoming centres of social services such as Ondobe with its church, or of trading businesses, like Okahenge (*see Figure 36*).

The present labour market still relies on long-distance migratory patterns, legitimises, and encourages mobility, directly effectuating absenteeism as well as land banking:

> "[P]eople they just don't know where to stay because these [strict] regulations in towns, yes. But there's new people coming to town every day … they need a place to stay. But regulations of the town are not allowing it. But it's like saying, "please come to Eenhana, but wait until you're given a plot. But you should stay in Eenhana!"" (Interview Govtt Official S, 17.7.2014: 178)

Informal land sales among villagers, however, are not merely a self-enriching strategy, but it is also at times an act of resignation towards the delays in authority decisions, such as the TAs' agreement on borders of jurisdictions. A municipal Councillor believes that this was at least part of the reason why land commodification in Okahenge took such dimension:

> "And that's why you find some people, some individuals they just decided by themselves, by saying, 'Ah, we cannot keep on uhm concentrating on that division of the land by the headmen of… Omunyekadi and the senior headman. We have got our own powers, we are from different villages, we can also sell uhm our land away!' That's why you see the Ondobe people, the Etope people, they are just selling the land by themselves, without even consulting the headmen […]." (Municipal Councillor EN, 17.7.14: 9-11)

In his opinion, communal land sales will inevitably spread to become normality in local land relations. And he blames the TAs themselves for not having prohibited land markets more proactively. He particularly suspects the Senior Headman to have started to sell land, and to have tolerated it to be practiced under his authority. Consequently, both Village Headmen and land users have felt encouraged to do the same and to sell land out to business people or entrepreneurs (ibid).
As it is, land sales are, indeed, a widespread practice among elites, but also of aspiring communal land users, to sustain a status (of authority) in both symbolic markets. So widespread, in fact, that hybrid lifestyle patterns are naturalising as side-effects in general development.
They are practiced, and naturalised, by both state and traditional elites, despite legal prohibitions or legal insecurities. And, most certainly, this mobility "between legal frameworks and related ideologies" (Haller, 2010, p. 433) and the resulting hybrid lifestyle patterns were starkly underestimated in the land reform planning, confronting the plural jurisdictions with additional tasks of aligning their processes and accountabilities.

### 7.4.3. Spatial practices, currency conversions and their effects on local Land Governance

The presented cases and strategic patterns of cross-field mobility deeply influence realities on communal land and the resulting demands and requirements for local governance authorities. While

all those spatial practices, field transgressions, and alterations to communal land use occur, official state law still assumes to be addressing two exclusive groups of citizens with its land reform policies and legal schemes. Yet, many strategies are nowadays taking place in the transition zone between the judiciary fields, spatially or temporally, where they remain widely unrestrained from explicit legal stipulations. It is an extraordinary challenge for TAs to adapt to the diversifying practices and currencies that are played within their jurisdictions – meanwhile they have a possible advantage over state law, as their governance is more swiftly adaptable to their community's specific needs. This chapter therefore enquires into the opportunities and challenges local governance authorities are confronted with, due to transforming spatial practices. This wrong legal assumption or underestimation of mobility and hybridisation of field logics has significant effects on the value of capital forms, and consequently, on the fundaments of TA authority. Social responsibility within communities is weakening, as with increasing mobility, more community members may cut their ties to the community at will and escape the reach for a TAs' punishment authority. This is true in a spatial, but also in a legal sense, if they are in possession of strong enough knowledge on state logics and justice system, to use as leverage.

A common characteristic of elite strategies is the commodification of single elements of traditional land use, and new patterns and degrees of securing claims in absence. Both characteristics directly compete with tasks that were substantial to the position of traditional leaders. In a way, they buy themselves, through economic capital, more of what has been portrayed as *traditional* (symbolic) capital: accumulation of certain aspects of customary lifestyles, e.g., Mahangu harvest, number of cattle, whereas other aspects seem less desirable, such as wooden fences or houses, or small livestock.

As a result, behaviour and land use practices become bolder, and land reservation, double land ownership, and illegal fencing of communal land become increasingly common, despite being illegal, or at least a breach of social (customary) norms. Many legal loopholes evolve from the political underestimation of, and jurisdictional unpreparedness for, social mobility. Uncertainties on legal future in communal land governance, and a steep capital-conversion rate trigger practices, for which present legal frameworks are not equipped: Absentee land holders, deputy land occupants, increased fencing as a placeholder or symbol for ownership, around the legally uncommodified land, and different forms of informal land markets around commercial or service centres.

The commodification of land, and particularly of selected customary practices, are not only tolerated, but increasingly absorbed as doxic realities, among a growing group of currency-hybrid elites: When for instance, in 2000, the acting Minister of Lands and Resettlement accused his Minister colleagues of not only partaking in, but being at the front line of illegal fencing in communal areas:

> "*And you thought by playing all manoeuvres to delay the passing of the law, you will be forcing this Government to change communal land tenure to freehold – that is not going to be allowed*." (Thiem & Caplan, 2014, p. 110 Italics in the original)

In fact, however, this statement evokes an important detail. It is indeed a reality that law follows practice when it comes to the commodification of resources and practices in communal areas. Bold, illegal or semi-legal strategies have, in the recent years often succeeded in extorting changes in tenure legislation (examples are the declaration (or expansion) of town land, settlements, or small-scale commercial farms). As spatial capital and daring investment practices represent an elite that has the power to overcome, and even to sustainably modify the field limits, it is a strategic choice of

TAs to join the bold, commodity-aspiring strategies, since they rely upon a renewed elite-capital basis and cannot simply have the mobile elite overtake them.

Meanwhile, these new realities are not unanimously shared, and yet far from absorbed by the doxa of village communities. There remain many members who defend customary land use and livelihood practices, and who are disappointed if their Village Headman fail to insist on people's attendance to meetings, adherence to rulings to relocate their fences, or cultivate their fields instead of drinking all night at the shebeens. To those land users, the increase of land grabbing or private land banking, absenteeism, and commodification of traditional land practices are imminent threats.

In consequence, spatial capital remains a major source of social inequality. Moving commercial zones and services closer to communal areas may have alleviated the need, but not the desire for mobility and for communal land; quite to the contrary. The TAs face an additional breaking test, by the diversifying demands and needs of their heterogeneous communities and adapting their governance strategies and services accordingly.

The aim of chapter 7 was to draw an image of how different legal and political ideas are transmitted to a rural locality in the north, how they affect local lives, land use and local land governance. The next chapter (8) will attend more in depth with how these plural rules and opportunities impact the status of TAs, alter the demands they are confronted with, and force them to adopt new strategies or practices themselves in order to maintain their status as community leaders.

# 8. Fending for legitimacy as (Traditional) Authority

The last chapter showed how local land users strategize within and between the fields of state and customary polities (→ *7. Transformations in Legal, Political and Social Practice: A Contextual Analysis*). It has offered numerous examples of how Communal land reform and other, related transformations have altered and diversified the capitals, strategic scope, and demands of actors within the communal area. Particular attention was devoted to the ideological and legal government intrusion into traditional tenure systems and its underlying logics of property and exchange (→ *7.1.*), the jurisdictional competition this intrusion triggered (→ *7.2.*), and how other evolving legal and socially dedicated effectuated shifts in land use and in community concepts (→ *7.3.*). Some of these transformative elements confront TAs with new requirements in gaining the legitimisation needed to hold their status.

The game of communal land governance is increasingly reshuffled by laws and actors, as they mix spatial and ideological fields. This is done by transgressing the loosening borders between the state and the traditional currency market, in a way that best suits a person's claim. Fields, moral fabrics, and respective capital currencies are thereby interwoven or selectively applied in favour of a specific argument or claim. In this game, all governance actors are challenged to act skilfully, according to their best knowledge of practical and social norms, but also constantly inventing and improvising untested moves (Lamaison & Bourdieu, 1986, pp. 112–113). This strategic challenge particularly applies to those who aspire to prevail as an authority, and who are to (re)negotiate their niche of legitimisation. With this in mind, this chapter shifts a focus onto individual responses of TAs, pertaining to the second research question: What are the various strategies that TAs adopt in order to maintain their status as community leaders?

This agency-perspective allows one to understand the context not only as an assemblage of local effects of transformations, but also as a game that is co-produced by the agency and relationship of local TAs and land users. A TA's choices of a primary target group, and aspired stability of power, interact with external conditions that shape his/her strategic scope (→ *8.1. A Reflection of Conditions, Resources, and Power aspirations)*. TA strategies, then need to be scrutinised with regards to their referencing focus, whether they build onto *tradition* and/or *development*. This binary perspective has shown to be a functional tool in legitimising the existence of plural fields within land governance, and their respective value as separate – although spatially inseparable – fields with a particular currency of symbolic capital. Thus, two capital forms indicate a first direction of the route a TA choses in pursuit of an authority strategy: traditional symbolic capital, and modern (or developmental) symbolic capital (→ *8.2. Two Currencies of Symbolic Capital*). The capital forms may also take on the form of narrative codes, or symbolic material statements. Moreover, in order to successfully bid for legitimisation, it has proven necessary in many cases, to engage a mix of both references (→ *8.2.3. Mixing Currencies and Fields of Action*). A strategic choice is made in adjusting relevant common-sense knowledge, including perceptions on fairness, entitlements, and tradition, and most specifically the opinion of what comprises the responsibility of a traditional leader.

TA strategies require a re-definition of the political character TA's ascribe to their authority status (→ *8.3. Strategies: Patterns of Discourse and Agency*), and many confront this challenge by making use of their special status as gatekeepers and translators between the two fields, between the statutory and the community's expectations, moral fabrics and practical norms. The question is then: How can a TA make use of this particular position? And what ideas and resources are applied in the process?

This navigation may be designed in various ways, according to the primary direction of seeking legitimisation through upward or downward accountability, but also in the aspired stability of authority. This includes advising and translating of local needs into the government's ideological and administrative narrative and discourse, and vice-versa. In any case, a strategy is supposed to convince the immediate audience, testing its range of tolerance and of legitimisation. The immediate audience is the counterpart to a TA, which, as an individual or a group of stakeholders are in a position to momentously dismiss or accept the TA's power. The practical anticipation of the audience's legitimisation response is hence a crucial point of orientation when deciding on a strategic move. A TA's strategy in seeking legitimisation is hence of necessity an attempt of testing the limits to the audience's common-sense and is not always successful (e.g., *→8.3.3. Testing the Limits to Legitimacy*).

## 8.1. TA strategies: a reflection of contexts, resources, and power aspirations

If land governance, in the study's context, is imagined as a stage, or game in which plural jurisdictions or authority spaces merge or interact, it becomes clear that the status of TAs depends strongly on their persuasiveness as consistent and powerful authorities. Effective mechanisms of coercion are therefore of central necessity, but also the adherence to legitimate and comprehensible rules and laws, through "strategies of persuasion, policies of moral and cognitive signals, and appeals to the citizens' capacity for enlightened self-binding" (Offe, 2009, pp. 559–560). In other words, an authority's legitimacy is defined by how well his behaviour relates to the assemblage of the common-sense understanding of its respective audience.

This chapter highlights the political strategies used, and segments them into practices and narratives that reflect a TA's view on what her/his authority basis consists of, and how this basis is affected by the (legal) transformations that go along with the two fields' overthrust. A strategy is clearly restricted by the available capital, and the relation of capitals between a TA and their community. Legal knowledge and access to either field's judicial fora, economic, social and spatial capital of a leader attain a specific value in relation to those of their villagers, because the villagers' own capital, livelihoods, and livelihood projections vitally influence their readiness to legitimise a leader and his/her strategies. In connection to the villagers' capital is the geo-political context with its influence on the relative values of capital forms in either currency.

Furthermore, a strategy for legitimacy is, often subconsciously, adjusted to the aspired stability of a position. The most short-termed strategies converge with what comes close to a resignation from authority altogether, while strategies at the other end of the spectrum can aspire to become even an orthodox or doxic fact. The *de facto* viability of a political authority status relies on the degree of its normalisation, and on its affected and targeted audience. Each power claimant may apply for legitimisation from various directions – and the response may differ according to the audience addressed by the claim. The addressees of an aspired claim can be imagined as *counterplayers* in the game of seeking legitimisation. Thereby, at times, TAs may gain power beyond the scope that has been formally assigned to them, by combining several strategies that cater for diverse groups of audiences.

A legitimisation strategy is, in consequence, not necessarily coherent; it can be adjusted according to a circumstance or a person that is addressed. In this endeavour, the dynamic of custom and a TA's mobility between registers of power and capital forms (van Beek, 2011, p. 45) is equally supportive as challenging, and similar to their double-role as both land users and authorities. This double-role,

too, widens the scope for strategies but forces them to not solely rely on the legitimacy from either the community or the state, but to comply, or argue, with the existing moral framework on all levels of governance.

Strategies are always adapted to the addressed audience, which is deciding to legitimise or to deny an actor's legitimisation. In her historical analysis of chiefly power in Malawi, Davies emphasizes that in seeking to assure their political authority, chiefs have to choose a direction in addressing their claim – "upward or downward" (Davies, 2014, p. 27). In the case of Namibian TAs, however, such decision can only be made with regards to a primary audience, yet, TAs in Namibia are particularly challenged to seek legitimisation from several directions and actor groups, depending on what moral fabric is deemed most valid in a situation. Partially formalised governmental affiliates, as somewhat informal institutions themselves, TAs have to master a multitude of narratives to defend their status in various moral fabrics and social fields, as well as the "skilful[…] foreground[ing of] the contextually most relevant element of legitimacy" (Lentz, 1998, pp. 61–62). This requires a quick adaptability to the community's immediate and diverse needs and expectations (Knight, 2010, p. 26; referring to Quan, 2007, p. 53; Berry, 1993).The insecurities on such expectations are reflected in a discussion, which arose during a training that offered TAs to learn about the CLRA. It was set in motion upon the question, how to best deal with disagreements on traditional boundaries:

> "P1: If two headmen have a meeting with a **Senior Headman,** they can look at the area to see where the boundaries are.
>
> P2: If there is a problem with the boundaries and even the Village Headman don't know them, they should call now the **Ministry** to come to see how it should be solved.
>
> P3: You cannot define the boundaries by yourself. **The old people** in the area need to be consulted.
>
> P4: If there is no peace between two headmen then it might also lead to people not respecting you as a leader, as you are not showing a good example." (TA Training, 9.04.14)

All offered propositions refer to potential and legitimate consultation routes. But it transpires to be a choice that fundamentally tests a TA's positioning and self-staging, as they "seek to traverse a new political and social environment" (Williams, 2010, pp. 17–19). This new environment is shaped by a closer confrontation between the two fields with their respective authorities and their distinct logics of legitimacy; multiple leaders may only coexist if they offer distinct "principles, institutions, rules, and processes that are central to ruler-ruled relations and interactions" (ibid. 2010, 17-19). Thus, their (co)existence depends on each referring to different sources of legitimacy, or symbolic capital currency. Hence, the encroachment of the democratic national universe (Meneses, 2006, p. 110) into their realm urges the TAs to find and invest in niche services which the state does not (yet) cater for. Such niches open especially in the delivery of goods, but also moral services or performances of integrity, presence, reliability, and predictability, which attest their unique understanding and dedication towards a local community's interests.

While the government insist on a democratic election of traditional leaders, local communities do not share a unanimous interest or priority in such measures for input legitimacy. Especially lower- or no-income citizens are more easily convinced of the legitimacy of an authority if they see immediate and material impacts in their lives. Such observations lead various scholars to conclude that performance or output legitimacy gains importance in traditional leadership, even eroding any moral requests for leaders (Williams, 2010, p. 29; Logan, 2011, p. 3; McNamara). However, the concepts of input and output legitimacy, as introduced by Van Kersbergen and van Waarden (2004, p. 156) meet

their limits in the analysis of the traditional order of power, since they are neither distinguishable in their chronological position, nor in their form of expression. TAs are constantly required to re-prove themselves as accountable (input), and – to that aim – to reconsider their style and matter of delivery (output):

> "[W]henever somebody comes to ask for help in terms of drought you should be able to process help." (Interview VHM ML, 15.03.14: 94-97)

Historically, offering material welfare and security to the communities has been incorporated in the powers and duties of a traditional "African" leader, who with his leading skills provided security and facilitated prosperity for his people (Utas, 2012, pp. 8–9); chiefs had to be "providers, nourishers, and protectors" (Schatzberg, 1993, pp. 451–455). This concept embraces a combination of material support, but also of protection and mediation. Among the Oukwanyama TA, where "chiefs' cattle could be used as a resource for economic, political and ritual patronage" (Dobler, 2008, p. 13), power and social services were historically tightly knit together, and continue to do so through the sustaining traditional fabric and symbolic field. A quote by a regional government clerk underlines this fluctuating character, as he explains that in the past a TAs' decision was rarely challenged:

> … "because [people] respect that person by the virtue of the position that he had, as well as by the virtue of the credibility of, you know, what the person had been doing." (Interview Govt Official PA, 6.12.13: 41)

But this credibility may not only be achieved through material support, but also through efforts in the (immaterial) strengthening of community values, and the protection of land rights and community rules. This concept of leadership expands the understanding of input legitimacy beyond a single event or phase, and beyond the individual authority claimant. After all, (many) traditional leaders are not only seeking legitimacy for themselves, but necessarily also advocating for the traditional system in its entirety. An authority will retain a most lasting legitimisation, if people want him/her "not only for what it *did* on a daily basis, but because of what it *meant* to the community in the broader sense" (Williams, 2010, p. 26). Maintaining legitimate power is therefore a complex undertaking of successfully adapting to the aspired audience, stability, and shape of symbolic capital.

## 8.2. Two currencies of symbolic capital: *Tradition* and *Development*

The 'vernacular' and the 'imported' *moral fabrics* are often represented as a binary, divided by an unconfined, not sharply determinable line. Their difference lies, for instance, in their understandings of basis of authority, conditions of land ownership, and to community values. A similar binary exists between a traditional community – in the case of this study the Oukwanyama – and the statutory, 'modern', standpoints that are referred to as signs of development (*see Figure 44*).

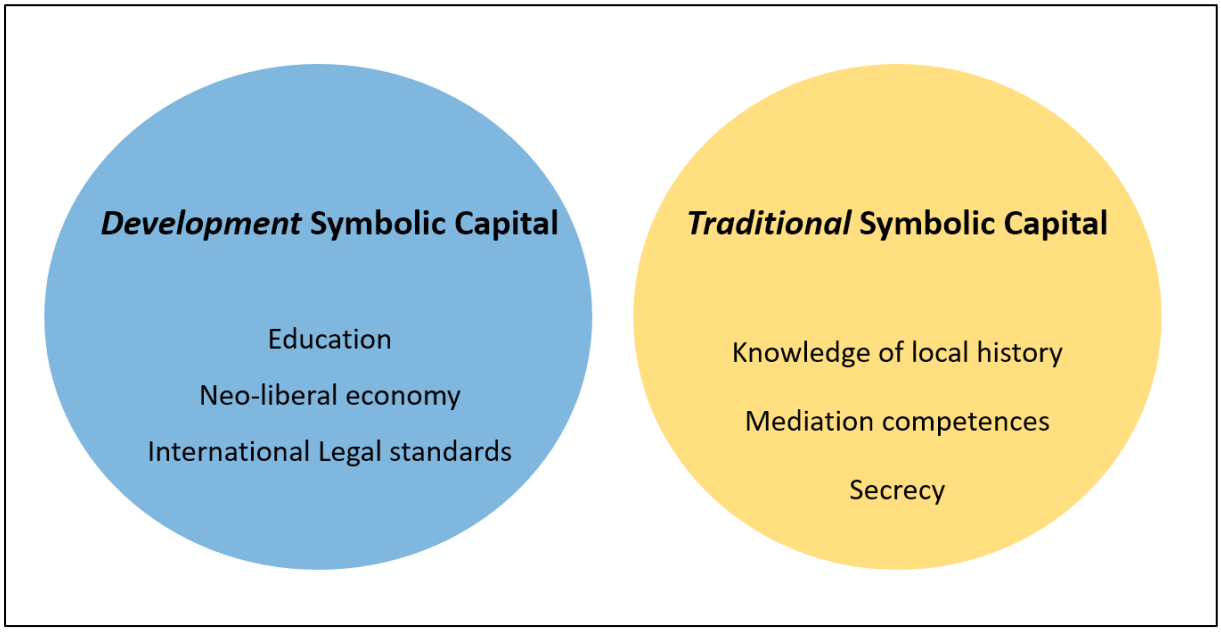



**Figure 44 Two Currencies of Symbolic Capital: *Developmental* and *Traditional*** (Weidmann, 2019)

Both *tradition* and *development* are abstract ideas, yet very concrete material and narrative references in the lives of communal land users in Ohangwena. While one builds on temporally undefined roots, "before history began" (Hinz, 1999b, p. 4), the other refers to ideas that were imported in an institutionalised and politicised form, through international narratives of state, and constitutional declarations that are unknown and out of reach to most communal residents. The 'traditional' and the 'rational authority' types as distinguished by Weber (ibid. 1999b, p. 4), I claim, do exist, however, not as a factual distinction among people as such. Rather, they represent a functional currency of referencing, which helps distinguish traditional scopes of power from the authority basis of the state. This fundamentally different legitimisation basis – even if it is primarily a discursive one – fulfils a prerequisite of peaceful co-existence (Larcom, 2014, pp. 208–209). To maintain this coexistence, I claim, the capital forms and their respective underlying discourses carry some inscrutable elements for self-protection. They rely on a certain secrecy, and incomplete definition, in order not to compete too drastically with each other's sources and fields of symbolic power.

### 8.2.1. *Traditional* symbolic capital

The previous chapters have shown from various angles, how *traditional symbolic capital* is submitted to a transforming context. However, with the adaptation of traditional political (self-)assertion, *tradition* is also vigorously employed and transformed through local daily discourse: It is a code to identify and connect insiders and distinguish and exclude outsiders, to perform and re-enforce the differentiation between social groups, linking their identity to certain conceptions of time and space. The binary between icons and ideas of state and modernity on one hand, and "ideas of tradition, identity and locality" (Lund, 2006, p. 691) on the other, has long been central ingredients of Namibia's political landscape. Just as long, possibly, as the intermixing of the two references, in negotiating paths for legitimisation. The mutual influence dates far back in history (Lindeke, 2014) and has been perpetuated as common-sense by political elites of both fields. This purposeful use of

traditional references within a blend of multi-layered social fields is sustained until this day. It is reflected in the diverse character of elites who reinstated the Kwanyama kingdom: An informant states his surprise that "church people […] know better about the King situation and the ritual situation than the […] traditional authority guys" (Interview Journalist OS 23.7.2014: 75). This shows that tradition is, consequently, created and adapted not only at different times, but by different authors. And it is seldom used as an exclusive and isolated category, but rather serves as one functional ingredient in a strategy.

As a functional and widely recognised set of attributes, *tradition* features a specific source of recognition, and of a specific symbolic capital. Tradition has become a placeholder to define the moral fabric, the field of which it is the associated symbolic capital. This traditional field appears specific in its origin, with a particular past, present, and desired future realities. It offers the security of common-sense, in the form of "overtly or tacitly accepted rules and of a ritual or symbolic nature, which seek to inculcate certain values and norms of behaviour by repetition, which automatically implies continuity with the past" (Hobsbawm, 2010, p. 1). Such a capital provides legitimate proof of a person's indisputable knowledge of a social group, and thereby gives evidence of their affiliation to this group and to the land it claims.

Within the field and scope of my research, various were evoked in conversations about sources of tradition and traditional capital: being charismatic, trustworthy, a skilled mediator, and having knowledge on the socio-geographic history of the area. Alongside these traits, regular references were also made to material wealth, as a leader needed to be able to provide for his/her subjects, or at least not to depend on exploiting them. Lastly, but importantly, the traditional field and its respective capital are crucially defined by its differentiation from the national one:

> "(Real headmen), they are not academic, they are not church-oriented people, you see? That is tradition. You have to… to tradition, you have to to to …" (Interview Journalist 23.7.14: 130)

Secrecy as an invaluable tool of power, to build an exclusive status for the personally involved leader, creates a stability and dependency through shared experiences and anticipation of legitimacy mechanisms. What the argument of tradition lacks in transparency, it compensates in identity and morally binding attributes. It is for example rather common to attack a TA's sincere legitimacy based on their compliance with the 'real' tradition. A recent example was a legal petition that requested the resignation of the majority of the Kwanyama leadership, on the grounds that the Queen Nelumbu was "unfit to rule and unite her subjects" (Breaking News Namibia, Facebook Page, 2019). In view of the continuous re-invention of tradition and common-sense, such disputes are constitutive of the traditional field.

Apart from these secretive and immaterial characteristics, traditional capital also takes on thoroughly concrete appearances in practices and material symbols. This takes the shape of specific agricultural practices, such as a 'traditional method' of ploughing with an ox or by hand instead of a tractor, of cooking on an open fire instead of a gasoline stove. In other moments, such references to traditional produce, as they are nowadays traded in urban areas as nostalgia products, such as *Marula* fruit or *Mahangu*. These references, in either form, also serve to preserve a "spirit of the collectivity" (Coicaud & Curtis, 2002, p. 14).

Traditional authority is acquired not only through such knowledge, but through its combination with the skill of mediation, "bravery and eloquence" (Koyana, 1999, p. 119). This constitutes an important argument in the legitimisation of appointment and inheritance of a traditional leadership, instead of undergoing democratic elections. The eligibility is hence deeply imprinted on a persons' character, through inheritance, upbringing, or other forms of acquiring a "feel for the game" (Bourdieu, 1990, p.

82). A Senior Headman for instance explained that people were convinced of him as a leader, when he proved his fondness of tradition by organising a yearly cattle show:

> "I used to call the herders because I bought cattle and give them to the herders now I use to call them then they come here it is our tradition whereby people will be pointing at the fat ones and so on, ja. And from there, people find out that I like traditions. Now the senior headman […] who was leading this whole district […, w]hen he passed away people said that the best person we can take to lead the traditions is [me] now in this whole district." (Interview SHM GN, 14.4.14: 12)

Many features used to describe a good traditional leader were directing at a necessary knowledge and memory of local history, of the land, the families in the community, and their character. Thus, these attributes rendered a Village Headman a reliable and trustworthy witness in disputes, but especially as a tenure contract partner:

> "No, no! They will not forget. Because they are all from this place, also!" (Interview Villager AN, 8.03.13: 29)

Part of the history of the community and the jurisdiction includes customary land rights. As the crown witness of each land right handed out in their jurisdiction, the Village Headmen are the personified cadastre:

> "When the headmen were elected long time ago, they knew where the boundaries were, everyone knew […] because that's how they found the boundaries." (Interview Kapatashu KK, 11.03.14: 7)

The tautological form of such reasonings lead an outsider to believe in a traditional community or village as a consensual group, devoid of any disagreement over authority (van Beek, 2011, p. 37). The rhetorical enactment of 'tradition' involves the strengthening of tradition's "moral significance and its perceived embeddedness in society" (Williams, 2010, p. 26). Upon being asked about his estimation of the TA's future, a Senior Headman answers by reciting a proverb:

> "I will now tell you a parable: A Vambo named one of his children '*I do not know the future*', and the other one '*I only know the past*'." (Interview SHM GN, 16.4.14: 87)

By reciting Owambo sayings in a conversation, an actor not only attests knowledge of the ethnic history and myths, but at the same time makes use of the stage of discourse to position his contribution, as the answer which builds on this background seems in accord with customary values. A similar effect is attained through references to previous kings:

> Mandume*: These ["naturally rich"] people will help to save the nation during a serious period of hunger. […] If people are being killed because of their property, then others will not have courage to work hard and accumulate property because they fear for their lives.* (Hayes & Haipinge, 1997, p. 50)

The employment of this argument by a Village Headman reflects the significance of protection of body and property that still forms a part of the Oukwanyama social identity of today. It performs the (first-hand) knowledge of the past problems and how they were solved in line with traditional values or standards, by invoking the historical and socio-economic relevance of motives (Offe, 2009, pp. 558–559) and leadership.

The role of "narratives of legitimacy" as a tool for "producing local authority" (Davies, 2014, p. 24) is particularly crucial in settings, where tenure relies on oral narratives (Lentz, 2005, p. 176). The

emphasis on *local* narratives and agreements are decisive for establishing consent rather than obedience, which is a more stable form of legitimacy (Meneses, 2006, pp. 102–103). What Von Trotha (1996, pp. 86–87) calls "small tradition", also correlates with the idea that tradition is for a major part defined and maintained by local stories or historical narratives, "told in the presence of other members of the local community. It consists not of laws, but of norms legitimated and disputed in ongoing interactions and sanctioned and modified by the chief's court" (ibid. 1996, pp. 86–87). It is the chief's role, to "defend" this small and local tradition (ibid. 1996, pp. 86–87). However, nowadays this *local* community is gaining mobility and consensus is less static in a plural legal and moral reality; hence, "[t]he power of persuasion […] cannot rely on 'good stories' alone, but also depends on the effective manipulation of social networks and political power" (Lentz, 2005, p. 176). In a sense, this can be observed in the self-ascription to an ethnicity or a traditional community: The historical narrative needs to be maintained and reproduced in a way that legitimises the Oukwanyama kingdom and political structure, while maintaining a transformable character to respond to local and national requests. Therefore, by interweaving an obedience to an authority with the identity-endowing narrative that consolidates "locally or regionally accepted arguments, images, and episodes" (ibid. 2005, p. 176), a consent with the power-narrative is strengthened and stabilised. Apart from these secretive and immaterial characteristics, traditional capital also takes on thoroughly concrete appearances in practices and material symbols. This takes the shape of specific agricultural practices or produce. Because economic capital is not merely money, it is particularly necessary in this study's context to include alternative forms of economic capital. For instance, and above all other such capital, is the value of ownership of cattle. **The slaughtering of cattle wedding celebrations represents a person's and/or household's wealth in offspring (and reproductive force (Pauli, 2019, pp. 263–264)) and is displayed by the cattle skulls in the reception area of a homestead (*see Figure 45*). Thereby, owning cattle is likely to draw prestigious, symbolic value from their (potential) economic value, in a manner of swiftly transforming capitals and mutually translating "political resources" (van Beek, 2011, p. 45). In similar context, Schnegg and colleagues (2016, p. 585) found that "social status and bargaining power strongly correlate with economic status" (with reference to Pauli, 2011) which is significantly intertwined with cattle ownership (Schnegg et al., 2016, p. 585).** Thereby, such 'traditional' forms of materiality, too, offer opportunities for TAs to exert power and to claiming rights. The material basis of headmen (and their position) used to lie in agriculture (Dobler, 2014, pp. 190–191), hence clearly distinguishable from monetary wealth. This distinction has, however, dissolved

**Figure 45 Cattle Skulls: A Symbol of Traditional Wealth.** The number of skulls represent a souvenir of a homestead's weddings and funerals (Weidmann, 27.6.2014)

considerably over time (ibid. 2014, pp. 190–191).

Over time, the spatial rift between fields and related ideas on economy has become more permeable; the material basis has expanded from agriculture onto various field-internal and field-transgressing forms of material and means of transactions. Traditional agricultural practices have long merged with the economic market, through the (semi-legal) options of commodified labour, trading of cattle and land and other means of support for agricultural output (fertiliser, seeds, etc.). Thus, traditional and modern material assets are by no means clearly distinct: Yet, economic capital seems not to be a sufficient source in achieving aspired power positions for a TA. This assumption is supported by cases in which economic capital is converted into traditional capital. The Village Headman of Ondobe even explained how his own *Mahangu* field fails to pay off financially. Especially as an absentee land owner, he relies on paid labour and machinery for cultivation, while he is working in Windhoek:

> "Now… what you put in, is what you're not getting out any longer! So, you're only doing it, to keep the traditional way of life." (Interview VHM SK, 16.02.14: 463-466)

The fluctuating value of traditional agriculture reflects in some quotes by traditional land users:

> "…but the problem is that even lazy people want more land even they won't do anything with this land." (Interview Kapatashu MN, 15.03.14: 102)

It depicts their unsettledness with the diversification of the valuing and use of land. While they depend on their *Mahangu* for survival, others do it only for traditional purposes, in a way to show the belonging to the traditions of the community, and prevent others from talking of him/her as a lazy person:

> "…some people they do not work in the field they are very lazy, know that we even have the drought relief they just want to get those but not work in the field. All they want is to be complaining that the government must do something about the drought issues but they do not want to work for themselves, they do not even try." (Interview Villager VP, 03.12.13: 44)

Dobler presents an example, in which a high official in one of the northern towns had stated that wooden palisades ought to be replaced by walls, and modern houses, suggesting that (political) legitimacy could only be gained through modernising architectural aspects of customary lives. The author hence deduces that “rich homesteads of the local elite are suddenly redefined as the slovenly remains of an agricultural era”, while the modern houses become the standard of aspirations (Dobler, 2009, p. 124). Such reference is, however, not supported by my own data. Instead, many locally influential people ‘develop' their plots reservedly. They retain their palisades with pride, while modern additions can be made, such as fences, water tanks, electrics lighting, etc.). Those actors take pride in demonstrating their wealth in both fields. The palisades prove a long history of settlement, since the resource wood is becoming increasingly rare. Outsiders or newcomers are therefore forced to get different material that is accessible through state-economic capital.

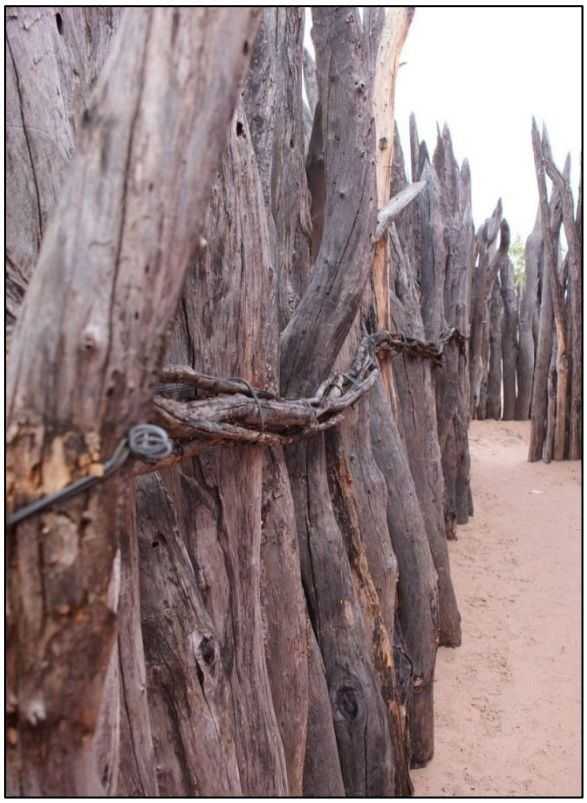


**Figure 46 Palisade Homesteads: Traditional Wealth at the Oukwanyama Palace** (Weidmann, 18.2.2013)

In consequence, recent settlers who lack access to the increasingly rare resource wood, now have an alternative form of achieving political capital through the state field, but their distinct non-traditional character remains visible and – depending on the audience or aim of their strategies – may be of disadvantage. Traditional material capital can easily be spent, but is hard to (re)acquire, due to the increasing scarcity of its ecological fundaments – scarcity in a predominantly political sense, results for a rising demand and increasing pressure to protect a resource (Scoones et al., 2014).

### 8.2.2. *Modern* or *Development* symbolic capital

With the increasing transfer of economic capital and the commercial logic into the communal areas through traders, the legitimisation of TAs and of traditional capital was first threatened as traders became more economically successful than Village Headmen. This reflects the source of a still ongoing clash between a neo-traditional practice (patronage by traders) with what is seen as 'traditional' ways of relating material resources to power (harvest, cattle e.g.). This new, and apparently more efficient, way towards "development" increased the import of economic ideas based on the statutory moral fabric into the *Homelands*. Consequently, the new material means introduced a whole alternative legitimising logic. And, while the economic resources and a surplus in knowledge of either fields in the *game* gave the traders new dexterity to strategize and even reshape the common-sense of tradition, their "exposure to the modern economy" gave them also "a sharper sense for the injustice of the [dual economic] system" (ibid. 2014, pp. 190–191). This counter-narrative, which challenged the traditional capital that reserved political power almost exclusively for

**Figure 48 Mixing Traditional and Modern Symbols of Wealth.** A rural homestead in Ondobe, featuring both traditional and modern buildings (Weidmann, 20.2.2013)

the elders in the village was, according to Dobler, established in a co-operation between young migrant workers and mission clerks. Their common interest was to challenge the political system or field, which saw traditional capital as the only route towards political power (ibid. 2014, p. 192). Modern or development capital is defined by a multitude of aspects that are commonly framed as opposites of the old traditional ways of life. A government clerk stressed what he saw as the main shift in the requirements, tasks, and position of Village Headmen was that their decisions are more likely to be challenged than before, because "now you can realize that people are being educated" (Interview Govt Official PA, 6.12.13: 43). In consequence, he says, "some traditional authorities are putting even headmen who are either educated or people who know […] the administration, you know, somewhere or somehow" (ibid: 43). Accordingly, in the informant's opinion, a TA's basis of

authority has considerably shifted from one of trust and reliability, to one of being educated or connected to the state political field. Another informant highlighted the transition of Village Headmen in a similar manner:

> "Now, you will shift that [knowledge] to the Kapatashus and to the secretaries. […] Whereas you will shift the wealth of the village to the headman who is in Windhoek or who is in, yeah…" (Interview Govt Clerk DK, 14.11.13: 176)

The fact that both these informants are clerks at regional ministries may have had an impact on the sample of TAs they interact with, and hence leaving those TAS without state access unregistered in their cosmos. Education is mentioned frequently, as a summarising reference of any knowledge of and access to state politics and law, international logics and standards of (good) governance, science, and expertise. Accordingly, development capital carries a normative orientation to the national scale (equality, democracy), in line with international normative premises such as good governance, or rule of law. It is acquired through education, cultural capital of the state field, in the truest sense (Bourdieu, 2002, p. 283; Gupta, 1995, p. 381). Knowledge about state law and logics allows a person to estimate the priorities and processes in international scientific standards (expertise, documentation) and governance standards (good governance, premise of decentralisation and democracy). This knowledge helps a TA to estimate and anticipate the course of a dispute case, or the value of a land right in the currency or market of the state field.

**Figure 50 Brick Housing and Water Pipes: A Symbol for Modern or "Development" Wealth.** A square brick building with in-house water access in Ondobe (Weidmann, July 2014)

A walk through a settlement in the central Ohangwena region shows a wide variation of how capital forms are combined and applied within a homestead. Economic and symbolic-traditional capital forms are both desirable, and their combinations symbolise a high social status in either playing field. The visibility of such a confluence between traditional and modern lifestyles and values is depicted in figure 45, which exhibits both modern brick houses, side to side with traditional wooden 'rooms'. The second image (*Figure 46*) proves access to monetary income, by the building materials and the water pipes that are installed not only to the plot, but to reach into the house.

Development, oftentimes used as a synonym for modernisation initiatives, is an inviting field for authority aspirants: There are more than enough demands to be fulfilled by those who can afford it – and to invest in their fulfilment may well be worth it in returns of symbolic capital. Development capital is always an assemblage of knowledge of state law and practical ideas in its implementation. It

is not enough to merely support the implementation of government projects as executors, if a TA aims for a legitimised and irreplaceable status in land authority.

> Thus, while maintaining its role as a 'custodian of custom', the chieftaincy has also responded to pressure from local populations, local government institutions, and development agencies, and has adopted some changes in its own structures. (Williams, 2004, pp. 115–116)

The slow dissolution of the dividing line between the customary and state capital market is not a new occurrence. What is increasing, however, are the number of community members who question the logic of the dual system and the basis of each authority.

### 8.2.3. Intermixing currencies and *Fields of Action*; a necessity with moral restraints

The categories of *Tradition* and *Development* as symbolic capital forms are already vast concepts, yet the resulting combinations in strategies are, of course, even more numerous. It is for that reason, that Ingram et al. (2015, p. 15) rightfully request a governance analysis to go deeper than simply dividing between the statutory and traditional system, and instead analysing the legitimising strategies by the actors involved.

As has been outlined thus far, the imbrications or overlays of the two seemingly divided fields and currencies create fluctuating context of multiple pasts, from which "complex combinations of claims emerge" (Lund, 2013, p. 28). And these must be responded to through intricate strategies of capital investment, discursive techniques, and adaptations to situated audiences. The increasing assimilation, or constant intermixing and syncretisation of the customary with state politics and logics has surfaced in many cases and will be outlined in the following chapters (→ *8.3*.).

The authority basis for traditional leaders in Owambo societies has long drawn from a mixture – rather than one single type – of capital forms (Hayes & Haipinge, 1997; Dobler, 2014; Miescher, 2012; Tötemeyer, 1978). After all, their status relied on providing "(the good) life, fertility and prosperity" (Salokoski, 2006, pp. 17–18) to their community, requiring a variety of different leadership features. In his seminal work, Fumanti (2016, p. 70) has portrayed this fluidity of traditional leadership at length, tracing it to the "a great bundle of moral ideas" a (traditional) leader had to convey, among which he counts, in particular, exemplarity and goodness. My own ethnographic observations, similar to Fumanti's, have shown that these traits are sustained by postcolonial generations of leaders or elites, yet their interpretations of *exemplarity* and *goodness* are adapting to the prevalent needs of people and the normative concepts, e.g. of justice or rules of equity (Schnegg et al., 2016). In consequence, each (generation) of elites establishes its own, local, moral, or symbolic capital (Fumanti, 2016, p. 274).

Therefore, on the one hand a simple distinction between traditional and development capital and respective symbolic fields would be oversimplifying. On the other hand, however, efforts to prevent this intermixing are widely-supported.

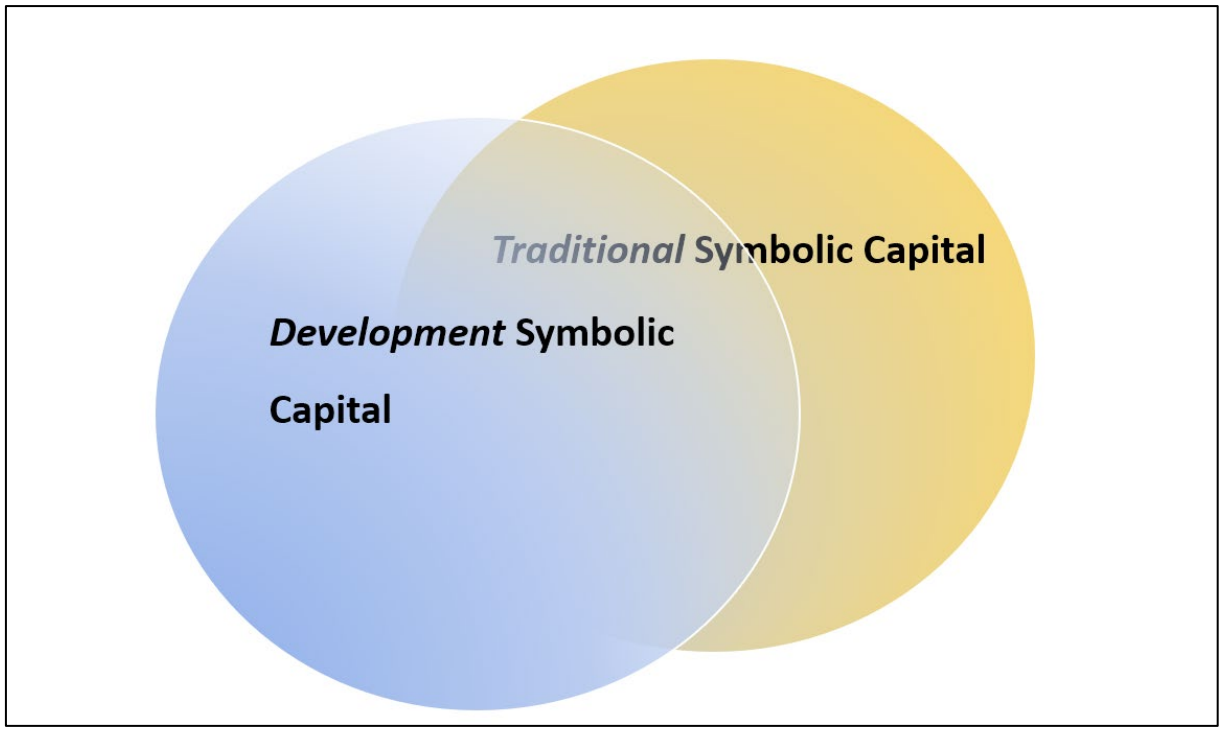



**Figure 52 Two Types of Symbolic Capital as Interconnected and Intermixing Assets** (Weidmann, 2019)

Political and legal efforts to maintain traditional communities as political entities prevent the plural moral fabrics from growing together, preserving each fabric as a separate 'legitimisation market'. Although intermixing strategies are not a new phenomenon, their legitimacy is increasingly drawn into question, as the approaching of the state field requires a more explicit distinction from the state authority's resources and mechanisms. In consequence, TA strategies show how various combinations are "regarded as potentially immoral", and therefore need to be downplayed in a strategy (Lentz, 1998, p. 64).

Examples for such disagreements are unresolved moral debates, typically on whether different social registers or "fields of action" (Lentz, 1998, p. 64) are compatible: Mixing 'tradition' and 'politics' threaten to be stigmatised as tribalism, whereas mixing economy and politics may be accused as corruption, bribery, or nepotism. Such debates are vividly engaged in Namibia's everyday public discourse, repeatedly challenging various political strategies. For instance, a reference to one's tribal affiliation is an identity attribute of many Namibians, however, it is better avoided in negotiations on a national scale, where the principles of free market and expertisation are valued higher than ethnic belonging (Diener, 2001, p. 255; Chabal & Daloz, 1999, pp. 53–54). For instance, using traditional linkages in job-hunts or for receiving favours of economic or political kind, risks accusations of favouritism. Meanwhile, on a local scale, references to traditional knowledge and belonging serves well as a legitimising argument to acquire a land right, for example.

The discourse – of tribalism and other 'isms' – is a mixed blessing: If a person actually oversteps the line of tolerated mixing of the registers for furthering their own interest in the form of a piece of land or other material or immaterial favours, it is a code to accelerate public perception and possibly prosecution of the practice. Concurrently, the code itself can be misused, in way of accusing a person or practice simply because they contradict one's own interest (Geingob, 2004, p. 158). And this latter example is often employed in the multi-layered field of norms and leading to questions over the integrity of TAs, which again reflects the divided opinions within a community. Thus, as will be

discussed later, the dissipating public opinion or interest is in itself a constant threat – or control mechanism – to the TAs behaviour. Tribalism is an inevitable condition as long as tribal self-governance persists – and fertilises competition for resources and influence on governance on all levels of the state. Consequently, TAs have to perform a constant balancing act: They are required to adapt to the dominant definition and systems of governance, without mixing politics and custom beyond an extent that actors view as legitimate.

Manoeuvring strategic arguments between the fields and moral fabrics requires at times employing contradictory narratives. An example is offered by a case reported on the news:

> Recently five villagers […] were fined three cattle each for questioning the fencing of communal land by Chief […] for his nephew. (Plan, 2012)

This case expanded further, as communal land users were then accused of illegally grazing their livestock within that fence. It was at their case hearing at the magistrate court, where it was revealed that the chief had given out land to several national leaders, among them even the then-president. The villagers' pragmatic argument was that fencing was supposedly illegal; however, the moral disagreement with the nepotism could not counter the chiefs' strategy of counting on his upward-focused legitimacy by buying into personal favours of members of the government. What the chief was reported to have done is not prohibited by law, but nepotistic land allocation by TAs is increasingly challenged in public discourse on local and on national medial level. Yet, the traditional argument and currency prevents its complete illegalisation. When confronted with the land allocations, the Minister of Presidential Affairs responded "that the Namibian Constitution allows any Namibian to settle anywhere in the country" and that as former Lands Minister, the President was "acquainted with the procedures to be followed to access land" (Plan, 2012). It is portrayed as a simple result of different knowledge levels, which are in a way personal and of higher destiny – and not an example of social injustice. The case illustrates that a person who lacks access to an alternative judiciary route, risks punishment for questioning the practices of their traditional leader. Hence, as Lentz has rightfully perceived, such combinations of traditional and modern narratives and tools, as much as they are necessary to gain political power, are at times at odds with the broader moral discourse (Lentz, 1998, p. 64).

According to an informant this situation leads (or has already led) to a state of disorder (Interview Journalist, 23.07.2014: 133), and it has been variously noted that a TA could no longer completely rely on "traditional ways" (Interview VHM SK, 16.02.14: 33). A Village Headman gave an example that despite his traditional leadership status, his religion forbids his attendance to traditional *efundula* ceremonies (Informal talk with VHM AA, 22.11.13). *Efundula* is a "pre-christian" ritual (Nampala & Shigwedha, 2006, 27 pp), which was originally held by traditional leaders (ibid. 2006, p. 44), to initiate young girls into the world of adulthood (Field Diary, 22.11.2013; *see Figure 48*). The Village Headman is in a dilemma, as it would be his traditional duty; yet attending contradicts his religious loyalty.

Apart from the Efundula ceremonies, there are also other moments that bring this dilemma to the fore. The journalist emphasises that a 'truly' traditional person can be identified by being polygamous:

> "[F]or a person who is not a traditional man, he will say: »no it's not fine«. And the church man in there, he will not go with it, he will not go with it. So, you see he's a man of another field…" (Journalist, 23.7.14: 131)

Thus, the deep moral rift that lurks between the church and custom appears to be similarly ambivalent as the relation *custom* shares with *politics*. Each register relies on moral lines, which at times directly contradict one another. Whenever a TA tests his/her moral avant-gardism, or local legitimacy, there is a risk involved, regarding how well their strategy alludes to the primary and the alternative audiences. TAs must carefully "stage their simultaneous involvement in different social and political fields", in accordance with a respective situated audience (Lentz, 1998, pp. 61–62; Williams, 2004). This is most effectively done by adopting a narrative, or a language of legitimacy (Posel, 1984b, p. 145) that is adapted to the audience and its respective image and expectations of an authority (Lentz, 1998, pp. 61–62).

**Figure 53 Efundula Ceremony in the Ondobe area** (Weidmann, 22.11.2013)

## 8.3. Strategies: patterns of discourse and agency in seeking legitimisation

As the game of land governance diversifies in respect to the institutions, the goals, and the capital assets it accommodates, strategies to achieve political power need to become more dynamic and creative. The Village Headmen, as an actor group, are especially affected by both the legal shifts and transitions in land use, which makes their strategies the most interesting to observe.

This chapter describes different strategy patterns that have been observed in TA's attempts to persist in power, throughout this field research. The strategies portrayed are not to be interpreted as 'types' that statically and unequivocally describe a person. Much rather, the aim is to provide observed agency patterns, which then can be analysed in their scope of completeness, direction, and potential stability. The ambition is to comprehensively argue what the contributing conditions and

factors to a certain type of strategy are, and what form of authority and legitimacy a TA (might) aspire by it.

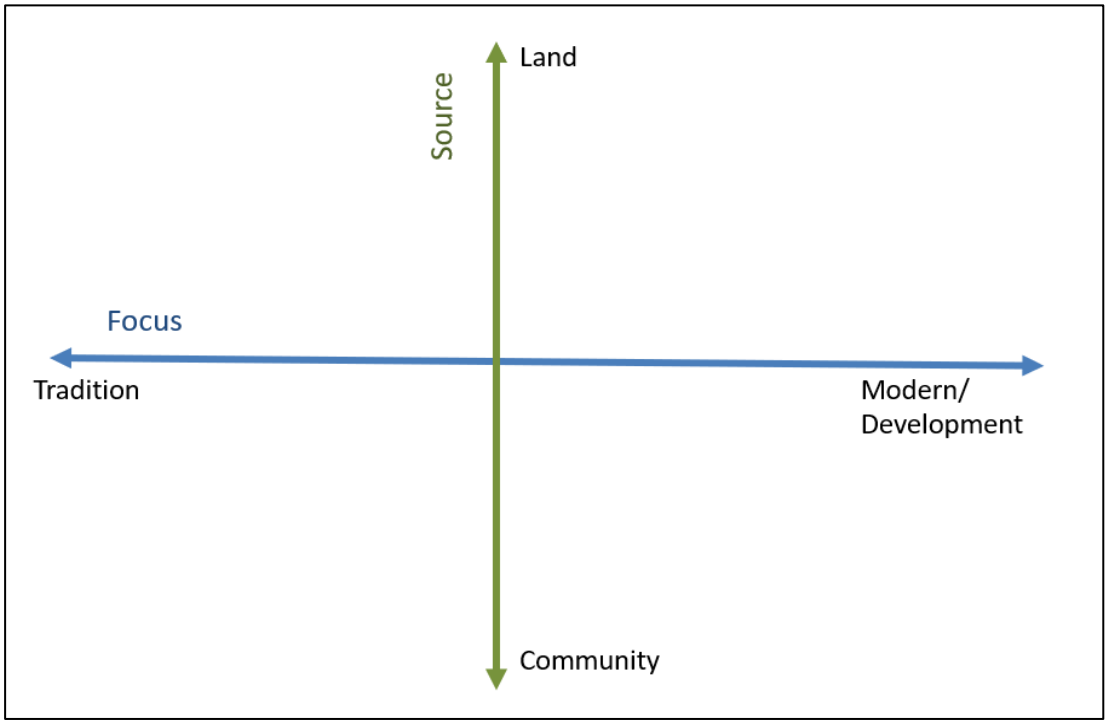



**Figure 54 Legitimisation Strategies: Foci and Sources** (Weidmann, 2019)

In view of all the outlined conditions and circumstances – including the necessity and moral delicacy of intermixing capitals and fields of power – a TA's strategy may first be identified through its prioritised moral fabric of reference, or its position between conservationist and developmental aspirations.

1) Conservation: Translating aspects of traditional life into the language of state logic, in order to conserve it
2) Development: Including the entrepreneurial narrative into one's tasks to provide goods for one's community by furthering the approximation of the state currency to the field of communal land and livelihoods

Each of the described strategies implies that a TA makes use of his/her gatekeeping position between their communities and the state institutions. The main difference lies in the positioning vis-à-vis services, system, and logic of the state: Whereas the conservationist strategy builds on supplementing what is offered by the state, the development or modernist approach tends to adapt customary governance to the shapes or services of state governance. These strategies may be directed at different aspects of traditional lives: either to strengthen its accumulative, or commodified, aspects such as land payments or cattle accumulation, or to protect and preserve non-commodified features. Others, which I call 'development strategies' actively seek recognition or legitimising backup by the state (logic), either by adopting or mimicking state features, such as power divisions and participatory committees.
Some TAs apply strategies that are set beyond these two categories, either because they lack the capital resources or the will to invest in maintaining their status. Those TAs might be forced to resign to leadership practices that are not legitimate in the view of their audience.

Another distinctive reference lies in a strategy's connection to land as a resource. As the examples will show, both conservationist as well as development strategies exist as variants of land-based strategies, but also in the mode of social or immaterial offers or projects (*see Figure 49*). In villages where they still exist, commonages or communal areas are one particularly visible stage where a 'traditional' land governance may be enacted.
A TA's strategic moves may oscillate between the conservative and development focus, in accordance with the (momentary) audience, and may be newly localised through each action and argumentation. Thus, in retracing their intent, strategic tools or resources, and their addressed audience, I aim to draw a portrait of each observed pattern. It is hence not a goal to assume static typisations of individual actors, but much rather to dissolve such, by describing single, situated behaviours and their contextual groundings.

### 8.3.1. Conservationist strategies

Conservationist strategies focus on projects which aim at maintaining the community or certain 'traditional' claims or practices. To this end, they emphasize the community boundaries – physical or social – and specifically aim at benefitting its members. This environmental or social conservation can take many forms: It may consist of elaborate procedures or simple instructions, in decentralising their power, or attempting to retain an autocratic position.
Conservationist strategies with a focus on land or other environmental aspects, often involve the establishment of a land management plan, with regards to the remaining communal grazing area. Social conservationist strategies, in contrast, target the enclosure of the community against outsiders; either through strengthening community rituals and narratives, or through physical enclosures. Both aims gain a particular relevance as the land registration proceeds. For one, Village Headmen see their opportunities for securing a lasting territory diminish. Furthermore, they are increasingly restricted in executing their land management duty. Although their duty to ensure a sustainable use of land is ascribed by law (CLRA), yet the definition of 'sustainability' remains vague:

> [T]he members of a traditional authority shall have the following duties, namely […] to ensure that the members of their traditional community use the natural resources at their disposal on a sustainable basis and in a manner that conserves the environment and maintains the ecosystems, for the benefit of all persons in Namibia. (Parliament of the Republic of Namibia, 1995b Sect. 10)2)c))

This exposes the TA to criticism from the outset: Commonage should be protected (Thiem & Caplan, 2014, p. 107), but their duty to help landless people *de facto* undermines their assumed authority to maintain commonage unallocated. As a result, it remains at the discretion of each TA (or Village Headman) to prioritise a form of sustainability and an according project's primary beneficiaries. It is an inevitable symptom that a TA must decide on a certain socio-economic group to address their

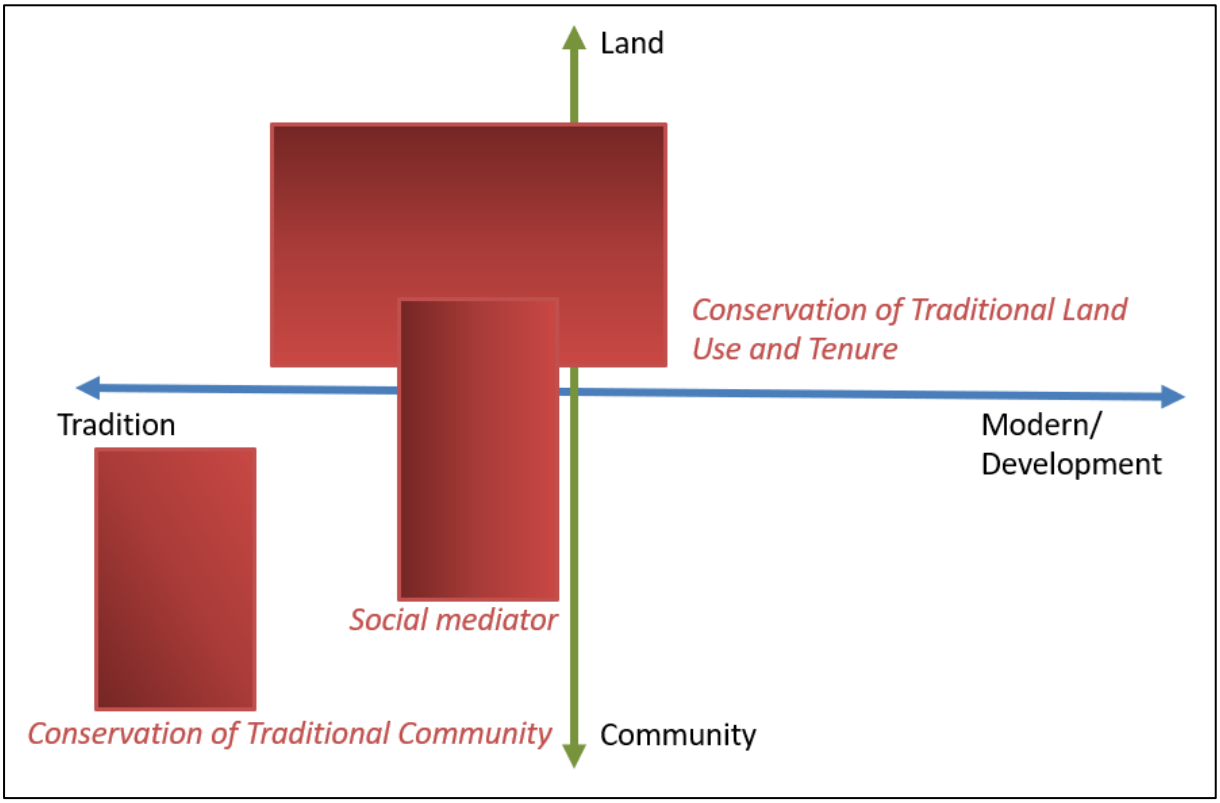



**Figure 56 Conservationist Legitimisation Strategies.** A sample and their approximate positioning (Weidmann, 2019)

sustainability-efforts. The diverse demands among his/her community regarding which aspects of a village ought to be preserved or sustained, forces a TA to morally (and at times economically) expose him/herself.

#### *8.3.1.1. Strategy of conserving a Traditional community*

This strategy of conserving a sense of community consists of demonstrating insider knowledge, aiming to build and strengthen a TA's legitimacy. The knowledge and application of myths, lineages, or the kingdom all prove a TA's validity, in terms of leading a village according to the TAs' historically ascribed authority. For example, a Senior Headman sees himself inclined to recount the succession of the previous leaders of his district, in order to show how he himself ranks in this descendance, and not only that, but also sought legitimacy through his father, who he claimed was one of Mandume's soldiers and had to defend the Kwanyama from the "Mbandja people" (Interview SHM GN 14. & 16.04.14: 85-91). By his family portrait, the Senior Headman illustrates multiple strings of loyalty that attach his family to the Kwanyama kingdom, and the traditional district, which ought to underline his rightful leadership of all who understand themselves as Kwanyama.

Ancestry and the connecting claims and knowledge strengthen a person's belonging to the group, and especially expands a TA's reach as mediator. TAs are hence guardians of a common history, "to the extent that they can relate […] to the same tradition rooted in the ancestors" (Hinz, 1999b, p. 7).

The combination of the knowledge and the skills of using it, enables a successful mediation of disputes. A Village headwoman accordingly names one of the important virtues of a traditional leader to be "a secret-keeper" (Interview VHM ML, 15.03.14: 94-97). Having a sense for when and how their delicate knowledge may be used in a legitimate way is, therefore, as essential to sustain power, as is the knowledge itself. If a Village Headman is known not to keep secrets, the community is less likely to letting them be part of their lives and sharing their gossip. It must hence be applied in a way that is seen as legitimate dispute solving (Koyana, 1999, p. 119).

> "We know that you're always going to bars and staying till past midnight. We don't know if you might want to stab the councillor." (Village Meeting Omunyekadi, 30.11.13)

This was the response a Village Headman offered a young man who went to a village meeting to inquire why he was not allowed to attend, previous with the councillor, during which his case was discussed. None of the community members present objected. Another example of a legitimised use of gossip appeared at the same village meeting, when an elderly man raised an intervention by emphasizing the need to teach young people more respect of the elders:

> "Villager: Respect for the headman should be taught to the children. No bad thoughts should be handed to the youngsters …
>
> VHM: I agree. I give you an example of a daughter in law who hit her father in law; when she was asked to pay [the customary fine], she said she should have killed him so she could pay more!" (Village Meeting 30.11.13: 39-43)

The Village Headman supports this input not by offering a solution but by underlining the old man's fears with an example. Thereby, he shows that he shares this opinion, that respect for the elders is decreasing, and that this development is urgent because it threatens people's lives. Later on, in the same meeting, the Headman takes again reference to this generational hierarchy that he knows is supported, when he reprimands a young man who complains about the slow pace of customary management:

> "You should go somewhere else if you think we're working slowly." (ibid.)

With this statement, the Headman raised several points simultaneously: He re-emphasized his unhappiness with the decreasing respect of the young towards the elders. At the same time, he made it clear that the TA administration was powerful, no way would lead around it, and that his institution leaves no room for complaints regarding its efficiency. We may speak of a (re)enacted traditionalization of a social order, in which "older leaders praise tradition and respect for (male) elders and traditional values" (Lindeke, 2014, p. 85). This re-enactment is a vital part for the identity and political self-concept of TAs who strongly build on their traditional capital.
It is therefore unsurprising that – in the Ohangwena context – it is especially elderly people who speak in favour of the continuity of traditional values and social orders, likely because they lack an alternate capital source. Young people, in contrast, even without any economic or other outstanding wealth, may hope for a treatment by state institutions that is more personal beneficial. This extent of social conservation is hence risky to the extent that it may repel young people, who are likely to seek revenge, once they obtained necessary capital from the state field.

#### *8.3.1.2. Strategy of social mediation*

While some forfeit their role of authority by assuming a mere advisory role in village disputes, others capitulate and resign from authority completely. Particularly, and forcibly, in cases where the power

over land was completely withdrawn from a Village Headman by the formalisation of their village as town land or settlement, TAs need to find new forms and resources for their status. Acting as social advisor or mediator requires any knowledge a Village Headman may dispose over, be it of traditional or state 'currency', or simply (traditional) diplomatic skills.
The emotional and normative familiarity ensures an almost undecodable vernacular system of symbolism. It helps the Village Headmen to build or retain their position as representation of the 'local', refer to an intimate involvement with the implicit, unnameable features of their tradition. Even a Village Headman who spends most of his year in Windhoek notes mediation to be an important task that he also fulfils among his village's 'diaspora':

> "these youngers who are working in Windhoek. […] they use to see me anytime they want to see me! We meet, we discuss… Ja, we solve some problems directly here. So… It's also good for these people who are in this… south of this country." (Interview VHM SK, 16.2.14: 24)

Thereby, discourse, through the employment of codes and references to the familiar (Bourdieu 1989: 23), is a powerful tool. It reflects belonging, tests for a knowledge of common-sense, and for legitimisation within a group. And this option, of persuasion, explanation, and invoking "relevant motives" (Offe, 2009, pp. 558–559), is only available for someone who is familiar with the different modes or styles of discourse (Van Dijk, 1989, p. 30).
The social mediator strategy can either be focused on giving traditional advice, presupposing respective traditional capital, knowledge, presence in the village, and an understanding for everyday-troubles of the subjects. Or it may be directed at the village diaspora in the city, drawing from a capital mix that enables a Village Headman to support and address the needs and challenges of those who transgress the fields. In either case, this strategy acquires legitimisation through offering a service that cannot be provided by state offices, either through a lack of accessibility or of expertise on the desired knowledge of the personal or communal history and the local concept of justice (→ *7.3.1.*). One example is the attempt to morally convince village members of working in their fields, and the shebeen owners not to open their shops before noon (→ *7.3.2.1.*). Such locally relevant measures would not be accommodated in national law, therefore traditional leaders attempt to fill this gap by suggesting customary rules. The advantage of customary rules and rulings over the statutory are based in the particular vicinity and quick translatability between economic, social, and symbolic capital that Van Beek summarises as the distinct features of "African models of power" and "political resources" (2011, p. 45).
In contrast to this flexible and interwoven political concept, European history has produced "the science of jurisprudence" not only to make sense of legal systems, but also to distinguish law "from other related modes of social control, such as religion, morality and custom" (Bennett & Vermeulen, 1980, p. 214). The strategy of a traditional social mediator is hence outstandingly flexible, also in its involvement or detachment from land governance (*see Figure 50*). As much as the TA is a keeper of personal secrets and social knowledge, he is a keeper of traditional ways of allocation and a mental land register. Yet, the strategy's power depends considerably on the leverage a Village Headman has to his verdict in a dispute, in order to compete with or complement state services in land conflicts. The role of a mediator may persist even once land has been completely withdrawn from a TA's reach of authority (Interview VHM JA, 15.4.14). The social cohesion of a community – if it can be sustained despite new socio-demographic patterns – remain a more lasting secret from the state than land tenure contracts. The knowledge of, or connections within, local social networks can be a valuable resource for a TA, as long as the community is willing to maintain their mediation as a valid (and even preferable) alternative to those of the state. Without any leverage other than such knowledge, an

authority status is separated from its land-based authority, one that relies on community members who voluntarily ascribe them the role of dispute mediator.

#### *8.3.1.3. Strategy of conserving Traditional land use and tenure*

The land conservationist strategy emerges from a primary focus of the Village Headman to conserving traditional ways of land use. First of all, a TA has to prove to be providing an additional (security) service to that of the state, especially once individual plots have been registered and officially become the state's liability. TAs are officially tasked with managing land distribution and land use within their newly delimited zones of power, which are spatially and legally cut, once the registration process is completed. These zones primarily consist of what is called commonage, which includes grazing areas, but also other communally used areas such as roads or forests.
Projects that focus on environmental conservation not only need to respond to the abstract demand for sustainability but adapt their measures and explanations to the local land uses and respective requirements; for example, for specific protection of communal grazing areas, soil fertility, or enclosing the community against new settlers. A certain degree of agreement and co-operation among the community members is hence needed to successfully implement a conservationist project, especially since the TAs' sway has been undermined by restricted coercive options. Yet, to some communal land users, basic land rights are still in the hands of their Village Headman, as a lady with a customary farming homestead in Ondobe underlines:

> "I: How can you be sure that your land is secure?
>
> PP: Mostly [it] is [about] hav[ing] a good relationship with the headman and to have good friends from church, well sometimes there are good friends and bad ones – you may never know who wants to harm you. With children they are also important, but the headman comes first." (Interview Villager PP, 25.11.13: 22)

This is testimony that, even in places that are relatively well-connected to state services, with a police station at the centre, the relation to the Village Headman remains the most important when it comes to secured land rights and other basic securities, at least for elderly people – or women – like her. One observed strategy of Village Headmen was the physical enclosing of the whole village with a fence. Such a fence may protect those most vulnerable households that could not afford to build a private fence themselves (Interview Village secretary MH, 20.02.13: 66). Naturally, a fence of this size requires a high economic input by the TA, but it may help in seeking legitimacy not only among the poorer villagers, but also with the MLR: The latter views it as a facilitation, as it relieves it from negotiating and vouching for the unchallenged agreements with neighbouring TAs.

As with all strategic options, it fully depends on a Village Headman's capitals, and their relative value within the field of the community. A Headman's resources decide whether she/he is in a position to defend an uncommodified land use: Land users with legal knowledge and access to legal representation are a direct threat to commonage areas and to their subordination to their TA. The competition or contradiction between subsistence farming and accumulative (commodity-focused) practices such as cattle farming on communal (grazing) land is recognised by all Village Headmen, but results in different strategies on their part, with various degrees of engagement. A Village Headman, for instance, fenced all unallocated land within the village and registered it in his own name (Field diary, 8.11.13). It is a form of participative conservation that may be argued to preserve soil fertility, since the most important deliverer of manure are kept close to the crop fields. However, especially in its location far from any state offices or infrastructural services, this act of protection transpires to be

also a potential threat. By this appropriation, he maintains the primary authority over “communal” grazing area and may continue to decide who may access it and under what conditions.

Another Village Headman advised his villagers to extend their private parcels (and fences), to eliminate any spaces that could be considered as free or available land (Group interview Villager Oh, 16.03.2013). Hence it prevents outsiders to apply for land that would withdraw more grazing land from the community. This way, quite opposite to the previous case, the Village Headman sacrifices his authority over communal spaces and puts it into the hands of the individual (heads of) households. This is risky for his authority status, because it makes the community largely independent from his control and the tenure contract gains more resemblance with ownership. However, it may be taken as a reason to trust this Village Headman and legitimise his authority in return: He shows a will to protect the community by a major mark of confidence towards the villagers and their ability to self-govern. Depending on a locally prevalent interpretation of his role as provider, this may be a most welcome strategy. In that case, a traditional leader is provided with legitimisation in exchange for representing a local common-sense understanding and common interest through his actions (Meneses, 2006, pp. 100–101) – or in this case - *in*action. By backing out of land allocation, a Village Headman avoids any potential allegations of clientelism or favouritism, but instead risks losing all ties to the community.
In another case, the TA aims to fence off the village-grazing area, in order to emphasize the commitment to protecting the village as place of housing and fields only (*see Figure 51*) and to ensure the sustainable use of resources:

> “We need to protect the land. If you protect it, grass will grow, look at the school at Eenhana […]: There was no grass in that area but now since it’s fenced off, there is lots of grass […]. But if people do not come up with this idea, they will think the soil is too old and it cannot give good grass.” (Interview SHM DH, 14.03.14: 106-107)

He took this realisation as an occasion to suggest a project to the Queen, who he hopes would give

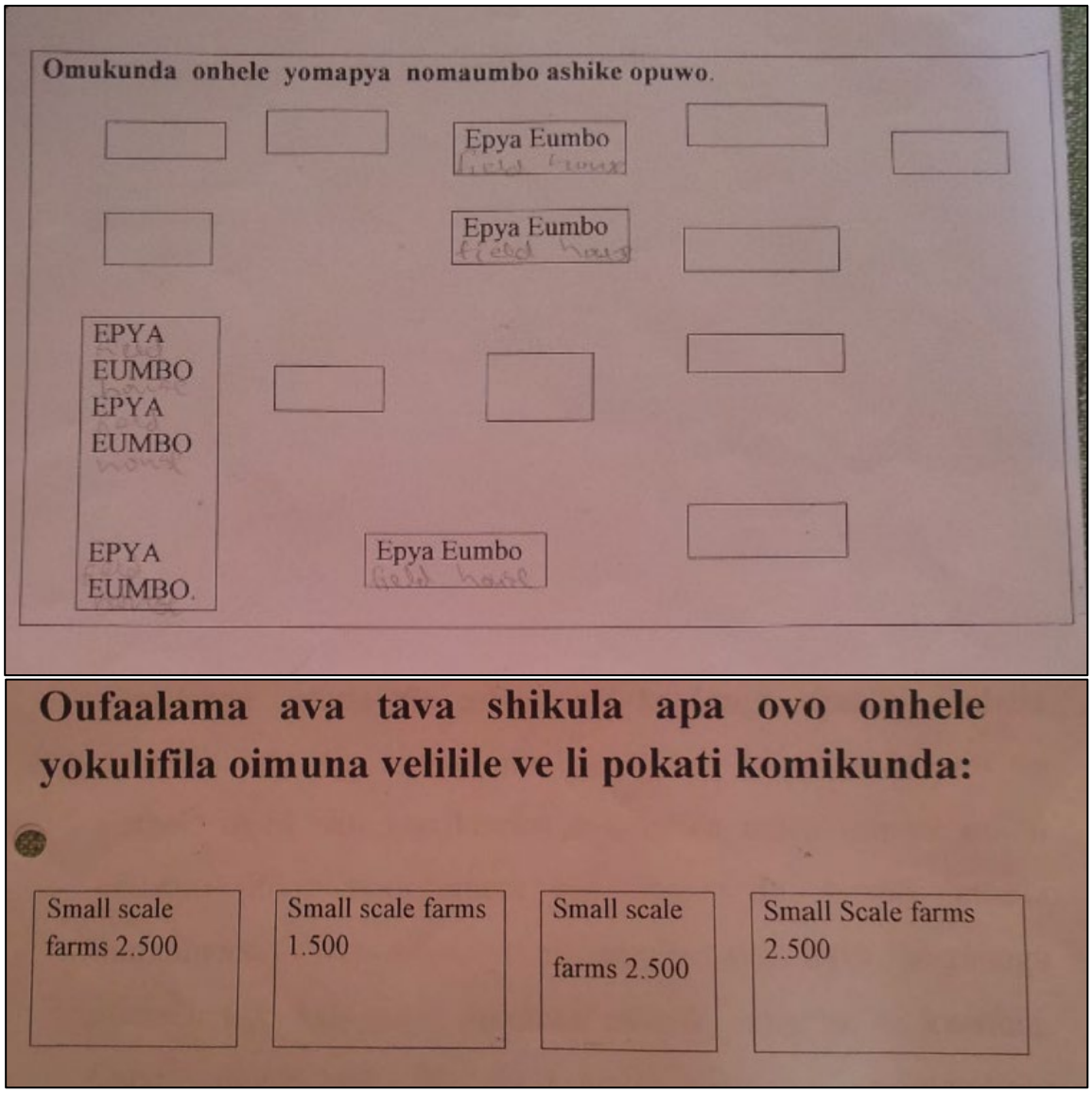



**Figure 57 A Land Management Project Proposal by a Senior Headman, submitted to the Queen.** Above a sketch entitled "A village is a place for households and fields only", displaying land parcels, with each including a field, epya, and a house, eumbo. Below the map of separate grazing areas of the village, including the respective size (in ha) (photograph by Weidmann, 8.4.2012)

green light to forward the request for support to the Ministry. His idea is to create a number of small-scale farms in "the small grazing areas that one finds between villages" (*see Figure 51*). This idea very similar to the one implemented by the government and international consultants (GOPA) in the SSCF projects, which is no coincidence. Upon being asked about the similarities, he says:

> "These ideas are more or less the same […]. I just kept changing some ideas little by little. And there are those people that wanted to join the small-scale farming, but they could not as they said only the people that have been there already are the only ones that will stay in the small-scale farming […].
>
> If this is implemented, people from Ondobe and other villages will not come to seek for grazing area. Once the government funds this project, we will make sure in every village there is a grazing area available." (Interview SHM DH, 14.03.14: 113-116)

The project this TA suggests combines development and conservation efforts. He sees himself as a catalyst to the type of development the government pursues, but that it cannot (yet) provide to the continuously growing group of interested farmers. He attempts to introduce a similar project, however, without overly disturbing the current village settings. His argumentation and his project are directed at his socio-economic assessment, and his anticipation of the community's demands. Yet, his community is not fully convinced by the project. He notes that some villagers are not prepared to transition from traditional pastoralism to an economic aligned cattle market:

> "They do not understand, they don't believe the cow can take care of them like make a living from it." (ibid. 103)

A communal land user from another village, however, explains that it may be neither a lack of understanding or belief, but rather a pragmatic reason that leads her to oppose such a project in her village:

> "It is impossible to take [all your livestock] there. Livestock cannot go away from the house. They supply manure for the soil." (Interview LK, 10.03.14: 54)

Hence, the benefit of a project like this is also restricted to a certain audience, at times only a section of the village community. The degree of democratisation or legitimisation of projects of this kind varies considerably. Another Senior Headman reported that he had already implemented such a project of a settlement-free zone. In his case, his position helps him impose this rule. As the district's Senior Headman who is also personally known by the regional government, by being a Communal Land Board member, gives him some leverage in his threat to impeach Village Headmen:

> "[I]n my district, I have a big portion of grazing! It's very big. […] And the headmen that are on the borders, I have instructed them not to put houses. So, if someone puts a house there, he is no longer a headman." (Interview SHM JAk, 27.02.14: 59)

This set-up undermines the participatory-democratic aspect that is promoted in the former example, but it may prevent grudges arising among villagers to be directed at their VHM, since the decision is taken higher up in the hierarchy. In another case, of an area that no longer contains any space for grazing, the Senior Headman has come up with the idea of sharing a cattle post:

> "So now people rent my cattle post to put their small herd of cattle on my cattle posts and pay the herders who are taking care of their cattle as well as paying petrol to fuel my car…" (Interview SHM JM, 31.03.14: 34-35)

In a way, this project involves a territorial outsourcing of the village commonage, over which the VHM retains the primary power by having the cattle post-parcel registered in his own name. He has established a satellite jurisdiction in which he provides space to the wealthy members of his jurisdictions, whereby he requests economic participation in the maintenance and transport expenses.

The required *assets* for a conservationist strategy are not strictly contained. Economic or political capital, however, can, and often does, enhance the speed of implementation and the number of projects at disposal, but are not necessarily required. The primary vulnerability of conservationist strategies surely lies in the volatility and changes in livelihoods and land use among the communities. As long as all members – or the most powerful among them – legitimise, or at least accept, a land management plan, it may provide strong acceptance for a VHM. A decisive condition for the success of a conservationist strategy is the proper estimation of what measures the village's power-majority endorses. Notwithstanding that accessibility and utility of grazing areas is not shared equally among

all members of a community, a strategy that provides or protects grazing areas is still recognised because the legitimising of the wealthier has more weight than that of the poorer. The vicinity to government and urban centres has in some cases led to the legitimisation focus navigating away from land control to subject-focused services, whereas in others a complete withdrawal from leadership aspirations was observed (→ *8.3.3. Testing the Limits to Legitimacy*).

### 8.3.2. Development strategies

The aim of TAs who employ strategies that I summarise as *development advocate,* is to facilitate their communication and compatibility with the state field. This may be done by adapting to state structures, narratives, and logics, by linguistic or structural adaptation. In comparison to conservative strategies, development strategies may be (more fundamentally) directed at either an upward-statutory or downward-traditional audience.

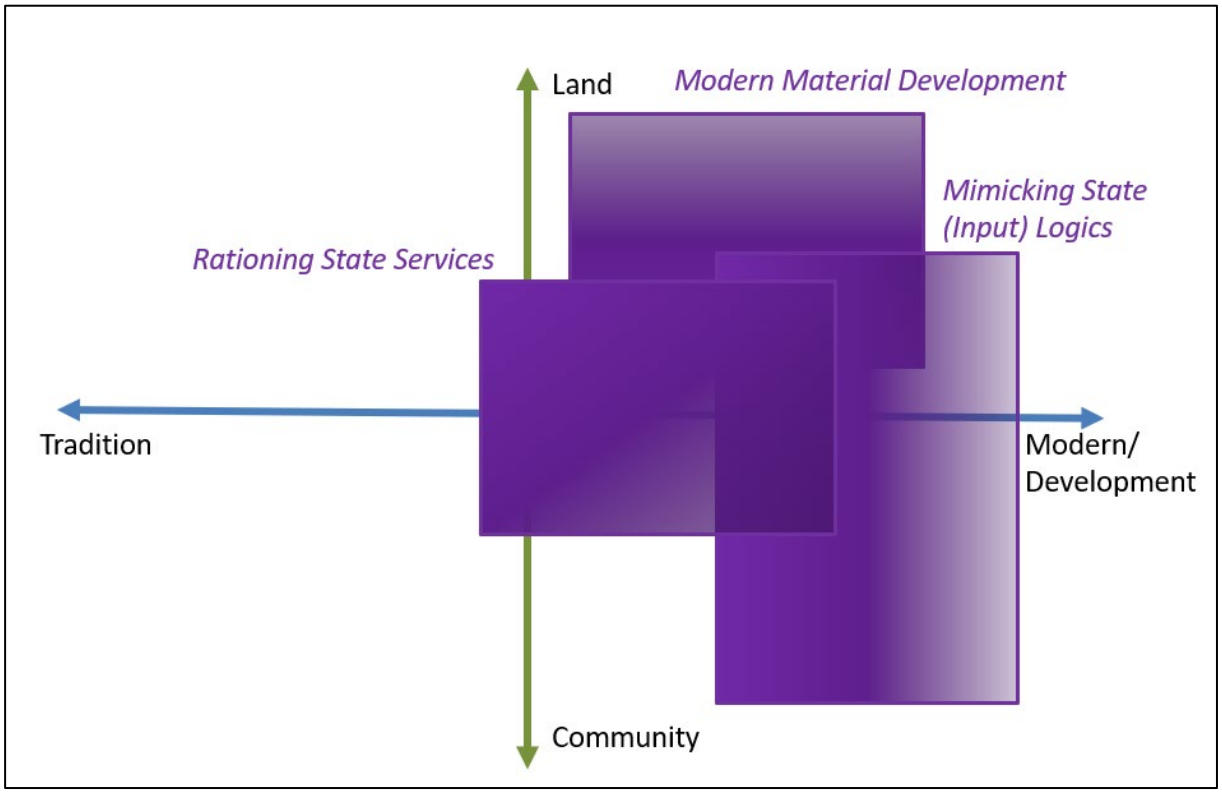



**Figure 58 Development Legitimisation Strategies** - A sample and their approximate positioning (Weidmann, 2019)

A first kind of development strategy seeks support on the national political arena for the formal proclamation and the commodification of the village, or of any of its sources or practices. It builds on supportively or proactively helping that state services or goods efficiently reach their community. A second strategy consists in using the status of gatekeeper and translator, by rationing and re-structuring state services, as they must pass through the TA's institution. A third strategy consists of TAs appropriating recognition through the state logic's input legitimacy, through adopting democratic and bureaucratic designs of the state field. The term 'development', in the description of these strategies, refers in different ways to economic security and opportunities for land users in terms of insurance and loans, which are legally not accessible for communal land rights holders, or to a modernisation of political systems and judicial processes.

#### *8.3.2.1. Material Development strategy: benefitting from state services*

The strategy I call *upward advocate for development*, encourages a diversified and commercial use of land, by channelling the provision of services and goods from the state to their communities. Those services are characterised by advertising *development* in a sense of enabling private economic accumulation within communal areas. Translating traditional practices into development narratives can help legitimise agricultural input services, legalisation of grazing areas or other commodity-serving adaptations, that have been introduced earlier (→ *8.2.1.3.*). *Development* is indeed a widely accepted code for legitimacy, and it is widespread both among land users and village leaders:

> "Well, development is needed and wanted." (Interview VHM JA, 15.4.14)

Especially in the northern regions of Namibia, *development* is closely tied to a fundamental claim for reconciliation by means of integration into state services, and inclusion into the road network and flow of goods and money. Thus, explains a Village Headman of a village which is almost completely integrated into town land, that the proclamation of a town had a meaning not only in practical terms, but also extended to a reassuring feeling of getting finally the attention they have been withheld during colonial governance:

> "People were happy with [*the proclamation of the town land Helao Nafidi*] […] because they also thought the development was coming close to them. Like their things that were sent from the south beyond the red line were transported to Oshikango so that they had to get them there and then when the town came to Ohangwena their things were now transported to Ohangwena where they live, and it became easy for everybody to get his or her things because they came closer." (Interview VHM JA, 15.04.14: 33)

The narrative and code of development is expanding into all layers of discourse and enjoys an almost exclusively positive status. However, the narrative ignores a notable variety among interpretations that arise from the local narrative's lack of making a distinction between a development for 'private' or for 'public' purposes. As Dobler (2009, p. 124) has noted, "modernisationism", as the belief in 'development' as the (only) way forward is "both a personal persuasion and an official vision". In the private sense, a land user explains about a land parcel, that it was "not well maintained, not well developed" (informal talk JH, 25.11.13). On a public stage, development is used as a signifier to distinguish the democratic government from the previous ones:

> "[W]hat we understand is that the government will be a developed government." (Interview SHM GN, 14. & 16.4.14: 87)

This intertwinement of meanings in the narrative of development reflects an interesting connection between 'personal' wealth and communal benefit. These are in fact overlapping at times, as certain local phenomena such as fencing or commodification or entrepreneurship in communal areas show:

> "[A]s you know that when the country became independent things began to change from worse to modern development. [Fencing] just came along with development. We tend to say the first person who bought a fence was the founder and thus he developed before others in theory. Because the bushes that we used as fencing materials began to be extinct […] and of course nobody wants to stay with unfenced area. As you see that parcel is not fenced. It is probably because he is struggling to get a fence but may be willing to have it." (Interview Village Secretary HN, 31.03.14: 46)

Another informant, too, replied with a use of the concept that is neither completely ascribable to a private or a public sphere:

> "Long time ago we only had the traditional fences but now with the development they are putting up the wire fences." (Interview VHM EK, 4.3.14: 18)

Hence, the code of development is a reference both to an individual development, as well as to a general socio-political era. *Development* in the sense of state services has become an important measure in communal areas, no less than in urban zones: servicing or commodification of a zone is an important factor in deciding to remain in a village:

> "[We are happy to live in Ondobe], because […] we got schools close for our children, we go to church and [have] a clinic next to us, water is available, we have taps in the house, so we are living in a good village." (Interview Villager PP, 8.03.13: 32)

Or, to invest in access to a village, as did the nephew of the same villager:

> "The boy came to his uncle and asked him for a land so that he can only build their house […] Because Ondobe is developing he wants to be in a town." (ibid. 9)

A young woman from the same village has also accounted of her plans to building and starting a private school on the land parcels of her family (*see Figure 53*), as she was under the opinion that Ondobe was already declared townland (interestingly, she raises the funds for the school project by renting out a house in another, official northern town) (Informal talk LH, 25.03.14). In this case, the

**Figure 59 Investing in Communal Land.** Preparing to build a school on a family plot in Ondobe (Weidmann, 25.3.2014)

Village Headman operates encouragingly by sending pro-development signals, such as through the instatement of a development committee (→ *8.3.2.3*.), with his ambition of getting the village

declared as a formal settlement (Interview VHM SK, 16.2.14: 142-143). He is acting as an upward-advocate and catalyst for development, with regards to a commodified land market, which is an already thriving informally.
In similar pro-active thrusts proceeds some of the strategies that were previously described as 'conservative': Gatekeeping is not only a valuable strategy in the sense of passing information up or down, but more elaborate forms of translating local ideas and demands into a priority for state-led development services is another option, for TAs to gain legitimacy. The Senior Headman who launched an initiative of providing a village grazing area in a satellite jurisdiction of his cattle post (Interview SHM JM, 31.03.14: 34-35), although the strategy was described as a conservationist (→ *8.3.1.3.*), has potentially a development aim, too. His motive in finding practical ways to answer to the needs of security and natural resources of the wealthy members, might be an attempt to keep them interested in remaining part of his community. Thus, the conservative strategy of traditional land use and the strategy of upward development advocate exhibit a considerable intersection, as both seek to pro-actively support the commodification of a communal capital market, more specifically certain traditional practices or resources. A main difference lies in a TA's motivation for advertising commodification, whether this is out of lack of alternative, or for moral conviction.

#### *8.3.2.2. Strategy of rationing state services*

The position of gatekeepers cannot only be used as an upward-directed advocacy for local needs, but it can also be enacted as a form of weir, rationing information, and services from the state to their communities. It aims for legitimisation from the state by fulfilling administrative tasks as expected, and from the local communities through staging as co-providers of the state resources. Yet, contrary to the upward advocate strategy, this strategy is not a pro-active and development-seeking transmission of services, but rather puts a focus on retaining the relevance of ones' position by rationing downward-seeping information and services.
Their position holds a variety of challenges, which must be confronted by diligent consideration on which tools could help a TA to arrange themselves despite them, in a long-term arrangement. An example for such a challenge is their status between their historical ideal of a 'natural', autonomous leadership, and as free administrative labour for the state. Administrative volunteering is only profitable for Village Headmen to a limited degree, as it requires new skills and different capitals: specifically, time, mobility, and documentation (Interview Govt Official DK, 14.11.13: 176; VHM TP, 3.3.14: 24) are resources the government requests without offering any remuneration in return. Meanwhile symbolic salaries are paid, however restricted to chiefs or monarchs, SHM, councillors, and secretaries (Keulder, 2010b, p. 159). On the village level, none of the interviewed Village Headmen, secretaries, or *Kapatashus* (deputy Headmen) stated to be

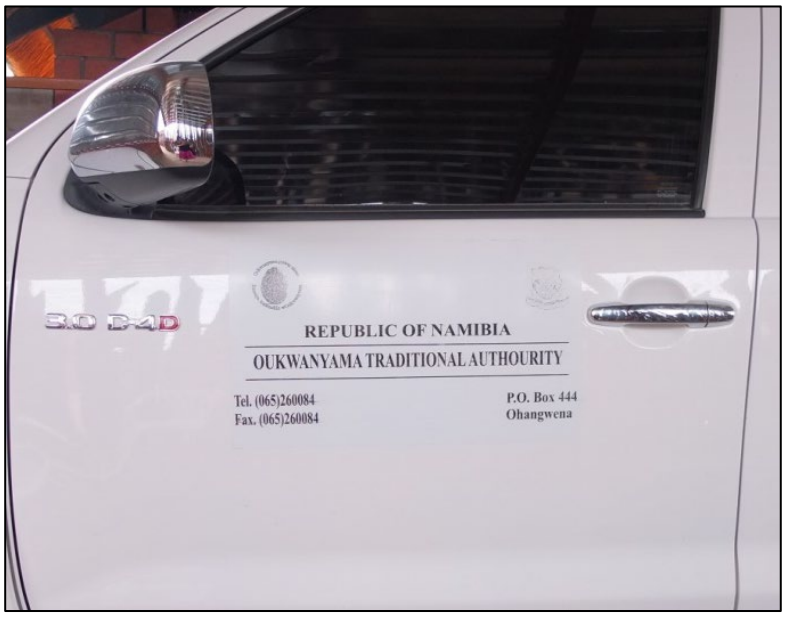


**Figure 60 Official vehicle of the Oukwanyama Traditional Authority, funded by the state** (Weidmann, 18.2.2013)

receiving government payments. Among the challenges that were most regularly named by Village Headmen concerning the fulfilment of their leadership tasks were transport costs to attend meetings. This task was often stated to have expanded over the past years, indicating a general shift towards engaging Village Headmen increasingly as a top-down information channel. This shift is a potential reason why many mentioned transport costs as a challenge, which evoked a feeling of deprivation, especially since the higher-level TAs are provided with government vehicles (*see Figure 54*; Lindeke, 2014, p. 85). Consequently, several Village Headmen stated that they feel they deserve compensation, too.

These symbolic salaries among TAs have several effects: They add a new distinction among different positions within a TA, altering their hierarchy, and they further concede the government's superiority and control over TAs. Their gatekeeping role comes with a considerable price, especially for those Village Headmen who lack any personal ties with state offices. It therefore lies in their individual estimation and scope of agency how they use their gatekeeper position: Either to strengthen their output legitimacy, to extort compliance, or a combination of both. The strategic potential of a gatekeeping position depends, especially among Village Headmen who remain anonymous administrative labour to the government's eyes, crucially from their individual spatial and political assets and their cross-field mobility. Without personal ties to state offices, Village Headmen must go through official channels to acquire services for their villages, just like any civilian. A Village Headwoman who leads a village east of Okongo, where services and infrastructure remain scarce, is one of them. Her daughter explains:

> "Like now, mom [the Village Headman] called for a meeting and told [the villagers] that she has an idea of building a clinic. […] We even requested for a tap to be installed in our village at that place. Now we are just waiting for machines to come and be installed. […] About the tap, we applied a form to the councillor, then he forwarded that letter to NamWater offices. About the pre-primary we applied at offices of gender, and we also wrote a letter to a state hospital." (Interview daughter of VHM ML, 15.03.14)

The Headwoman, or other Village Headmen in similar cases, takes on a role of advocates for their village vis-à-vis the government and its services, from which their villages are still marginalized. By expediting their inclusion into the state infrastructure, they offer both a concrete and psychological service to their community:

> "What is there is that NamPower does not feel the pain but is the community that feel a need." (Interview son of VHM ML, 15.03.14: 11)

In this village, the lines of responsibility are religiously adhered to: The Village Headman is to formulate a request for the attention of the councillor, who has the authority to apply to companies such as NamPower, the national electricity provider. These examples show how TAs – especially those on the most local level, who depend most directly from upward legitimisation – retreat to strategizing for performance legitimacy by offering services the state cannot (yet) provide. This strategy strongly relies on a lack of an "effective state" (Logan, 2011, p. 3) with regards to the "delivery of public goods and services" (ibid. 2011, p. 3). Whereas scholars have insistently warned governments from abusing informal governance systems as substitute to the state's responsibility (Olivier et al., 2008, p. 17), for many Village Headmen this position seems vital to their basis of authority (Logan, 2011, p. 3).

It might be in pursuit of fitting more neatly into their scopes of power foreseen by the state, that several informants have reported a tendency to decentralise information among the traditional communities more efficiently, probably a way to circumvent accusations of effecting 'decentralised despotism'. A village Headwoman has highlighted the improvement of orchestrated information-flows since Independence:

> "In the past, meetings do only take place at Ohangwena and that's all. People were not told that there is a meeting to be held. So now the message is from Ohangwena to Okongo, then the meetings can be held at the houses of chiefs, particularly [the SHM], then people attend and go back to their houses." (Interview VHM ML, 15.03.14: 67)

She believes the requirement for a Village Headman to be spatially mobile and knowledgeable beyond the village history, is yet increasing:

> "I think young ones are better to become headman. […] Because [people] may think that that person can give them advices, can go to attend meetings and bring the feedback." (ibid. 80-81)

Since physical impediments make it difficult for her to attend the TA meetings in Ohangwena, she can no longer fulfil the tasks she believes is demanded by her increasingly younger community. As for her, access to modern political capital remains restricted through physical and spatial obstacles, and the demand for what she offers – age, wisdom, and mediation – is slowly replaced by spatial capital and bureaucratic knowledge; especially since such meetings seem to evolve from consulting meetings into top-down information events.

#### *8.3.2.3. Strategy of mimicking the logics of state Government*

> [T]o maintain legitimacy with those living in their areas, chiefs have often sought to direct and redirect the democratisation process to help maintain or establish their political legitimacy at the local level. (Williams, 2004, pp. 115–116)

These strategies involve a TA's efforts to fulfill democratic or other globally respected ideologies in governance practice in order to advocate for their legitimisation. Rather than service or performance legitimacy, the focus of this strategy is to attain a broader scope of legitimacy by adopting narratives and structural logics that attract input legitimacy from the state field. Such efforts have been observed especially in the decentralisation and democratisation of traditional governance features. This input legitimacy may either pay off from state actors, or from community members who trust in the state logic's inherent legitimacy.

Sub-dividing accountabilities and powers in traditional governance is a response to a call for decentralisation but also a necessity of catering to the rising number of resources and fields. It seems to be an inevitable measure to meet the broad variety of needs that are at stake regarding ideological demands for input-validity and output-services. The acknowledgement of 'development' as the (only) way forward means that many features of the "developed" government is rarely openly challenged (or even re-evaluated), rendering it a standing of an orthodox belief for some communal land users. This signifies a shift in preference and prioritisation of input-legitimacy: While the 'traditional' way to achieve authority is through personal appointment by the previous Village Headman, the democratic principle of the constitution opposes such form of status-achievement completely.

The TAA states, in rather laborious terms, that Village Headmen ought to be elected by the people, if "there is uncertainty or disagreement amongst the members of that community regarding the

applicable customary law" on "the designation of a chief" (Parliament of the Republic of Namibia, 22 December / 2000Sect. 5 (10)). This Act is however unknown to many villagers. When asked whether they would like to elect a Village Headman, many villagers affirmed without hesitation:

> "We would be very happy because when they get a headman that we don't want, it will not really be good. We will want to elect someone that has the nation's best interest at heart and someone who can lead us well." (Interview Villager MN, 05.03.13: 18)

However, in factual cases where elections in traditional settings have taken place, no essential shift in logics was perceived by the wider community. A likely reason is that those elections remained a foreign matter in a traditional realm that promoted logics which starkly differ from the assumptions inherent in democratic ideals. One such Western-democratic assumption lies in the definition of who is eligible to elect, or to veto an election:

> "[I]f the nation may want him or vote him to be a headman the senior headman […] has a right to tell them that he does not want him. And if they want him then the village will just stay without a headman." (Interview Village Secretary LH, 9.12.13: 24)

Secondly, the unlimited terms of office of traditional leaders, tied to their personalised form of power, undermine a crucial principle of democratic elections (Journalist OS, 27.03.14: 112). Without a prescribed re-election, there is no enduring downward accountability ensured. In order to work in a truly democratic sense, would require a much more fundamental replacement of a social status by a political title, than simply the prescription of holding elections. The appointment of a traditional leader is a practice that is similarly semi-legal as the customary payments for communal land.
The mimicking strategy is hence a way to delimit the corroding surface of TAs' authority status. Apart from mimicking elections, another option is to decentralise accountability and authority within TA structures: A Senior Headman names the installation of committees, deputy secretaries, and secretaries as one of the major changes he has introduced since his instalment (Interview SHM GN, 16.03.14: 36). Deputising the role of traditional knowledge holders onto Kapatashus, secretaries, and committees, is a way for a Village Headman to gain acknowledgment for his adaptability to the requests of 'modern' governance, and to gain support for the fulfilment of the Village Headman's (new) duties. It is a structural adaptation of traditional politics to (the language of) state logics.
In this strategy, a TA needs to prove trust and readiness to "share" his/her power – at least officially – with 'traditional' members of society, and thus testify that they do not combine all necessary registers of power as one person. "[A]s a younger one" a Village Headman says of himself, he is "not able to […] stay in the village" (Interview VHM SK, 16.2.14: 21). And being absent most of the time, he apprehends that his ability to solve disputes in a timely manner is limited. Therefore, an elderly man, who had also worked for the Village Headman's father during his Headmanship, retains these traits in the position of a Kapatashu. Although this position is well-naturalised within customary systems, the scope of his deputisation is not endorsed by all villagers:

> "Because some people [who] have this belief that they want their problems to be direct[ly] solved by me. But I'm not there!" (ibid. 22)

The strategy of mimicking systemic deputation combines the decentralisation of offices and multiplication and subdivision of legitimisation tasks, by arguing both (or either) from a pragmatic or ideological position.
A government clerk interprets the increasing partitioning among the TA hierarchy as an effort to meet all the diversifying interests and requirements. The knowledge (or the traditional capital),

which used to be the Village Headmen's characteristic feature, she proposes, is now "shift[ed], to the Kapatashus and to the secretaries. […]. Whereas you will shift the wealth of the village to the headman who is in Windhoek or who is in, yeah…" (Interview Govt Clerk DK, 14.11.13: 136-148). According to this informant, Village Headmen would change their primary capital from traditional knowledge to political and spatial capital, as they gain prevalence for providing the wealth (security) and the development (prosperity) of the village:

> "Even if the headman's in Windhoek, there, the secretary should be so well connected that she just picks up a phone and tell the guys that they did not get their drought food and the next morning the drought truck will be there. We…, secretary is so connected to the governor, he's so connected to the councillor, he's so… you know?" (ibid. 150)

The problem with these subdivisions, the government clerk finds, are the Village Headmen who are wealthy in knowledge and therefore vital for the village in the way of development, but are not present and available in a way that used to be appropriate for village leaders:

> "[T]hey know a lot, […] but [they] still a-ah, [they] just neglect the village. [… They] will just waste their time. Coming to Tsumeb now, you should work there, the other moment work in Ohangwena, the other moment you should go work in Oshakati, yet people back there are waiting for the results of their village [issues]." (ibid. 176)

Education, as well as literacy, were often stated to be important assets for a TA. Sub-dividing the village leadership is, accordingly, often explained with the increasing demand for documentation:

> "[It came with] the development... When a lot of information came, we were told that now we should do things formally, have a deputy and secretary so that's why we now write. It's also because we don't want to be left behind." (Interview VHM TP, 3.3.14: 26)

The literacy narrative, as this quote shows, is a multi-levelled one: Superficially it often only refers to the skills of writing, but it is also used as a metaphor to describe a person's understanding or foreignness to the central government's legal logic, the one that adopts documentation and expertise as the standard for democracy:

> "The only problem [with the TA] is illiteracy! […] Some of them they don't understand […] the Act [CLRA]. What we need in the traditional… I think is education!" (Interview VHM SK, 16.02.14: 61)

This technical, yet ideological, shift in the topography of TA's power has two major effects on the leadership structures: First, it gives an opportunity for younger, female village members to establish a social status for themselves, and second, it expands the requirement for unpaid administrative labour. It pushes a new social group to the margins of the power game, as in effect, "the poor old men, they are depending on these guys, because they are the ones that can read that can write" (Interview Govt Clerk DK, 14.11.13: 150). To underline a similar point, a different government clerk voices the observation of the instalment of "what they are calling the village development committee" (Interview Govt Officials PA, 6.12.13: 43). A Village Headman explains that he has purposefully included some younger people in such a committee, "just to see whether we come up [with] some new ideas [on] how to develop our village" (Interview VHM SK, 16.02.14: 70). He further shares his authority with a committee of village elders that assists him in land disputes. Their special trait is similar to that of the Kapatashu, to "know the area" (ibid.). With these two committees the Village Headman exhibits a strategy of simultaneously catering for the parallel logics of conservation

and development: The development committee allows a young person to become active members, which contradicts the geronto-patriarchal concept of community. At the same time, he signals valuation of the traditional knowledge and mediation systems by giving them the authority to settle land disputes on his behalf (Field diary, 25.11.13). By means of this deputation the Headman caters for two main socio-demographic groups in his village separately, and by dividing their responsibilities avoids a direct competition of traditional and development capital. Thus, he evades the risk of repelling young people from the traditional field, which is inherent in many social conservation strategies (→*8.1.3.2*.). This strategy may benefit the TA through strengthening the community's involvement and co-responsibility, a potential way to prevent disputes among a diverse community. Committees are a further degree of decentralisation, in addition to deputising powers to secretaries and Kapatashus. As an ideological translation, it may be even promoted as public participation. As almost any strategy has shown, moral and pragmatic motives are seldomly clearly separable. In the case of committees, they are often not solely aimed to generate input legitimacy, but selfless act may also be a way for Village Headmen of transferring the additional workload assigned to them from the government, onto the community. In this context it seems to be no coincidence that the position of TAs themselves is at times framed as committees by government stakeholders. A government clerk for instance explains and rationalises by means of this narrative, why TAs are not payed for their labour as administrators:

> "[The TAs] are used as committees, and the committees are not paid, in most cases […] most of the committees they are there for the people because we want people to be involved, to decide […]. [The g]overnment will definitely not at this stage […] pay these committees. But as part of decentralization they are saying it is you to take care of your resources! Manage it, but we are not paying you to manage your resources! Because it is working in your benefit." (Interview Govt Clerk FS, 17.07.14: 78-79)

Assigning TAs this label of *committees* draws an inauspicious picture for TAs' futures, if the traditional and the national field were to assimilate or merge in the future, since it reflects a clear downgrading of their authority within the government hierarchy.
Development strategies (narrative, services, and systemic mimicry) offer new settlers a way to compete with the political power achievable through traditional practices and capital. As an effect, a 'non-traditional' elite draws closer onto the communal land 'market', committed to turning their capital – urban connections and economic capital – into 'social status' (Dobler, 2014, p. 220). Development-focused strategies permit TAs to shape the form of this merging of symbolic markets as much as their capital resources allow. Clearly this shaping ought to correspond with their own assets and status. In general, the threat to development strategies lies in the uncertainties on the future value of agricultural work and products in the traditional or communal field, and on how the fields and currency markets are going to overlap – or even merge – in the future. With these systemic and structural uncertainties, combined with the low investments required to access land rights, it seems inevitable, yet risky to assimilate traditional governance structures to state logics, and (proactively) provide and secure a space for commodified and accumulative practices.

### 8.3.3. Testing the limits to legitimisation: between extortion, economic benefits, and resignation

In sum, the previous chapters have illustrated that, in order to remain competitive with state services and wealthy or influential individuals, a TA must either cater for a different logic of justice or procedure, or at least be more accessible. This requires undoubtedly to test risky manoeuvres. This last chapter therefore offers some examples of strategies that touch or cross the limits of what their local audience views as *legitimate*. I have divided them into three strings of behaviour: Resignation, extorting compliance, and opportunism of economic or other kind.
The decision to continue struggling for legitimacy ultimately depends on an individual input-output calculation (Weidmann, 2018, p. 34). A TA must define and estimate the future of his/her position within the converging and diverging fields and capital markets. Resignation is therefore not seldomly found, even as attributes of other strategic attempts, among Village Headmen. Some TAs, for instance, have openly admitted that they desist from a demonstration of power, such as to demolishing a fence, for fear of becoming a subject of judicial investigations themselves:

> "[M]any people have lawyers, and he will say I must be given 50 000 because when I put up that fence it cost me 30 000 and the workers that put it up, I spend 6 000 so you must pay my money back. But what we want is cooperation." (Interview Kapatashu MD & SHM DH, 15.03.14: 27)

In this case, the TA's absence is, at first, described as a major cause for his limited (coercive) power and authority. In the following, the informant, however, expresses some understanding that while his absence may be a driver of a diminishing social cohesion in the village and its protective impact, another challenge are the limits to his traditionally ascribed authority. She continues to say, that the children, whom she caught cutting her fence and letting their cattle graze in her field, would not attend a traditional hearing, anyway:

> "And the headman cannot just stand up and go to their house; it will come off as if he went to look for fights. He's the headman and people are supposed to respect him. He does not go to their house; he just leaves things the way they are." (Interview Villager CK, 25.11.13: 21)

Consequently, it is not only absent Village Headmen who grapple with the new and variegated requests of their communities and the government. Particularly, and forcibly, in the case where the power over land was completely withdrawn from a Village Headman by the formalisation of their village as town land or settlement, TAs need to find new forms and resources for their status.

Attempts of extorting compliance among villagers have been observed in several instances, often by means of modern-developmental arguments. The registration process and their prescribed gatekeeping role in it, is an extraordinary opportunity for Village Headmen to make use of their gatekeeping-role as a coercive instrument. In this operation the government depends on the TAs' loyalty and cooperation, raising their judiciary power and their authority considerably, if only short-lived. After all, an application for a customary land right or a leasehold may only be submitted, once they had been confirmed through the Village Headman's signature. A Kapatashu who is in despair over a village member, who has sold his land without introducing his successor, draws hope from knowing that he will eventually be depending on the traditional village leadership:

> "He has to come and give what is asked by the TA, take his friend and visit the ministry of land office there then the first settler will explain what happened showing the letter

> that is from the TA and fill in the form to get full right to own this land." (Interview Kapatashu MD & SHM DH, 15.03.14: 19)

At a meeting of another a village this dependency was also explicitly expressed, when the Village Headman issued a warning against disrespectful shop owners in his village:

> "Okahenge is still under TA [authority] but if one day it becomes a town, shebeen owners will need a TA recommendation letter in order to get a certificate." (Village Meeting 30.11.13: 81)

These examples show how some TAs use their current but fading status as custodian of information as a main power source, not only towards the disobedient, but also to emphasise their institutionally ascribed authority over their community in general.

Threatening to seek coercive support by the police is another way of extorting recognition from traditional communities. In several instances the leader's discourse takes a threatening undertone, for instance when emphasising the communities' duties that were not complied with:

> "Hearings must be attended by the invited according to the new traditional laws. Those who refuse will go sleep in a prison cell and the next day they will be brought to the hearing in handcuffs." (VHM at Village Meeting 30.11.13)

Statements like this take a direct reference to the state coercion by suggesting that their authority was backed by police action (this however, has never been proven to my knowledge). A yet more practice-oriented approach to seek coercive support from government offices is taken by a Senior Headman from the eastern part of the region. He is a regular invitee to the Ohangwena Communal Land Board to act as a witness in cases that originate from his district. Many of them involve illegal extensions of fences by absentee land users who are unreachable for informal discussions (Informal talk SHM DH, 14.3.14). The CLB in his case provides as much-needed assistance in giving his voice the required authority, knowledge, and has more confidence to act upon their verdicts as a state-backed institution. However, depending on their respective counter-players, even government officials lack the power to extort full compliance. This was extensively shown on the example of Mr. W who succeeded in legally subduing the CLB at the High Court *(→ 7.2.2.*).
The lack of a centralised database on land rights and their owners undermines the legal authority of both state and customary institutions. Yet, even more than CLB, especially Village Headmen must expect to be treated as common citizens by state courts, as their authority status is nowhere officially documented. In consequence, some TAs do not see a way of sustaining their authority status, and as a result, refrain from attempting at any more strategies to maintain or to gain legitimisation. At times this decision is taken due to a perceived loss of options that would account for the input that is required. Some find their communities' respect for what they can offer decreases, or that their administrative tasks and accountability has risen without offering them accurate compensation:

> "[M]any headmen give up, because they know that it is them to be witnesses from the village to here and from Ohangwena to the land board, then they just end up saying that 'no I do not want to go through that long way, let the person just stay there.'" (Interview SHM GN, 16.04.14: 228-232)

Several Village Headmen have expressed frustration about being degraded to volunteering administrative offices for the government, for example:

> "With [the Land Board], they don't really work much like us, because they get a case that we have already dealt with. For them, it's like we are chewing for them, and they just swallow." (Interview VHM AA, 26.11.13: 35)

Statements like this reveal a certain frustration with – or at least ambivalence about – their position between restricted powers, increasing labour, and denied compensation.

Village Headmen who lack any assets to provide for their community and are left with no alternative but to resign from legitimate authority, at times yet try to make private profits on their way out. Retreating to practices that are labelled as 'corrupt' or 'unfair', can afford them a reputation as opportunists. It might be – apart from private enrichment – an attempt to gain individual allies through the special treatment in land allocation. This (economic) opportunist strategy relies on spontaneous speculation, what De Certeau (1980, pp. 5–6) describes as *tactics*, as "an art of the weak", because it is a way of profiting "without a base in which to stock supplies, to augment a proper space, and to anticipate sorties" (ibid. 1980, pp. 5–6). With the prospect of losing land authority to government contracts, there is indeed no outlook for stocking lasting supplies, apart from social or economic capital, which on a community scale are unlikely to be legitimised. The journalist explains it as a socio-political transformation, as he raises the concern that, although it used to be a duty of a Village Headman "to assist the people with goods", exceeding a certain size of business, or from a range of supplies that exceeds "the immediate needs of the people", it would defy the traditional purpose (Interview Journalist OS, 23.07.14: 135). A government clerk, too, sees a threat in this closely tied chain between private and community benefit:

> "At times now, this is getting out of hand that. You can't say anything against this person, because if you lose this person, you will lose the wealth of the village. […] if this person withdraws, she will withdraw with her the developments […]." (Interview Govt Clerk DK, 14.11.13: 152-155)

Traditional community members are therefore increasingly confronted with the question how much private profit is legitimate to gain from offering development or protection to the public? In sum, wealth remains an important aspect of the profile of a Village Headman; maybe more than ever. But this asset has to be applied with diligence and careful consideration of the discourse and practical norms of a specific community.

The decentralising state control that came with the land reform increasingly exposes TAs to being undermined from two directions: On the one hand, their position and local networks attracts political stakeholders to use them as promoters for political ideas and parties. On the other hand, exactly due to such immoral mixing of politics and tradition, the narratives of corruption and favouritism have spread to become a set of tools for villagers to oppose their traditional leaders. A municipal councillor has observed that the TAs are indeed targeted by political opportunists, which he locates among his fellow councillors:

> "[Politicians t]hey want just to come in, flocking in through the headmen. ... They try to recruit the headmen to become their members, and from all they expect the headmen to react in the direction of the… of that political party. […] and they try to use some manoeuvres at least… for the headmen to convince the community." (Interview Municipal Councillor EN, 17.7.14: 13-32)

Hence, the narratives of corruption, or of discrimination are important tools for villagers to defend themselves against a too biased traditional government. An elderly land user argued that the TAs are

important stakeholders in land governance as leaders, but need to be made accountable in cases of discrimination or unfair favoritism:

> "[L]et's take it for example the headman does not like you, he will use his power to take you off the land. But with the new registration act [CLRA] he cannot really do that.
> [… Yet, i]t can happen. But what example are you showing to your people? This is what we call discrimination, instead of leading your people you are practising corruption!"
> (Interview Villager JA, 28.02.13: 18)

In sum, the strategies portrayed in this sub-chapter are overall perilous and likely offer merely short-termed legitimisation. And the more ephemeral a legitimisation, the more it becomes rather a toleration instead, without offering a TA any lasting, common-sense status.
In contrast, as the position of villagers and their legal insecurity is equally affected by the transforming context, the concertedness of a TA position with their needs and priorities is the primary criterion; it expresses which scopes and stretches of the "traditional" and the "developed" in traditional leadership are welcomed or tolerated. Once such a balance is found, it may even contain some practices, which would otherwise count as corrupt or unfair, tolerated, even naturalised as ingredients, and turned into a pragmatic local leadership and power relations.

# 9. Conclusion

This thesis has aspired to locate the transforming effects the communal land reform project has had on local and regional governance in North-central Namibia. The communal land reform introduces two main changes to land governance: Firstly, it establishes the Traditional Authorities as semi-formal authorities by giving them specific tasks, and by delimiting their authority at the same time. And secondly, it translates land rights within communal areas into a documented and expertised form, into a currency that is visible and negotiable beyond traditional communities and their leaders. This thesis illustrated how all these changes and transformations are set in a governance game that takes place in between the state and the traditional field of logics, or moral fabrics, by ambivalently referencing to either one. Within this highly unstable and transforming context, the cases of single governance strategies are taken to demonstrate how the two fields of power are coexisting yet competing with one another.

My particular focus was attributed to the Traditional Authorities: The first question addresses how their status is affected by different socio-political transformations, triggered by the land reform. The second question enquires about patterns and connections that define TAs' active initiatives, in their pursuit of a continued power position. Through these two questions I have come to grasp land governance as an ever-evolving and interactively re-created game. In this concept of governance, actors ought to be assumed as dynamic, active, and heterogeneous participants, which attributes TAs are often denied in the political and scholarly discourse: Too often considered a homogeneous group in their powers, interests, and possibilities, my research ensued to show their variations in social status, economic wealth, and in the ways they are affected by the transforming legal and institutional circumstances. Their different (capital) resources proved to be directly informing a TA's position, agency, and the impact of their agency.

Since agency bears a particular weight in the context of post-colonial state formation, the level of agency gains particular significance in the negotiations of power positions and their moral and common-sense foundations. The two coexisting and yet constantly competing symbolic fields and currencies, which dominate the self-conception of traditional and state politics respectively, emphasizes the competitiveness and diversity of moral capital and elites. Therefore, all observed TA strategies were a reinvention of tradition: Some combine a traditional feature with national modernising aspirations, while others stage it as a complementary source of legitimacy and identity.

## 9.1. TAs' affectedness by the implementation of the Communal Land Reform

The land reform and other reformist policies require undivided and immediate commitment by the government. The government, therefore, sees itself challenged to invest all its legal, administrative, and coercive power in various projects simultaneously. Maybe this is one of the reasons why the TAs have retained a significant role in communal land governance. The land reforms, and particularly the communal land reform, reflect the government's conflict between decentralisation and a desire to control in an extraordinary manner, especially in its efforts to find a practical balance between *Unity* and *Diversity*. TAs find themselves at the very centre of this balancing act of postcolonial politics: They are a crucial support in the government's formalisation efforts, but necessitate governmental control to keep them from turning into "decentralised despots" (Mamdani, 1996).

The government's dedication to eradicate poverty in the country is another important motive to sustain TAs and their alternative land tenure system: to this end, the CLRA was designed to formalise

existing customary land rights without submitting these rights to any too intrusive changes, at least according to the official narrative. The registration of customary land rights maintains the logic and lines of allocation and land management to a considerable degree and ensures continued free access to land use rights and resources for uncommodified subsistence farming. Although this political recipe for poverty reduction is contested and likely short-lived, it seems an important cause for the political and legal efforts to maintain traditional communities as political entities, and land rights as distinct fields of capital exchange. Thereby, political efforts are in place to preserve moral fabric as a separate 'legitimisation market'.

The first segment and question of the analysis illustrates how the positions of Traditional Authorities are affected by the communal land reform. All participants in this study agreed that the status and agency of TAs were affected by a transforming context. Those who had a distinct knowledge of state politics were further convinced that the communal land reform played a central role in this transformation. In consequence, the analysis of the transforming effects of the communal land reform called for a subdivision into direct and indirect impacts of the status of TAs. Older informants often mentioned a dwindling respect among the younger population. Whereas this may be directly tied to new institutional and judicial options in land management, it is certainly strengthened by further socio-political shifts among generations. Another cause is the observed rise in the demand for land and its privatisation, which, if not triggered, was certainly intensified or accelerated by the reform. This implies that apart from the reform, other forces must be in place, too, that drive state judiciary logics and neoliberal ideas closer to the (reach of) citizens in communal areas. This spatial and ideological extension of the state into the traditional power field unsettles the fundaments of all positions of authority, establishing new rules and "consumption practices" (Pauli & Dawids, 2017, p. 18) to be adhered to by those who call themselves elites.

During the process of land rights registration, the TAs (and mostly the Village Headmen) are required to offer substantial administrative support to the government. By the registration of land rights, customary tenure systems are fundamentally altered in their contractual basis, since their security is no longer depending on a relation of personal knowledge and trust, but on a centralised, technisised, and documented database in custody of the central government. TAs facilitate this process by transferring information on subjects and tenure relations within their jurisdiction to a "modern" documentation, giving the state access to the administrative information on its subjects. The lack of any previous national register of identities and land rights within former homelands accredits the TA a powerful, yet short-term position as the only and most reliable custodian of a person's ties to land and social belonging. But once all parcels are registered and certified by the MLR, tenure contracts will rely solely on the state. Hence, the TAs will be deprived of the power they derived from being the guardians of such undocumented information. In this sense, the future of land rights and TAs are closely entangled. The process of land titling is, hence, a constant reminder of multiple governmental responsibilities: securing the rights to land of communal land users, while developing the country into a "modern", unified national construct.

The government's ambivalence between acknowledging and disempowering the TAs is a persistent feature on all political levels in Namibia. It presents itself in ambivalent political signs and legal formulations, such as the recognition and de-recognition of tradition's dynamic character, the reluctance of defining the TAs' territorial borders, or the prohibition, yet toleration, of customary payments for land. At least at this stage and in peripheral rural contexts of Namibia, the governance set-up may indeed be described as a legal pluralism, in which different sets of rules are supported by different political powers who are equipped with similar strength (Benda-Beckmann et al., 2009b, p. 8). Yet, many of its features indicate that it is a *critical* legal pluralism: Flawed communication

channels, legal hierarchies, ambiguous ascriptions, or double-membership are all phenomena that are reflected in my empirical data.
To contribute to scholarly debates on legal pluralism, several chapters are devoted to a clearer understanding of the social and spatial boundaries of authorities, and their assertiveness vis-à-vis different audiences. In sum, they uncover a distinct, yet not explicitly communicated, intention of the government to use legal pluralism (and the recognition of TAs) as a method to soften the transition of the peripheral areas and identities into unitary national governance. In this light, the observed ambivalent experience between empowerment and restriction of TAs appears to some extent explicable, at least from the point of view of governmental intentions.
As my field work proceeded, I was increasingly convinced that in order to inquire into the basis of legitimacy for TAs, land governance ought to be imagined as a game that is played on, and between, two fields: Although these fields are certainly not distinguishable in pragmatic terms, since the TAs are of course part of the state and its administration, the fields retain a functional separation. Hence to be understood as analytical categories, the state field and the traditional field each working along distinct logics of law, politics, economics, and moral fabrics. Hence this system or game of governance, consisting of plural legal framework and moral fabrics with fluid and permeable boundaries, forces an inquisitive use of Bourdieu's field concepts and their distinction. With this understanding, it became apparent that many legal grey zones and uncertainties within the plural legal setting stem from the governments' overstating of the TA's power and of the misleading legal assumptions that TAs would act in a completely apolitical sphere. Since law deprives the TA of any coercive power over communities, they are increasingly in competition with their subjects, who have access to the valuable currency of the state field capitals. The individual TA's scopes of action are limited, yet they remain fundamental enablers of a coexistence of traditional and state political fields. This politics of distinction is most vividly reflected in the spatial separation of their respective fields into communal and commercial areas.

## 9.2. TA strategies to maintain legitimisation as leaders

The institution of the Kwanyama Traditional Authority has been transforming at least since colonisation (Salokoski, 2006, p. 291). And yet, the need for strategic adaptation has gained exceptional urgency and scope of redefinition with independence and the introduction of the CLRA. It has become more difficult and requires more elaborate strategies to manoeuvre among the plural legal and moral markets, if one aims to secure a lasting position of authority.
Throughout the field research, I worked toward identifying features of legitimising strategies observable in different TAs. To that effect, a cross-level and multi-site approach enabled me to observe governance networks and processes through individual agency and discourse, on both informal and institutional levels of governance. A focus was conceded to the individual strategies that the land reform provoked in the game of power and legitimisation inherent in local governance. In looking at governance as a process defined by, and affecting, agency, the discourse of elites gained importance. Understanding some of the current social inequalities requires to see how elites, who once were "united in their aim to achieve independence" of Namibia (Dülffer & Frey, 2011, p. 3), now progressively disagree in their fundamental definitions of legitimate power, and on tradition's place therein.
In consequence, the composition of (traditional) authority is blurred, which has both advantages and disadvantages for TAs. One disadvantage is that state law and state narratives, such as corruption, or gender equity, render TAs more assailable to critique and to being held accountable by those moral

standards that are spilling over from the state field. Yet, as much as legal grey zones are sources of uncertainties, they are also important scopes for TAs: granting them informal zones in which to interact with their audiences and adopt and respond to their respective needs and norms. Apart from the legal prescriptions, TAs are most strongly affected by the diversification of interests and needs of their community. Social cohesion, a crucial pillar of customary land governance, is slowly dissolved by the rise in privatisation, absence, and commodification of land use, among other aspects. Meanwhile, a part of their community remains dependent on a secured subsistence farming context. Such social transformations fundamentally impact the scope of TAs, since the community is the most immanent addressee of a TA's assertion of power. And if legitimisation is understood as a fragmented, assembled, multi-layered, and momentary social creation, it majorly depends on each individual addressee's response. This response, in turn, reflects what authorities, laws, and field of power the respective subject subscribes to.

The authority status of TAs is under constant threat to be outplayed by the capital forms in state currency, with its international reach, combined with the narrative of expertisation and documentation. The colonial regime has strongly informed the low 'currency value' of *traditional* symbolic capital relative to economic capital by isolating, or strictly restraining, homelands from national and international trade of any capital, symbolised by the separation by the red line. This encouraged the formation of alternative forms of economic and symbolic capital in the communal, or then *native*, areas. A particular traditional form of accumulation or material capital is for example reflected in the 'vernacular' system of payments in return for land allocation. This currency concedes the TAs their exclusive field of power, by establishing their status on grounds that differ morally and historically from those of state offices. The resilience of a traditional field therefore vitally grounds in its artificial distinction from the state market. And yet, it seems impossible to bar state capital completely from entering their jurisdictions. Therefore, it is an important measure for TAs in order to maintain their position, to recognise, to appropriate, and to embed state capital or references in their governing strategies.

Many of the TAs who participated in this study have shown a fundamental interest to maintain the dual field-system, while, at the same time, they noted that the transforming governance conditions call for new compromises in their leadership strategies. Many see it as an inevitable reality that they must adapt their leadership to integrate – to a certain degree – state logic, moral, or economic values. Each type of symbolic capital, of the traditional and state field, carries its own opportunities for TAs and common villagers to exert power and claim rights, so that the variations in currency and mixes in narratives are manifold. Governance services range from providing opportunities to invest in communal land, up to mediation and management in a way to conserve the original community or land use. Such offers may again differ in the means or methods by which they are framed and legitimised. These methods show a continuum between a focus on the development narrative, and the effort to appeal to, or to re-define *tradition*.

The continuous assimilation, interweaving and syncretisation of politics and logics in the customary field with those of the state field are present in the entire empirical analysis. In order to maintain a status of authority within this hard-to-anticipate process of merging or over-thrusting fields, it is decisive for each TA to dispose of capital that is readily convertible across the lines of currencies and fields. Among the observed strategies most took the form of initiatives regarding the management of village commonage, or social mediation and community building. Beyond this common ground, TA strategies differ regarding a multitude of factors, which constitute their respective (social) context: Their community's size, but also its degree of heterogeneity, and the capital gradient between the powerful among them and the TA him/herself, all work in restricting or stretching factors of the TA's

strategic options. The relative value of their capital set against those of their diverse community members determines what they can offer and what their community's priorities are through demands. This dependency undermines a fundamental promise of the CLRA to give priority to the alleviation of poverty. The poor remain particularly dependent on informal governance and social services, and thereby on the TAs, who fundamentally define and restrict their access to the state field and ideas. This reflects the delicate balancing act of the TAs between their community and the state. Their gatekeeping position is variably used as a means of self-enrichment, of direct economic or material gain, or a longer-term, indirect use for stabilising a power position. The line between the two options is not only defined by a TA, but by their community's interpretation of such strategy and its (de)legitimisation. The TAs must carefully re-evaluate what legitimate power they may receive in return for offered services or leadership strategies. The opinions among land users (and TAs) regarding the form and extent to which development or tradition should be included in local governance, greatly diverge. Those TAs who have capital, and resourceful members among their communities are particularly required to seek innovative projects that offer state narratives or logics to their strategies, projects, or leadership formula; hence, offering a more consciously argued combination of traditional and development ideas. The pivot of a TAs' strategy lies in formulating ideas or offers in a way that transforms them into convincing and legitimate arguments in both the state and traditional field.

Their position as gatekeepers is therefore highly unstable, due to the controversies inherent in their structural position between the two moral fields and legitimisation markets, and because of the instability and instantaneity of any social relation and elite characterisation.

The maintaining of two moral fabrics leads to constant competition and vast potential for disagreements and insecurities on what return on investment to expect for a claim. Examples for such moral disagreements are unresolved moral debates, typically on whether different social registers or 'fields of action' are compatible: Mixing 'tradition' with 'politics' threatens to be stigmatised as tribalism, whereas mixing economy and politics may be accused as corruption, bribery, or nepotism. These competitive logics remain an inevitable feature of (land) governance, as long as tribal self-governance persists. Therefore, TAs must perform a constant balancing act: They are required to adapt to the dominant definition and systems of governance, without mixing politics and custom beyond an extent that actors view as legitimate. Accordingly, governance strategies (and acts of opposing them) rely strongly on narratives that reflect a moral positioning, such as corruption or tribalism. For instance, a reference to one's personal wealth or tribal affiliation is better avoided in some negotiations with actors who compare their moral values to the moral fabric of the state, its constitutional rights and principles of free market and expertisation (Diener, 2001, p. 255; Chabal & Daloz, 1999, pp. 53–54). In negotiations in the traditional field, ethnic belonging and personal 'development' are convincing, even basic, legitimising arguments.

## 9.3. About the pleasures and difficulties of ethnographic research and writing

The cross-scale analysis was advantageous for rendering governance visible as a system, which expanded across various levels between the institutionalisation and formalisation of rules. This approach reveals many patterns and connections, yet it limits the depth in which single phenomena may be inquired, for instance how village meetings work as cultural practice by testing and establishing a discourse.

By focusing on TAs and especially VHM as institution and individuals, an important limitation of the research focus was defined. This thesis approached a vast field, in the combined desire to reflect the vastness of the transitioning context of (and around) land reform, and to permit more specific, ethnographic glimpses into the realities of local traditional land governance. This oscillation between macro and micro-levels of political analysis was confronted in the writing process by dividing between the two research questions: Whereas the first question was dedicated to the transformations and their effects on TAs, the second aimed at more concretely exemplifying single strategies of TAs. It soon became clear that the wide range of diversities would not allow for a typology of three or four strategic portraits. Among the main reasons was the growing insight that the different description and self-descriptions were so coined by the describers, that the resulting 'types' would rather reflect the situation and position of the speakers themselves, rather than the TAs under discussion. In effect, a projected typisation was replaced by the ethnographic and multileveled lens on single practices that could be illustrated as strategic attempts.

The entire process of this research was accompanied by the experience of barriers to understanding, developing, and re-formulating questions and interests, and moments of understanding, new insights, and surprises. This ambivalence in process is what I believe to be part of any ethnographic field research. It reflects and enables the continuous formulation of questions, as one proceeds on a personal path of understanding, of conceptualising, of (mis)interpreting. In this path of understanding and shaping new questions, the language barrier, for instance, was a constant symbol of this extraordinary process. My dependency on a translator, who eventually became a research assistant, was at times a painful reminder of all the things I failed to hear or understand. And yet, as we developed a relationship of trust and friendship, I recognised the value she added with her perspective, her re-formulation of ideas and of questions, and her estimation of a situation. In these instances, I appreciated the value in the distance that separated me from my research context.

With each insight I gained, further topics revealed their role establishing of social fabrics in the north-central communal areas: Privatisation and commodification of communal land seem almost an inevitable forecast; what implications they have on social fabrics, on inter-generational relationships, on a traditional community as a whole, would certainly be interesting to be inspected more closely. The role of religion, its local forms of expression in local concepts of land use, politics, and rights could not be included in this thesis, since it would have taken another project and book. Yet, this topic is another important, yet highly disputed, layer in the legitimisation of TAs and of tradition itself. A further aspect that my empirical navigation did not allow to discover further, are the effects of the shifts of power fields on gender roles. In various encounters I perceived that relations of gender among traditional communities, and among their leadership were also affected, and explicitly addressed in legal and political discourse; women seemed a crucial pillar in the maintaining of everyday traditional governance, less so in highly recognised positions, but rather as secretaries and consultants of the male leaders. In such positions, they are likely to impose important (re)directions on traditional governance, which would well deserve a further special inquiry. These are of course merely a selection among the possible continuative approaches for researching the effects of land reforms and related socio-political transformations in Namibia.

Amidst such content referring questions and limitations to the scope of my research, more fundamental debate accompanied the process: As a European scholar researching in the African continent, at various points during my research process, my confidence was fundamentally shaken, especially as the decolonising protests gained momentum during my stay in South Africa in 2016. I was morally caught between a felt duty to deliver outputs from all the information I was given, and being a product of deeply colonial structures of privilege in research and academia:

> [T]o date, scholarly texts which are being used by African academics and students alike, at the different universities on the continent, are predominantly written by Western scholars. Arguably, some of these texts still miss out on the African realities - no matter how noble the writers' intentions may be. This is simply because African conditions are best expressed by those who were born and bred on the continent and have, and continue to, experience its triumphs and challenges. (Mwansa, 2018, p. vii)

It is high time to react to the rising call for African studies becoming owned by African scholars, and yet I hope that my intentions and my thesis will not be disregarded. Because, unlike the above author of the quote, I advocate for a multi-perspective anthropology, in which insider and outsider perspectives are combined in complementing manner. During the writing of this thesis, I felt a great moral duty and exposure to potential critique, to which I cannot counter in basic principle. My explanation may only be that I have tried to turn my privilege into a differentiated, interesting work about an area and some of its socio-political processes, which are yet reviving insufficient international attention.

## 9.4. Prospects for TAs and implications of the study

In my advocacy for a multi-perspective approach to this field, I would like to close with a few outlooks and what aspects of the vast field of interest would call for more research, inquiries, and discussions. On the one hand, I would like to illustrate, which opportunities and insights this research approach has permitted, and where its limitations were. And on the other hand, I will conclude by highlighting a few of the numerous possible questions and interests that may be taken as an implication or a motivation from this study for further research.

This thesis did not aim to evaluate the success of Namibia as state, or that of its land reform programmes *per se*. But it may offer some clues about the perspectives for plural legal frameworks and power fields, and the future scope of action and powers of TAs. If a peaceful co-existence of plural legal systems relies on their distinct and non-rivalrous legitimisation basis, these conditions are likely to diminish in the future of the north-central Namibian context: Indicators in that regard are the increasing blurring of boundaries between the two jurisdictions and symbolic capital markets, and the lack in mechanisms that control the merging or the transgressing between the judicial and ideological fields. And yet, this merging does not proceed straightforward, for at least two main reasons: firstly, because the TAs are a convenient and relatively inexpensive means to connect peripheral citizens with the political centre, at a time when so many legal and political decentralisation initiatives are to be implemented. And secondly, because a powerful elite advocate for the sustaining of TAs as traditional, yet political stakeholders.

The parallel existence of customary laws and TAs with the statutory system necessarily results in ambiguous understandings on assigned competences. It, therefore, seems fair to assume, that legal pluralism in Namibia – and possibly anywhere – can never remain completely unproblematic over a longer period of time; at best, plural jurisdictions can coexist harmoniously for a limited time and within separate capacities. This judiciary transformation phase will last at minimum for as long as the government is yet to acquire and compose the identities and tenure relations of all its citizens, and only then may it achieve a status as *de facto* supreme judiciary authority. Because as long as these aspects remain variable, the “argument of belonging […] as a claim to resources and to jurisdictions […] produces a broad array of processes in which people may engage in order to pursue their interests” (Lund, 2011, p. 9). In the meantime, their (functional) coexistence requires of both fields to remain adaptable and volatile enough to react to adjustments in the features of self-identification of

the other. This may be a reason why “there is in Africa a marked reluctance to abide by the abstract and universalistic norms of the legal-bureaucratic order that are the foundations of Western polities” (Chabal & Daloz, 1999, pp. 99–100). It follows that the European and the state logic are less distinct in their fundamental character from the traditional principles, than they are intentionally designed to differ to prevent a too easy currency-transgression. The distinct character of traditional and modern capital is vital for a functional coexistence of the two fields. Ultimately, a TA’s chance of maintaining his or her status depends on whether they are able to maintain a function as gatekeeper among the state and their community.

TAs are still strongly anchored in the north-central Namibia, and their legitimacy relies not only on their role as land authority. The function of tradition as a source of identity surely helps sustain a field of common history, rituals, and ancestors. Yet, many attributes and logics that are foundational to the TA’s power basis are losing importance among the younger, field-commuting generations, who do not see themselves exclusively as members of the traditional field, but as commuting in between the two fields of ideas and logics.

In the longer term, I believe, the transformation will proceed to incorporate the TAs into the national government, together with their field of reference immersing in the state field. After all, the TA embody a permanent obstruction to the construction of the state (Gupta, 1995, pp. 393–394). A Namibian politician and writer has truthfully marked that for the Namibian state to become naturalised, “more of a premium ought to be placed on the concept of a social contract with the governed” (Diescho, 2008, p. 39); and to that avail, the government first has to step into a more direct contact with its population at its spatial, historical, and capital trading periphery.

# 10. References


Adams, F., Werner, W., & Vale, P. (1990). *The land issue in Namibia: an inquiry'.* NISER Research Report. Windhoek.

Adams, M. E., & Devitt, P. (1992). Grappling with Land Reform in Pastoral Namibia. *Pastoral Development Network Papers*, *March*, 1–20.

Adams, M. E., Kalabamu, F., & White, R. (2003). Land Tenure policy and practice in Botswana. Governance lessons for southern Africa. *Journal für Entwicklungspolitik*, *XIX*, 55–74.

Agrawal, A. (2002). 2. Common Resources and Institutional Sustainability. In E. Ostrom, T. Dietz, N. Dolsak, P. C. Stern, S. Stonich, & E. U. Weber (Eds.), *The drama of the commons* (pp. 41–85). Washington, DC: National Academy Press.

Agrawal, A. (2003). Sustainable Governance of Common-Pool Resources: Context, Methods, and Politics. *Annual Review of Anthropology*, *32*, 243–262.

Agrawal, A. (2007). Forests, Governance, and Sustainability: Common Property Theory and its Contributions. *International Journal of the Commons*, *1*, 111–136.

Agrawal, A., & Benson, C. S. (2011). Common property theory and resource governance institutions: strengthening explanations of multiple outcomes. *Environmental Conservation*, *38*, 199–210.

Agrawal, A., & Ribot, J. C. (2006). Recentralizing while decentralizing: how national governments re-appropriate forest resources. In D. R. Cameron, G. Ranis, & A. Zinn (Eds.), *Globalization and self-determination: Is the nation state under siege?* (pp. 301–331). London, New York: Routledge.

Akuupa, M. U., & Kornes, G. (2013). From 'One Namibia, one Nation' towards 'Unity in Diversity'? Shifting representations of culture and nationhood in Namibian Independence Day celebrations, 1990–2010. *Anthropology Southern Africa*, *36*, 34–46.

Alden Wily, L. (2000). Land Tenure Reform and the Balance of Power in Eastern and Southern Africa. *ODI Natural Resource Perspectives*, *6*, 1–4.

Alden Wily, L. (2001). Reconstructing the African Commons. *Africa Today*, *48*, 77–99.

Alden Wily, L. (2003). *Governance and Land Relations: A Review of Decentralisation of Land Administration and Management in Africa: Land Tenure and Resource Access in Africa*. London: International Institute for Environment and Development.

Alden Wily, L. (2008a). Custom and commonage in Africa rethinking the orthodoxies. *Land Use Policy*, *25*, 43–52.

Alden Wily, L. (2008b). Whose Land Is It? Commons and Conflict States: Why the Ownership of the Commons Matters in Making and Keeping Peace. http://www.rightsandresources.org/documents/files/doc_853.pdf. Accessed 01.07.2015.

Alden Wily, L. (2011). The Law is to Blame: The Vulnerable Status of Common Property Rights in Sub Saharan Africa. *Development and Change*, *42*, 733–757.

Alden Wily, L. (2012). Looking back to see forward: the legal niceties of land theft in land rushes. *Journal of Peasant Studies*, *39*, 751–775.

Aldridge, J. M., Fraser, B. J., & Huang, T.-C. I. (2010). Investigating Classroom Environments in Taiwan and Australia With Multiple Research Methods. *The Journal of Educational Research*, *93*, 48–62.

Allgemeine Zeitung (2012). Landfragen verlangen Klärung: Registrierung der kommunalen Parzellen wirft vergessene Hindernisse auf. *Allgemeine Zeitung,* 28.11.2012. http://www.az.com.na/politik/landfragen-verlangen-klrung.159819.php. Accessed 10.04.2013.

Amoo, S. K. (2008). The structure of the Namibian judicial system and its relevance for an independent judiciary. In N. Horn, & A. Bösl (Eds.), *The independence of the judiciary in Namibia* (pp. 69–95). Windhoek, Namibia: Macmillan Education Namibia.

Appadurai, A. (1995). The production of locality. In R. Fardon (Ed.), *Counterworks: Managing the diversity of knowledge* (pp. 204–225). London, New York: Routledge.

Appadurai, A. (2010). How Histories make Geographies: Circulation and Context in a Global Perspective. *Transcultural Studies*, 1–4.

(2015). Army commander fences off communal land. *The Namibian,* 15.06.2015: News National. http://www.namibian.com.na/indexx.php?id=27851&page_type=story_detail&category_id=1&utm_content=buffer599fb&utm_medium=social&utm_source=facebook.com&utm_campaign=buffer#. Accessed 15.06.2015.

Arruñada, B., & Garoupa, N. (2005). The Choice of Titling System in Land. *The Journal of Law and Economics*, *48*, 709–727.

Ashcroft, B., Griffiths, G., & Tiffin, H. (Eds.) (2013). *Postcolonial Studies: The Key Concepts*. Third edition. (3rd ed.). New York: Routledge.

Ashipala, N. (2016). Structures along roads to be removed. *New Era,* 14.11.2016. https://www.newera.com.na/2016/11/14/structures-along-roads-to-be-removed/. Accessed 15.11.2016.

Bailey, F. G. (1990). *Stratagems and spoils: A social anthropology of politics.* (4th impr., repr). Pavilion series. Oxford: Blackwell.

Baland, J.-M., & Platteau, J.-P. (1998). Division of the Commons: A Partial Assessment of the New Institutional Economics of Land Rights. *American Journal of Agricultural Economics*, *80*, 644–650.

Balch, J., & Scholten, J. N. (1990). Namibian Reconstruction and National Reconciliation: Putting the Horse before the Cart. *Review of African Political Economy*, *49*, 82–93.

Barnaud, C., & van Paassen, A. (2013). Equity, Power Games, and Legitimacy: Dilemmas of Participatory Natural Resource Management. *Ecology and Society*, *18*.

Barrows, R., & Roth, M. (1990). Land Tenure and Investment in African Agriculture: Theory and Evidence. *The Journal of Modern African Studies*, *28*, 265–297.

Bartley, T., Andersson, K., Jagger, P., & van Laerhoven, F. (1990). The Contribution of Institutional Theories to Explaining Decentralization of Natural Resource Governance. *Society & Natural Resources*, *21*, 160–174.

Bayart, J.-F. (2009). La démocratie à l'épreuve de la tradition en Afrique subsaharienne. *Pouvoirs*, *129*, 27.

Bayart, J.-F. (2013). Postcolonial Studies: A Political Invention of Tradition? *Ab Imperio*, *2*.

Becker, H. (2006). 'New Things after Independence': Gender and Traditional Authorities in Postcolonial Namibia. *Journal of Southern African Studies*, *32*, 29–48.

Becker, H. (2011). Commemorating Heroes in Windhoek and Eenhana: memory, culture and nationalism in Namiba 1990-2010. *Africa*, *81*, 519–543.

Benda-Beckmann, F. v. (2001a). Legal Pluralism and Social Justice in Economic and Political Development. *IDS Bulletin*, *32*, 46–56.

Benda-Beckmann, F. v. (2002). Who's afraid of legal pluralism? *Journal of Legal Pluralism*, 37–83.

Benda-Beckmann, F. v. (2007). *Legal pluralism in Malawi: Historical development 1858-1970 and emerging issues.* Kachere Monographs, 24. Zomba: Kachere Series.

Benda-Beckmann, F. v., Benda-Beckmann, K. v., & Eckert, J. (Eds.) (2009a). *Rules of law and laws of ruling: On the governance of law*. Farnham, Surrey, England, Burlington, VT: Ashgate Pub.

Benda-Beckmann, F. v., Benda-Beckmann, K. v., & Eckert, J. (2009b). Rules of Law and Laws of Ruling: Law and Governance between Past and Future: Chapter 1. In F. v. Benda-Beckmann, K. v. Benda-Beckmann, & J. Eckert (Eds.), *Rules of law and laws of ruling: On the governance of law* (pp. 1–32). Farnham, Surrey, England, Burlington, VT: Ashgate Pub.

Benda-Beckmann, F. v., Benda-Beckmann, K. v., & Wiber, M. G. (2006). The Properties of Property: Chapter 1. In F. v. Benda-Beckmann, K. v. Benda-Beckmann, & M. G. Wiber (Eds.), *Changing Properties of Property* (pp. 1–39). New York: Berghahn Books.

Benda-Beckmann, K. v. (2001b). Folk, Indigenous, and Customary Law. In N. J. Smelser, & P. B. Baltes (Eds.), *International encyclopedia of the social & behavioral sciences* (pp. 5705–5708). Amsterdam [u.a.]: Elsevier; Elsevier, Pergamon.

Benda-Beckmann, K. v., & Pirie, F. (2007). *Order and disorder: Anthropological perspectives*. New York: Berghahn Books.

Benjaminsen, T. A., & Lund, C. (2002). Formalisation and Informalisation of Land and Water Rights in Africa: An Introduction. *The European Journal of Development Research*, *14*, 1–10.

Bennett, T. W. (1999). The constitutional base of traditional rulers in South Africa. In F. M. D'Engelbronner-Kolff, M. O. Hinz, & J. L. Sindano (Eds.), *Traditional authority and democracy in Southern Africa: Proceedings from the workshop, Traditional Authorities in the Nineties - Democratic Aspects of Traditional Government in Southern Africa, 15-16 November 1995, Windhoek* (pp. 14–30). Windhoek: New Namibia.

Bennett, T. W., & Vermeulen, T. (1980). Codification of Customary Law. *Journal of African Law*, *24*, 206–219.

Bergmann, J. R. (2004). 3.2 Ethnomethodology. In U. Flick, E. v. Kardorff, & I. Steinke (Eds.), *A companion to qualitative research*. London, Thousand Oaks, Calif.: Sage Publications.

Berry, S. (1993). *No Condition is Permanent: The @Social Dynamics of Agrarian Change in Sub-Saharan Africa.* ([ACLS Humanities E-Book edition]). Madison, Wis.: University of Wisconsin Press.

Berry, S. (2000). *Chiefs know their boundaries: Essays on property, power, and the past in Asante, 1896-1996.* Social history of Africa. Portsmouth, NH, Oxford, Cape Town: Heinemann; J. Currey; D. Philip.

Blatter, J., Janning, F., & Wagemann, C. (2007). *Qualitative Politikanalyse: Eine Einführung in Forschungsansätze und Methoden.* (1. Aufl.). Lehrbuch. Grundwissen Politik, 44. Wiesbaden: VS Verl. für Sozialwiss.

Bollig, M. (2011). Chieftaincies and Chiefs in Northern Namibia Intermediaries of Power between Traditionalism, Modernisation and Democratisation. In J. Dülffer, & M. Frey (Eds.), *Elites and decolonization in the twentieth century* (pp. 157–176). Basingstoke, Hampshire, New York, NY: Palgrave Macmillan.

Boone, C. (2003a). Decentralization as political strategy in West Africa. *Comparative Political Studies*, *36*, 355–380.

Boone, C. (2003b). *Political topographies of the African state: Territorial authority and institutional choice.* Cambridge studies in comparative politics. Cambridge, UK, New York: Cambridge University Press.

Boone, C. (2007). Property and constitutional order: Land tenure reform and the future of the African state. *African Affairs*, *106*, 557–586.

Boone, C. (2013). LAND REGIMES AND THE STRUCTURE OF POLITICS: PATTERNS OF LAND-RELATED CONFLICT. *Africa*, *83*, 188–203.

Boone, C. (2014). *Property and political order in Africa: Land rights and the structure of politics.* Cambridge studies in comparative politics. New York: Cambridge University Press.

Bortz, J., & Döring, N. (Eds.) (2002). *Forschungsmethoden und Evaluation: Für Human- und Sozialwissenschaftler.* (3., überarbeitete Auflage). Springer-Lehrbuch. Berlin, Heidelberg, s.l.: Springer Berlin Heidelberg.

Bourdieu, P. (1971). Le marché des biens symboliques. *L'Année sociologique (1940/1948-)*, *22*, 49–126.

Bourdieu, P. (1977). *Outline of a theory of practice.* Cambridge studies in social and cultural anthropology, 16. Cambridge: Cambridge University Press.

Bourdieu, P. (1984). *Distinction: A social critique of the judgement of taste*. Cambridge, Mass.: Harvard University Press.

Bourdieu, P. (1989). Social Space and Symbolic Power. *Sociological Theory*, *7*, 14–25.

Bourdieu, P. (1990). *The logic of practice: Translated by Richard Nice*. Stanford, California: Stanford University Press.

Bourdieu, P. (2002). The forms of capital. In N. W. Biggart (Ed.), *Readings in economic sociology* (pp. 280–291). Malden, Mass.: Blackwell.

Bourdieu, P. (2012). *Die feinen Unterschiede: Kritik der gesellschaftlichen Urteilskraft.* (22. Aufl), 658. Frankfurt am Main: Suhrkamp.

Bourdieu, P., & Terdiman, R. (1986). The Force of Law: Toward a Sociology of the Juridical Field. *The Hastings Law Journal*, *38*, 805–853.

Bourdieu, P., Wacquant, L. J. D., & Farage, S. (1994). Rethinking the State: Genesis and Structure of the Bureaucratic Field. *Sociological Theory*, *12*, 1–18.

Breaking News Namibia, Facebook Page (2019). OUKWANYAMA QUEEN GIVEN 30 DAYS TO LEAVE. https://www.facebook.com/permalink.php?story_fbid=2514594208551885&id=1099964073348246. Accessed 28.4.19.

Bridge, G. (2002). Bourdieu, rational action and the time-space strategy of gentrification. *Transactions of the Institute of British Geographers*, *26*, 205–216.

Bromley, D. W. (1989). Property relations and economic development: The other land reform. *World Development*, *17*, 867–877.

Bromley, D. W. (2009). Formalising property relations in the developing world: The wrong prescription for the wrong malady. *Land Use Policy*, *26*, 20–27.

Brondizio, E. S., Ostrom, E., & Young, O. (2009). Connectivity and the Governance of Multilevel Social-Ecological Systems: The Role of Social Capital. *Annual Review of Environment and Resources*, *34*, 253–278.

Brubaker, R., & Cooper, F. (2000). Beyond "identity". *Theory and Society*, *29*, 1–47.

Bryan, J. (2012). Rethinking Territory: Social Justice and Neoliberalism in Latin America's Territorial Turn. *Geography Compass*, *6*, 215–226.

Búrca, G. de, & Scott, J. C. (2006). Introduction New Governance, Law and. In G. de Búrca, & J. C. Scott (Eds.), *Law and the New overnance in the EU and US* (pp. 1–12). Oxford: Hart Publishing.

Carr, J., & Smith, L. B. (1975). Public Land Banking and the Price of Land. *Land Economics*, *51*, 316–330.

Casey, K. L. (2008). Defining Political Capital: A Reconsideration of Bourdieu's Interconvertibility Theory: Conference Paper.

Chabal, P., & Daloz, J.-P. (1999). *Africa works: Disorder as political instrument*. [London], Bloomington: International African Institute in association with James Currey, Oxford; Indiana University Press.

Chanock, M. (1991). A Peculiar Sharpness: An Essay on Property in the History of Customary Law in Colonial Africa. *The Journal of African History*, *32*, 65–88.

Chapin, M., Lamb, Z., & Threlkeld, B. (2005). Mapping Indigenous Lands. *Annual Review of Anthropology*, *34*, 619–638.

Cheeseman, N. (2014). Does the African middle class defend democracy? Evidence from Kenya. *Afrobarometer Working Papers*.

Chess, Burger, & Hughes McDermott, M. (2005). Speaking Like a State: Environmental Justice and Fish Consumption Advisories. *Society & Natural Resources*, *18*, 267–278.

Chimhowu, A. (2018). The 'new' African customary land tenure. Characteristic, features and policy implications of a new paradigm. *Land Use Policy*.

Chimhowu, A., & Woodhouse, P. (2006). Customary vs Private Property Rights? Dynamics and Trajectories of Vernacular Land Markets in Sub-Saharan Africa. *Journal of Agrarian Change*, *6*, 346–371.

Chimhowu, A., & Woodhouse, P. (2010). Forbidden But Not Suppressed: a 'Vernacular' Land Market in Svosve Communal Lands, Zimbabwe. *Africa*, *80*, 14–35.

Chinigò, D. (2014). The politics of land registration in Ethiopia: territorialising state power in the rural milieu. *Review of African Political Economy*, 1–16.

Claassens, A., & Cousins, B. (Eds.) (2008). *Land, power & custom: Controversies generated by South Africa's Communal Land Rights Act*. [Durban], Athens, OH: Legal Resources Centre; Distributed in the United States by Ohio University Press.

Cleaver, F. (2003). The inequality of social capital: agency, association and the reproduction of chronic poverty. http://r4d.dfid.gov.uk/PDF/Outputs/ChronicPoverty_RC/cleaver.pdf. Accessed 28.01.2015.

Cliffe, L. (Ed.) (1994). *The Transition to Independence in Namibia*. Boulder: Lynne Rienner Publishers, Inc.

Cloke, P. J., Cook, I., Crang, P., Goodwin, M., Painter, J., & Philo, C. (2004). *Practising human geography*. London, Thousand Oaks, Calif.: SAGE.

Coicaud, J.-M., & Curtis, D. A. (2002). *Legitimacy and politics: A contribution to the study of political right and political responsibility*. Cambridge: Cambridge University Press.

Comaroff, J., & Comaroff, J. (2007). Law and disorder in the postcolony*: ∗ This essay is an abridged version of 'Law and disorder in the postcolony: an introduction, in Jean and John Comaroff (eds.), Law and disorder in the postcolony. Chicago: University of Chicago Press, 2006. *Social Anthropology*, *15*, 133–152.

Committee on the Elimination of Racial Discrimination (2008). *Condsideration of Reports Submitted by States Parties under the Article 9 of the Convention: Concluding observations of the Committee on the Elimination*.

Community Lands Support Sub-Activity (CLS), & Millennium Challenge Account Namibia (2014). *Land Rights in Communal Lands. Summary of Recommendations on Policy lssues: Policy and Legal Memorandum*. Windhoek.

Cousins, B. (1997). How Do Rights Become Real? Formal and Informal Institutions in South Africa's Land Reform. *Institute for Development Studies IDS*, *28*.

Cousins, B., & Scoones, I. (2010). Contested paradigms of 'viability' in redistributive land reform: perspectives from southern Africa. *The Journal of Peasant Studies*, *37*, 31–66.

Crook, R. C. (2008). Customary justice institutions and local Alternative Dispute Resolution: What kind of protection can they offer to customary landholders? In J. M. Ubink, & K. Amanor (Eds.), *Contesting Land and Custom in Ghana: State, Chief and the Citizen* (pp. 131–154). Leiden: Leiden University Press.

Dafinger, A., & Pelican, M. (2006). Sharing or Dividing the Land? Land Rights and Farmer-Herder Relations in Burkina Faso and Nothwest Cameroon. *Canadian Journal of African Studies*, *40*, 127–151.

Davidson, M. (2009). Social sustainability: a potential for politics? *Local Environment*, *14*, 607–619.

Davies, C. (2002). *Reflexive ethnography: A guide to researching selves and others*. London: Routledge.

Davies, M. (2014). *The locality of chieftainship territory, authority and local politics in Northern Malawi, 1870-1974*. PhD Thesis. Leiden.

De Certeau, M., Jameson, F., & Lovit, C. (1980). On the Oppositional Practices of Everyday Life. *Social Text*, 3–43.

De Soto, H. (2003). *The mystery of capital: Why capitalism triumphs in the West and fails everywhere else.* (1. paperback ed., [updated ed.]). New York, NY: Basic Books.

Deininger, K., & Binswanger, H. (1999). The Evolution of of the World Bank's Land Policy. Principles, Experience, and Future Challenges. *The World Bank Research Observer*, *14*, 247–276.

Deininger, K. W., Augustinus, C., Enemark, S., & Munro-Faure, P. (Eds.) (2010). *Innovations in land rights recognition, administration, and governance.* A World Bank study. Washington, DC: World Bank.

Delaney, D. (2011). *The spatial, the legal and the pragmatics of world-making: Nomospheric investigations*. New York, Abingdon, Oxfordshire: Routledge.

Della Fave, L. R. (1986). Toward an Explication of the Legitimation Process. *Social Forces*, *65*, 476.

D'Engelbronner-Kolff, F. M. (1999). The people as law-makers: The juridical foundation of legislative power of Namibian traditional communities: Chapter 4. In F. M. D'Engelbronner-Kolff, M. O. Hinz, & J. L. Sindano (Eds.), *Traditional authority and democracy in Southern Africa: Proceedings from the workshop, Traditional Authorities in the Nineties - Democratic Aspects of Traditional Government in Southern Africa, 15-16 November 1995, Windhoek* (pp. 62–82). Windhoek: New Namibia.

Devereux, S. (1996). Fuzzy entitlements and common property resources: struggles over rights to communal land in Namibia. *Institute for Development Studies IDS*, *Working Paper 44*.

Devereux, S., & Getu, M. (2013). The Conceptualisation and Status of Informal and Formal Social Protection in Sub-Saharan Africa: Chapter 1. In S. Devereux, & M. Getu (Eds.), *Informal and formal social protection systems in Sub-Saharan Africa* (pp. 1–8). Addis Ababa: OSSREA and Fountain Publishers.

Diener, I. (2001). Ethnicity and nation-building: towards unity respectful of heterogeneity? In I. Diener, & O. Graefe (Eds.), *Contemporary Namibia: The first landmarks of a post-apartheid society* (pp. 231–257). Windhoek, Namibia: Gamsberg Macmillan.

Diener, I., & Graefe, O. (Eds.) (2001). *Contemporary Namibia: The first landmarks of a post-apartheid society*. Windhoek, Namibia: Gamsberg Macmillan.

Diescho, J. (2008). The paradigm of an independent judiciary: Its history, implications and limitations in Africa. In N. Horn, & A. Bösl (Eds.), *The independence of the judiciary in Namibia* (pp. 17–41). Windhoek, Namibia: Macmillan Education Namibia.

Dlamini, J. (2015). The Land and its Languages: Edward Tsewu and the Pre-History of th 1913 Land Act. In B. Cousins, & C. Walker (Eds.), *Land divided, land restored: Land reform in South Africa for the 21st century* (pp. 40–55). Auckland Park, South Africa: Jacana.

Dobler, G. (2008). Boundary-drawing and the notion of territoriality in pre-colonial and early colonial Ovamboland. *Journal of Namibian Studies*, *3*, 7–30.

Dobler, G. (2009). Oshikango: The Dynamics of Growth and Regulation in a Namibian Boom Town. *Journal of Southern African Studies*, *35*, 115–131.

Dobler, G. (2014). *Traders and trade in colonial Ovamboland, 1925-1990: Elite formation and the politics of consumption under indirect rule and apartheid*, 8. Basel: Basler Afrika Bibliographien.

Donaldson, A., Lane, S., Ward, N., & Whatmore, S. (2013). Overflowing with issues: following the political trajectories of flooding. *Environment and Planning C: Government and Policy*, *31*, 603–618.

Dorussen, H., Lenz, H., & Blavoukos, S. (2005). Assessing the Reliability and Validity of Expert Interviews. *European Union Politics*, *6*, 315–337.

Draper, M., Spierenburg, M., & Wels, H. (2007). African dreams of cohesion: Elite pacting and community development in transfrontier conservation areas in southern Africa. *Culture and Organization*, *10*, 341–353.

Dülffer, J., & Frey, M. (2011). Introduction. In J. Dülffer, & M. Frey (Eds.), *Elites and decolonization in the twentieth century* (pp. 1–10). Basingstoke, Hampshire, New York, NY: Palgrave Macmillan.

Düsing, S. (2000). *Traditional leadership and democratisation in Southern Africa: A comparative study of Botswana, Namibia, and South Africa.* Studien zur Politikwissenschaft. Abteilung D, Schwerpunkt Asien und Afrika, 6. Hamburg: Lit Verlag.

Eaton, L., & Louw, J. (2000). Culture and Self in South Africa: Individualism-Collectivism Predictions. *The Journal of Social Psychology*, *140*, 210–217.

Eckert, J. (2006). From Subjects to Citizens: Legalism from Below and the Homogenisation of the Legal Sphere. *The Journal of Legal Pluralism and Unofficial Law*, *38*, 45–75.

Ekeh, P. P. (1975). Colonialism and the Two Publics in Africa: A Theoretical Statement. *Comparative Studies in Society and History*, *17*, 91–112.

Emirbayer, M., & Mische, A. (1998). What Is Agency? *The American Journal of Sociology*, *103*, 962–1023.

Evers, S., Spierenburg, M., & Wels, H. (Eds.) (2005a). *Competing jurisdictions: Settling land claims in Africa.* Afrika-Studiecentrum series, v. 6. Leiden, Boston: Brill.

Evers, S., Spierenburg, M., & Wels, H. (2005b). Introduction - Competing Jurisdictions: Settling Land Claims in Africa, including Madagascar. In S. Evers, M. Spierenburg, & H. Wels (Eds.), *Competing jurisdictions: Settling land claims in Africa* (pp. 1–20). Leiden, Boston: Brill.

Fanon, F., & Philcox, R. (2004). *The wretched of the earth*. New York: Grove Press.

Flick, U., Kardorff, E. v., & Steinke, I. (Eds.) (2004). *A companion to qualitative research*. London, Thousand Oaks, Calif.: Sage Publications.

Food and agriculture organization of the United Nations (2012). *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security // Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security*. Rome: Food and Agriculture Organization of the United Nations.

Foucault, M. (1982). The Subject and Power. *Critical Inquiry*, *8*, 777–795.

Foucault, M. (1991). Governmentality. In G. Burchell, C. Gordon, & P. Miller (Eds.), *The Foucault effect: Studies in governmentality with two lectures by and an interview with Michel Foucault* (pp. 87–104). Chicago: University of Chicago Press.

Foucault, M. (1994). *Überwachen und Strafen: Die Geburt des Gefängnisses.* (1. Aufl), 2271. Frankfurt am Main: Suhrkamp.

Friedman, J. T. (2005). Making Politics, Making History: Chiefship and the Post-Apartheid State in Namibia. *Journal of Southern African Studies*, *31*, 23–51.

Friedman, J. T. (2013). *Imagining The Post-apartheid State: An Ethnographic Account of Namibia*. New York, NY: Berghahn Books.

Fuller, C. (1994). Legal Anthropology: Legal Pluralism and Legal Thought. *Anthropology Today*, *10*, 9–12.

Fumanti, M. (2016). *The politics of distinction: African elites from colonialism to liberation in a Namibian frontier town*, 87. Canon Pyon: Cambridge University Press; Sean Kingston Publishing.

Gargallo, E. (2010). Land, Restitution and Traditional Authorities in Namibia's Agrarian Reform. *CIEA7*.

Geertz, C. (1987). *Dichte Beschreibung: Beiträge zum Verstehen kultureller Systeme.* (1. Aufl.). Suhrkamp-Taschenbuch Wissenschaft, 696. Frankfurt am Main, Germany: Suhrkamp.

Geingob, H. (2004). *State Formation in Namibia: Promoting Democracy and Good Governance*. PhD. Leeds.

Gerber, J.-D., Knoepfel, P., Nahrath, S., & Varone, F. (2009). Institutional Resource Regimes: Towards sustainability through the combination of property-rights theory and policy analysis. *Ecological Economics*, *68*, 798–809.

Gitonga, A. (1988). The Meaning and Foundations of Democracy. In W. O. Oyugi, Odhiambo, E. Atieno S., M. Chege, & A. Gitonga (Eds.), *Democratic theory & practice in Africa* (pp. 4–23). Portsmouth, NH, London: Heinemann; J. Currey.

Gluckman, M. (1963). Gossip and Scandal: Papers in Honor of Melville J. Herskovits. *Current Anthropology*, *4*, 307–316.

GOPA, & Ministry of Agriculture. *Community Based Rangeland an Livestock Management: Sustainable wealth creation in the Northern Communal Areas of Namibia*.

Government of Namibia (n.s.). Projects of the MLR (Ministry of Land Reform): Program For Communal Land Development (PCLD) and The "Grundbuch" Project. 2014-2017. http://www.mlr.gov.na/projects1. Accessed 08.06.2018.

Government of the Republic of Namibia (1990a). *The Constitution of The Republic of Namibia*.

Government of the Republic of Namibia (1990b). *The Namibian Constitution*.

Government of the Republic of Namibia, & Ministry of Lands and Resettlement (MLR) (2010). *Poverty Impact Assessment of the Various Land Reform Programmes*. Windhoek.

Graefe, O. (2003). Städtische Territorien und Land Management im postkolonialen Namibia. *Petermanns Geographische Mitteilungen, Justus Pertha Verlag Gotha GmbH*, *147*, 48–55.

Graefe, O., Kuhn, N., & Dobler, G. (2011). *Communal Land Reform in Namibia: Project Proposal*.

Griffin, K., Rahman Khan, A., & Ickowitz, A. (2002). Poverty and the Distribution of Land. *Journal of Agrarian Change*, *2*, 279–330.

Griffiths, A. (2011). Pursuing Legal Pluralism: The Power of Paradigms in a Global World. *The Journal of Legal Pluralism and Unofficial Law*, *43*, 173–202.

Griffiths, M. (2017). From heterogeneous worlds: Western privilege, class and positionality in the South. *Area*, *49*, 2–8.

Günzel, M., Fehling, B., Pietzek, C., Womelsdorf, A., & Völker, S. (2010). Tagungsbericht: Diskurs und Raum.: Humangeografische Sommerschule am Institut für Geographie Erlangen-Nürnberg in Erlangen vom 25.-29. Juli 2010, ausgerichtet von den geografischen Instituten Erlangen-Nürnberg, Heidelberg, Frankfurt/M., Münster. *Forum Qualitative Sozialforschung / Forum: Qualitative Social*.

Gupta, A. (1995). Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, and the Imagined State. *american ethnologist*, *22*, 375–402.

Gupta, A., & Ferguson, J. (1992). 'Beyond "Culture": Space, Identity and the Politics of Difference.'. https://scholar.google.ch/scholar?q=1992+%E2%80%98Beyond+%E2%80%9CCulture%E2%80%9

D%3A+Space%2C+Identity+and+the+Politics+of+Difference.%E2%80%99&btnG=&hl=de&as_sdt=0%2C5. Accessed 29.05.2017.

Habermas, J. (1979). *Communication and the evolution of society*. Boston: Beacon Press.

Habermas, J., & MacCarthy, T. (2005). *Lifeworld and system: a critique of functionalist reason: The theory of communicative action. Volume 2.* (1. digital-print ed). The theory of communicative action, 2. Cambridge, Boston: Polity; Beacon Press; Beacon.

Hager, C.-P. (2013). *Terms of Reference: Local Level Participatory Planning for the development of small scale commercial farming in designated communal areas in Namibia*. Accompanying Measure for the Support to Land Reform and Infrastructure Development in Communal Areas. Accessed 30.06.2015.

Haidula, T. (2015). Kavango threatens to block roads. *The Namibian,* 15.12.2015. http://www.namibian.com.na/index.php?page=read&id=35153&utm_content=buffere51da&utm_medium=social&utm_source=facebook.com&utm_campaign=buffer. Accessed 15.12.2015.

Haller, T. (2010). Between Open Access, Privatisation And Collective Action: A Comparative Analysis Of Institutional Change Governing Use Of Common-Pool Resources In African Floodplains. In T. Haller (Ed.), *Disputing the floodplains: Institutional change and the politics of resource management in African wetlands* (pp. 413–444). Boston: Brill.

Haosemab, C. (2018). Kavango West Report: REGIONAL CONSULTATIONS IN PREPARATION FOR THE SECOND NATIONAL LAND CONFERENCE, 26 - 27 July 2018.

Harring, S. L. (1999). Inconsistencies in the Constitution of Namibia regarding the land question: Chapter 9. In F. M. D'Engelbronner-Kolff, M. O. Hinz, & J. L. Sindano (Eds.), *Traditional authority and democracy in Southern Africa: Proceedings from the workshop, Traditional Authorities in the Nineties - Democratic Aspects of Traditional Government in Southern Africa, 15-16 November 1995, Windhoek* (pp. 155–182). Windhoek: New Namibia.

Hayes, P., & Haipinge, D. (Eds.) (1997). *"Healing the Land": Kaulinge's History of Kwanyama: Oral Tradition and History by the late Reverend Vilho Kaulinge of Ondobe as Told to Patricia Hayes and Natangwe Shapange.* History, Cultural Traditions and Innovations in Southern Africa, 3. Köln: Rüdiger Köppe.

Heita, D. (2018). Rhetoric aside, here's the actual debate at land conference. *New Era,* 03.10.2018. https://neweralive.na/posts/rhetoric-aside-heres-the-actual-debate-at-land-conference. Accessed 05.10.2018.

Henham, R. (1995). Due process, procedural justice and sentencing policy. *International Journal of the Sociology of Law*, *23*, 233–252.

Herdt, T. de, & Olivier De Sardan, J.-P. (Eds.) (2015). *Real governance and practical norms in sub-Saharan Africa: The game of rules*, 7. Abingdon, Oxfordshire: Routledge.

High Court Namibia, Main Division, Windhoek (2013). *In the matter between TILEINGE WAPULILE APPLICANT and CHAIRMAN, OHANGWENA COMMUNAL LAND BOARD N.O. http://www.saflii.org/na/cases/NAHCMD*, 1–22. http://www.saflii.org/na/cases/NAHCMD/2013/340.pdf. Accessed 17.09.2014.

Hilukilwa, P. (2016). 'Illegal' fence causes massive loss. *The Sun,* 28.01.2016. https://www.namibiansun.com/news/illegal-fence-causes-massive-loss. Accessed 07.09.2018.

Hinz, M. O. (1999a). Communal land, natural resources and traditional authority: Communal land and Customary Law. Chapter 10. In F. M. D'Engelbronner-Kolff, M. O. Hinz, & J. L. Sindano (Eds.), *Traditional authority and democracy in Southern Africa: Proceedings from the workshop, Traditional Authorities in the Nineties - Democratic Aspects of Traditional Government in Southern Africa, 15-16 November 1995, Windhoek* (pp. 183–227). Windhoek: New Namibia.

Hinz, M. O. (1999b). The 'traditional' of traditional government: traditional versus democracy-based legitimacy. In F. M. D'Engelbronner-Kolff, M. O. Hinz, & J. L. Sindano (Eds.), *Traditional authority and democracy in Southern Africa: Proceedings from the workshop, Traditional Authorities in the Nineties - Democratic Aspects of Traditional Government in Southern Africa, 15-16 November 1995, Windhoek* (pp. 1–13). Windhoek: New Namibia.

Hinz, M. O. (Ed.) (2006). *The shade of new leaves: Governance in traditional authority.* Afrikanische Studien, [29]. Berlin: Lit.

Hinz, M. O. (2008). Traditional courts in Namibia – part of the judiciary?: Jurisprudential challenges of traditional justice. In N. Horn, & A. Bösl (Eds.), *The independence of the judiciary in Namibia* (pp. 149–173). Windhoek, Namibia: Macmillan Education Namibia.

Hinz, M. O. (2009). Traditional governance and African customary law: Comparative observations from a Namibian perspective. In N. Horn, A. Bösl, & J. Diescho (Eds.), *Human Rights and the Rule of Law in Namibia* (pp. 59–87). Windhoek: Macmillan Education Namibia.

Hinz, M. O. (2010a). The Ascertainment of Customary Law: What is Ascertainment of Customary Law and what is it for? In M. O. Hinz (Ed.), *Customary Law Ascertained: The Customary Law of the Owambo, Kavango and Caprivi Communities of Namibia* (pp. 3–19). Windhoek: Namibia Scientific Society.

Hinz, M. O. (2010b). The Laws of the Oukwanyama. In M. O. Hinz (Ed.), *Customary Law Ascertained: The Customary Law of the Owambo, Kavango and Caprivi Communities of Namibia* (185-). Windhoek: Namibia Scientific Society.

Hinz, M. O., & Kwenani, J. W. (2006). The Ascertainment of Customary Law. In M. O. Hinz (Ed.), *The shade of new leaves: Governance in traditional authority*. Berlin: Lit.

Hipondoka, M., & Haudiu, E. (2008). *Mapping Areas of Officially Recognized Traditional Authorities and Land Board Jurisdictions: Project Report for MLR and GTZ*.

Hirschauer, S. (2007). Putting things into words. Ethnographic description and the silence of the social. *Human Studies*, *29*, 413–441.

Hobsbawm, E. J. (2010). Introduction: Inventing Traditions. In E. J. Hobsbawm, & T. O. Ranger (Eds.), *The invention of tradition* (pp. 1–14). Cambridge: Cambridge Univ. Pr.

Hodgson, G. M. (2015). What Humpty Dumpty might have said about property rights – and the need to put them back together again: a response to critics. *Journal of Institutional Economics*, *11*, 731–747.

Hogg, R. (2002). Law's Other Spaces. *Law/Text/Culture*, *6*, 29–38.

Holston, J., & Appadurai, A. (1996). Cities and Citizenship. *Public Culture*, *8*, 187–204.

Hubbard, D. (2007). Ideas about equality in Namibian family law. In H. Melber (Ed.), *Transitions in Namibia: Which Changes for Whom?* (pp. 209–229). Uppsala.

Hufty, M. (2011). Governance: Exploring four approaches and their relevance to research. In U. Wiesmann, & M. Hufty (Eds.), *Research for Sustainable Development: Foundations, Experiences, and Perspectives. Perspectives of the Swiss National Centre of Competence in Research (NCCR) North-South* (pp. 165–183). Bern.

Iipinge, M. T. (2011). *Evaluation of Institutional Models for Managing Communal Land in Namibia*. Enschede.

Ingram, V., Ros-Tonen, M. A., & Dietz, T. (2015). A fine mess: bricolaged forest governance in Cameroon. *International Journal of the Commons*, *9*, 1–23.

Kaag, M. (2005). Fighting over Crumbs? Small valleys in West Africa as a new locus of land claims. In S. Evers, M. Spierenburg, & H. Wels (Eds.), *Competing jurisdictions: Settling land claims in Africa* (333-). Leiden, Boston: Brill.

Kaakunga, E., & Ndalikokule, V. (2006). Property Rights and Access to Credit: Bank of Namibia, Research Department. *Occassional paper of the Bank of Namibia*.

Keulder, C. (Ed.) (2010a). *State, Society and Democracy: A Reader in Namibian Politics*. Windhoek: Macmillan Education Namibia (Pty) Ltd.

Keulder, C. (2010b). Traditional Leaders. In C. Keulder (Ed.), *State, Society and Democracy: A Reader in Namibian Politics* (pp. 150–170). Windhoek: Macmillan Education Namibia (Pty) Ltd.

Kleinbooi, K. (Ed.) (2010). *Review of land reforms in Southern Africa 2010*. Bellville, Cape Town: Institute for Poverty, Land and Agrarian Studies (PLAAS), School of Government, University of the Western Cape (UWC).

Knight, R. S. (2010). *Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation*, 105. Rome: Food and Agriculture Organization of the United Nations.

Kooper, L. (2019). Chief Mamili defends land dispute decision. *The Namibian,* 20.02.2019. https://www.namibian.com.na/75826/read/Chief-Mamili-defends-land-dispute-decision. Accessed 21.02.2019.

Kössler, R. (2000). From Reserve to Homeland: Local Identities and South African Policy in Southern Namibia. *Journal of Southern African Studies*, *26*, 447–462.

Kössler, R. (2006). *In search of survival and dignity: Two traditional communities in southern Namibia under South African rule.* Wissenschaftliche Reihe / ISSA, Bd. 31. Frankfurt am Main: IKO - Verl. für Interkulturelle Kommunikation.

Koyana, D. S. (1999). Administrative functions of traditional leaders: The indigenous constitutional and administrative system. In F. M. D'Engelbronner-Kolff, M. O. Hinz, & J. L. Sindano (Eds.), *Traditional authority and democracy in Southern Africa: Proceedings from the workshop, Traditional Authorities in the Nineties - Democratic Aspects of Traditional Government in Southern Africa, 15-16 November 1995, Windhoek* (pp. 119–130). Windhoek: New Namibia.

Krahmann, E. (2003). National, Regional, and Global Governance: One Phenomenon or Many? *Global Governance*, *9*, 323–346.

Krygier, M. (2001). Rule of Law. In N. J. Smelser, & P. B. Baltes (Eds.), *International encyclopedia of the social & behavioral sciences*. Amsterdam [u.a.]: Elsevier; Elsevier, Pergamon.

Kuch, A. (2016). Land rights and mobility: the unintended consequences of durable solutions in Tanzania. http://democracyinafrica.org/land-rights-and-mobility-the-unintended-consequences-of-durable-solutions-in-tanzania/. Accessed 09.02.2016.

Kurshan, L. (2000). Rethinking Property Rights as Human Rights: Acquiring equal Property Rights for Women using international Human Rights Treaties. *Journal of Gender, Social Policy & the Law*, *8*, 353–385.

Kuteeue, P. (2003). Chiefs threaten to challenge legality of some land boards. *The Namibian,* 23.07.2003. Accessed 05.08.2015.

Kyed, H. M., & Buur, L. (2006). Recognition and Democratisation: 'New Roles' for Traditional Leaders in Sub-Saharan Africa. *Danish Institute for International Studies Working Paper*, *11*, 1–25.

Lamaison, P., & Bourdieu, P. (1986). From Rules to Strategies: An Interview with Pierre Bourdieu. *Cultural Anthropology*, *1*, 110–120.

Land, Environment and Development Project. Legal Assistance Centre, & Advocacy Unit Namibia National Farmers' Union (2009). *Guide to the Communal Land Reform Act, 2002: No. 5 of 2002.* (2nd ed.). Windhoek.

Lapeyre, R. (2010). The conflicting distribution of tourism revenue as an example of insecure land tenure in Namibian communal lands. In W. Anseeuw, & C. Alden (Eds.), *The struggle over land in*

*Africa: Conflicts, politics & change*
(pp. 85–104). Cape Town: HSRC Press.
Larcom, S. (2014). Problematic legal pluralism: causes and some potential 'cures'. *The Journal of Legal Pluralism and Unofficial Law*, *46*, 193–217.
Lawry, S., Samii, C., Hall, R., Leopold, A., Hornby, D., & Mtero, F. (2014). The impact of land property rights interventions on investment and agricultural productivity in developing countries: a systematic review. *Campbell Systematic Reviews*.
Legal Assistance Centre (1991). Communal lands in Namibia: the legal framework, its application and existing practices. In Office of the Prime Minister (Ed.), *National Conference on Land Reform and the Land Question: Volume 1: Papers, Addresses and Consensus Documents; Section 3: Position Papers* (61-97). Windhoek.
Lentz, C. (1998). The Chief, the Mine Captain and the Politician: Legitimating Power in Northern Ghana. *Journal of the International African Institute*, *68*, 46–67.
Lentz, C. (2005). First-comers and late-comers: The role of narratives in land claims. In S. Evers, M. Spierenburg, & H. Wels (Eds.), *Competing jurisdictions: Settling land claims in Africa*. Leiden, Boston: Brill.
Li, T. M. (2010). Indigeneity, Capitalism, and the Management of Dispossession. *Current Anthropology*, *51*, 385–414.
Lindeke, B. (2014). Conflict resolution by institutional design: Democratic development and state formation in independent Namibia – public service and decentralisation experiences. *Journal of Namibian Studies*, *15*, 63–93.
Lipset, S. M. (1959). Some Social Requisites of Democracy: Economic Development and Political Legitimacy. *American Political Science Review*, *53*, 69–105.
Locher, M. (2015). *The 'Global Land Rush', Local Land Rights and Power Relations: European Forestry Investments in Tanzania*. PhD . Zürich.
Loewenstein, K. (1953). Political Systems, Ideologies, and Institutions: The Problem of Their Circulation. *The Western Political Quarterly*, *6*, 689–706.
Logan, C. (2011). The Roots of Resilience: Exploring Popular Support for African Traditional Authorities. *Afrobarometer Working Papers*, *128*.
Lund, C. (2006). Twilight Institutions: Public Authority and Local Politics in Africa. *Development and Change*, *37*, 385–705.
Lund, C. (2008). *Local politics and the dynamics of property in Africa*. New York: Cambridge University Press.
Lund, C. (2011). *Land rights and citizenship in Africa.* Discussion paper, *65*. Uppsala: Nordiska Afrikainstitutet, 1–31. Accessed 17.11.2014.
Lund, C. (2013). The past and space: On arguments in African Land control. *Africa*, *83*, 14–35.
Lund, C., & Boone, C. (2013). Introduction: Land Politics in Africa - Constituting Authority over Territory, Property and Persons. *Africa*, *83*, 1–13.
Mamdani, M. (1996). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton, N.J.: Princeton University Press.
Markelova, H., & Mwangi, E. (2012). Multilevel Governance and Cross-scale Coordination for Natural Resource Management: Lessons from current Research. In D. Bollier, & S. Helfrich (Eds.), *The Wealth of the Commons: A World Beyond Market & State*
. Massachusetts: Levellers Press.
Mbembé, J.-A. (2001). *On the postcolony*, 41. Berkeley: University of California Press.

McAuslan, P. (1998). Making Law Work: Restructuring Land Relations in Africa. *Development and Change*, *29*, 525–552.

McAuslan, P. (2013). *Land law reform in Eastern Africa traditional or transformative?: A critical review of 50 years of land law reform in Eastern Africa,1961-2011.* Law, development, and globalization. Abingdon, Oxon [UK]: Routledge.

McCarthy, J. F. (2004). Changing to Gray: Decentralization and the Emergence of Volatile Socio-legal Configurations in Central Kalimantan, Indonesia. *Asia Research Centre Murdoch University Working Paper*.

McConnell, F., Moreau, T., & Dittmer, J. (2012). Mimicking state diplomacy: The legitimizing strategies of unofficial diplomacies. *Space, Contestation and the Political*, *43*, 804–814.

McCullers, M. (2012). *Lines in the Sand: The Global Politics of Local Development in Apartheid Era Namibia, 1950-1980*. PhD. Atlanta, Georgia.

McNamara, T. Why NGOs in Africa must respect village headmen and hierarchies. http://theconversation.com/why-ngos-in-africa-must-respect-village-headmen-and-hierarchies-115068?utm_medium=Social&utm_source=Facebook#Echobox=1557303039. Accessed 09.05.2019.

Meijs, M., & Kapitango, D. (2010). Land Registration using aerial photography in Namibia: Costs and lessons. In K. W. Deininger, C. Augustinus, S. Enemark, & P. Munro-Faure (Eds.), *Innovations in land rights recognition, administration, and governance* (pp. 68–87). Washington, DC: World Bank.

Meijs, M., Kapitango, D., & Witmer, R. (2009). Land Registration using aerial photography in Namibia: Costs and lessons. https://www.fig.net/resources/proceedings/2009/fig_wb_2009/papers/sys/sys_2_meijs_kapitango.pdf. Accessed 27.10.2016.

Melber, H. (2003). From Controlled Change to Changed Control: The case of Namibia. In H. Melber (Ed.), *Limits to Liberation in Southern Africa: The unfinished business of democratic consolidation* (135-). Cape Town: HSRC Press.

Melber, H. (2007). Poverty, politics, power and privilege: Namibia's black economic elite formation. In H. Melber (Ed.), *Transitions in Namibia: Which Changes for Whom?* (pp. 110–129). Uppsala.

Melber, H. (2019). Colonialism, Land, Ethnicity, and Class: Namibia after the Second National Land Conference. *Africa Spectrum*, *54*, 73–86.

Mendelsohn, J. M. (Ed.) (2006). *Farming Systems in Namibia*. South Africa: ABC Press.

Mendelsohn, J. M. (2008). *Customary and legislative aspects of land registration and management on communal land in Namibia*. Report prepared for the Ministry of Land & Resettlement and the Rural Poverty Reduction Programme of the European Union
.

Mendelsohn, J. M., el Obeid, S., & Roberts, C. (2000). *A profile of north-central Namibia*. Windhoek, Namibia: Gamsberg Macmillan Publishers.

Meneses, M. P. (2006). Traditional Authorities in Mozambique: Between Legitimization and Legitimacy. In M. O. Hinz (Ed.), *The shade of new leaves: Governance in traditional authority* (pp. 93–119). Berlin: Lit.

Menges, W. (2013). Ohangwena communal farmer wins fence fight. *The Namibian,* 20.11.2013: News. http://www.namibian.com.na/indexx.php?id=6310&page_type=story_detail&category_id=1.

Merry, S. E. (2000). Crossing Boundaries: Ethnographies in the Twenty-First Century. *PoLAR: Political and Legal Anthropology Review*, *23*, 127–133.

Metsola, L. (2007). Out of order? The margins of Namibian ex-combatant 'reintegration'. In H. Melber (Ed.), *Transitions in Namibia: Which Changes for Whom?* (pp. 130–152). Uppsala.

Meuser, M., & Nagel, U. (1991). ExpertInneninterviews - vielfach erprobt, wenig bedacht: ein Beitrag zur qualitativen Methodendiskussion. In D. Garz, & K. Kraimer (Eds.), *Qualitativ-empirische Sozialforschung: Konzepte, Methoden, Analysen* (pp. 441–471). Wiesbaden: VS Verlag für Sozialwissenschaften.

Miescher, G. (2012). *Namibia's Red Line: The history of a veterinary and settlement border.* Palgrave Series in African Borderlands Studies. New York: Palgrave Macmillan.

Millennium Challenge Account Namibia (2011). Communal Land Support (CLS) Sub-activity: Communication Strategy & Implementation Plan
.
http://www.mcanamibia.org/files/files/PDFs/CLS/Communication%20Strategy%20%26%20Implementation%20Plan.pdf.

Millennium Challenge Account Namibia, & Millennium Challenge Corporation (2011). Communal Land Support (CLS) Sub-activity: Policy Review. A review of policies concerning tenure in Communal Areas of Namibia.
http://www.mcanamibia.org/files/files/2dc_CLS%202%20Policy%20Review.pdf.

Mills, G. T. (1984). *Inquiry into the Structure and Function of Space in Indigenous Settlement in Ovamboland*. Dissertation for Master in Architecture. Cape Town.

Ministry of Land Reform (2017). Programme for Communal Land Development: Management Brief. http://209.88.21.57/documents/20541/108334/PCLD+management+brief+March+2017_26_04_2017.pdf/62abee23-7855-49ee-8a66-e4355abbd0bd. Accessed 08.06.2018.

Ministry of Lands and Resettlement, Directorate of Land Reform. Part 1: Importance and benefits of registering communal land. http://www.mlr.gov.na/documents/20541/86239/LANDS-_ENG_30X6.pdf/12aa8890-ae05-44f9-802b-6d642c00af96. Accessed 04.06.2018.

Ministry of Lands and Resettlement (MLR), Millennium Challenge Account Namibia, & GIZ. *The Communal Land Support Project. Frequently asked Questions*.

Ministry of Regional and Local Government, Housing and Local Planning (2014). *Government Notice: Announcement of appointment of members of Council of Traditional Leaders: Council of Traditional Leaders Act, 1997: Announcement of appointment of members of Council of Traditional Leaders*, 5564.

Mnisi-Weeks, S. (2011). "Take your Rights then and sleep outside, on the street": Rights, Fora and the Significance of Rural South African Women's Choices. *Wisconsin International Law Journal*, *29*, 289–317.

Moore, H. L., & Vaughan, M. (1995). *Cutting down trees: Gender, nutrition, and agricultural change in the Northern Province of Zambia ; 1890 - 1990.* ([Nachdr.]). Social history of Africa. Portsmouth, NH: Heinemann.

Moore, S. F. (1969). Law and Anthroplogy. *Biennial Review of Anthropology*, *6*, 252–300.

Moore, S. F. (2001). Certainties Undone: Fifty Turbulent Years of Legal Anthropology, 1949-1999. *The Journal of the Royal Anthropological Institute*, *7*, 95–116.

Mosse, D. (2006). Collective Action, Common Property, and Social Capital in South India: An Anthropological Commentary. *Economic Development and Cultural Change*, *54*, 695–724.

Mufune, P. (2011). Land Reform Management in Namibia, South Africa and Zimbabwe. *International Journal of Rural Management*, *6*, 1–31.

Muraranganda, E. (2015). Traditional authorities mushrooming. *The Sun,* 15.07.2015. http://www.namibiansun.com/cultural/traditional-authorities-mushrooming.80800. Accessed 27.04.2016.

Muyambe, J. (2018). Agribank offers collateral-free loans to farmers. *New Era,* 17.01.2018. https://www.newera.com.na/2018/01/17/agribank-offers-collateral-free-loans-to-farmers/. Accessed 18.01.2018.

Mwangi, E., & Wardell, A. (2012). Multi-level governance of forest resources. *International Journal of the Commons*, *6*, 79–103.

Mwansa, L.-K. J. (2018). Foreword. In E. K. Boon, & N. Noyoo (Eds.), *Indigenous social security systems in Southern and West Africa* (pp. vii–viii). South Africa: African Sun Media.

Mwanza Geraldo, G., & Nowases, I. (2014). Researching Namibian Law and the Namibian Legal System. http://www.nyulawglobal.org/globalex/namibia1.htm. Accessed 12.12.2014.

Nakale, A. (2016). Land Bill to be tabled soon. *New Era,* 29.08.2016. https://www.newera.com.na/2016/08/29/land-bill-tabled/. Accessed 13.11.2016.

Nampala, L. T., & Shigwedha, V. (2006). *Aawambo Kingdoms, History and Cultural Change: Perspectives from Northern Namibia.* Basel Namibia Studies Series, 8/9. Muttenz/Basel: P. Schlettwein Publishing.

NAMRIGHTS – Press Release (2013). *Ondonga Traditional Authority must now also say*.

Nandjato, I. (2016). Communal land chaos. Illegal sales of land cause blame game. *The Sun,* 14.11.2016. https://www.namibiansun.com/news/communal-land-chaos/. Accessed 15.11.2016.

Needham, D. B. (2001). Property Rights. In N. J. Smelser, & P. B. Baltes (Eds.), *International encyclopedia of the social & behavioral sciences* (pp. 12205–12208). Amsterdam [u.a.]: Elsevier; Elsevier, Pergamon.

New Era (2016a). Former Exiles Exacerbate Land Disputes. *New Era,* 12.02.2016. https://www.newera.com.na/2016/02/12/exiles-exacerbate-land-disputes/. Accessed 18.02.2016.

New Era (2016b). Resettlement farms not for retirement – Matongela. *New Era,* 29.06.2016. https://www.newera.com.na/2016/07/19/resettlement-farms-retirement-matongela/. Accessed 04.09.2016.

Nghitevelekwa, R. (2017). *Communal Land Reform in North-Central Namibia: Implications for People's Lived Realities and Social Equity*. PhD. Freiburg, Br.

Nghiulikwa, R. V. (2008). *Re-situating and shifting cultural identity in contemporary Namibia: The experience of rural-urban migrants in Katutura (Windhoek)*. Cape Town.

Nitsche, G. J. (1913). *Ovamboland: Ovamboland; Versuch Einer Landeskundlichen Versuch einer landeskundlichen Darstellung nach Dem gegenwärtigen Stand unserer geographischen Kenntnis*. Inaugrual Dissertation zur Erlangung der Doktorwürde. Kiel: Chr. Donath.

Noyes, J. K. (1994). The Natives in their Places: "Ethnographic Cartography" and the representation of autonomous spaces in Ovamboland, German South West Africa. *History and Anthropology*, *8*, 237–264.

Nyamu-Musembi, C. (2007). De Soto and land relations in rural Africa: breathing life into dead theories about property rights. *Third World Quarterly*, *28*, 1457–1478.

Nye, J. S. (2009). Get Smart: Combining Hard and Soft Power. *Foreign Affairs*, *88*, 160–163.

Odendaal, W. (2011a). *Land Grabbing in Namibia: A Case Study from the Omusati Region, Northern Namibia.* LDPI Land Deal Politics Initiative. http://www.iss.nl/fileadmin/ASSETS/iss/Documents/Conference_papers/LDPI/82_Willem_Odendaal.pdf. Accessed 14.05.2014.

Odendaal, W. (2011b). *Elite land grabbing in Namibian Communal areas and its impact on subsistence farmers' livelihoods.* Policy Brief.

Odendaal Commission (1964). *Report of the commission of enquiry into South West African Affairs 1962-1963 (Odendaal Plan)*. Pretoria: [Government Printer].

Odgaard, R. (2005). The struggle for land rights in the context of multiple normative orders in Tanzania. In S. Evers, M. Spierenburg, & H. Wels (Eds.), *Competing jurisdictions: Settling land claims in Africa* (pp. 243–264). Leiden, Boston: Brill.

Offe, C. (2009). Governance. An "Empty Signifier"? *Constellations*, *16*, 550–562.

Olivier, M. P., Kaseke, E., & Mpedi, L. (2008). Informal Social Security in Southern Africa: Developing a Framework for Policy Intervention. http://unpan1.un.org/intradoc/groups/public/documents/cpsi/unpan030287.pdf. Accessed 16.06.2015.

Olivier De Sardan, J.-P. (2008). Researching the practical norms of real governance in Africa. *Africa power and politics*, *Discussion Paper No. 5*.

Olivier De Sardan, J.-P. (2011). The Eight Modes of Local Governance in West Africa. *IDS Bulletin*, *42*, 22–31.

Ostrom, E. (1990). *Governing the commons: The evolution of institutions for collective action.* Political economy of institutions and decisions. Cambridge: Cambridge Univ. Press.

Ostrom, E., & Hess, C. (2007). Private and Common Property Rights. *Library and Librarian's Publications*, 1–116.

Ostrom, E., & Janssen, M. A. (2005). Multi-Level Governance and Resilience of Social-Ecological Systems: Chapter 13. In M. Spoor (Ed.), *Globalisation, Poverty and Conflict* (pp. 239–259). Dordrecht: Kluwer Academic Publishers.

Paasi, A. The Changing Discourses on Political Boundaries: Mapping the Backgrounds, Contexts and Contents. Chapter I. In (17-).

Pack, Z., & Nkolo, J. (2012). *Communal Land Reform*. Ongwediva, Namibia.

Parliament of the Republic of Namibia (1991). Appendix: Methodology for the national sample survey on Socio-Economic Conditions and Attitudes to the Land Question and Land Related Issues in the Communal Areas: Section 4. In Office of the Prime Minister (Ed.), *National Conference on Land Reform and the Land Question: Volume 1: Papers, Addresses and Consensus Documents; Section 3: Position Papers* (pp. 203–227). Windhoek.

Parliament of the Republic of Namibia (1992). *Promulgation of Local Authorities Act*, 470.

Parliament of the Republic of Namibia (1995a). *Agricultural (Commercial) Land Reform Act 1995*, 1040.

Parliament of the Republic of Namibia (1995b). *Promulgation of Traditional Authorities Act: Act No. 17, 1995*, 1158.

Parliament of the Republic of Namibia (1997). *Traditional Authorities Amendment Act: TAAA No. 195*, 1694.

Parliament of the Republic of Namibia (22 December / 2000). *Traditional Authorities Act: TAA No. 25*, 2456.

Parliament of the Republic of Namibia (2002). *Communal Land Reform Act: CLRA*, 2787.

Parliament of the Republic of Namibia (2003). *Community Courts Act of 2003: CCA 2003*, 3044.

Parliament of the Republic of Namibia (2006). *Amendments of the Communal Land Reform Act*, 3591.

Parliament of the Republic of Namibia (2008). *Local Authorities Act: ACT NO. 23 OF 1992 as amended*, 1992.

Parliament of the Republic of Namibia (2012). *Promulgation of Flexible Land Tenure Act: Act No. 4, 2012*, 4963.

Pauli, J. (2011). Celebrating Distinctions: Common and Conspicuous Weddings in Rural Namibia. *Ethnology*, *50*, 153–167.

Pauli, J. (2019). *The decline of marriage in Namibia: Kinship and social class in a rural community.* Culture and social practice. Bielefeld: Transcript.

Pauli, J., & Dawids, F. (2017). The struggle for marriage: elite and nonelite weddings in rural Namibia. *Anthropology Southern Africa*, *40*, 15–28.

Pearce, J. (2012). Control, Politics and Identity in the Angolan Civil War. *African Affairs*, *111*, 442–465.

Peluso, N. L., & Lund, C. (2011). New frontiers of land control: Introduction. *Journal of Peasant Studies*, *38*, 667–681.

Peluso, N. L., & Lund, C. (Eds.) (2013). *New Frontiers of Land Control.* Critical Agrarian Studies. London: Routledge.

Peters, P. E. (1998). The Erosion of the Commons and the Emergency: Problems of Social Analysis: Chapter 18. In R. C. Hunt, & A. Gilman (Eds.), *Property in economic context* (351-). Lanham, MD: University Press of America.

Peters, P. E. (2004). Inequality and Social Conflict Over Land in Africa. *Journal of Agrarian Change*, *4*, 269–314.

Peters, P. E. (2013). Conflicts over Land and Threats to Customary Tenure in Africa. *African Affairs*, 1–20.

Peyroux, E., & Graefe, O. (1995). Precarious Settlements at Windhoek's Periphery (Namibia). Investigation into the emergence of a new phenomenon.

Place, F., & Hazell, P. (1993). Productivity Effects of Indigenous Land Tenure Systems in Sub-Saharan Africa. *American Journal of Agricultural Economics*, *75*, 10–19.

Plan, J. (2012). Pohamba gets communal land. *The Namibian,* 06.07.2012. http://www.namibian.com.na/indexx.php?id=196&page_type=story_detail. Accessed 18.09.2014.

Platteau, J.-P. (1996). The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment. *Development and Change*, *27*, 29–86.

Pohamba, H. (2014). Statement by His Excellency Hifikepunye Pohamba, President of the Republic of Namibia, on the Occasion of the official opening of the 17th Annual Meeting of the Council of Traditional Leaders. 08.09.2014. http://www.gov.na/documents/10181/13234/STATEMENT+BY+HIS+EXCELLENCY+HIFIKEPUNYE+POHAMBA,+PRESIDENT++OF+THE+REPUBLIC+OF+NAMIBIA,+ON+THE+OCCASION+OF+THE+OFFICIAL+OPENING++OF+THE+17TH+ANNUAL+MEETING+OF+THE+COUNCIL+OF+TRADITIONAL+LEADERS+%282014+09+08%29/f14dd51b-3d1f-4d69-acc7-61f3f2551c61. Accessed 19.12.2014.

Polack, E., Cotula, L., & Côte, M. (2013). *Accountability in Africa's land rush: What role for legal empowerment?* London/Ottawa: IED; IDRC.

Popitz, H. (1976). *Prozesse der Machtbildung.* Recht und Staat. Eine Sammlung von Vorträgen und Schriften aus dem Gebiet der gesamten Staatswissenschaften, 362/363. Tübingen: J. C. B. Mohr (Paul Siebeck).

Popitz, H. (1986). *Phänomene der Macht: Autorität, Herrschaft, Gewalt, Technik*. Tübingen: Mohr.

Posel, D. (1984a). Language, Legitimation and Control: The South African State After '78. *Social Dynamics. A journal of African studies*, *10*, 1–16.

Posel, D. (1984b). Language, Legitimation and Control: The South African State After '78: Collected Seminar Papers. *Institute of Commonwealth Studies*, *33*, 139–151.

Quan, J. (2007). Changes in Intra-Family Land Relations. In L. Cotula (Ed.), *Changes in 'customary' land tenure systems in Africa* (pp. 51–64). London: IIED.

Radcliffe, S. A. (2005). Development and geography: towards a postcolonial development geography? *Progress in Human Geography*, *29*, 291–298.

Raleigh Yow, V. (2005). *Recording Oral History: A Guide for the Humanities and Social Sciences.* (2nd ed.). Lanham: Altamira Press.

Ramutsindela, M. F. (2001). Down the post-colonial road: reconstructing the post-apartheid state in South Africa. *Political Geography*, *20*, 57–84.

Ramutsindela, M. F. (2012). Property rights, land tenure and the racial discourses. *GeoJournal*, *77*, 753–763.

Ranger, T. O. (2010). The invention of Tradition in Colonial Africa. In E. J. Hobsbawm, & T. O. Ranger (Eds.), *The invention of tradition* (pp. 211–262). Cambridge: Cambridge Univ. Pr.

Republic of Namibia (1991a). *Institutions for Land Reform.* NEPRU Briefing Papers, Land Conference Documents.

Republic of Namibia (1991b). *National Conference on Land Reform and the Land Question: Section 2: The Consensus of the Conference*. Windhoek.

Rérat, P., & Lees, L. (2011). Spatial capital, gentrification and mobility: evidence from Swiss core cities. *Transactions of the Institute of British Geographers, New Series*, *36*, 126–142.

Ribot, J. C. (2001). Integral local development: ''Accommodating multiple interests'' through entrustment and accountable representation. *International Journal of Agricultural Resources, Governance and Ecology*, *1*, 1–21.

Risse, T. (2007). Regieren in "Räumen begrenzter Staatlichkeit": Zur „Reisefähigkeit“ des Governance-Konzeptes. DFG Sonderforschungsbereich 700. *SFB-Governance Working Paper Series*, *5*.

Röder, A., Pröpper, M., Stellmes, M., Schneibel, A., & Hill, J. (2015). Assessing urban growth and rural land use transformations in a cross-border situation in Northern Namibia and Southern Angola. *Land Use Policy*, *42*, 340–354.

Rose, N. (2008). *Powers of freedom: Reframing political thought.* (8. reprint). Cambridge: Cambridge Univ. Press.

Salokoski, M. (2006). *How kings are made - how kingship changes: A study of rituals and ritual change in pre-colonial and colonial Owamboland, Namibia*. Academic Dissertation. Research Series in Anthropology, University of Helsinki, 8. Helsinki: Helsingin yliopisto.

Sasmann, C. (2016). Resettlement anger brews. *The Namibian,* 19.05.2016. http://www.namibiansun.com/cultural/resettlement-anger-brews.93770. Accessed 20.05.2016.

Schaap, A. (2007). The time of reconciliation and the space of politics. In S. Veitch (Ed.), *Law and the politics of reconciliation* (pp. 9–32). Aldershot, England, Burlington, VT: Ashgate.

Schatzberg, M. (1993). Power, Legitimacy and 'Democratisation' in Africa. *Africa: Journal of the International African Institute*, *63*, 445–461.

Schlager, E., & Ostrom, E. (1992). Property-Rights Regimes and Natural Resources: A Conceptual Analysis. *Land Economics*, *68*, 249–262.

Schnegg, M., Bollig, M., & Linke, T. (2016). Moral equality and success of common-pool water governance in Namibia. *Ambio*, *45*, 581–590.

Schwingel, M. (2009). *Pierre Bourdieu zur Einführung.* (6th ed.), 280. Hamburg: Junius.

Scoones, I., Hall, R., Borras Jr, Saturnino M., White, B., & Wolford, W. (2013). The Politics of Evidence: methodologies for understanding the global land rush. *Journal of Peasant Studies*, *40*, 469–483.

Scoones, I., Smalley, R., Hall, R., & Tsikata, D. (2014). Narratives of Scarcity: understanding the ‘global resource grab’. *Future Agricultures & PLAAS Working Papers*.

Scott, J. C. (1998). *Seeing like a state: How certain schemes to improve the human condition have failed*. New Haven: Yale University Press.

Sender, J., & Johnston, D. (2004). Searching for a Weapon of Mass Production in Rural Africa: Unconvincing Arguments for Land Reform. *Journal of Agrarian Change*, *4*, 142–165.

Shamena, N. E. (1999). The concept of 'traditional community'. Chapter 15. In F. M. D'Engelbronner-Kolff, M. O. Hinz, & J. L. Sindano (Eds.), *Traditional authority and democracy in Southern Africa: Proceedings from the workshop, Traditional Authorities in the Nineties - Democratic Aspects of Traditional Government in Southern Africa, 15-16 November 1995, Windhoek* (pp. 323–327). Windhoek: New Namibia.

Shipton, P., & Goheen, M. (1992). Introduction: Understanding African Land-Holding: Power, Wealth, and Meaning. *Africa: Journal of the International African Institute*, *62*, 307–325.

Shiweda, N. (2011). *Omhedi: Displacement and Legitimacy in Oukwanyama politics, Namibia, 1915-2010 By Napandulwe Shiweda Dissertation submitted in fulfilment of the requirements for the Doctoral Degree in History in the Department of History, University of the Western Cape*. PhD. Cape Town.

Siegele, L. (2008). Procedural Rights: Inclusion in Decision-making Processes relating to land and natural resources. In L. Cotula, & P. Mathieu (Eds.), *Legal empowerment in practice: Using legal tools to secure land rights in Africa*. Highlights from the international workshop “Legal empowerment for securing land rights” Accra, 13th-14th March 2008 (pp. 123–132). [London, Rome]: IIED; FAO.

Sikor, T., & Lund, C. (2009). Access and Property: A Question of Power and Authority. *Development and Change*, *40*, 1–22.

Spittler, G. (2001). Teilnehmende Beobachtung als Dichte Teilnahme. *Zeitschrift für Ethnologie*, *126*, 1–25.

Stryber, R. (2001). Legitimacy. In N. J. Smelser, & P. B. Baltes (Eds.), *International encyclopedia of the social & behavioral sciences* (pp. 8700–8704). Amsterdam [u.a.]: Elsevier; Elsevier, Pergamon.

Sulle, E., Thiem, M., & Muduva, T. (2014). Raising awareness of land rights necessary for rural Namibians. http://www.plaas.org.za/blog/raising-awareness-land-rights-necessary-rural-namibians. Accessed 06.11.2017.

Tamanaha, B. Z. (2000). A Non-Essentialist Version of Legal Pluralism. *Journal of Law and Society*, *27*, 296–321.

Tapia Garcia, C. (2004). Land reform in Namibia: economic versus socio-political rationale. In P. Groppo (Ed.), *Land Reform: Land Settlement and Cooperatives* (pp. 41–53): FAO.

Temple, B., & Young, A. (2016). Qualitative Research and Translation Dilemmas. *Qualitative Research*, *4*, 161–178.

The Minister of Lands, Resettlement and Rehabilitation (2003). *Regulations made in Terms of the Communal Land Reform Act, 2002 (ACT NO. 5 OF 2002)*.

The Namibian (2013). Illegal fences removed in Ohangwena. *The Namibian,* 29.07.2013. http://www.namibian.com.na/indexx.php?id=1845&page_type=story_detail#. Accessed 22.07.2014.

The Namibian (2016). Editorial … End Tribal Entrepreneurship. *The Namibian,* 19.08.2016. http://www.namibian.com.na/Editorial--End-Tribal-Entrepreneurship/44459/read?utm_content=buffer9b78a&utm_medium=social&utm_source=facebook.com&utm_campaign=buffer. Accessed 21.08.2016.

The Villager Newspaper. 2nd National Land Conference to conclude today - Namibia. *The Villager Newspaper*. https://www.youtube.com/watch?v=5axQnACct5M. Accessed 05.10.2018.

Thévenot, L., Moody, M., & Lafaye, C. (2000). 9. Forms of valuing nature: arguments and modes of justification in French and American environmental disputes. In M. Lamont, & L. Thévenot (Eds.), *Rethinking comparative cultural sociology: Repertoires of evaluation in France and the United States* (pp. 229–272). Cambridge: Cambridge University Press.

Thiem, M., & Caplan, P. (2014). *A Decade of Communal Land Reform in Namibia: Review and Lessons Learnt, with a Focus on Communal Land Rights Registration*. Windhoek.

Tjihenuna, T. (2015). Ndeitunga, Namoloh in land row. News, National. *The Namibian,* 10.03.2015. http://www.namibian.com.na/indexx.php?id=24236&page_type=story_detail&category_id=1. Accessed 10.03.2015.

Tjihenuna, T., & Haidula, T. (2015). The baron of the communal lands. *The Namibian,* 22.05.2015: News National. http://www.namibian.com.na/indexx.php?id=26924&page_type=story_detail&category_id=1. Accessed 22.05.2015.

Tötemeyer, G. K. (1978). *Namibia Old and New. Traditional and Modern Leaders in Ovamboland*. London: Hurst & Co.

Toulmin, C. (2009). Securing land and property rights in sub-Saharan Africa: the role of local institutions. *Land Use Policy*, *26*, 10–19.

Trotha, T. von (1996). From administrative to civil chieftaincy: Some problems and prospects of African chieftaincy. *The Journal of Legal Pluralism and Unofficial Law*, *28*, 79–108.

Trotha, T. von (2000). Die Zukunft liegt in Afrika. Vom Zerfall des Staates, von der Vorherrschaft der konzentrischen Ordnung und vom Aufstieg der Parastaatlichkeit. *Leviathan*, *28*, 253–279.

Ubink, J. M. (2010). *Towards Customary Legal Empowerment*.

Ubink, J. M. (2011). Effectuating normative change in customary legal systems: An end to 'widow chasing' in northern Namibia? In J. Abbnik, & M. de Bruijn (Eds.), *Land, law and politics in Africa mediating conflict and reshaping the state* (pp. 315–333). Leiden: Brill.

UNDP (1997). Governance for Sustainable Human Development. Policy Document. https://digitallibrary.un.org/record/492551. Accessed 20.09.2022.

United Nations Economic and Social Council (ECOSOC) (2001). *Enhancing social protection and reducing vulnerability in a globalising world: Report of the Secretary-General on the World Summit for Social Development*.

United Nations UN (1948). The Universal Declaration of Human Rights. http://www.un.org/en/universal-declaration-human-rights/. Accessed 13.01.2016.

Utas, M. (2012). Introduction: Bigmanity and network governance in African conflicts. In M. Utas (Ed.), *African conflicts and informal power: Big men and networks* (pp. 1–34). London, New York: Zed Books; Published in association with the Nordic Africa Institute.

van Beek, W. (2011). Cultural models of power in Africa. In J. Abbnik, & M. de Bruijn (Eds.), *Land, law and politics in Africa mediating conflict and reshaping the state* (pp. 25–48). Leiden: Brill.

Van Binsbergen, W. M. (2008). Traditional wisdom – its expressions and representations in Africa and beyond: Exploring intercultural epistemology. *Quest: An African Journal of Philosophy / Revue Africain*, *22*, 49–120.

van der Merwe, M. (2018). Promised Land: Grim truth about 'redistributed' land failures told in Parliament | Daily Maverick. *Daily Maverick,* 15.03.2018. https://www.dailymaverick.co.za/article/2018-03-15-promised-land-grim-truth-about-redistributed-land-failures-told-in-parliament/#.Wq1P5ujOU2x. Accessed 17.03.2018.

Van Dijk, T. A. (1989). Structures of Discourse and Structures of Power. In J. Anderson (Ed.), *Communication Yearbook 12* (pp. 18–59). California: Newbury Park.

Van Dijk, T. A. (1993). Principles of critical discourse analysis. *Discourse and Society*, *4*, 249–283.
Van Dijk, T. A. (Ed.) (2011). *Discourse studies: A multidisciplinary introduction.* (2nd ed). London: Sage Publications.
van Kersbergen, K., & van Waarden, F. (2004). 'Governance' as a bridge between disciplines: Cross-disciplinary inspiration regarding shifts in governance and problems of governability, accountability and legitimacy. *European Journal of Political Research*, *43*, 143–171.
van Maanen, J. (2011). *Tales of the field: On writing ethnography.* (2nd ed.). Chicago guides to writing, editing, and publishing. Chicago, London: University of Chicago Press.
Veitch, S. (Ed.) (2007). *Law and the politics of reconciliation.* Edinburgh Centre of Law and Society series. Aldershot, England, Burlington, VT: Ashgate.
Verne, J. (2012). Ethnographie und ihre Folgen für die Kulturgeographie. *Geographica Helvetica*, *67*, 185–194.
Vlachos, J. (1995). *Communal Land Tenure and Land Degradation: A Minor Field Study of the Elim Constituency Omusati Region, Namibia*.
Weidmann, L. (2018). Indigenous Social Security Systems in Post-Colonial Namibia: A Basis of Legitimacy for Traditional Authorities. In E. K. Boon, & N. Noyoo (Eds.), *Indigenous social security systems in Southern and West Africa*. South Africa: African Sun Media.
Werner, W. (1989). *An Economic and Social History of the Herero of Namibia, 1915-1946*. PhD thesis. Cape Town.
Werner, W. (1991). A brief history of land dispossession in Namibia. In Office of the Prime Minister (Ed.), *National Conference on Land Reform and the Land Question: Volume 1: Papers, Addresses and Consensus Documents; Section 3: Position Papers* (pp. 43–60). Windhoek.
Werner, W. (1993). A Brief History of Land Dispossession in Namibia. *Journal of Southern African Studies*, *19*, 135–146.
Werner, W. (2008). *Protection for Women in Namibia's Communal Land Reform Act: Is it Working?* Windhoek: John Meinert Printing (Pty) Ltd.
Werner, W. (2011). *"What has happened has happened": The complexity of fencing in Namibia's communal areas*. Windhoek, Namibia: Land, Environment, and Development Project, Legal Assistance Centre.
Werner, W. (2015). 25-Years-of-land-reform-in-Namibia. *Land, livelihoods and housing Programme 2015-18 Working Paper*.
Werner, W. (September 6th, 2018). *Land Reform. Fact Sheet.* Fact sheets developed on the occasion of the 'Short course for journalists on land matters'. Windhoek, Namibia.
Werner, W., Mendelsohn, J. M., & De Klerk N. (2012). Support to Land Reform and Infrastructure Development in Communal Areas: Road Map report for Ministry of Lands & Resettlement and kfW. http://www.raison.com.na/Namibia%20-%20KfW%20land%20reform%20SUMMARY%20and%20APPENDIX%20road%20map%20issues%202012.pdf. Accessed 17.05.2015.
Wicomb, W., & Smith, H. (2011). Customary communities as 'peoples' and their customary tenure as 'culture': What we can do with the Endorois decision. *African Human Rights Journal*, *11*, 422–446.
Wiersum, K. F., Ingram, V. J., & Ros-Tonen, M. A. F. (2014). Governing access to resources and markets in non-timber forest product chains. *Forest, Trees and Livelihoods*, *23*, 6-18.
Williams, F.-N. (1991). *Precolonial communities of southwestern Africa: A history of Owambo kingdoms, 1600-1920.* (2nd ed.). Archeia, no. 16. Windhoek: National Archives of Namibia.
Williams, J. M. (2004). Leading from behind: Democratic Consolidation and the Chieftaincy in South Africa. *The Journal of Modern African Studies*, *42*, 113–136.

Williams, J. M. (2010). *Chieftaincy, the state, and democracy: Political legitimacy in post-apartheid South Africa*. Bloomington: Indiana University Press.

Wolff, S. (2004). 2.6 Clifford Geertz. In U. Flick, E. v. Kardorff, & I. Steinke (Eds.), *A companion to qualitative research* (pp. 47–52). London, Thousand Oaks, Calif.: Sage Publications.

Woodman, G. R. (2001). Customary Law in Common Law Systems. *IDS Bulletin*, *32*, 28–34.

Woolford, A., & Ratner, R. (2010). Disrupting the informal–formal justice complex: on the transformative potential of civil mediation, restorative justice and reparations politics. *Contemporary Justice Review*, *13*, 5–17.