



CIEA7 #15:

STATE POWER BETWEEN AND BETWEEN MODERNITY AND TRADITION IN  
SOUTHERN AFRICA. DECENTRALISATION AND GOVERNANCE OF LAND AND  
NATURAL RESOURCES.

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## Land, Restitution and Traditional Authorities in Namibia's Agrarian Reform<sup>1</sup>

*The land reform process in Namibia has been based on the official policy of "nation- building" which attempts to ignore the existence of ethnic differences and tensions. The government has refused both to accept claims to ancestral lands by communities dispossessed during colonial times and to recognise as "indigenous" any of the Namibian communities. The Government has also restricted the power of Traditional Authorities over land in Communal Areas. Land acquired from white farmers is, therefore, redistributed to "African" beneficiaries regardless of their ethnic identity or their history of dispossession, and plots can thus be allocated to people who were never deprived of their land. This article tries to analyse the reasons behind this policy, and to show how it makes many ethnic communities feel discriminated and unfairly treated.*

Land reform, Ancestral land claims, Traditional authorities, Ethnicity.

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## Introduction

In most analyses of the land reform process in independent Namibia attention is focused on the transfer of land from white commercial farmers to African farmers: number of hectares transferred, mechanisms of land acquisition, use of expropriation, etc. Those studies which devote more attention to what happens on the land once it has been distributed analyse the use of the plots, production levels or the selection of beneficiaries<sup>2</sup>. Although this focus is understandable, usually leaves little room for an important aspect of reform, its relationship with ethnicity and identity in Namibian society. This limited presence of ethnicity in the academic field is reinforced by the official policy of “reconciliation” and “nation building” which, as we will see, attempts to ignore the existence of ethnic differences and tensions, or regards them as something which must be overcome in the future. However, when one listens to the opinions of people involved in the reform process – to beneficiaries, to local government officials, and to politicians from different parties – references to questions linked with ethnicity and identity become frequent and recurrent. The intention of this paper is to analyze the role of ethnicity in Namibia’s land reform, and to try to unveil the reasons for the contrast between the official discourse and the views of those involved in the process.

It seems clear that Namibian ethnic identities at present are a result of both the existence of differentiated precolonial cultural groups and the construction of new or modified identities during the colonial times. In this process, which is still under way, colonial policies and African initiatives have shared a role<sup>3</sup>. My goal, however, is not to enter into a detailed discussion of the process of creation of ethnic identities in Namibia, or to discuss if they are more or less artificial or “invented”. I assume that ethnic identity is part of the socio-political Namibian environment, either due to its reality or to the perceptions of wide sectors of the population. Whatever its origin or evolution, I agree with Ute Dieckmann when she states that ethnicity plays a “pivotal role” in Namibian society, and describes how government wishes to build a unified

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<sup>2</sup> Among recent studies of the land reform see C.Tapia, *La reforma agraria en Namibia: ¿una alternativa de desarrollo?*, Florence, Instituto Agronomico per l’Oltremare-Società Editrice Fiorentina, 2005; W.Odendaal & S.Tjiramba, *Our Land We Farm. An Analysis of the Namibian Commercial Land Reform Process*, Windhoek, Legal Assistance Centre, 2005; J.Hunter (ed), *Who Should Own the Land? Analyses and Views on Land Reform and the Land Question in Namibia and Southern Africa*, Windhoek, Konrad-Adenauer-Stiftung & Namibia Institute for Democracy, 2004 and S.Harring & W.Odendaal, “No Resettlement Available”. *An Assessment of the Expropriation Principle and its Impact on Land Reform in Namibia*. Windhoek, Legal Assistance Centre, 2007.

<sup>3</sup> On identity in Namibia see, among others, L.F.Fosse, “The Social Construction of Ethnicity and Nationalism in Independent Namibia”, Discussion Paper No14. Namibian Institute for Social and Economic Research, University of Namibia, July 1992; R.Kössler, *In search of survival and dignity: two traditional communities in southern Namibia under South African rule*, Windhoek, Gamsberg Macmillan, 2005; M.Bollig & J-B.Gewald (eds), *People, Cattle and Land. Transformations of a Pastoral Society in Southwestern Africa*, Köln, Rüdiger Köppe Verlag, 2000 and T.Hohmann (ed), *San and the State. Contesting Land, Development, Identity and Representation*, Köln, Rüdiger Köppe Verlag, 2003.

national identity, but encounters great difficulties to achieve this objective in the face of the heterogeneous cultural inheritance and the colonial history of the country<sup>4</sup>. This tension between the unifying goals of the State and the diverse reality of identity in Namibia also has an important influence on land reform.

A further point of interest arises when we set Namibia's policies in the wider context of regional land and agrarian reforms. Contrary to the Namibian case, in South Africa restitution of ancestral lands has been accepted as part of the land reform process, and this policy has not been free from conflicts and problems<sup>5</sup>. Namibian authorities have tried to avoid these difficulties but have encountered or created other problems which also threaten the future success of land reform.

## LAND IN THE COLONIAL PERIOD

As it was the case in other Southern African territories, German and later South African colonists encouraged the establishment of European farmers in wide areas of Namibia and demarcated land Reserves for the African population. Reserves were expected to be the places where Africans would grow crops and keep livestock, and to facilitate the control of the population by the government. They would also be the place where "surplus" Africans – elderly, unemployed, most of women and children – would be kept. Finally, the insufficient extension and low fertility of the Reserves situated in the central and southern areas of the country would hamper the efforts of most of the Africans to become economically self-sufficient and this would induce the emigration of men to workplaces in farms, mines and towns<sup>6</sup>. In the Reserves, land tenure was communal and its distribution was kept mostly in the hands of traditional chiefs, under the supervision of colonial officials. It is important to draw attention to the fact that in Namibia the lands more suited to crop growing and where

<sup>4</sup> U.Dieckmann, *Hai//om in the Etosha Region. A History of Colonial Settlement, Ethnicity and Nature Conservation*, Basel, Basler Afrika Bibliographien, 2007, p.4-5, 237.

<sup>5</sup> For an analysis of the problems involved in the restitution of land to dispossessed communities in South Africa see C.Murray, "Land Reform in the Eastern Free State: Policy Dilemmas and Political Conflicts", *Journal of Peasant Studies*, Vol.23, n°2 & 3, 1996, p.209-244; D.James, "'After Years in the Wilderness'. The Discourse of Land Claims in the New South Africa", *Journal of Peasant Studies*, Vol.27, n°3, 2000, p.142-161; C.Walker, *Landmarked. Land Claims and Land Restitution in South Africa*, Johannesburg, Jacana, 2008.

<sup>6</sup> R.Kössler, *In search of survival and dignity...*, op.cit., p.36-42; W.Werner, "No one will become rich". *Economy and Society in the Herero Reserves in Namibia, 1915-1946*, Basel, P.Schlettwein Publishing, 1998, p.102-104; J.Sylvester, "Black Pastoralists, White Farmers: The Dynamics of Land Dispossession and Labour Recruitment in Southern Namibia, 1915-1955", Ph.D.Thesis, University of London, 1993, p.40-41.

most of the population, principally the Owambo, resided were in the north and were never expropriated by the settlers, who established themselves in the sparsely populated and mostly arid or semi-arid central and southern areas of the country, where they developed large cattle ranches.

In the mid 1960s, following the recommendations of the Odendaal Commission, the authorities decided to extend to Namibia the *bantustan* system which was already being implemented in South Africa. Each ethnic group was supposed to get a “*homeland*” or territory over which it would enjoy exclusive rights of residence and which would be ruled by their own autonomous authorities. Most of the central areas of the country and the commercial farms were to remain under the central Administration, controlled by the whites. After 1968 the 17 African Reserves were integrated into 7 *homelands*: Damaraland, Namaland, Kaokoland, Okavango, Owamboland and East Caprivi and Bushmanland. The ethnic authorities in the *homelands* had the control over the communal lands and also had the power to grant private property titles in some areas<sup>7</sup>. At the moment of independence in 1990, the *homelands* covered an extension of 32,7 million hectares, while the “commercial” lands, basically owned by white farmers, occupied some 36 million hectares<sup>8</sup>.

## LEGISLATING ON LOCAL POWER AND IDENTITY AFTER INDEPENDENCE

Namibia became independent amidst the wave of decentralization policies being implemented – at least in principle - in a number of African states in the 1990s. On the other hand, Namibia’s ruling party, Swapo, came from a highly centralist ideological tradition, influenced by soviet political theories, and wished to break with the past of ethnic division encouraged by the South Africans. Pressure from Western powers and from several opposition parties

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<sup>7</sup> A. du Pisani, “State and Society Under South African Rule” in C.Keulder (ed.), *State, Society and Democracy. A Reader in Namibian Politics*. Windhoek, Gamsberg Macmillan, 2000, p.64-67; R.Kössler, *In search of survival and dignity...*, op.cit., p.91-96; M.O.Hinz, “Communal land, natural resources and traditional authority”, in F.M. d’Engelbronner-Kolff, M.O.Hinz & J.L.Sindano (eds.), *Traditional Authority and Democracy in Southern Africa*, Windhoek, Centre for Applied Social Studies. University of Namibia & New Namibia Books, 1998, p.183-188; F.Adams, W.Werner & P.Vale, *The Land Issue in Namibia: An Inquiry*, Windhoek, Namibian Institute for Social and Economic Research. University of Namibia, 1990, p.91.

<sup>8</sup> W.Werner, “A Brief History of Land Dispossession in Namibia”, *Journal of Southern African Studies*, vol.19, n°1, 1993, p.145-146; R.Sherbourne, *Guide to the Namibian Economy 2009*, Windhoek, Institute for Public Policy Research, 2009, p.322.

during the transition to independence induced Swapo to accept a process of limited decentralization<sup>9</sup>.

In 1991 an official Delimitation Commission announced that, in order to abolish the *apartheid* legacy, Namibia should be divided into 13 regions, with borders demarcated according to geography and the economy, and not to ethnic criteria. *Homelands* were erased from the institutional architecture of Namibia. For instance, the former Owamboland was partitioned into 4 regions (Omusati, Oshana, Oshikoto and Ohangwena), or Hereoland was divided amongst Otjozondjupa and Omaheke. In 1992 the Local Authorities Act was passed, establishing democratically elected Regional Councils (RCs) and local authorities. RCs elect the Regional Governors and are responsible for the development of rural areas, i.e. those not included in any kind of urban entity<sup>10</sup>.

In spite of the new legislation, Namibia has become a strongly centralized State. Swapo's ideological basis, the government's wish to deliver more services to the majority of the population neglected during the colonial period, and clientelism explain this process. The number of public servants has expanded, many local authorities and RCs depend on the central government for funding, RC's planning must be approved by the Ministry of Regional and Local Government (MRLG), and responsibilities are often transferred to regional/local authorities without the corresponding transfer of funds<sup>11</sup>.

Swapo also introduced new legislation affecting traditional chiefs and headmen<sup>12</sup>. The end of the *homelands* reduced their powers until the passing of the Traditional Authorities Act (TAA) in 1995. According to this act, chiefs must be elected following the customary laws of each community, and then the MRLG has to confirm

<sup>9</sup> C.Keulder, "Traditional leaders and rural development", in F.M. d'Engelbronner-Kolff, M.O.Hinz & J.L.Sindano (eds.), *Traditional Authority and Democracy...*, op.cit., p.289-219; O.Graefe, & E.Peyroux, "La décentralisation à l'épreuve des faits: l'exemple d'Oshakati, capitale économique de l'ancien Owamboland", in I.Diener & O.Graefe (dirs.), *La Namibie Contemporaine. Les premiers jalons d'une société post-apartheid*, Paris, Karthala-IFRA, 1999, p.281.

<sup>10</sup> G.Töttemeyer, "Decentralisation and State-building at the Local Level" in C.Keulder (ed.), *State, Society and Democracy...*, op.cit., p.118-131. In this article we have retained the use of the term Owamboland when referring to the areas basically populated by Owambo communities. The more politically correct and rather cumbersome forms to denominate the former Owamboland are "the four O regions" or "North Central Namibia".

<sup>11</sup> G.Töttemeyer, "Decentralisation and State-building...", op.cit., p.122-123, 125-131; O.Graefe, & E.Peyroux, "La décentralisation à l'épreuve des faits...", op.cit., p.283-292.

<sup>12</sup> The following paragraphs are based on M.O.Hinz, "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...*, op.cit., p.8-9; C.Keulder, "Traditional Leaders", in C.Keulder (ed.), *State, Society and Democracy...*, op.cit., p.159-167 and S.Harring, "Inconsistencies in the Constitution of Namibia regarding the land question", in F.M. d'Engelbronner-Kolff, M.O.Hinz & J.L.Sindano (eds.), *Traditional Authority and Democracy...*, op.cit., p.171-172.

the appointment. Chiefs and their councillors receive a salary from the government. Traditional Authorities (TAs) have powers over several fields: they can judge minor cases according to customary law; they have the right to grant land in first instance; and must look after the sustainable use of natural resources on their territory.

As in the case of decentralization, Swapo had a clearly hostile attitude towards TAs, whom they regarded as the former collaborators of the South African regime and as the basis of the *homelands* governments. They were also linked, in Swapo's mind, to Namibia's ethnic divisions. The power vested on them by the TAA is, therefore, very limited: traditional laws are invalid if they conflict with the Constitution or statutory law; most of the *homelands'* responsibilities were transferred to the RCs, not to the TAs; and chiefs are legally bound to collaborate with the local authorities' and the State's policies.

## LAND REFORM AND ETHNICITY IN COMMERCIAL LANDS

In 1991 the government convened the National Conference on Land Reform and the Land Question, to which all concerned actors – farmers unions, trade unions, NGOs, traditional leaders, academics – were invited. Among its purely consultative resolutions was included a recommendation to avoid a land reform process based on the claims to “ancestral lands” lost by each community during the colonial period. The Conference considered that such a policy would fail “given the complexity of overlapping claims” over the same pieces of land. However, it pleaded for making a priority of the San rights to communal lands<sup>13</sup>.

The 1995 Agricultural (Commercial) Land Reform Act (ACLRA) regulated the mechanisms for land acquisition by the State. Government has the right to make the first offer for a farm which goes for sale into the market. Expropriation is possible in the “public interest” and through paying a fair compensation<sup>14</sup>. The 1997 National Resettlement Policy (NRP) defined the persons and groups that would qualify to apply for land in farms acquired by the Ministry of Lands and Resettlement (MLR), either to individual plots or to be resettled in groups. The NRP established five categories which had to be prioritised when selecting the resettlement beneficiaries: the San; former soldiers from the liberation war; people returned from exile, displaced by war or

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<sup>13</sup> Ministry of Lands and Resettlement (MLR), Background Research Work and Findings of the Permanent Technical Team Studies, Windhoek, 2005, p.5-6.

<sup>14</sup> Ministry of Lands and Resettlement (MLR), Background Research Work and Findings..., op.cit., p.38; C.Tapia, La reforma agraria en Namibia..., op.cit., p.93-99.

disabled; the poor and landless; and people coming from “overcrowded” Communal Areas. Again, the only reference to a specific community was to the San. The NRP confirmed the choice for resettling Communal Area residents whether they had been dispossessed of their land or not. Among those eligible for resettlement and not dispossessed were, obviously, the Owambo, the largest ethnic group and the basis of electoral support for Swapo<sup>15</sup>. Both the 1995 law and the NRP reaffirmed the wish of the government to discard the recovery of ancestral land as basis for their land policy.

The official policy emanating from the MLR states that “to avoid creating “Bantustans” or giving preference to local applicants”, the Ministry and the Land Reform Advisory Commission (LRAC) have to revise the Regional Resettlement Committees recommendations, and encourage them to call for applications from regions not adjacent to the farm<sup>16</sup>. The Director of Resettlement, S.H.Kandjii, insisted that his Department “do not want apartheid policy again”, and that the resettlement programme is part of the “reconciliation” and “nation building” process. To him, the ethnic origin of beneficiaries “is immaterial”. The Regional Resettlement Committee has to assure a “constituency balance” within the region and the Land Reform Advisory Commission in Windhoek introduces a “regional balance”<sup>17</sup>. And the then Minister of Agriculture, Dr.Nickey Iyambo stated in 2007: “It would be unthinkable to go back to pre-colonial times and start rearranging things, because where would you start and to whom would you allocate which land?”<sup>18</sup>.

In spite of the apparent coherence of the official discourse, at local level things are often viewed differently. Bertus Kruger, from the Emerging Commercial Farmers Support Programme, (ECFSP) pointed out that a farm is frequently divided into four plots, which are attributed to four beneficiaries of different ethnic origin, and this makes difficult the share of resources and even mutual comprehension<sup>19</sup>. Troubled relationships among the resettled communities were confirmed by the MLR Coordinator in Skoonheid, a group resettlement in the Omaheke region where about 75 % of the beneficiaries are

<sup>15</sup> Ministry of Lands, Resettlement and Rehabilitation, *National Resettlement Policy*, Windhoek, 1997, p.3-4.

<sup>16</sup> Ministry of Lands and Resettlement, *Strategic Options and Action Plan for Land Reform in Namibia*, Windhoek, 2005, p.40, emphasis added.

<sup>17</sup> S.H.Kandjii, personal communication, 28th May 2008.

<sup>18</sup> Interview in E. von Wietersheim, *This Land is My Land! Motions and emotions around land reform in Namibia*, Windhoek, Friedrich-Ebert-Stiftung, 2008, p.76.

<sup>19</sup> Bertus Kruger, personal communication, 18th March 2008. The Emerging Commercial Farmers Support Programme is a project to help and to train black farmers newly settled on former white farms, and it is funded by the European Union and jointly implemented by the Namibia Agricultural Union and the Namibia National Farmers' Union.

San, and where “other tribes try to undermine the San community” in the farm; “Specially Damaras: they think that they know better”<sup>20</sup>.

In the south of Namibia tension has been growing for the last few years. In January 2008 the Traditional Authorities of the Hardap and Karas regions, mostly Nama, publicly accused the LRAC of changing the Regional Resettlement Committees’ recommendations in order to give land to people coming from other regions. This is precisely the practice that the MLR declared the LRAC was supposed to do<sup>21</sup>. Shortly afterwards, four families which had been evicted from municipal land in Maltahöhe (Hardap) were evicted again from Riviera farm, owned by the MLR. They had applied for resettlement in the farm, but never received an official response. The families repeated the accusations of government’s partiality towards the Owambo or Swapo-connected individuals, and stated that the MLR discriminates against the Nama, “the real owners” of the land. Nama TAs protested again for the alleged marginalisation of local communities from the economic activities in the south<sup>22</sup>.

In Westphalen, a resettlement farm in Hardap, all six beneficiaries are Owambo. According to Simeon Ningwendja, Regional Coordinator of the Settlement Division of the MLR in Hardap, the local population “were not that interested in crop farming” and, although the Resettlement Committee initially selected three local applicants, “they did not show up”, apparently because the neighbouring community believe that the farm is not suited for livestock. The Owambo read the advertisement of resettlement places in the press and opted for moving to Westphalen rather than staying in the north with their families but unemployed<sup>23</sup>. Although there are no reasons to doubt the veracity of the Regional Coordinator statements, cases like the one in Westphalen increase the feeling among locals that land is being transferred to “outsiders”.

Uneasiness in the south has recently led to the creation of a new political party. In July 2008 the Democratic Party of Namibia, led by Salmon David Isaaks, former exile during the war against South Africa, was established. The party’s main appeal to the electors was the need to ensure a fair treatment of the southern regions<sup>24</sup>. In October, the Democratic Turnhalle Alliance (DTA) – an opposition party - president, Katuutire Kaura, accused Swapo of practising a “black apartheid” for the benefit of the Owambo, who get employment in the south and resettlement land in spite of already

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<sup>20</sup> Mr.Sijaja, personal communication, 10th June 2008.

<sup>21</sup> “Traditional leaders unhappy with resettlement”, *The Namibian*, 28th January 2008.

<sup>22</sup> C.Maletsky, “Ministry responds to families’ cry for help”, *The Namibian*, 7th May 2008; L.Cloete. “Karas leaders speak out against economic exclusion”, *The Namibian*, 13th June 2008.

<sup>23</sup> Simeon Ningwendja, personal communication personal, 11th October 2008.

<sup>24</sup> C.Maletsky, “New political party formed in South”, *The Namibian*, 2nd July 2008.



having well-paid public jobs and/or land in Owamboland<sup>25</sup>.

## THE COMMUNAL LANDS

Article 100 of the Namibian Constitution asserts that all land, water and natural resources not “legally owned” by someone belong to the State. This provision means that lands in the former *homelands* - now called Communal Areas (CAs) - which until independence had been managed by the *homelands* authorities on behalf of the central Administration, now belong to the State. In order to break with *apartheid*'s residential laws, article 21 explicitly ensures the right of any citizen to reside and to acquire property in any area of the country. Swapo wished to retain the State's final authority over the CAs, instead of transferring its full control to the TAs. The ruling party wanted to avoid the appearance of a strong local political power and to crash “tribalism”. They mistrusted the TAs which, with the partial exception of those in Owamboland, were perceived as opposition sympathisers<sup>26</sup>.

These general dispositions were not complemented until the passing of the Communal Land Reform Act (CLRA) in 2002. The new law retained the State's ownership of the Communal Lands. The right of Traditional Authorities to grant land was recognised: they can distribute individual plots for growing crops and for residence, up to an extension of 20 hectares. Grazing lands are supposed to be exploited communally and cannot be fenced. The CLRA, however, created new regional Land Boards (LBs) which have to supervise and ratify the TAs' decisions. LBs also have the right to grant leases of bigger plots for commercial use, in consultation with the TAs and the local communities, to ensure that their previous rights are not affected by the lease. Members of LBs are appointed by the government, and include officials, TAs and farmers unions<sup>27</sup>. It is also important to mention that, before the passing of the CLRA, the 1998 National Land Policy (NLP) already conferred on TAs the right to authorise or exclude people from other communities from access to their lands<sup>28</sup>.

<sup>25</sup> B.Weidlich, “DTA warns of tribal domination”, *The Namibian*, 13th October 2008.

<sup>26</sup> S.Harring, “Inconsistencies in the Constitution of Namibia...”, op.cit., p.155, 164, 171-172.

<sup>27</sup> Ministry of Lands and Resettlement, *Strategic Options and Action Plan...*, op.cit., p.37-38; Ministry of Lands and Resettlement, *Background Research Work and Findings...*, op.cit., 92-92; W.Odendaal & S.Tjiramba, *Our Land We Farm...*, op.cit., p.18-19; Ministry of Lands, Resettlement and Rehabilitation, *National Land Policy*, Windhoek, 1998, p.12; W.Odendaal, “The SADC Land and Agrarian Reform Initiative. The Case of Namibia”, Windhoek, NEPRU Working Paper, December, 2006, p.12-13, 31.

<sup>28</sup> W.Odendaal & S.Tjiramba, *Our Land We Farm...*, op.cit., p.25-26.

The TAA and the CLRA combined make official recognition of a TA important for land management and for land access by the community concerned. The TAs have jurisdiction over Communal Lands and natural resources, and are influential in dealings with outside agencies, whether the government, donors or NGOs, for the planning and implementation of development schemes<sup>29</sup>. This combination of restricted power over land by the chiefs and headmen and the need for TAs to be officially recognised by the government has created many conflicts in Communal Areas, not least frequent allegations that the government is biased in favour of chiefs close to Swapo, and delays the recognition of chiefs perceived to be less “loyal”.

In the former Damaraland there is a growing division between the King's Council, led by King Justus //Garoseb - who is at the same time president of the United Democratic Front (UDF), an opposition party basically supported by Damaras - and the Chiefs' Council, formed by eight Damara chiefs elected according to the rules approved by the TAA. The Chiefs' Council is led by Immanuel /Gaseb, and includes authorities close to Swapo<sup>30</sup>. Damaras have repeatedly expressed their dissatisfaction for the lack of official recognition of the King's Council and for their alleged discrimination in the process of land resettlement. This feeling is made more acute by the fact that Damaras are a significant percentage of farm workers on commercial farms. A recent study indicated that more than half of farm workers in Namibia were Nama-Damara speakers<sup>31</sup>. Neither the ACLRA nor the NRP consider farm workers as a priority group when selecting beneficiaries for resettlement. When a farm is acquired by the MLR or by a private farmer, workers can be kept by the new owner or dismissed. In the latter case, they have to leave the farm. It seems that only 16% of the beneficiaries in resettlement farms are former farm workers<sup>32</sup>.

Herero communities have repeatedly complained of the lack of recognition of their TAs. 40 Herero and Himba chiefs have not been officially recognised, and a some years ago they decided to go to the courts. Although in 2001 courts decided in their favour and ordered the opening of a new process of recognition, up to this moment, the

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<sup>29</sup> J.T.Friedman, “Making Politics, Making History: Chiefship and the Post-Apartheid State in Namibia”, *Journal of Southern African Studies*, vol.31, n°1, 2005, p.44-45.

<sup>30</sup> G.Hopwood, *Guide to Namibian Politics*, Windhoek, Namibia Institute for Democracy. 2007, p.135-136; A.Hartman, “Divided political allegiances at core of Damara disunity”, *The Namibian*, 17th October, 2007.

<sup>31</sup> C.Karamata, *Farm Workers in Namibia: Living and Working Conditions*, Windhoek, Labour Resource and Research Institute, 2006, p.4. Nama-Damara language is spoken both by Damara and Nama (or Khoikhoi) people.

<sup>32</sup> Ministry of Lands and Resettlement, *Strategic Options and Action Plan...*, op.cit., p.4-6; Ministry of Lands and Resettlement, *Background Research Work and Findings...*, op.cit., p.116.

government has ignored this decision<sup>33</sup>. Until a year ago, among the 40 non-recognised chiefs was Kuaima Riruako, the Herero Paramount Chief and leader of the National Unity Democratic Organisation (NUDO), a party supported basically by Hereros. The government is accused again and again of fuelling succession disputes amongst Herero TAs and of recognising the chiefs aligned with Swapo. On the other hand, the Minister of Regional and Local Government (and previously Minister of Lands), Jerry Ekandjo, declared that there were already too many TAs in Namibia, 658, which supposed a drain of public funds, and warned that more recognitions would mean more expenses and the subdivision of existing TAs<sup>34</sup>. But the MLR itself acknowledged in 2006 that in areas where the local TA has not been recognised people don't try to register their land rights, indicating that recognition problems have a clear impact on land registration<sup>35</sup>.

Disputes over the recognition of TAs are not the only problem linked with land in the Communal Areas. There are also problems due to overpopulation and intercommunity conflicts. For instance, difficulties have been aggravated lately in Oshikoto. Since the 1990s Owambo herders from Oshikoto were allowed to graze their herds in the neighbouring Kavango region, with the permission of Kavango TAs. But demographic growth and the increase of cattle heads in both regions have resulted in growing opposition from Kavango TAs, such as those of the Kwangali, to the presence of Owambo herds. In December 2007 chief Daniel Sientu Mipasi, backed by the Kavango Land Board, demanded the eviction of Owambo cattle from his community's lands. Since at least the 1990s the Kwangali TA had approved the establishment of fenced ranches in the western portion of his territory in order to avoid the irruption of Owambo herds in that area. In February 2008 the High Court ordered the withdrawal of the herds, and the Owambo herders declared that they had no other place to go. The government assured that they had already contacted the Kwanyama and Ndonga TAs in Owamboland and the chiefs had agreed to reduce the extension of fenced land on their territories so that the evicted herders could graze their cattle. However, almost immediately the Owambo farmers represented by the Mangetti Farmers' Association clashed with the MLR, accused officials of trying to separate farmers from their TAs and refused to reduce their 2.500 hectares fenced plots to make room for the evicted herders<sup>36</sup>.

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<sup>33</sup> B.Weidlich, "Herero Chiefs launch international appeal", *The Namibian*, 12th March 2008.

<sup>34</sup> C.Maletsky, "Too many chiefs bloat the council", *The Namibian*, 24th April 2009.

<sup>35</sup> Ministry of Lands, Resettlement and Rehabilitation, *Resettlement Programme 2001-2005*, Windhoek, 2001, p.10.

<sup>36</sup> C.Kerven, "The Knife Cuts on Both Blades: Redefining Property Rights in Eastern Oshikoto" in J.Cox; C.Kerven; W.Werner & R.Behnke, *The Privatisation of Rangeland Resources in Namibia: Enclosure in*

Things are not much better on Owamboland's eastern border. In November 2008 chief Paulus Tjuvara from the Otjikoto TA and five more Himba chiefs publicly requested President Pohamba's assistance. They alleged that since the 1990s people from Uukwaludhi and Ongandjera have been occupying Himba and Herero lands, with the approval of their TAs, and are fencing these newly acquired plots. The TAs concerned denied the allegations and insisted that the fenced lands fall within their traditional territories<sup>37</sup>.

## INDIGENOUS PEOPLES AND ANCESTRAL LANDS

Land reform in Southern Africa has been tied up with questions dealing with the rights of the so-called "indigenous" communities. Briefly, there is a lively debate around three points: the definition of some communities as "indigenous"; the option of prioritising certain ethnic groups when land is redistributed, according to their particular history of colonial land dispossession; and the choice between, on the one hand, designing a land reform programme devoted to correcting the injustices of colonisation and returning "ancestral" lands to those communities that lost them, or considering that it is enough to transfer land to "Africans" in general, without allocating specific tracts of land to specific communities.

In this context, San communities, supported by donors, NGOs and international movements defending the rights of indigenous peoples, have launched campaigns to assert the rights of the "first" inhabitants of the region. Their emphasis on the "indigenusness" of some groups has led to conflicts with successive governments which, since independence, have developed programmes of "nation building" explicitly hostile to ethnic claims<sup>38</sup>. While Namibia has shown more willingness to accept ethnic diversity than neighbouring Botswana, nevertheless land claims by groups dispossessed during the colonial period are regarded as "tribal" politics. Officially, all black Namibians are "indigenous", and Namibia has not signed any international agreement for the defence of indigenous peoples<sup>39</sup>.

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*Eastern Oshikoto*, London, Overseas Development Institute, 1998, p.65-90; W.Menges, "Kavango grazing dispute lands back in Court", *The Namibian*, 3rd December, 2007; J.Mendelsohn & S. el Obeid, *Sand and Water. A Profile of the Kavango Region*, Cape Town, Struik, 2003, p.116-117; W.Menges, "Eviction order granted against communal farmers", *The Namibian*, 12th February 2008; O.Shivute, "No place to graze", *The Namibian*, 18th March 2008; "Deadline for illegal grazing in Kavango", *The Namibian*, 31st July 2008; A.Shigwedha, "Farmers boycott Ministry meeting", *The Namibian*, 28th January 2009.

<sup>37</sup> B.Weidlich, "Himba fear land grab", *The Namibian*, 27th November 2008.

<sup>38</sup> T.Hohmann, "An Introduction" in T.Hohmann (ed.), *San and the State...*, op.cit., p.23-25.

<sup>39</sup> J.Suzman, *An Assessment of the Status of the San in Namibia*, Windhoek, Legal Assistance Centre, 2001, p.71-73; A.G.Hoffmann, "'Since the Germans came it rains less': Landscape and Identities of Herero Communities in Namibia", Ph.D.Thesis, University of Amsterdam, 2005, p.187-188.

The San are clearly the most marginalised community in Namibia. Already in the mid-nineteenth century they began to lose the control of some territories at the hands of the Herero, who were expanding both their herds and their grazing lands<sup>40</sup>. San also lost hunting and gathering grounds at the hands of white settlers. And changes to land distribution after the implementation of the Odendaal Plan dispossessed them even further: lands traditionally used by San in the Nyae Nyae area were annexed to Hereroland, Tswanaland and Kavango. The Bushmanland *homeland* established in 1976 was, therefore, much smaller than the traditional San territories had been. Moreover, Bushmanland, was an atypical *homeland*, as it had no Tribal Authority to manage it, and was directly ruled by European officials<sup>41</sup>.

Although the San have been officially recognised as one of the priority groups for the selection of resettlement beneficiaries, this provision has not usually been implemented. Most of resettled San are in group resettlements under very precarious conditions. Apparently, the only beneficiary of an individual farm is chief Sofia from the Omaheke, who has subleased her plot to neighbouring Herero<sup>42</sup>. Lately, government has acquired some farms adjacent to the Etosha National Park, which are supposed to be allocated to Hai//om communities, but both the extent of implementation and the results of this policy remain unclear. In reality, the resettlement process is often damaging to the San interests. They find themselves unemployed when the farms they used to work in are sold by white farmers to the MLR and the newly resettled farmer is unable or unwilling to reengage the San workers<sup>43</sup>.

In addition to this, the launching of programmes for the specific benefit of San communities can easily be perceived by other groups as a form of “privilege”, or as a disproportionate attention and interest from the government and cooperation agents towards the San. When, for instance, the Spanish Agency for Cooperation, through the NGO Fundación CEAR, was planning a support programme to three resettlement farms in the Omaheke with a majority of San residents, the MLR insisted that “Projects are not only meant for San people”, and “recognizing only the San people brings divisions. The different racial groups found in the camps encourage learning between

<sup>40</sup> R.Gordon, *The Bushman Myth. The Making of a Namibian Underclass*, Boulder, Westview Press, 1992, p.28-32.

<sup>41</sup> R.Gordon, *The Bushman Myth...*, op.cit., p.172-173; R.Sylvain, “‘We work to have life’: Ju//hoan Women, Work and Survival in the Omaheke Region”, Ph.D.Thesis, University of Toronto, 1999, p.47; A.Botelle & R.Rohde, *Those who live on the land. A socio-economic baseline survey for land use planning in the communal areas of Eastern Otjozondjupa*, Windhoek, Ministry of Lands, Resettlement and Rehabilitation, 1995, p.37-39.

<sup>42</sup> NGO workers, personal communication, March 2009.

<sup>43</sup> E. von Wietersheim, *This Land is My Land!...*, op.cit. p.201-202.

the people”<sup>44</sup>.

In Communal Areas the situation is also difficult for the San. When they wish to use a piece of land they are forced to ask for the permission of other ethnic groups' TAs. This is not always granted as the San are rarely more than 10% of the population in any given area, other groups have strongly negative stereotypes of the San – and are used to regarding them as little more than servants -, and land is everywhere becoming increasingly scarce. Frequently, as in Oshikoto, TAs allow the fencing of plots by wealthy Owambo farmers (in addition to those lands illegally fenced) and this leaves less and less land and water points open for use by the San<sup>45</sup>.

In Ohangwena, San have neither rights to land management nor officially recognised TAs. They fall under the jurisdiction of Kwanyama TAs, who are supposed to make judgements concerning conflicts between their own people and San. Throughout the twentieth century, Owambo communities have expanded and have gradually occupied lands and water points traditionally used by the San. Finnish missionaries established some settlements to shelter and attract the San, with the objective of evangelization and also of teaching them agricultural techniques, often under the supervision of white missionaries and Kwanyama church leaders. In 1995 these settlements were transferred to the MLR<sup>46</sup>. The official view from the Ministry is that San “are like any other Namibian”, and that when they “go” to other communities' territories they must accept the authority of the local chiefs. If they are not fairly treated, they can always appeal to the Land Boards and Regional Councils<sup>47</sup>.

The San only have some lands which are officially regarded as theirs, and where they have recognised TAs and enjoy the right to land and natural resources management: Tsumkwe district, the former Bushmanland, in Otjozondjupa region. This area, which was only marginally affected by German and South African rule, has very few water sources and a very low capacity for supporting both people and livestock<sup>48</sup>. Attempts by the colonial administration, and missionaries to encourage agricultural projects and, later, by NGOs to create a mixed economy, based on crops, livestock,

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<sup>44</sup> S.Felton & H.Becker, *A Gender Perspective of the San in Southern Africa*, Windhoek, Legal Assistance Centre, 2001, p.67; Fundación CEAR, “Key informants interviews”, 2006, p.3-4.

<sup>45</sup> J.Suzman, *An Assessment of the Status of the San in Namibia...*, op.cit., p.26-30; T.Widlok, “The Needy, the Greedy and the State: Dividing Hai//om Land in the Oshikoto Region” in T.Hohmann, *San and the State...*, op.cit., p.87-119.

<sup>46</sup> R.Pakleppa, (2005). *Report on enquiry into the socio-economic conditions and needs of some San communities in the Ohangwena and Oshikoto regions of northern Namibia*, Windhoek, WIMSA, 2005, p.14-15.

<sup>47</sup> S.H.Kandjii, Director of Resettlement, Ministry of Lands and Resettlement, personal communication, Windhoek, 28th May 2008.

<sup>48</sup> R.Gordon, *The Bushman Myth...*, op.cit., p.175-177, 185-191; A.Botelle & R.Rohde, *Those who live on the land...*, op.cit., p.vii; T.Hohmann, “‘We are looking for life. We are looking for the conservancy’”. *Namibian Conservancies, Nature Conservation and Rural Development: The Nǃa-Jaǃna Conservancy*” in T.Hohmann, *San and the State...*, op.cit. p.205-254.

hunting and gathering were not particularly successful, and this was one of the reasons why the San community in East Tsumkwe opted for the creation of the Nyae Nyae Communal Conservancy over most of their land. The Conservancy was officially approved in 1998, and is founded on the basis of community management of natural resources and the sharing of income produced by tourism and, above all, trophy hunting<sup>49</sup>.

In West Tsumkwe several agricultural schemes managed firstly by the Evangelical Lutheran Church in Namibia and later by the MLR obtained very poor results in terms of production. Kwangali herders started using West Tsumkwe as grazing land for their cattle, alleging that the new Namibian Constitution allows any citizen to settle anywhere in the country. In 1999 this attitude provoked clashes with the resident San. In order to guarantee their control of the land, San communities established the Nǃa Jaqna Conservancy in 2003. The Conservancy constitution states that membership is restricted to residents and their relatives or to people who have been granted residence rights by the TA or the Conservancy Committee. These terms provide for non-San membership, but keeps control over settlement and land use at the hands of the Conservancy and the San majority<sup>50</sup>.

However, not even the official recognition of the Conservancies has protected the Tsumkwe San from outside encroachment on their lands. Recently, the government has begun the planning of an agricultural scheme which would settle small commercial farmers in northern areas of Nǃa Jaqna. The settlers would receive individual plots of 1.500 hectares each, and are expected to devote themselves to commercial ranching. The local San community and supportive NGOs are very reticent concerning this plan, and have demanded to be included in consultations and to receive guarantees that any future benefits will go to the San and will surpass the income generated by the Conservancy<sup>51</sup>.

The Herero are the group who consider themselves as the main victim of the land dispossession process under colonial rule, especially as a result of the genocidal campaign conducted by the German troops in 1904-07, which exterminated a large part of the Herero population (and Nama, also rebelled against the colonial

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<sup>49</sup> S.Harring & W.Odendaal, *"Our Land They Took"*. *San Land Rights Under Threat in Namibia*, Windhoek, Legal Assistance Centre, 2006, p.35-39.

<sup>50</sup> T.Hohmann, "We are looking for life...", op.cit., p.222-225; J.Suzman, *An Assessment of the Status of the San in Namibia...*, op.cit., p.44-46; S.Harring & W.Odendaal, *"Our Land They Took"...*, op.cit., p.29; WIMSA, *Report of Activities. April 2006-March 2007*, Windhoek, Working Group on Indigenous Minorities in Southern Africa, 2007, p.21.

<sup>51</sup> WIMSA, *Report of Activities. April 2006-March 2007*, op.cit., p.21; S.Harring & W.Odendaal, *"Our Land They Took"...*, op.cit., p.29-30.

government), and which comported the lost of most of Herero lands and livestock<sup>52</sup>. The Herero are aggrieved that communities who were never stripped of their lands have legally the same right to receive resettlement land as themselves, and believe that this is done in order to favour the Owambo. Herero leaders have often expressed the opinion that, as victims of colonial genocide, they are the community mostly affected by the land question<sup>53</sup>. SWANU, a small opposition party traditionally supported by Otjiherero speakers, recently suggested that the criteria for selecting resettlement beneficiaries should include giving priority to communities “displaced” or “dispossessed” in colonial times<sup>54</sup>.

As a part of their claims, the Herero have repeatedly demanded reparations from Germany on account of the 1904 genocide. German governments have always rejected the possibility of compensation or of funding a possible acquisition of lands by the Herero or Nama. However, in 2004 the Minister for Economic Cooperation, Heidmarie Wiecek-Zeul, officially apologised for colonial crimes to the Herero gathered for a commemorative ceremony in the Waterberg. In March 2005, without previous consultation with the Namibian government, she announced the launch of a “reconciliation initiative” which included the delivery of 20 million euros through five years for development projects and aid to the communities affected by the genocide. The Herero Paramount Chief, Kuaima Riruako, immediately declared that the initiative could not replace the compensation is community demande, and criticised the lack of consultation with the German authorities. The Namibian government also showed their uneasiness with Germany’s unilateral decision, but following some months of consultations between both governments and with the communities involved, in October 2006 the National Assembly unanimously approved the Special Initiative, and in November 2007 the official agreement was signed and projects were supposed to begin for the benefit of Herero, San, Damara and Nama communities<sup>55</sup>. Germany has clearly declared, however, that the Special Initiative is not intended to help the Herero recover their lost lands, but it’s a development programme for all inhabitants of the

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<sup>52</sup> On the 1904-07 campaign see, J.Zimmerer & J.Zeller (eds.), *Genocide in German South-West Africa. The Colonial War (1904-1908) in Namibia and its Aftermath*, Monmouth, Merlin Press, 2008; J-B.Gewald, *Herero Heroes. A Socio-Political History of the Herero of Namibia, 1890-1923*, Oxford, James Currey, 1999; H.Drechsler, “Let Us Die Fighting”. *The Struggle of the Herero and Nama against German Imperialism (1884-1915)*, London, Zed Press, 1980; H.Bley, *Namibia Under Colonial Rule*, Hamburg, Lit.Verlag, 1996, revised edition.

<sup>53</sup> E.von Wietersheim, *This Land is My Land!...*, op.cit. p.57, 59-61; H.Melber, “Namibia’s Past in the Present: Colonial Genocide and Liberation Struggle in Commemorative Narratives”, *South African Historical Journal*, 54, 2005, p.107-109.

<sup>54</sup> K.Veii, “Veii Defends Nyae Nyae Stance”, *The Namibian*, 29th May 2009.

<sup>55</sup> H.Melber, “‘We never spoke about reparations’. German-Namibian relations between amnesia, aggression and reconciliation” in J.Zimmerer & J.Zeller (eds.), *Genocide in German South-West Africa...*, op.cit., p.267-271; R.Kössler, “Facing a Fragmented Past: Memory, Culture and Politics in Namibia”, *Journal of Southern African Studies*, vol.33, n°2, 2007, p.381; “N\$190 million to clear colonial past”, *The Namibian*, 8th November 2007.



selected regions, no matter their ethnic origins<sup>56</sup>.

A recent dispute can illustrate the difficulties created by the need to reconcile the conflicting claims of different communities over the same pieces of land. In 1993-1994 some 2.200 Hereros who had been living in Botswana during the colonial period, were repatriated and resettled in Gam. The local Ju/'hoansi inhabitants, around 50 or 60, were not consulted. Land in the area is poor, in spite of some support from the government with seeds and other services. Most of the Herero depend on their cattle, and the area is overgrazed. In addition, the area is known for the presence of "otjikurjoma", a poisonous plant<sup>57</sup>. In April 2009 several Herero families from Gam broke the fences around Nyae Nyae Conservancy and introduced hundreds of heads of their cattle. The government could not return the cattle to Gam, as they had already crossed the Veterinary Cordon Fence – which separates areas of the country free from livestock diseases from contaminated areas. The Herero herders alleged that in Gam their herds were suffering for the prevalence of otjikurjoma. In mid-May some 1.200 cattle had been introduced in Nyae Nyae. The authorities arrested some herders, who were quickly released on bail. Both the Conservancy and chief Tsamkxao Oma of the Ju/'hoan have demanded swift and clear actions from the government against the invaders, and have expressed their dissatisfaction with what they perceive as the slowness of the government's reaction and the absence of clear official declarations against the Herero herders. In June 2009 authorities finally confiscated the invaders' cattle<sup>58</sup>.

SWANU quickly protested at the government's measures. One of its leaders described the plight of the Herero in Gam, complaining that they have experienced difficulties in obtaining their Namibian IDs, suffer a lack of education and medical services, have to live on poor land, and many "are sons and daughters of the never-to-be-forgotten victims of Von Trotha's Extermination Order". The Congress of Democrats, another opposition party, also criticised the confiscation of the Herero

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<sup>56</sup> E.von Wietersheim, *This Land is My Land!...*, op.cit. p.186-187. The regions covered by the Special Initiative are Karas, Erongo, Hardap, Otzondjupa, Kunene and Omaheke.

<sup>57</sup> A.Botelle & R.Rohde, *Those who live on the land...*, op.cit., p.167-170; S.Harring & W.Odendaal, *"One day we will all be equal..." A socio-legal perspective on the Namibian land reform and resettlement process*, Windhoek, Legal Assistance Centre, 2002, p.82-83; C.Maletsky, "Herero farmers invade San area", *The Namibian*, 6th May 2009.

<sup>58</sup> C.Maletsky, "Herero farmers...", art.cit.; N.Shejvali, "Gam farmers to experience consequences of land invasion", *The Namibian*, 8th May 2009; N.Shejvali, "Govt seizes Gam cattle". *The Namibian*. 16th June 2009; "Briefing on Illegal Settlement and Grazing in the Nyae Nyae Conservancy", (2009). WIMSA, LAC and NNDFN, 19th May 2009; Letter from Chief Tsamkxao Oma, Kiewiet'un and /Kgao Ghauz to the Ministries of Agriculture, Lands and Resettlement, Safety and Security, Environment and Tourism, Deputy Prime Minister and Director of Veterinary Services, 13th May 2009. I would like to thank Ben Begbie-Clench from WIMSA for providing me with copies of the last two documents.

cattle and defined the invasion of the Conservancy as “a clear and unambiguous expression of land hunger by the farmers”. NUDO and his leader, Riruako, called for dialogue and declared that the policy of willing buyer/willing seller for the acquisition of commercial land is failing. They also accused the government of treating the Owambo herders evicted from Kwangali more sympathetically than the Herero from Gam<sup>59</sup>.

## CONCLUSION

It is obvious that ethnicity is not the only element involved in party politics or the land reform process in Namibia. It can rightly be argued that government’s bias – real or perceived – when redistributing land or recognising TAs is influenced more by party than by ethnicity. At the same time, however, one has to acknowledge, as Dieckmann does, that “Ethnicity still remains a framework in which socio-economic differences are experienced and interpreted. Marginality is perceived to a certain degree as an ethnic marker”<sup>60</sup>. One cannot ignore that, generally, ethnic belonging plays a important role in Namibian political life. A 1999 study showed that, although few people interviewed declared that they voted a party because it defended their ethnic group, voting patterns showed a clear link between party preference and ethnic group<sup>61</sup>. More importantly for our analysis, it is clear that a significant portion of Namibian society see the government’s decisions regarding land as based on ethnic reasoning. In view of all this, Harring and Odendaal in 2002 already warned that the policy of distributing land to people who do not belong to the local communities that “may be necessary to achieve national unity in a multi-ethnic nation, but (...) should not be taken without adequate measures to address inter-group relations”<sup>62</sup>.

It is highly unlikely, however, that Swapo will accept a fundamental change of his land redistribution policy. Prioritising communities dispossessed during colonialism would trigger disputes among the different ethnic groups, would be contrary to the policy of national unity as it is understood by the party, and, would leave little opportunity for the Owambos to get free resettlement land. They were never dispossessed and they are the basis of Swapo’s electoral support. It is true that a land policy based on historical restitution would bring endless problems and would hardly

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<sup>59</sup> K.Veii, “Veii Defends...”, art.cit.; N.Shejvali, “Government’s Gam action ‘illegal’”, *The Namibian*, 17th June 2009; N.Shejvali, “Call for dialogue on Gam issue”, *The Namibian*, 19th June 2009.

<sup>60</sup> U.Dieckmann, *Hai//om in the Etosha Region...*, op.cit., p.304.

<sup>61</sup> C.Keulder, “Voting Behaviour in Namibia”, in C.Keulder (ed.), *State, Society and Democracy...*, op.cit., p.264-296.

<sup>62</sup> S.Harring & W.Odendaal, “*One day we will all be equal...*”, op.cit., p.105.

solve all the problems that we have analysed in this article<sup>63</sup>. But it is also true that it should be possible to introduce formulas to favour dispossessed communities without making of dispossession the only criteria for selecting beneficiaries. The present policy of ignoring ethnic realities and the different experience of dispossession during colonialism is helping neither to heal the wounds of the past nor to achieve the allegedly pursued goal of nation-building. The combination of party politics, ethnicity, unrealistic expectations to land amongst the population and populist discourses by the ruling and opposition parties could easily lead to heightened political tension in the future.

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<sup>63</sup> See the problems mentioned for South Africa in the introduction of this article and the references quoted in footnote 6.

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