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Effa Okupa

Carrying the Sun on our Backs

Unfolding German Colonialism in Namibia
from Caprivi to Kasikili

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Cover illustration: Chancellor Leo von Caprivi

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In memory of the forgotten children,
women and men who died excruciatingly
crossing the Omaheke desert from
German Southwest Africa into British
Bechuanaland during the 1904 German-
Herero war.

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Sebituane subsequently settled at the place called Litubaruba, where Sechele now dwells, and his people suffered severely in one of those unrecorded attacks by white men, in which murder is committed and materials laid up in the conscience for a future judgment.		
David Livingstone (1857)		
<i>Missionary Travels and Researches in South Africa</i>		
When civilised nations come into contact with barbarians the struggle is short, except where a deadly climate gives aid to the native race.		
Charles Darwin (1871)		
<i>The Descent of Man</i>		
It was their germs, not these imperialists themselves, for all their brutality and callousness, that were chiefly responsible for sweeping aside the indigenes and opening the Neo-Europes to demographic take-over.		
Alfred W. Crosby (1986)		
<i>Ecological Imperialism: The Biological Expansion of Europe, 900 – 1900</i>		

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Preface

The Caprivi Strip in Namibia attracted the world's attention because of the judgment of the International Court of Justice (ICJ) in the Kasikili / Sedudu Island case, between Botswana and Namibia in 1999. The Kasikili / Sedudu Island is in the Chobe river, a tributary of the river Zambezi. The ICJ found by eleven votes to four that the boundary between Botswana and Namibia followed the deepest sounding in the northern channel of the Chobe river, accordingly, Kasikili / Sedudu Island in the Chobe River forms part of the territory of Botswana.

The Botswana and Namibia boundary dispute came before the ICJ at a period when the European Community was proclaiming one of its most basic freedoms: the free movement of persons and the removal of boundary controls. Thus, according to lawyers of African Customary law, the Kasikili / Sedudu Island case ought to have been a symbolic gesture to the Subia, the people who live on both banks of the Chobe river. But Namibia and Botswana, two developing states were obliged to spend almost £17m in asserting the Anglo-German Treaty of 1 July 1890, delimiting their colonial boundaries. However, according to the benefits of accumulated wisdom of Subia indigenous law, that amount of money was far cheaper than a war between the two states; although the Subia of Botswana and Namibia would have settled the dispute for far less. In spite of the authoritative modernity of their constitutions, magistrate courts, high courts and supreme courts in Windhoek and Gaborone, most people outside the capitals still rely on their indigenous law and pre-colonial boundaries.

The Kasikili / Sedudu Island case was the inspiration for this study. To understand the Anglo-German Treaty of 1 July 1890 which created the Caprivi Strip that has returned to haunt some people and disrupt the lives of others, one must examine German colonialism. However, young European historians argue that we should be quiet and forget the past, and not stir up racial hatred about the brutal policies of German colonialism. "Dig a hole and confine German colonialism. German colonialism died with your ancestors. It is no worse than the colonial policies of Belgium, Britain, France and Portugal". But does that make it right?

The study begins with ancient rock art society, and ends in the twentieth century with the Kasikili / Sedudu Island judgment of 13 December 1999. Many people have not heard of the Caprivi Strip. Some primary school children in Opuwo, northwest corner of Namibia, suggested that Caprivi was a Windhoek ice cream. Thus one could not even begin to write about the Caprivi Strip and Kasikili / Sedudu Island case if most of the learned readers do not know that the Strip in the heart of Africa was christened Caprivi, after General Count Leo von Caprivi. He was the general who commanded the 10th Army Corps in Hanover 1888 – 1890, and became the second Chancellor of the German Reich in 1890 – 1894. Caprivi succeeded Chancellor von Bismarck, 1871 – 1890. Accordingly, chapter 3 is a study of General Leo von Caprivi who was said by his 'friends' to have followed the wrong curriculum at the Wedersche Gymnasium in Berlin and became a soldier instead of a lawyer.

Today, the Caprivi Strip has developed into the tourists' oxygenated blood that flows from the Mosi-o-Tunya (the Victoria Falls) through the Chobe National Park to the Caprivi Game Park. It then enters Etosha Park, the Petrified Forest, the 'White Lady', Cape Cross, Swakopmund, and Namib-Naukluft Park and into South Africa. The Caprivi Zipfel is the index finger of Namibia reaching out to the Central Valley of the Zambezi and into the heart of Africa. Accordingly, the Caprivi Strip sticks its other fingers into Angola in the North, Zambia to the northeast, Zimbabwe to the southeast and Botswana to the south.¹ These states were once the powerful frontline buffer zones against former apartheid South Africa. Thus, the meeting of fingers at Zimbabwe, Zambia, Botswana and Namibia on the confluence of the Zambezi and the Chobe rivers form what is known as a quadripoint. While international boundary lawyers argue about whether or not the alignment of the four modern states is a quadripoint, the ethnic groups that have lived there since time immemorial know that before European occupation, it was a meeting point of human beings and the great rivers.

¹ The Caprivi Strip is on latitude 17:30 south of the equator and longitude 24:17 east of Greenwich.

This study is also a succinct legal ethnography of the ovaHerero and the Nama and their brutal subjugation by the Schutztruppe (the German troops) in Chapters 4, 5 and 6. Why should one retell the past brutalities of the indefatigable Schutztruppe against the natives of their protectorate when other people were also to blame, such as the administrators who formulated the policies and the academics who gave the policies credibility? One should not forget too the economic migrants who simply carried on as though the deaths of almost half a million natives had nothing to do with them. The survivors should also not forget the people who made the ultimate sacrifice for them. They have a duty to prevent any recurrence of 'ethnic cleansing'.

The Otjiherero leaders who took on the mighty Schutztruppe were not great potentates, but men related to nearly everybody by cross cousin marriages: in levirate, sororate and 'love wife' polygyny. Polygyny was all about procreating children for the *onganda*. An Otjiherero leader's status and his sense of wellbeing were dependent on having many babies reared by the womenfolk. When the children became adults his standing amongst his peers was based on the number of sons available to defend his *onganda* and the daughters who would make suitable marriage alliances. The Tjamuaha and Maharero genealogies were very complicated because of cross cousin marriages and polygyny.

However, according to the ovaHerero, marriages to cross cousins were more desirable and epitomise excellent selection for breeding. They are aware of the inherent genetic disadvantages of cross cousin marriages and my interviewees maintained that they know the diseases that run in certain families; 'they know which women are quite mad'. A favoured cross cousin bride's family is screened for diseases of various kinds, but they rely mostly on the unpredictability of the ovaHerero matrilineal genetic pool and hope for the best. 'Replicated genes are not interested in Otjiherero taboo, and if any genes wanted to mutate, it would do what it has to do. The highest frequency of cross cousin marriage disease was infertility, and a husband had a duty to remedy the infertility and keep the *eanda* cattle in the *eanda*,' said a Himba *omuhona*. Accordingly, the insolent vanity of adultery was not a ground for divorce in Otjiherero

matriliny, as the resultant child, like all children were attached to the mother's matriclan, the *eanda*.

Apart from the Otjiherero, the Nama and the Damara, and those who call themselves the Caprivians, the Fwe, Kwengo, Mbukushu, Subia, Totela and Yeyi, there are other ethnic groups, the Owambo and the Kavango, the San, the !Kung and the Tswana. Furthermore, there are also the white tribes consisting of Afrikaans, Germans, and the British whose forebears have lived in Namibia since the occupation of the territory by the economic migrants. Finally, there is the group that bears the name 'Basters', an Afrikaans word expressing bastardy, a mixed race group who had predominantly black mothers and white fathers, but as the white men said, 'necessity is the father of the Basters'. The Basters are held in contempt by both sides: the whites thought that in many ways the Basters were as bad as the natives, liars and untrustworthy double-dealing cads. And the blacks reasoned that the bilingual Basters were just as bad as the whites and were addicted to 'fleshspots and liquor in their stomachs'.

During the First World War, and before the capitulation of the stalwart Schutztruppe to the South Africa Troops under General Louis Botha, the Schutztruppe destroyed all their documents and jettisoned their firearms and equipment into Lake Otjikoto. Accordingly, in writing about Schutztruppe colonial history in South West Africa, I have dredged through the Imperial War Museum, London and relied on inscriptions on War Memorials and monuments, and inscriptions on plaques, historical graves and cemeteries and fortifications in Namibia that stretched from north to south. Colonial memorials range from tablets now on private land to enormous bronze sculptures with long lists of names, rank and achievement. Hundreds of memorials abound from Swakopund on the Atlantic Ocean to central Namibia and to Warmbad in the south. There are memorials from the early German conflicts in SWA, the Herero and Nama wars, and the First World War. The memoirs, diaries and correspondences of Baron Friedrich von Holstein 1837 – 1909 were enormously helpful, as well as Reports, Memorials and Counter-Memorials of Botswana and Namibia and other secondary sources.

Since I am writing about a former German colony, South West Africa, it means that there are two spelling conventions, English and German. I use both English and German, for example Heligoland and Helgoland; Hanover and Hannover, Windhoek and Windhuk, Otjimbingwe and Otjimbingue and many more. Sometimes I write German South West Africa, sometimes Deutsch Sudwestafrika – it depends on the context.

There are also two Silozi orthographies: Zambian orthography and the Namibian Department of National Education orthography, No. 2, 1985. I have used a modified Namibian orthography to make reading easier for people who do not read any African languages. In the writing of some African languages, a few authors dislike the use of a capital in the middle of a word, for example, baLozi and ovaHimba. However, I sometimes use this convention of not capitalising the prefix to indicate that it is a prefix and capitalizing the first letter of the stem, for example omuHimba, and boKabika – thus illustrating which is the prefix and which the stem. In addition, some people cannot pronounce the African 'n' in Nduna, Ngami and tend to write Induna, but I have used Nduna.

In English, some plurals are formed by simply adding an 's'; girl, girls; boy, boys. But in Otjiherero, plurals are formed by prefixes such as *oma*, *ova*, *ozo* and *otu*, and in Silozi, by *ma*, *ba*, *za* and *si*. There are also nuances in Otjiherero that have no English equivalent, one Otjiherero word becomes a very long sentence, simply to convey the meaning, for example Otjimbingwe: 'the sight of this spring refreshes the human heart'.

There are many gifted Namibian men and women who speak and write fluently in English, Afrikaans, German and Silozi as well as their mother tongue. My research methodology was to use some of these men and women who understand the jurisprudential roots of their indigenous law as my control group, while my stratified random selections were the men and women whom I interviewed in the field who still had their spiritual and artistic roots in the villages.

I carried out structured interviews in Gam amongst descendants of those who returned from nearly a hundred years in exile, and I was thoroughly depressed. I did not want to write any more about the

Schutztruppe, the glamorous men in uniforms who terrorised and brutalised the natives into submission. However, by the encouragement of those whose parents and grandparents survived the flight across the Omaheke desert, I completed the study. I dedicate this book to the men, women and children who died in the Omaheke desert.

Robinson	Sir Hercules, the British High Commissioner in Bechuanaland Protectorate in 1886. He proposed the 'Extension of the Bechuanaland Protectorate to the Northwards, as far as the Zambesi River'.
Salisbury	Marquis of, Cecil Robert, Prime Minister (1885 - 1886) (1886 - 1892). The Signatory to the <u>Anglo-German Agreement</u> , 1890.
Streitwolf	Kurt Hauptmann. The first German Imperial Resident of Caprivizipfel 1909 - 1910.
Trollope	L. F. W., The South African Resident Commissioner for Eastern Caprivi Strip 1939.

Cultural Property

Namibia is enormously rich in ancient rock petroglyphs and rock paintings as well as in cultural and natural property.¹ All over the dry mountainous heartland of Namibia, there are millions of rock paintings and rock engravings in thousands of recorded sites. Upper Brandberg alone has 1,045 sites; Harald Pager (1993) further recorded 43,000 artistic impressions of individual figures on rock surfaces in 89 sites. New finds of either engravings or paintings are reported regularly to the archaeological department of the National Museum in Windhoek, where rock art locations are documented, and archaeologists, anthropologists and lawyers use the records for research into ancient societies. There are still vast tracts of unexplored rock shelters in Namibia. Notwithstanding the unrecorded rock art, it is still possible for every child, woman and man in Namibia to claim to be culturally entitled to one piece of rock art - a human figure, fauna or flora.

The people who created these breathtaking petroglyphs and rock paintings have bequeathed a formidable artistic legacy to their modern descendants. Today, the very fine motifs on modern clay pots made by the coiling method, and ostrich eggshell trimmed into beads for decorating

¹ The Petrified forest, the Namib desert, Gibeon and Hoba meteorites, Mukorob rock, the Brandberg mountain range, Waterberg plateau, Fish River Canyon, Lake Otjikoto, quiver trees, baobab trees, Welwitschia mirabilis, *padroes* in Cape Cross and Luderitz and a wealth of German forts, historical monuments and inscriptions dotted all over SWA / Namibia.

leather for men and women's clothing and headbands, illustrate the artistic lineage of the rock artists.

An examination of musical drums and handles for throwing knives, weapons and spearheads, baskets and sleeping mats also depict the ancient genius of the rock artists. On seeing some of the rock art of Namibia, the questions most frequently asked are: 'Who painted the rocks?' 'Who incised the rocks?' 'Why were they painted, and why were they engraved?'

There are few answers, but as a result of German colonialism (1884 – 1915) and South African occupation (1915 – 1990) followed by apartheid scholarship, the rock art of Namibia, especially the now so-called 'White Lady', have generated myths about South West Africa and the creators of the rock engravings and rock paintings. Breuil (1955:3), one of the early Europeans whose words were recorded, opined on first seeing the painting of the White Lady, 'I do not know whether she is Greek, Cretan or Egyptian; but that she is of Mediterranean race is certain'.

However, rock art, like the people who created it, is very old; accordingly, there is a tendency for some rock art researchers to equate the creators of the bands of animals and figures on the rocks with ancient European civilisations. What the proponents of European rock artists of Africa have not satisfactorily explained was the simple issue of how the European Stone Age seafarer artists reached the rock shelters of Africa? How did they venture into the heart of South West Africa ten to four millennia ago to teach the natives the art of rock painting and engraving?

The mythical European rock artists did not leave any written chronicle of their sojourn in Southern Africa, although writing on clay, then papyrus, had already developed in Mesopotamia. Why, so far, has only one Mediterranean race type of painting been found among the thousands of rock art friezes? In turn, who taught the Europeans how to apply colour to sandstone surface? The people who propagated the myth of European rock artists in Africa have not taken into consideration the power of the human brain cells and eyes irrespective of the colour of the skin. The human brain cells can do many exciting things. Some human beings, white or black, were very clever; they had to be for their very

survival. Information was transmitted between the genes and their brain cells. The not-so-clever imitated the very clever and the skilful. Perhaps the advent of clever metal-using people, and the arrival of the herders with their domesticated animals and associated pathogens, changed the balance of migratory settlement patterns among the Southern Africa indigenous people.

So far, there has been no archaeological evidence to substantiate the presence of either mysterious Neolithic Cretan or Egyptian visiting artists coming over to draw and paint in the rock shelters and caves of Africa. If they had, how did the white people find their way back home and leave nothing of their material culture? Fortunately, the theory of foreign lithic artists has been discredited and is now out of favour. Archaeologists do not support the myth of peripatetic white art teachers from the material culture that they have excavated at various sites.

After this myth was discredited, the interpretation by some writers became that the masterminds behind the rock artists were shamans who created the art under the influence of trance hallucinations. Williams and Dowson (1989:30) affirmed that the paintings and engravings were closely associated with the activities of Bushmen medicine people or shamans. It is in fact Bushman beliefs about shamans that explain animal characteristics ... Shaman is someone in a hunter-gatherer society who enters a trance in order to heal people, foretell the future, control the weather, and ensure good hunting.

Thus, under the theory of shamanism, there would have been hundreds of very active gifted shaman artists who travelled all over the gorges, ravines and mountains to engrave and paint after they had recovered from all night trance dances. It presupposed that the shamans had plenty of creative energy left to draw and paint in the daylight hours. Shamans themselves need to eat. So did they make a good living out of shamanism from the few remaining men who hunted to provide them and their families with meat? What did they smoke or drink to go into the trance? There were rock artists in Central Arabia, Anatolia, northern Pakistan and Indian. There is Chinese rock art, rock art in Australia and New Guinea, and the rock art of North America, Mexico and Central America, rock art

in Argentina and Brazil. Are these rock paintings and engravings scattered all over the world the creation of their shamans?

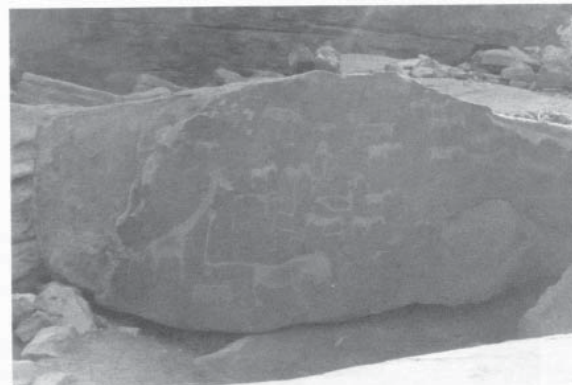
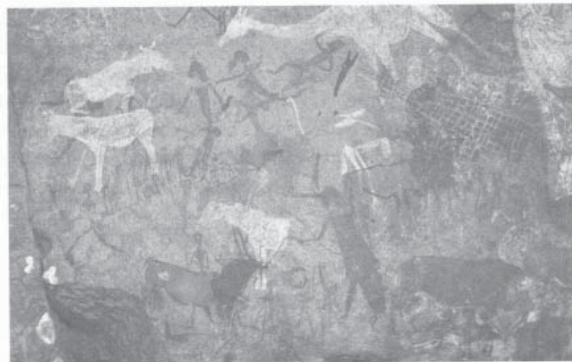
Fortunately, the myth of shaman rock artists as the creators of African art has also disappeared, but politically correct researchers have replaced shamanism with Bushman art. Some researchers of rock art have declared after an examination of 'today's primitive' art, that the rock art was stylistically Bushman art, San art. But how could the Bushmen have constructed such parietal fine art, they demanded?

We do not know the ethnic origins of the creators of the rock art of three to four thousand years ago, as such; and the rock art of present-day Namibia should not be identified as the artistic heritage of one particular ethnic group.² Other communities such as metal-using people and herders from other parts of Africa moved into the gorges and ravines and intermarried with the indigenes. Some of the present day ethnic groups of Namibia are the descendants of the artists. Furthermore, if rock art is to be taken seriously then perhaps it should be described as Namibian rock art to distinguish it from the rock art of Angola, Botswana, South Africa, Tanzania and Zimbabwe. The mountains and dry riverbeds near the sites of the rock art have ancient names pregnant with meaning that are peculiar to the locality. From generation to generation, the names were engraved on the tongues of people who speak either Damara or San languages. The Damara name for the Brandberg Mountains is Dâures, 'Fire Mountain'. One could talk of Dâures rock art, just as there is rock art in other regions.

Today, rock art writers have agreed that the Later Stone Age indigenous people of South West Africa created the art. The older interpretations of peripatetic Neolithic European rock artists reflected an unimaginative analysis of rock art writers. The thousands of rock art sites that have been found so far in Namibia are in rock shelters but only a few localised findings of cave paintings have been recorded.³

² G. Gwasira (2000).

³ There are only a few identified locations of cave art in Namibia. Arnhem cave, the longest, is about 4,500 metres in length, but the colours have almost disappeared because of smoke and fires that were lit in the cave. Philip's cave at Ameib, Usakos, is 35m wide, 7m high and 15m deep depicting



*Plate 1: Slabs with engravings of various animals.
Twyfelfontein, Namibia.*

giraffes, rhinoceros, kudu, and elephants. Paula's Cave, Okapekaha, Omaruru, depicts red-haired people and black people with bows and arrows. See A. Vogt (1995:62) Rock art areas in some parts of the world are in caves: Ayers rock, Altamira and Font-de-Gaume, Drakensberg, Lascaux, Tassili or Valcamonica.

The English references to Namibian rock paintings that I trawled through had no archaeological radiocarbon dates, probably because any interference caused by scraping pigment for analysis would have damaged the underlying stone.⁴ The engraved or painted rock art slab that was found far from the rock shelter may or may not be linked to the art in the shelter. Thus, only archaeological artefacts in the deposits of the rock shelters were radiocarbon dated. For example, the rock paintings in the cave at Ameib, Usakos, were not dated, but the stone tools and other artefacts from a test trench were dated as 3368±200 B.P. (Lab. No. C-911), millennia before the Portuguese *marinheiros*, and Columbus, Magellan and Cook invaded Africa, the Americas and Australia.



Plate 2: The 'White Lady'.
Brandberg, Namibia.

⁴ Perhaps there is radiocarbon dating, and thermoluminescence dating references in Afrikaans and German, but owing to my limitation in these languages I was unable to read them.

In the 1880s, European travellers in South West Africa noted that they saw some amazing rock paintings, but it was not until 1910, when Lieutenant von Jochmann, a German Officer, published the paintings which he found in the Brandberg, Erongo and Spitzkoppe that enormous excitement in rock art was created. More exhilarating still, on 4 January 1918, Reinhard Maack, a very tired surveyor found that he was resting from the heat of the sun under the shelter of the rock slab that has become known as the 'White Lady'.

1.1 They — the super artists

Sensitive rock art writers are circumspect in their interpretation and analysis of African rock art, as some cannot even understand African cultural property of two centuries ago, never mind the rock art of a couple of millennia ago.

My own strongly held contention is that the women of the Later Stone Age society created the rock art: they were the super artists. Stone Age women were the driving forces of their world. While the men were occupied learning to throw projectiles at distant moving targets as well as studying the ballistics of the various projectiles, the women were the plant physiologists, and the physicians of their time. The ancestresses of the indigenous people have never been given any credit for their creative drudgery. However, we must start from the very beginning in order to clarify and rectify a few misconceptions along the way.

According to the transmitted Judaeo-Christian theology in Genesis, God created man in His own image. The jurisprudence of genesis according to the Later Stone Age women was that there were two creators at work, and their main object was to create more creatures like themselves. But the two creators could not and did not have the same idea of how to create strong beautiful others, only one creator could. So one creator, the woman, spent a long time and created a big strong fellow, then 'rested from her labour'; while the first creator rested, the second creator resuscitated the big strong fellow and bifurcated him and produced a smaller version of the first creator. The two new creatures

were left, maybe in a garden somewhere in Africa, which was then and still is a paradise for the gorilla, chimpanzee, huge aquatic and land animals, baboon, cheetah, crocodiles, elephants, giraffes, hippopotamus, leopards, lions, kudu, oryx, rhinoceros and zebras. Some of these large animals did not know how to protect themselves against the big strong bipeds.

Although both the big strong man and the small woman had the same origin, she had to be inferior because she realised the full meaning of survival between the bipeds and the quadrupeds. These humans adapted to the variations in their organs; they could not interbreed with their four legged 'chimpanzee cousins' but soon found that by fertilising each other they could produce more bipeds like themselves, and their offspring were also distinct and strong. Their two original creators according to their history, moved out of the garden to increase and multiply. From then on, the woman who had to be clever, but not let the big man know that she was cleverer, took control of their lives.

However, as the women were smaller, the men became the meat hunters; unlike among the big non-human animals, for example, the lion, the king of the beasts who, with exquisite full mane, would lie majestically under the shade of a tree and watch as the lioness killed for food. Then the lion, big fellow that he is, would trot across to demand his share.

But the Stone Age women in Africa did not hunt, not because they were 'immobilised' by pregnancy and lactation (after all there were female hunters among the Agta of the Philippines), but because they were clever. Tracking animals, following their hoofprints and dung and spoor took several days; and hunting was a very skilled activity. The experienced male leader of the band, who donned his lion skin, walked for several days leading the other men in search of meat. They used their bigger brains to trap animals that were several times their size.

What would the Stone Age man do all day, if he did not become man the hunter? Man the meat winner? When the big men were not out hunting, they would assemble and prepare their stone artefacts and throw

projectiles. They told their women and children stories about animal hunts that became engraved in their minds.

The men had to be very astute to hunt the large animals that would provide meat for everyone. The skins of dead animals, horns, and plumage from flightless birds were sometimes used as hunting masks to disguise themselves so as to get nearer to the animals before throwing the projectiles. The skin of the lion with that enormous mane of hair, was the emblem of the bravest man who attacked the lion first. He was proclaimed killer of the lion and crowned as the great leader of the next hunt. He was permitted to use the tail of the lion as a flywhisk. The men were most impressed with the lion's powerful strength.

Some rock art writers have asserted that animals were painted on the rock shelters to fix their potency, and for the potency to pass to the hunters and help them with the killing process. The men hunted in groups for self-preservation, as well as making hunting easier. Hunting should not be a grim harvest of dead men, because the big wild animals could easily attack a lone hunting man. Group co-operation in hunting became the social bonding of the male group. For after a successful hunt, the men removed their stone spear points from the meat, then shared it out amongst the hunters to facilitate hauling it back home to their womenfolk. A large animal took a very long time to carve up, as they did not then have adequate tools for slicing the carcass. Some of the hunters ate their share on the spot then carried the remainder a long distance back to the women and children in the rock shelters.

Maybe there were also some performing artists who danced and executed fertility rites for more children: perhaps these were the researchers' shamans. At the dance, where women provided the music, the men danced to summon their famous ancestors to aid them in the process of breeding more children as well as for a successful hunt for meat. Fecundity was far more important than trance dancing. Breeding and raising children to survive to adulthood was considered the women's greatest fulfilment.

If women also went out for several days throwing projectiles at animals, who would breast-feed the young ones, look after the toddlers,

the very old and sick, the men disabled from hunting or from fractures sustained in falls? What do you think Stone Age women did all day? Woke up in the morning; ate meat then went to sleep again? Accordingly, when the men were away from their rock shelters tracking animals and hunting for meat, the women and children collected windfall pods and berries, which they had observed were eaten by animals, and if the food was good enough for the quadrupeds then it was also good for the bipeds. The surplus pods and berries were put on a large granite slab so that the valuable product did not go to waste over the sides when ground into fine powder. A smaller smooth stone was held in the palm of the hand like a present day large computer mouse, and this was used to grind and reduce the pods and berries to powder. The powder was then mixed with water or fat and rubbed on the skin. The women had a purpose in grinding powder mixed with fat; this was to protect their skin from the sun.

Our fashionable Later Stone Age women, like some ovaHimba women of today, painted their bodies with *otjize*; that is, iron oxide mixed with clarified butter and perfumed herbs. The fat lubricates the skin and makes it glow. The *otjize* gives the Himba woman's body the colour of auburn gold (much sought after by film crews and international photographers advertising promise of exotic holidays in Kaokoland). The Himba women still decorate their skin and hair with elaborate perfumed herbs.

However, the Stone Age old women had to choose who would fertilise their daughters. One man could fertilise several women a day, but the women wanted to tie down good hunters who would be around long enough to help to nourish the babies. Accordingly, Stone Age women too painted their bodies with pigments. Pager (1989:31) noted, 'Traces of red colour have been preserved in the drill holes of beads, which could have derived from the wearers' body paint'.

To amuse themselves and to relieve the plodding boredom of Later Stone Age routine, the women then painted their rock shelters with their fingers. It was their very own home; they had been the first to establish themselves under the rock shelters. Creative imagination came first to Stone Age women. They painted the eland, kudu, oryx, and antelopes that the men said were easy to trap in a dugout hole (then the animal was

killed inside the hole with stone projectiles). They also engraved rock slabs that they sat on, and painted the everyday shapes and patterns their eyes could see in the world around them. Women's eyes must have evolved faster for them to see better and make their harsh surroundings interesting.

Rock paintings and engravings were not just pretty pictures on the rock shelters, but they were also women's understanding of men and animal behaviour. The men would never have thought of painting a rock shelter home for their entire harem. There are many beautifully smooth rock shelters in Brandberg without a lick of paint or engraving. Could these have been the men's quarters?

When the men shaped the stones for hunting, the women also prepared the flakes and the stones for chiselling. Rock art researchers have underestimated the great skill and the development of the fine tools that women used in the rock shelters.

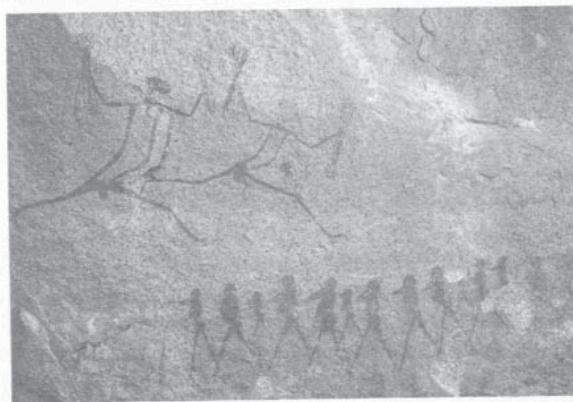


Plate 3: Leaping hunters with projectiles and, below, migrating group.
Namibia.

The band or group, that meant the men, their wives and dependant children, widowed mothers or widowed sisters, some nephews and nieces

and their spouses and other relatives migrated periodically. By migration, the people avoided wallowing in their own filth inside the caves and prevented diseases that the women did not know how to treat. The groups could be about forty to sixty persons when they migrated following the meat according to the seasons. The women did not carry their grinding stone slabs, but they would have taken their favourite tools like flakes and blades that they could use along the way when the able-bodied men hunted. The meat was not easy to preserve, and there were not enough daily surpluses available, so the men hunted whenever they could.

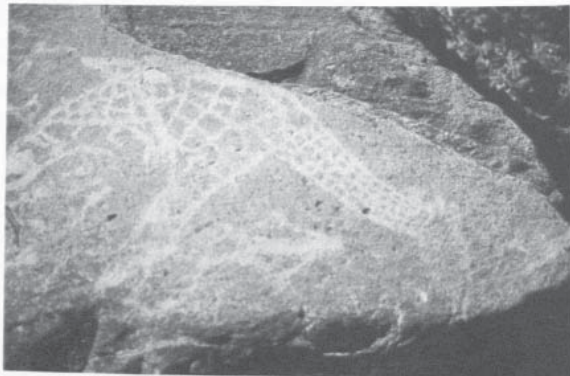


Plate 4: Petroglyph of a giraffe.
Piet Albert's Koppie. Kamanjab, Namibia.

After the first trial migration, the women could estimate their daily walking distances in search of meat and water. Without maps, they navigated the desert and mountains and veldts following the trampled vegetation. They set out very early in the morning and walked for ten to fifteen miles every day for several days or weeks. At that period some parts of the Namib Desert were still agreeable for human beings, animals and plants. The women, men and children were healthy for they had left their vermin behind. But those who died, when the spirit had left the body, were buried in the foetal position close to human habitation or

inside the dwelling; the dead still needed protection until their cycle of rebirth and death was completed. They did not have the tools to shovel out six feet of earth, but the desert sand was easier for burial. Death had come for the deceased and in due course death would come for others. Immediately after the burial, the stone tools and animal skins of the deceased were distributed to the most needy next of kin. They believed that, in death the lifeless body would remain in a very long sleep in the sand, but the spirit would soar somewhere in the skies waiting for a woman to conceive for reincarnation. As a result of all their misdeeds, dead women would be reincarnated as men and men would become women. The cycle continued until the person achieved a higher spirituality on earth and, on death, the person would then live forever in the skies as the free-wheeling spirit of a bold and confident ancestor or ancestress.

The group moved to mountain shelters, the highest and safest places with spring water where they could see any four-legged dangerous animals or two-legged ones coming towards their shelters from the ravines below. They could then take cover. The migrants occupied several rock shelter sites. In cold weather, the group moved to beautiful warm regions with good running spring water or water holes trapped between rocks. Pager (1989:66), who spent several years recording rock art, noted that 'within the two main sections of Amis there are a number of groupings where it is less than a five-minute walk from one site to the next. The connective element in many of the groups is an open field, i.e. a level plain of at least 10m x 10m. Accordingly, 56 of all sites in the Amis gorge (=88%) are sited in close proximity to such an open field, being within shouting distance from it, with 29 of these looking directly onto the plain'.

In a new shelter of overhanging rocks, while the men were out hunting, the women collected wild honey, roots and berries. The high altitude produced many edible berries. They also made cups with ostrich eggshells, and ostrich eggshell beads and decorated eggshell pendants. The women painted or used pointed stones for fine line engravings of animals. Sometimes when their hands were full of paint after mixing the

colours and instead of rubbing the paint off with their animal skin aprons, they slapped their hands on the rock surfaces, thus they left their handprints on the rocks to try out the palette for next time. If handprints, as some researchers explained, were conceived to fix the potency of the hunted animals to the rock, then the penalty of relying on such potency would be death. They would have starved to death without meat. The women chose a middle course. How else could our Stone Age women have survived to reproduce? The species would have died out. Children needed food regularly to stay alive. Good mothers steered the middle course between permitting their children to die, and fixing animals on the walls and the shamans. The cells of their large brain had programmed a pool of women who would always resist magic and would put the survival of their children first. The indigenous species survived, not by magic, but because of the few clever Stone Age women.

For women, the most important discovery of all was fire. According to the Greek mythology, Prometheus stole fire from God and gave it to the clever women of the world, and God was furious with Prometheus and chained him to a rock where an eagle fed daily on his liver. The liver regenerated at night and the eagle ate it again until one day the eagle was killed by Heracles and Prometheus was set free. According to Christian Genesis, when God kicked Adam and Eve out of Paradise they found fire. They liked fire, for fire gave them light and warmth.

But the Himba women believe that the moon shone with reflected light from the sun, but did not burn like the sun. In the daytime the women harnessed some power from the sun that became fire. Thus fire was discovered separately by women.

So women had fire and discovered roasting the meat of antelopes and zebras. The men soon realised that roasted meat was tastier than the raw meat that they had grown accustomed to eating. The roast produced fat, and when the fat was bound with pigment, the colour lasted longer than when mixed with water. But when ochre and fat were heated the colour changed. Instead of boring old monochrome, various shades of the same colour; the women introduced polychrome, many colours. They retrieved charcoal for black and it was mixed with fat or blood. White was

obtained from gypsum, and from some plants that obligingly produced white fluid.

The women took enormous care of the fire; it was kept burning, and at any hint of rain, the embers were promptly collected and moved into the far recesses of the rock shelter. They also carried the embers from one settlement to the other. It was easier to carry some embers than laboriously start fire from scratch using special sticks, stone and tinder to startle a small flame into action. On arrival at a new site before the travellers retreated into their rock shelters, and the fire was lit for warmth and roasting meat.

Then the women discovered edible tubers that could be left under hot ashes to bake, and herbs and seeds that added spice to the roast, and improved the flavour. The spices made the men come back for more meat and stay longer under the shelter. The children discovered insectivorous plants, and collected all the insects within the plants for food.

The women were the chiefs of the group, and descent was and is still matrilineal in some communities, but they were too clever not to argue with the men; for two or more men could help to fertilise a woman, when sexual hospitality was offered. The children knew where the food came from and who looked after them when they were ill. During the initiation ceremony into adulthood, boys learnt how to be men like the ones who provided meat, and girls learnt how to be wives and mothers. The sisterhood passed the secret of the herbs and seeds and sexual hospitality to their daughters, but not to their sons.

One day, the boys who were learning to be men brought back some baby animals as gifts for their mothers and sisters, and the women raised them until they noticed that some produced milk, and they gave some milk to their own babies. However, the milk from animals could be contaminated, it would 'spoil' very quickly if not drunk as soon as possible when taken from the healthy animals. The women thus discovered milking and the making of yoghurt: men did not.

Some groups domesticated a few small animals, goats and sheep, but their big animals, the lions, the leopards and elephants and giraffes were

not suitable for domestication as servants of human beings. Even today they still refuse to be domesticated.

The lactating women produced milk, and their milk producing organs were visible in the rock art, and so too were their large bottoms in lieu of fleece and grass for bedding. Painting and engraving were the only fun and games for clever women. Pager (1989:86) also noted that the proportion of women depicted is remarkably high: they make up 21.6% of human beings whereas men constituted only 9.5%, the remaining 68.9% are indistinct humans. Only women who had observed one another very closely could have replicated themselves and their daily lives on the rock shelters. But sometimes the men were persuaded to partake of such effeminate activities as painting and engraving on the roof of the shelter, at high levels, while the women painted at eye, arm and ground levels. The women also taught their gifted daughters the art of painting and engraving: art for art's sake.

During their seasonal migrations and when they returned to the same rock shelters, the survivors chiselled in more animals and added another layer of colour on the parts that had faded or peeled. More human figures were also added. The men could be distinguished by their erect fertilising phalluses that propped up the species. Anyone who could not recognise the deflated phallus would not miss the scrotum. The phallic shapes of some plants were appended for artistic effects. The pendulous penis of the elephant in musth could be seen in some engravings and paintings. The women engraved all forms of human locomotion as seen by them: sprinting, walking, jogging, jumping, and crawling. They engraved kneeling figures, standing figures and women in squatting, normal birth, position to deliver babies. The squatting position was far easier for the pregnant woman to discharge the child. In order to make her contract and push, herbs were inserted into her nostrils and the vigorous sneezing produced the uterine contractions that pushed out the child. If the child was congenitally physically disabled and not likely to develop the necessary physical skills for survival, it was left face down.

The women also carried out antenatal care. They prepared herbs for women prone to miscarriage, and for women who could not conceive.

Women were the birth attendants who looked after mothers and newborn babies. They did not insert their paint stained hands into the vulva of the squatting woman; thus they did not introduce infections. More herbal remedies were given to prevent puerperal infections hence many babies survived. Babies born with congenital physical abnormalities would not survive the group's long rigorous pattern of seasonal migration in search of spring water and meat. They had to match their lives against the elements as well as the animals that knew how to attack them.

Breast-feeding lasted until the arrival of another sibling who would chase the older baby from the mother's milk. The deposed child was put on semi-solid meat chewed by the mother and regurgitated into the youngster's mouth. It was the women who made hunting life easier when the men learnt how to make arrows from the quiver tree, kokerboom, and gave men poisoned tips for arrows. Even the youngsters' circumcision surgery was treated with herbs by the women.

When some members of the group had fractures from falls, or if animals had mauled them, or they had external wounds, dysentery, malaria and hosts of helminthic diseases, most did not require the services of shamans, as modern rock art writers have declared. The whole group could not have held such superstitious beliefs. Like human beings of today, some women and men were programmed by their brain cells to adopt a very sceptical attitude to superstition or shamanism. If all Stone Age women had relied on shamans for their health care, the human species in Africa would not have survived, and survival was important. Children would have died of childhood diseases before the shaman could have cured even one of them. The women had herbal medicinal knowledge that today's ethno-pharmacologists have proven to be effective and Faculties of Pharmacology have started investigating local pharmacopoeia and researching the potency of the various herbs.

Medical pluralism has not reached remote areas of the world. Vast areas of Africa do not have modern health care for the indigenous population who still look after their own health, and rely on the herbal prescriptions handed down by the women. For a simple example from

fieldwork; the ovaHimba attribute diseases to three categories of causation:

- natural causes
- supernatural causes
- breach of taboo.

Dysentery, malaria and colds have natural causes and they can be cured. Attempts can also be made to cure illnesses produced by witchcraft and poisoning or suspected poisoning. But the breaking of a taboo was very serious, because the men who committed the breach, and his *eanda*, (matrilinal group) were inviting serious illness. Incest is a taboo that prevents a man from fertilising his own mother, daughters and sisters; this breach of taboo would lower the birth rate by sterility. Thus an incestuous relationship would invite swift punishment from the ancestors who had been and gone. But if the incest taboo were breached unwittingly, then the ancestors would not send illness and sterility. The ancestors would punish the offender here and now, almost immediately, not when the person is dead and buried. What was the point of punishing a lifeless body?

There are several *otjiwondo* (age group, age-set) taboos about the killing of certain *were* animals. If an *otjiwondo* is named after an animal, the animal would become sacred to members of that particular age-set, and the meat of the icon should not be eaten. The killing of an *otjiwondo were* animal would result in illness to the killer and his *eanda*. This concept is very familiar to many societies outside Africa.

Since ovaHimba herders started living cheek by jowl with their tamed animals and sharing water and *onganda* with them, new diseases have developed. From the long experience of ovaHimba health care, these natural illnesses that occurred were treated with herbs. The illnesses caused by witchcraft and poisoning were also treated; however, the treatment was of uncertain efficacy, because the bewitcher's power or the guilt of the patient could undermine the potency of the herbs. Witches inflicted pathogens of diseases through the unconscious, and they did not like being seen - accordingly, they operated only at night. Thus, the afflicted could be treated in the haunts of witches, in woods, ravines and

dry riverbeds during the daytime. Men who were unable to kill animals, and women who could not have babies or after a bout of malaria or women who were prone to miscarriage were also treated and given herbal potions.⁵ But the breach of a taboo was not treated, it was very important that the punishment should take its course; it was a form of social control and quick divine dispensation of justice.

In the cases that I witnessed during fieldwork, the traditional healer remembered the patient's history, or she took the history and performed a physical examination of the patient. 'Is it here? There?' She pressed on various locations on the body and looked into the patient's eyes for signs of pain or distress. The herbal medicines were then administered orally or as an enema if the patient talked of having worms in his stomach. The treatment for snakebite was dealt with by the older women. They were usually around most of the time. A tourniquet and a strip of goat skin was applied just above the site of the bite before the surrounding tissue was cut out with a sharp implement to let out the blood and venom, then the wound was sucked and the blood and venom spat out. In their high mountainous terrain, people were very susceptible to fractures, and the older women were the bonesetters, setting the fractures and then allowing nature to take its course. I once saw a Himba man back on his donkey a short while after a fractured femur had been set.

Thus the rock artists were very clever; their cleverness was in not letting the men know that they were clever, but in making men believe that they were the clever ones. The group was kept alive by the women's herbal knowledge and thus prevented epidemics. They did not stay too long in one place for the 'shamans' to interfere with their herbal remedies. African shamanism is implausible in terms of the herbal knowledge of the women.

We have travelled a long way from the Stone Age women who, in my view, were the super artists of the rock art. Today, men know that the women of this world are just as clever as they are, and are gradually admitting that the Later Stone Age women could have ground and mixed

⁵ H. M. Giles et al (1969) *Malaria, anaemia and pregnancy*.

the colours, painted and incised the rock without the dreary nonsense of shamans that many rock art writers have engraved on Africa.

1.2 The Portuguese *marinheiros*

The Portuguese had been trading in the Guinea Coast since about 1481. Diogo Cão and his *marinheiros* were the first recorded Portuguese to land on what is now known as the coast of South West Africa. Diogo Cão's first voyage beyond the equator and the Kongo River was between 1482 and 1484, when the Portuguese persuaded the ManiKongo (ruler of the Kongo) to become a Christian. Cão took stone cross markers, *padrões*, that the *marinheiros* used to delineate their stops along the African coast line, thus demonstrating that they were the first Europeans to land on that particular stretch of land in Africa. On the stone cross, the *marinheiros* incised the date of their arrival and the new Christian name of the coast where the caravels had landed. They bartered textiles and mirrors for gold dust, ivory, slaves and pepper. According to a Chronicler, if the natives did not understand Portuguese that was too bad. Cão simply resorted to the traditional solution. For example, when the caravel crew reached the Kongo, in Chapter XIV, the Chronicler wrote:

He detained some of the people who had come aboard the caravels and took them back with him to Portugal. After they had learnt the language, customs and intentions of the King of Portugal and his Kingdom, they would return to their country and, through them, the affairs of each side would be easily made known to the other for, on account of the diversity between their two languages, no other solution was possible.

João II had ordered that a fortress should be built at São Jorge da Mina, (St George of the Mine) in the Gold Coast (Ghana). It is now known locally as Elmina. The purpose of building the fortress was to exploit the gold fields, as well as to protect the mines from other European powers.

During Diogo Cão's second voyage 1485 – 1486, Barros (1552) recorded that Diogo stopped at São Jorge da Mina on the way to the

Kongo to exchange the native hostages for the Portuguese who had been left behind. Cão reached approximately 22° S when he visited the coastline of South West Africa. After such a long time sailing the Ocean, they would have rested before sending out an Exploration Party for fresh water and food. Researchers would have liked to read documents of how the *marinheiros* spent their time after they had mounted the *padrão* in the area that they christened Cabo do Padrão known today as Cape Cross. Did they go ashore? It was recorded that in the Kongo during the first voyage, the *marinheiros* met some natives, who were not 'ferocious' cannibals. Accordingly, did the *marinheiros* meet any natives in the vicinity that they named Cabo do Padrão? Did Cão and the crew of the caravels and their horses venture out into the hinterland?

However, Bartholomeu Dias continued the exploits of Diego Cão, and in 1487, he anchored at Golfo de S. Maria da Conceicao (Walvis Bay). Further south of Walvis Bay, the Portuguese found a little bay that they christened Angra Pequena and was later renamed Lüderitzbuch by the Germans after Adolph Lüderitz, the German merchant.

Cabo do Padrão is only about sixty plus kilometres along the modern super highway from the beautiful arid landscape of Uis and the Dâures mountains to Henties Bay. The Dâures Mountain, approximately 2,500 metres above sea level, is visible from Cabo do Padrão and still beckons strong young climbers to get to the top for the view and excitement. Why should one not climb the mountain? Did the *marinheiros* voyage all the way from Lisbon to the coast of South West Africa simply to erect more *padrões*, stone crosses? The crew would have mutinied. Did the colour gold of the mountains, and the exotic flora and fauna that they could see from the caravels lure the voyagers inland? Did they collect sealskins? Did the *marinheiros* cross the mountains to see what riches lay on the other side of the Dâures Mountain? Barros recorded that the Portuguese *marinheiros* were always searching for natives to barter trinkets for their local produce, spices and ivory - or pillage and rape?

Sometimes the Portuguese searched for the mythical Prester John who had a vast fortune in gold, and if they could not find him they converted native souls. Although the Guinea Coast, which then included the South

West was known as the white man's grave, Boxer (1965:27) noted that there was no 'angel with a flaming sword of deadly fevers, who prevents us from penetrating into the interior to the springs of this garden, whence proceed these rivers of gold that flow to the sea in so many parts of our conquest'. If there had been hostile natives and a flaming angel outside Cabo do Padrão; the chronicler would have recorded at least one incident.

According to Mossolow (1955:91) during construction work in Swakopmund in 1952, a rusty old sword was unearthed at a depth of one metre. It measured 1.03 in length and 6cm wide. The length of the handle is 14cm and its crosspiece 14.5cm. The sword was not indigenous. As it bore the hallmark of a European craftsman, the sword was sent to Europe for expert identification.⁶ The prompt reply was that the rusty old sword was a 13th century Portuguese sword. A miniature bronze sword sheath caked in salt was also found in Cape Cross. The length with its chain and medallion is 12cm. The medallion has a bearded helmeted Portuguese head. The lost sheath and sword must have belonged to the *marinheiros* who went ashore. Did they encounter any indigenous people or did they take cover?

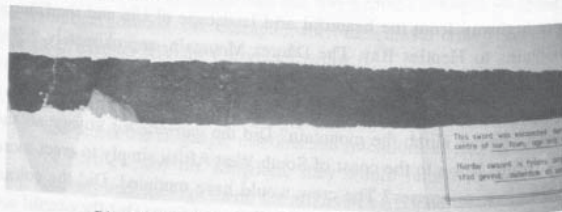


Plate 5: Rusty Portuguese sword, 13th Century.
Swakopmund Museum, Namibia.

One must recall that Diogo Cão, and Bartolomew Diaz and their *marinheiros* visited Africa when covens of witches were still being harassed and burnt in Europe. Witches, mostly women, were believed to have psychic powers as well as an oral agreement with the devil who had

two phalluses and seduced witches. The Christian church blamed witches for their children's disabilities and mercilessly persecuted identifiable witches. European Christian women who were unfortunate enough to give birth to physically disabled children were branded as witches and some congenitally disabled children and their mothers were incinerated to purify their souls. The essential cleansing by fire was a continuation of the eternal damnation that awaited them.

It would be guesswork to add that the *marinheiros* who had climbed the Dâures Mountain and reached the rock shelters and who had a taste for figurative art possibly retouched the painting of the procession with the pigments and implements strewn around the shelter.

Other Europeans were slow to get on their sailing ships. But after the Portuguese voyages to the Guinea Coast, the Dutch seal hunters and merchants of guano deposits followed them. At that time the guano deposits were the only known source of fertilisers that were rich in nitrates and phosphates. Many European traders who had enriched themselves from the guano and sealskins did not return home.

After the Dutch settled in South Africa, several expeditions were organised to the Transgariëp, Grinqualand, Namaland and Otjimbingwe. A British Foreign Office Document (1919:10) recorded that the first journey into the interior of South West Africa was probably that of Van der Stell, Dutch Governor of the Cape, who made his way into Namaqualand in 1685. Traders and missionaries sometimes accompanied the travellers. The Wesleyan missionaries who were no hermits built a mission house at Warmbad in 1806 and lived near the natives. But the missionaries were sent packing by Jager Afrikaner in 1811. However, the mission at Otjimbingwe in the shadow of the Dâures Mountain is of more relevance for our purpose to make connection with the super-artists.

Otjimbingwe, the name meaning 'the sight of this spring refreshes human heart', had a good water supply from the Swakop River and its tributary the Omusema river, 'the living fountain'. Otjimbingwe was not too far from Walvis Bay by-the-Sea, and there were boats to take the missionaries and merchants back to South Africa whenever it became necessary. Before wagons were introduced for postal delivery to the

⁶ Museu Nacional de Arte Antiga. The sword and sheath are in the Swakopmund Museum.

missions and administration, the post runners, 'light-footed native pedestrians', took about ten days from Walvis Bay to Otjimbingwe.

Missionary Johannes Rath set up a mission station at Otjimbingwe in 1849 among the pastoralist ovaHerero. He had wanted to change the name Otjimbingwe to Wilhelmfeste but the ovaHerero would have none of it. Accordingly, in deference to the merchants and travellers who had been there before him, the name Otjimbingwe was retained. Rath grew wheat with 'imported plough'. He had planned to stay for a long time to convert the natives to Christianity. But his wife and four children drowned in a shipwreck in 1861 on their way from Cape Town to rejoin him. Rath left Otjimbingwe. Then the 'copper diggers' and traders moved in and the sale of liquor began in earnest; the exchanges of cattle for hot drinks in the natives' bellies. Otjimbingwe became a very important European trading town, and when Charles John Andersson from Sweden 'leader of native savages in darkest Africa' opened a store, the usual dispute broke out between the traders and the missionaries.

Missionary Hugo Hahn (1818 – 1895) succeeded Rath in 1864. On 18 October 1865, recorded Lau (1987:140), the foundation for the church in Otjimbingwe was laid. The missionaries and traders also built a powder magazine with peepholes and firing ports to protect themselves should they ever be attacked by the natives.

Did the travellers, missionaries and copper diggers venture into the Dâures Mountain for fresh spring water? Did they see any rock art? Did some of them superimpose their art on the existing art?

1.3 Foreigners are seduced by the devil they know

As a result of colonialism and apartheid scholarship, the positive aspects of African customary law and its contribution to other legal orders of human beings throughout early history have not been emphasised. Apart

from ancient legislations,⁷ other sources of law were customs, juristic opinion and judicial precedent. Whereas there is a constant outcry from the academic right against some minor negative exposures of African customary law, for example, polygyny, bridewealth, or female and male genital surgery, it is essential to explain that other human societies have also had polygyny, or monogamy with *concubina* and husbands consorting with prostitutes and union with the housemaids. Some societies had bridewealth, dowry or expensive engagement and wedding rings. In some cultures, women have been mutilated by male surgeons to 'cure' their hysteria⁸ and turn the women into chaste wives. Some societies bound the feet of little girls as an aid to chastity so that they could hardly totter around to a rendezvous. Some had chastity belts, veiling, purdah and female genital operations; these are all reactions to men's quests for virginity in brides and chastity in wives. Bridal virginity represented the family honour; a gift of immaculate commodity that the men could bargain with for a legitimate heir. If the bride did not preserve her virginity for the husband's defloration, a dishonoured bride was treated almost like a maid. Her mother-in-law's tongue would forever lash and taunt her. A high-status man who married her could offer her to other male friends for sexual hospitality. What had she that others had not taken their fill of? 'As we know you love men, here you are, have a whole village of them'. If she did not consent to sex, several held her down while they took turns. It was virginity and not consummation that constituted early customary law marriage. Accordingly, the old women excisors reminded each other, during genital operation or infibulation to preserve virginity, it was better to be dead than dishonour the family.

However some positive and some negative aspects of African customary law have survived into the twenty-first century, because they give meaning to the adherents' lives. Scientific developments and social

⁷ The most famous being the Code of Hammurabi (c1792-1750 BC); The Ten Commandments inscribed by God on two tablets of stone and given to Moses on Mt. Sinai and the Roman Twelve Tables (451 / 450 BC). See Okupa *A Bibliography of African Customary Law*. LIT for the International African Institute.

⁸ Peter Stothard (1999). *Women at our mercy*.

changes bring about modifications in some communities, but others continue to harness the positive attitude of their Stone Age ancestors' inventions for their own survival.

The rock art of Africa, the Mosi-o-Tunya or the Victoria Falls in the quadripoint for example, have been there since millennia and most local people knew their whereabouts before they were spectacularly 'discovered' by European travellers weakened by malaria who were carried to their discoveries by skilful natives.

As explained earlier, there are thousands of rock art sites in Namibia. The form and content of nearly all of the rock paintings and petroglyphs are basically the same except for the distinctive composition of what has become known as the procession of the 'White Lady of Brandberg' in the Dâures Mountain.⁹ The White Lady of Brandberg is stylistically different from many of the rock paintings in the whole of Southern Africa. Here, one agrees with Breuil (1948:5) when he noted that:

A study of the figures composing it shows it was executed at various times by varied artists each having a different palette and ideas, leading them to retouch the pre-existing paintings and modify several times the racial type, e.g. surcharging a Negro profile on a European face.

There are other rock art sites in West Africa, in Botswana and South Africa, Tanzania, Uganda and Zimbabwe, but the 'White Lady of Brandberg' of Namibia is an unusual representation. There are thousands of rock paintings in hundreds of rock shelters, but I shall only discuss the famous 'White Lady' of the Tsisab (leopard) gorge, and how she acquired either her fame or notoriety from her city of rock shelters in the Dâures Mountain. She is of historical interest to customary law.

After Germany hoisted its flag in South West Africa, Dr Heinrich Göring from the Foreign Office was appointed as the Imperial

⁹ There is also the White Lady of the Deighton River in South East Cape York, Australia. I do not know if there are any striking resemblances between the White Lady of the Brandberg and the Deighton River White Lady.

Commissioner for GSWA.¹⁰ In August 1885, Dr Göring, who had a PhD in law, was accompanied by two other officers to South West Africa and landed in Angra Pequeña. They then established themselves in the mission schoolhouse at Otjimbingwe amongst the missionaries and traders. Dr Göring tried to enter into 'Protection Treaties' with some of the chiefs, but Captain Hendrik Witbooi refused to be terrorised into signing any treaty. Resentment against Dr Göring started to brew when he tried to control the sale of liquor and ammunition to the natives. The few Germans found themselves battling against the natives and the European traders. The Germans ignored the traders' request to let the natives be.

In 1888 the first skirmish between the natives and the German administrators of Otjimbingwe broke out. The missionaries and the European traders took cover inside the powder magazine from the marauding natives. But it was beneath the dignity of the Imperial German Commissioner, Dr Göring, to hide in the powder magazine. Accordingly, Dr Göring promptly marched from Otjimbingwe, then took the ox-wagon to Walvis Bay and sought asylum with the British.

German administration in Otjimbingwe disintegrated. Chancellor von Bismarck was not amused by the antics of the natives. Bismarck was a wily old politician who anticipated more troubles from the natives. Thus while Bismarck was negotiating with the British to secure access from Lake Ngami to the upper waters of the Zambesi, a protection army, the Schutztruppe, was convened. The Schutztruppe consisted mainly of officers from the Ingenieur-Korps (Engineer Corps) and Fortress Construction (Festungsbau-Offiziere) who had volunteered to go to GSWA. They were put under the command of Captain Curt von François, 'the very epitome of a Prussian Officer', for his bravery. Drechsler (1986: 63.n.149) recorded that François received oral instructions from the Wilhelmstrasse 'to intimate that we are contemplating the construction of a railway line leading inland from Angra Pequeña'. The German Expeditionary commander and his well-disciplined twenty-one men crew were dispatched 'to restore order in Otjimbingwe, as well as the prestige

¹⁰ Dr Heinrich Göring (1839 - 1913) was the father of the Nazi leader, Hermann Göring. Drechsler

of the German Empire', but not to use force against the natives. But the Schutztruppe's main covert imperial operations were to map out GSWA, then design and construct fortresses. Ostensibly, the young men were travelling through GSWA as an Expeditionary Force to the upper waters of the Zambesi. For it was certain that the British who were stationed in the Port of Walvis Bay would not have permitted the Prussian commander and his well-trained men to trickle in on 24 June 1889.

There were no valid arguments for Captain Curt von François to return to Otjimbingwe, as the Imperial Commissioner, because Dr Göring had deserted the station. However, Curt von François and his men found Otjimbingwe too volatile. They were not welcomed in Otjimbingwe. After about a month, Captain von François and his men moved out of Otjimbingwe and set up a military settlement at Tsaobis, a well-watered attractive belt at the junction leading towards Tinkas on the 'Bay Road', the great ox-wagon route. Tsaobis was a water-hole trading station between Walvis Bay and Otjimbingwe. The qualities of Tsaobis that had attracted the natives had also attracted the Schutztruppe. Von François named Tsaobis, *Wilhelmsfeste* — a neo-Berlin. The cattle track that became the ox-wagon gravel road was an important ancient trade route at the crossroads for rivers, land, and the Atlantic Ocean, before it became *Wilhelmsfeste* military post. Some of the natives took to the other side of the mountains. As François rightly reminded the Germans, he wrote, 'that the natives were the owners of the land, free to do as they pleased, could not be disputed by words, but only by armed might'.¹¹

The very ambitious Captain Curt von François and his men carried out relief and survey reconnaissance of the territory, and native population density of places that would be suitable to build fortifications (*Schanzen*). Gradually, Germany increased the numbers of its invading shock troops, the Schutztruppe Expeditionary Force, because the natives' defences against the Schutztruppe were tropical diseases of all sorts. While some of the Schutztruppe widened the old trade route, a detachment was sent up country and with the aid of a few local men, the Schutztruppe built

¹¹ 1986: 60, n. 921.

their first stronghold, which they christened Fort von François, for cavalry and draught oxen.¹²

Captain François continued the orders that had been issued by Dr Göring under the Ordinance Concerning the Importation of Firearms and Ammunition into the South West African Protectorate, which provided that no more arms or ammunition should be sold to the indigenes. There were further clarifications of the application of the Ordinance. In accordance with paragraph 11 of the Act Concerning the Legal Status of the German Protectorates of 15 March 1888, ('Reichsgesetzblatt' p. 75), and paragraph 2 of the Terms of Reference concerning the Administration in Law of the South West African Protectorate of 27 August 1890, the following rules would apply:

Paragraph 1

The importation of firearms, ammunition and gunpowder into the South West African Protectorate is prohibited, except in the circumstances set out in paragraphs 2 and 5.¹³

Paragraph 2

The Imperial Commissioner may grant permission to import weapons, ammunition and gunpowder to (1) person who can provide a satisfactory undertaking that the weapons, ammunition and gunpowder will not be given, left in the keeping of, or sold to a third party; (2) travellers who can provide certification by their government that the weapons, ammunition and gunpowder are intended solely for their personal defence.

Paragraph 5

The Imperial Commissioner may grant permission to import muzzleloaders, and coarse-grained gunpowder to such persons as have been licensed to trade in such goods and

¹² Drechsler (1986:43) interpreted Curt von François. *Deutsch-Südwestafrika*, p. 49.

¹³ A. Vogt (1995:207).

¹³ For the original German text see *Kolonial-gesetzgebung* vol. I, pp. 318-319.

who have supplied a detailed list of the quantity to be imported.

Thus, at Tsaobis junction, Captain von François incurred the wrath of some of the Herero trading chiefs, because their wagons from the British port of Walvis Bay to Otjimbingwe had been stopped by the Schutztruppe and searched for arms and ammunition. The chiefs resented the unwarranted interference with their ancient trading routes. More trouble was brewing with the chiefs who were herders and who decided that the Schutztruppe would make their graves and not their homes in Tsaobis.

Then the Schutztruppe did a sudden disappearing act. They transported their ammunition and food supplies by ox-wagon through Otjivesa and Okapuka non-stop to the small Fort von François in Khomas Hochland, about sixty kilometres from Otjomuise, because the fort at Otjomuise was still under construction. Although Townsend (1930:288) stated that Bismarck was reputed to have said: 'We do not contemplate establishing garrisons in the colonies. Such a system is not suitable for us', the Schutztruppe constructed several fortresses. When another wave of Schutztruppe crossed the ocean and landed in GSWA, the Captain and his men moved them inland from troublesome Tsaobis, to Otjomuise renamed Windhuk. What were they doing in Otjomuise? The argument was that Windhuk would be a far better military settlement. 'It is beautiful in Windhuk' and would be safer for the Schutztruppe. The Schutztruppe would then be poised between the Witbooi Nama and the Kamaharero ovaHerero, and set them at each other's throats.

The Captain must have learned a few things about the indigenes, because that knowledge dictated where he constructed the forts. The Fort in Windhuk popularly known as the Alte Feste, is a rectangular stone structure built in the style of an early Roman military garrison. The strong rectangular walls protected the waterhole, their only source of water supply during a siege. The fort was built on top of a hill that overlooks the surrounding land for several miles. A lookout tower was also constructed on what is now called the Eros Mountain to protect the spring water. There were other various lookout posts around the surrounding mountains to protect the few German economic migrants who had moved

in behind the Schutztruppe. The Windhuk fort had four watchtowers and several firing ports on every side. There were about 54 rooms. The completed fort appeared to the ovaHerero like an enormous wagon drawn by four horses.



Plate 6: Some Schutztruppe and horses.
Roth. National Archives, Windhoek, Namibia.

The post relay runners' mail delivery time from Walvis Bay to Windhuk was cut to eight days. This meant that there were more mails from home and South Africa. The postal changeovers were at Tsaobis and Otjimbingwe and then at Fort von François. By 1893, the construction of the Alte Feste fort was completed and Windhuk became the new administrative capital instead of troublesome Tsaobis. The Schutztruppe tried hard to establish a settlement, but the trouble was that Otjomuise was already occupied by many natives, more numerous than the Schutztruppe. German women were encouraged to migrate to join the men, but when some heard about the diseases, the tropical heat and fortified settlements that awaited them, they would not risk everything to sail the ocean and join their men. Licentious Schutztruppe turned their lust on native women who had no law to protect them. Many Schutztruppe seducers had acquired several pretty native women and had several children who spoke German as well as their mother tongue. The Schutztruppe who were not busy 'scattering their seeds' were frequently drunk so that the small fort François, since vacated by the Schutztruppe, became a *trockenposten* (a drying-out health spa) for Schutztruppe alcoholics.

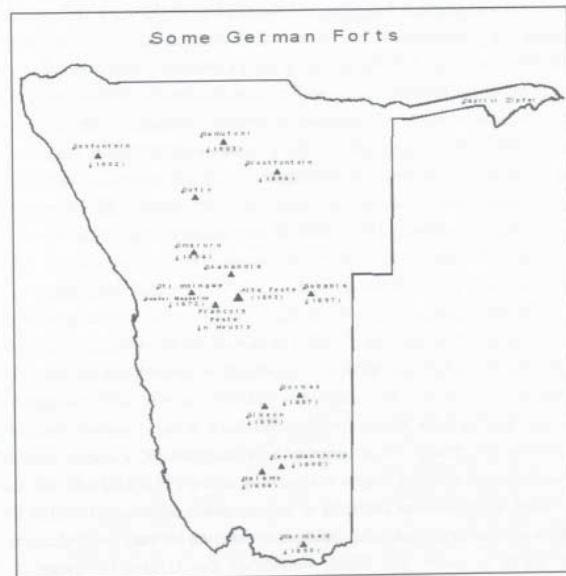
The Schutztruppe constructed many other large-scale military posts and forts across German-occupied South West Africa. Construction of these fortresses clearly meant, 'We are here! And we are here to stay!' Each fort had about 120 metres of cleared land around the perimeter. The fort at Grootfontein was completed in 1896 and Fort Naiams near Seeheim, between Luderitz and Keetmanshoop was built in 1898 and Fort Warmbad was added later. Fort Namutoni and Fort Tsumeb near the ancient copper mines protected the northern territory against the Owambo. There were also forts at Okahandja and Omaruru, which were high-density native population areas. Fort Sesfontein in Damaraland was completed at the beginning of 1902. Germany had ring-fenced its territory with forts and lookout towers.

All the forts and lookout posts were connected by heliographs (used for signalling) and some had artillery sighting and ranging instruments. These ensured that all the fortresses that spanned the hostile Herero, Nama and Damara territories were linked together.

On completion of their active service in GSWA, the Schutztruppe returned to civilian life, but others stayed on in their new-found land as reservists. They were called the reservists, because they were prepared to be called up again for service, and were obliged to attend eight weeks of annual refresher courses. These men were trained soldiers who were neither interested in civilising the natives, nor in their political freedom nor in their Christianisation, but in commerce - making money from land. With the little capital that they had saved up, they could make more money in a year or two by farming and raising cattle.

However, Britain refused to give up its possession of Walvis Bay to Germany. Accordingly, in 1893, Germany decided to develop Cape Cross Bay as a port for German South West Africa. While determining the navigability of the Bay, Captain Becker found the Portuguese *padrão* that time had knocked off its historic pedestal. According to Vogt (1995:82), Becker appropriated the *padrão* and took it back to Berlin, where it was displayed at the Institut für Physikalische Hydrographie of the German Academy of Sciences. The *padrão* has since been transferred to the Museum für Transport und Technik. When the administration in South

West Africa decided to commemorate the five-hundred-year-old visit of the Portuguese *marinheiros*, Mr Coetzee, the Director of the State Museum in Windhoek commissioned a replica of the *padrão* which was then erected near the Portuguese primary site of the cross.



Map 1: Some German Forts.

The issue of interest is who were the interlopers who gave the original rock painting in the Dâures Mountain a makeover into what has become known as the 'White Lady procession'? Breuil (1946:4) also recorded that Maack saw three successive levels of superposition of frescoes, and Breuil himself noted probably as many as eleven levels of superposition as foreign influences. Who were the trespassers and intruders of the rock shelter? Who painted the White Lady?

The original indigenous rock painting could have been superimposed and altered by the intruders who found themselves in the shelter within the last five hundred years and reproduced ideas from their own culture. They had no intention to defraud. They simply aggregated their own emotional and cultural baggage and superimposed them on the existing rock paintings. Breuil (1955:15) was clear. He noted that:

On the other side of the Kalahari, I visited the vast cave of Wonderwerk near Kuruman (Bechuanaland), which has been excavated by Dr B. Malan of the archaeological survey, Johannesburg. The results of my research there were highly significant. None of the shelters contained any paintings, which showed the slightest connection or contact with those of the Brandberg, 500 – 600 kilometres away. The zone of the paintings, which show the characteristic style of the Brandberg, is, therefore, rather limited even in Southwest Africa; it appears not to extend beyond a distance of 150 kilometres to the north, south and east of the Brandberg.

The beautiful Däures Mountains could have attracted explorers and hunters, missionaries and merchants and anyone else with an eye for natural splendour. The human beings who could clamber up and down the ravines in and around Otjimbingwe, Omaruru and Okombahe, and the mining town of Uis could have reached the shelter. The wild animals and the exotic plant species could have baited observant people towards the direction of ancient footpaths that led to the rock shelters. And there are rock pools of water and edible berries on the Däures to reward the climbers.

In GSWA, some merchants and Schutztruppe hunted down large animals for sport, whilst a few people explored the unusual flora and trees like the quiver trees, camel thorn and the baobab – this last's girth fascinated the economic migrants. Some people might have seen the rock paintings and engravings without understanding their significance, whilst those with an artistic eye could have seen that the engravings and paintings were exceedingly beautiful representations of the cultural life of the human beings of long ago. Why would the indigenous super-artists

impose European features and fancy garments on a white lady in a procession? Who or what is the mysterious white figure that attracts thousands of artistic tourists from all over the world to the Tsisab gorges?

In the long processional composition of the White Lady, the central character is a striding or a dancing human figure - dancing, because of the relationship of her feet to the audience. The figure's twisted hips result in the left leg and feet turning clumsily sideways. The figure is not doing a barefoot walk or a barefoot dance. The soft white ballet shoes or crepe-soled shoes do not show a left or a right shoe, as both shoes are identical.

The height of the figure is about 15¾ inches and it is painted wearing white tights that stretch from the midriff down to the knees with dark gaiters, then fully stretched to the soft white shoes. The figure is wearing a short white under-skirt, not a fluffy tutu, held round the waist by a fancy dark cummerbund against the pristine white tights. A phallus is visible. The dark boatneck blouse has puff sleeves held tightly by coloured armbands the same width and colour as the cummerbund, the gaiters on the knees, and the distinguished bellyband. The figure, with its masked face, is sporting shoulder-length hair, braided and decorated and has a strung bow and arrows strapped to the left wrist by what looks like a gauntlet worn by trainers of falconry. This painted principal figure is holding either a white flower or a white ostrich eggshell cup in the right hand in front of her. The mask does not enclose the figure's chalk white face. The white face of an oryx with its hind legs painted in black and white zebra stripes is positioned above the principal figure impersonating a woman.

Just ahead of the White Lady, a white figure, as well as a white cheetah, and an ostrich and other white-bellied animals are painted. In received customary law wisdom, white is significant, because white is the symbol of the new moon - white birds, white animals, white eggs, white shells, white flowers and a white ostrich. And that was how the figure at the Tsisab ravine got the title of the White Lady, because of the predominance of white. Breuil, who was a priest, christened the principal figure in the procession: 'The White Lady of the Brandberg', Breuil

(1955:3) added, 'I do not know whether she is Greek, Cretan or Egyptian; but that she is of Mediterranean race is certain'.

This main white figure in the procession has been misrepresented as a woman, and become the White Lady. Our clever indigenous women would not have been seen dead with strung bows and arrows going to hunt for meat. What were the men for? As far as the indigenes of the Dâures are concerned, the White Lady is not a woman. He is a man.

Various rock art researchers, successors to Breuil (1955) have interpreted The White Lady of Brandberg' as Diana the Huntress, the Roman goddess associated with hunting, because of the bow and arrows. The Brandberg virgin goddess has also been interpreted as the Egyptian goddess Isis, wife of Osiris, whose skeleton played such an important part in the Second Mystery of Egypt. Breuil (1955:12) continued the Egyptian theme that the black youth preceding the Lady carries a child's bow in his hand. The man of Horus (the child of Isis and Osiris) carried bows, and his 'spirits' were cranes and a stork. In the top register of the processional White Lady, there is both a crane and a stork (of an earlier age). An Egyptian page also accompanies the White Lady.

The central figure at the Tsisab ravine, the White Lady, was also said to be the Queen of Sheba travelling to Jerusalem to see for herself if Solomon deserved his reputation. Another hypothesis was that the White Lady of Brandberg was a female survivor from a shipwreck, who became a whore and turned all the men in her procession into docile animals. That is why she is carrying what looks like a white flower, but it is an ostrich eggshell chalice containing a love potion or poison.

Breuil and the other rock art writers after him have been seduced in their interpretation of the iconography of the characters and animals in the procession of the White Lady. According to Breuil (1955:9):

The costume worn by the White Lady, the principal female figure, is very similar to that worn by the girl bullfighters of the Palace of Minos at Knossos in Crete ... she wears a similar short-sleeved jerkin and trunks strapped with colour, and her head-dress, which covers the head and passes under the chin resembles those of the ivory figurines of young

athletes in the Palace, although it is more elaborate ... There are men of various races before and behind her.

According to Breuil's interesting interpretation, the principal figures in the procession consist of the crocodile man who is 14 inches tall, the black horned devil who was destructive, the horned devil, the White Lady, her young Egyptian page, the prince of darkness, the skeleton man, who is the tallest in the procession standing at 19 inches; the witch who prods the goddess from behind with her broom stick exercising magical power over her and a variety of processional animals. Is the White Lady being pushed towards the sacrificial altar? Ritual sacrifice? Breuil (1955:12), noting the difference in height and the great variety of human types and expressions, suggests that some of the paintings may be portraits. But portraits of whom?

Rock art was very important to the super-artists who painted and engraved the rocks. The artists recorded the significant things in their lives, men and women doing things with their friends and their animals. They lived in a society that recognised women's contribution to their world. It was the economic migrants and colonial officers who, to justify their view of their own superiority, described the descendants of the producers of the engravings and paintings as primitive people.

The economic migrants forced indigenous male herders to work on the farms and in the mines. The indigenous women of reproductive age had to go out to work too and, cooked, washed and cleaned the homes of the colonial madams. The indigenous women looked after madams' children, cooked and cleaned for them as well as carried out the same chores in their own homes; thus, they lost their creative leisure.

Today the rock art has been preserved as the artistic heritage of humankind. People descend from all over the world to gaze at the White Lady.¹⁴ Whether or not the White Lady was painted three thousand years ago, five hundred years or three hundred years ago, whether she is a woman or a man, it is still the cultural heritage of the people of Namibia. If the White Lady makes money for the people, so be it, because in the

¹⁴ Now enclosed by a secure iron stockade to prevent any more superimposition and destruction.

words of Breuil (1952:9) 'Eternally she walks there, young, beautiful and supple, almost Aryan in poise. In ancient times, all her own people also walked to contemplate her adored image and all went on walking for centuries, not only men, but oryxes, springbuck, ostriches, giraffes, elephants and rhinoceros swayed by her magic'.

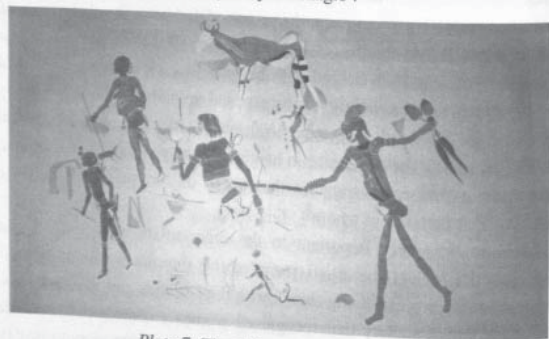


Plate 7: *The White Lady procession.*
Brandberg, Namibia.

Chapter

2

The hunt — lament for the elephant

Namibia became an independent sovereign state on 21 March 1990, after a prolonged, excruciating war of liberation between the South West Africa Peoples' Organisation (SWAPO) and the South African Defence Forces (SADF). Although the keloids of the war are fading, no sane person should ever forget the history of the occupation of South West Africa, Namibia. In order to understand the history of Namibia that should not be forgotten, one has to travel very far back in time into the pre-occupation era.

The passion of some Europeans to exploit the Africans and the resources of Africa as a means of making life far more interesting for themselves dates back to antiquity. Long before the transatlantic African slave trade, exotic African animals were the first to be exploited as popular gifts for Caesars and Kings. The animals were used for entertaining the public in amphitheatres, in circuses, and in *venatios* — that is, displays in the killing of wild animals.¹ The games and *venationes* are reminiscent of the physical excitement in our era of mass spectator sports like World Cup football, the Grand National and the final of

¹ In one of the animal shows, there was a *venatio* of 400 lions, torchlight parades of elephants, and the first appearance in Rome of the giraffe. When Trajan celebrated his Dacian triumph, spectacular ways of killing 11,000 animals were devised. See G. Jennison, (1937:56.62) citing Pliny, N. H. VIII 16(21), 55.

Wimbledon. Some of the ancient performances in the arena and in the provincial amphitheatres were recorded in murals and floor-mosaics.²

The hunt and gladiatorial mosaics depicted various endemic African animals like the giraffe, lion, leopard, cheetah, hippopotamus and birds such as the ostrich, turacos and the vulturine guinea fowl. African elephants with their long tusks and umbrellas for ears are easily identifiable, while the gentle giraffe towered above the procession of tribute bearers. Of all the animals, Christianity acquired the lion king as the potent symbol of its religious strength.

After the demise of the Roman empire, European princes and nobles developed menageries and aviaries. George and Yapp (1991:36) recorded that the holdings of Henry I's (1100 – 1135) menagerie at Woodstock in Oxfordshire contained lions, leopards, camels and a porcupine. King Louis of France sent Henry III (1216 – 1272) of England, an African elephant that Mathew Paris (c.1200 – 1259) drew. It is in the collection of Corpus Christi College, Cambridge.³ When the Europeans first visited Africa there was no scarcity of the massive quadrupeds.

Having killed off nearly all their own endemic grand animals, the European and American big game hunters, adventurers and collectors of specimens turned to the hinterland of Africa. They decimated the elephants so that the wives and children of the rich could have pianos in their parlours and nurseries. Gordon (1992:33) estimated that to meet this demand, between 1860 and 1930, 25,000 – 100,000 elephants were killed per year. The huge size of the elephants made them very vulnerable. The hunters and imperialists culled the elephants. Yes, some Africans too hunted game but it was for clothing and meat in order to conserve their domesticated herds. Many did not eat game meat because the flesh was considered unhealthy.

Furthermore, there were expeditions to the South West Coast of Africa by the Royal Geographical Society led by Sir James Alexander (1836).

² See for example a mural of 'Pygmies fighting crocodiles and a hippopotamus'. From Pompeii, Casa del Gallo. First century A.D. Museo Archeologico Nazionale, Naples.

³ See A. Dent (1976:3). Also see A. Datta (1995:39).

and Sir Francis Galton (1851) who made their way up country from Walvis Bay; whilst Charles John Anderson (1851) travelled further northeast into Hereroland and Owamboland. It was reported that Charles Anderson was the first person to christen the area north of the Orange river, South West Africa. Formerly, it was known as the South West Coast of Africa.



Plate 8: Lying alone on a dead elephant. *Speak now, and I will answer.*
National Archives, Windhoek, Namibia.

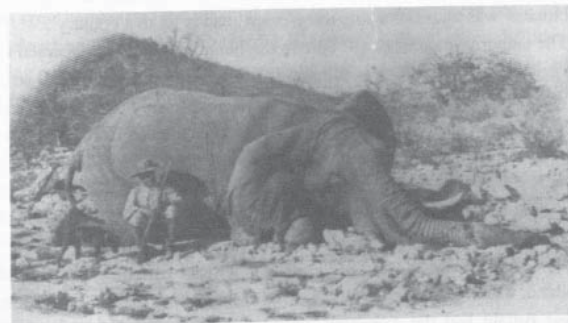


Plate 9: Awesome complexity of the elephant reduced to nothing.
National Archives, Windhoek, Namibia.

2.1 Place in the sun

It was after the abolition of the transatlantic slave trade that 'the scramble for Africa' really began in earnest. Then it became respectable for European states to annex lands in Africa. Belgium, Great Britain, France, Portugal and Spain appropriated large tracts of land in Africa, then they acquired African territory from each other. Great Britain acquired land in the Gambia from France in 1783 and, in 1850, Denmark ceded her ports in the Gold Coast to Great Britain who had already secured important territories in Sierra Leone, Lagos and along the river Niger.

The missionaries too, who followed closely behind the big game hunters, travelled from South Africa across the Orange river (named in honour of the Prince of Orange) into South West Africa. It was formerly known as the Gariep river. The London Missionary Society, the Wesleyan Methodist Missionary Society and the Rhenish Missionary Society amongst others were very active in Damaraland and Namaqualand in the 1840s. Dr David Livingstone (1813 – 1870) a medical missionary, whose first journey was in 1852 – 1856 trekked through Bechuanaland and Ngamiland to the river Chobe among the baSubia then to the baToka, 'who were then living in all their glory', wrote Livingstone (1857:86). Livingstone continued his journey by canoe and visited Sebituane, chief of the Makololo on the banks of the Chobe, and in Livingstone's opinion Sebituane 'was unquestionably the greatest man in all that country'.

The authority to annex and settle in the hinterland of Africa accrued to the European power that was the first to hoist its flag on any coastal strip of Africa. The European state then assumed sovereignty over the coastal strip, its hinterland and its peoples. The implication of this 'hinterland doctrine' in Africa was that European states should not encroach on each other's sphere of influence. Before the Berlin Africa Conference, there was great rivalry and dispute among the European powers who concluded treaties with the same African kings, chiefs and their councillors.

However Germany, unlike Belgium, Great Britain, France and Holland, had only limited experience of colonial free market capitalism. Great Britain had the American colonies, Australia, Canada, the Cape Province, India and New Zealand as well as many parts of Africa, but

Germany's only brief African exploit had been in 1683 when the Elector of Brandenburg hoisted his flag in the Guinea coastland. Wright (1913:138) noted that the Dutch government promptly bought out Prussia in 1720.

Nevertheless, it was not until the 1880s that Germany's imperial Chancellor Otto von Bismarck (1815 – 1898) was cajoled into acquiring colonies. German economists had argued that Britain became enormously rich and successful because of its overseas territories, and that Germany should emulate Britain, and provide land that was rich in mineral resources for its immigrants. Von Strandman (1993) has recently refuted the economic argument for Germany's 'scramble' for Africa. He has pointed out that colonial trade at the height of German colonialism was only one per cent of Germany's total trade. In view of this insignificant amount, Germany did not need colonies to increase its trade. What Germany acquired from her colonies towards the closing years of the 19th century was international prestige rather than economic profit. For it was Germany that had skilfully convened the signatory powers of the Berlin Africa Conference on 14 November 1884 – 26 February 1885, for the signing of the Treaty, the Berlin Africa Act.⁴ The Conference balanced the might of Germany and Great Britain.

Meanwhile in South West Africa, the German Captain Schering, and his crew had hoisted the imperial German flag in the territory acquired by Luderitz and given three cheers for His Majesty, the Emperor William I, King of Prussia. Germany then acquired the Cameroons and Togo in West Africa, German East Africa (Tanganyika, Burundi and Rwanda). Iliffe (1995:191) recently noted that Chancellor von Bismarck challenged Britain's regional hegemony by creating German South West Africa. In order to block the northward expansion of the Transvaal and to prevent a meeting between the Transvaal and German South West Africa, Britain declared a protectorate as a buffer zone over the intervening Bechuanaland in 1885.

⁴ For details on the signatory powers of the Berlin Africa Act, 1884 / 85 see Edward Hertslet (1896:317), Ian Brownlie, (1979).

Although Germany was a newcomer to colonialism, she soon quickly learnt 'the rules of the game'. Bismarck did not apply the rules by force, but by protection treaty arrangements (*Schutzverträge*),⁵ and by concluding treaties with the chiefs. Brownlie (1992) noted that Germany was following the practice of the British government of entering into treaties with kings in West Africa and East Africa and chiefs in New Zealand.

Nineteenth century colonialism was such that natives had no rights. Germany neither negotiated the text of the Treaty of Protection with the chiefs, nor its contents and the obligations. But the German lawyers acknowledged the capacity of the chiefs to conclude the treaties, by signing or putting their mark as their consent to be bound. The treaty was written in German. The interpreters as well as the persons designated to negotiate for his Imperial Majesty were missionaries.⁶ The chiefs had no copies of the text that had been interpreted for them by the missionaries and no comprehension of the obligations that they had imposed on their people. There were no provisions for amendment, modification and termination of the treaty. Was it a treaty, or a contract that the chiefs had concluded? Whatever it was, it created obligations for the natives yet conferred no rights on them, because Germany had no reciprocal duties.

Hendrik Witbooi (c1830 – 1905) one of the very few powerful African chiefs who kept a diary in Cape Dutch language from 1884 – 1893, noted:

I cannot grasp this business of Protection, which is to me difficult and downright impossible. So I cannot, and do not want to stand under you.⁷

Witbooi (1990:75-76) recorded a conversation between himself and Curt von François, the German Imperial Commissioner (1891 – 1893) and *Landeshauptmann*, land or country chairman (1893 – 1894).⁸

⁵ See Esterhuysen (1968:98).

⁶ See S Akweenda (1989) Appendices, B1: B2; B3; B4.

⁷ Hendrik Witbooi Papers (1990:137).

⁸ In the 1960s, the South African artist Hennie Potgieter was commissioned to produce a bronze statue of François later erected in Windhoek.

What is protection? What are we being protected against? From what danger, or difficulty, or suffering can one chief be protected by another? asked Witbooi.

From the Boers and other mighty nations, who want to enter this country by force, answered Curt von François.

Please understand, added Curt von François, that a chief is not deprived of his rights.

Witbooi replied:

When one chief stands under the protection of another, the underling is no longer independent, and is no longer master of himself, or of his people and country. He is an underling and all who are underlings are subjects of their protector because he is on top. He who is on top is the lord and master and chief of all that is under him. So, I see no truth or sense in the suggestion that a chief who has surrendered may keep his autonomy and do as he likes.

However, Article I of the German-Portuguese Declaration 30 December 1886, delimited the colonial boundary between the Portuguese territory and German SWA. This provided for a colonial northern boundary following the middle line of the river Kunene from its estuary to the top of the Ruacana falls. The boundary then stretched eastward in a straight line that ran from the parallel of the Ruacana falls to the middle of the Kubango-Okavango, then eastward to Andara then to Katima Mulilo rapids on the Zambezi.

The southern boundary separating GSWA from the Cape Colony was traced from the estuary of the Orange river to the 20th degree east longitude in Bechuanaland. The western boundary was the Atlantic Ocean. With the exclusion of British Walvis Bay, German territory stretched along the coast from the estuary of the river Orange to the Kunene, and the limit of the eastern boundary was Bechuanaland.

As was explained earlier, Germany built several forts from 1885–1897 and acquired the best land in the territory for its economic migrants. Curt von François did not barter with the natives over land; he simply used the Gewehr rifle. There was nothing Kamaharero, Manasse and other chiefs

could do against the Gewehr rifle. After opposition and resistance to the Treaty of Protection and Friendship, the chiefs signed or made their mark in the space provided by the treaty, then placed themselves under German protection.⁹ According to the account of oral historians, the purpose of the treaty was to take possession of the land. Rohrbach (1918:18) who was head of the Settlement Commission unusually agreed with the later oral historians that the decision to colonise means nothing else than:

The native tribes must withdraw from the lands on which they have pastured their cattle and so let the white man pasture his cattle on these self-same lands. If the moral right of this standpoint is questioned, the answer is that for people of this cultural standard of the natives, the loss of their free national barbarism and the development of a class of workers in the service of and dependent on the whites is primarily a law of existence in the highest degree. This was the thinking at the time of colonialism.

⁹ On the 18 October 1884, a treaty was signed between Germany and Bethany by which a German Protectorate was recognised over Great Namaqualand. (Herstlet 1896:318) Chief Manasse Noreseb of Hoachanas in Great Namaqualand signed on 2 September 1885. On 15 September 1885 an identical treaty was then signed between Germany and the Bastards of Rehoboth in Great Namaqualand, extending the German Protectorate over their territory; Kamaherero Katjamuaha, king of the Herero 21 October 1885; Omaruru acceded to an identical Herero treaty on 3 November 1885. On 21 August 1890, treaties were concluded with Willem Christian of Warmbad and Jan Hendriks of Keetmanshoop and in 1894 with Simon Koper of Gochas and the Swartboots of Fransfontein and Witbooi on 14 September 1894. For further details see Herstlet 1896:317-322. *The Cambridge History of Africa*. Vol. 8, pp. 694-696. See also Akweenda (1989).

Chapter

3

Reich Chancellor General von Caprivi

Germany had several Chancellors. But of all the Chancellors from Otto von Bismarck, Leo von Caprivi, Chlodwig zu Hohenlohe-Schillingsfürst, Bernard von Bülow, Theobald von Bethmann Hollweg, to Franz von Papen; George Leo von Caprivi is the Chancellor best remembered in Africa. The German Chancellor even has a strip of prime land in the heart of Africa named after him: the Caprivi Zipfel. Indeed, Chancellor Caprivi is fortunate, as they say, to have a Bantu sounding name 'kaprivi', Caprivi.

Nichols (1958:29) noted that General Leo von Caprivi's original family name could have been Kopriva, but was changed to Caprivi by his ancestors sometime in the seventeenth century when they were ennobled after they had fought in the war against the Turks. It was also further suggested that the name could have originated from an Italian descendant in Caprarra, but Leo von Caprivi with his incisive intellect did not acknowledge the Italian connection in his lifetime. He refuted it especially when the papers christened him General Georg Leo Count von Caprivi di Caprarra di Montecuculi.

George Leo von Caprivi was born on 24 February 1831 in Charlottenburg, near Berlin. Leo had a brother and a sister, for Röhl (1967:58) recorded that during the Conservatives' attack on Caprivi in the 1890s, Caprivi was purported to have remarked, 'this does not worry me very much personally. But the vindictive group would take it out on the

children of my brother and sister'. Furthermore, during the intrigues against Caprivi, Röhl (1967:116) also noted that Caprivi confided in his brother that the Kaiser would:

'Have to choose between Eulenburg and myself, and I have no doubt that he will prefer the former. That is in fact what I want, for my relations with the All Highest have become intolerable. And there is no guarantee that things will improve permanently'.¹

These assertions were the only historical evidence that a life history researcher in English had to go by that Leo von Caprivi had a brother and a sister. Leo's father, Julius Eduard von Caprivi was a barrister and he married into the Koepter family. He was appointed a judge, and then became a member of the Prussian House of Lords after he retired from the bench. Leo's mother, Emilie Charlotte Koepter was a descendant of a very distinguished family. According to Arndt (1894:2) the Koepter family had produced many scholars, theologians and historians and the connection between the Caprivis and the Koepters went back a very long way.

Young Leo von Caprivi was sent to the Wedersche Gymnasium in Berlin, where Otto von Bismarck had also been educated. The Wedersche Gymnasium was an elite school for privileged youths destined for leadership either in politics, the church or the army. It was also a preparation for the ancient universities. The Gymnasium was first and foremost about academic work, then 'discipline, order and obedience to authority'. The students had to go through the various grades of Sexta, Quinta, Quarta, Tertia, Sekunda and Prima. The last three were divided into two, for example, Untertertia and Obertertia. The Gymnasium goes back as far as the medieval period and the students learnt Greek and Latin and classical literature. The Gymnasium was for the intellectual elite; higher education was available for the aristocrats; and the Volksschule, elementary school, provided for the masses. Accordingly, by the 1840s

¹ Caprivi to his brother, 23 October 1894. Hauptarchiv Berlin-Dahlem, Caprivi Papers, No. 5. Messner, 'Caprivi', 730.

the majority of German-speaking people could read and write because the economy relied on literate people.

At the Gymnasium, young Leo was one of those rare secondary school youngsters who respected school discipline and did what he was ordered to do without argument. He was a happy, docile child who enjoyed long walks. Arndt (1894:3) remarked that Leo went into all his daily subjects in class thoroughly prepared. At the Gymnasium, Leo became well-grounded in mathematics as he found the mathematics master interesting, but he found the endless translation of Xenophon and the teaching of Tacitus and Euclid dreary. There was also physical training, music, art, English, French and German. Leo was good at gymnastics and he had a passion for shooting. But he was neither interested in reading for law as his father had, nor in theology and history as were his erudite maternal uncles. Medicine was suggested, and he bowed politely to his father and uncles and said that anatomy and pathology would traumatise him. Criminal law disgusted him and the inhumane treatment of prisoners horrified him. Sandwiched between his two families, Leo was determined that whatsoever was going to be his fate, it was certainly not going to be law or medicine despite his parents' insistence that in one of them lay his future. Leo knew exactly what he wanted to be - an army officer, not just an ordinary officer, but a general. The Wedersche Gymnasium gave him every encouragement. The Fatherland would always be in danger and young men like Leo were needed to fight for the Fatherland.

His teachers at the Wedersche remembered Leo with affection. 'He was a bright, upright, industrious, young man', they said with satisfaction. He was the intelligent, big, broad-shouldered youth with lots of freckles, the genial and generous youth. Dr Bonnell, the Director of the Gymnasium remembered Caprivi as the boy most likely to succeed, 'with all that was good'. He was one of us.

Leo von Caprivi obtained very good grades in the *Abgangsprüfung* (the School Leaving Certificate) in what his family called the wrong curriculum. His grades satisfied the entrance requirements and his ambition to go into the army. Thus, straight from the Gymnasium, Leo joined the Guards' Regiment and began the slow process of soldierly

upward mobility. He would fight for the Fatherland against stupidity and evil. From his family, one gathered that he was extremely happy in the regiment. In 1870 just before the outbreak of the Franco-Prussian war, Leo Caprivi was made a Lieutenant Colonel and Chief of Staff of the Tenth Army Corps in Hanover.

But the highest point of his career in the Tenth Army Corps came when he fought bravely in the battles of Vionville and Beaune-la-Rolande. Caprivi was awarded the highest order of the Iron Cross and the Prussian Order of Merit for his gallantry. After the war Caprivi served in the War Ministry as the Section Chief.

In 1877 Caprivi was promoted to Major General and for three years he took over the command and leadership of the Fifth Infantry Brigade in Stettin, then he returned to Berlin to command the Guards Infantry Brigade. As an operational commander, his soldiers explained that Caprivi was a very conscientious, genial commander with good manners especially to those below him in rank and social status. He hated cruelty and all that was dishonourable. His physical requirements too were very simple and modest and regular.

Caprivi was appointed Chief of the Admiralty 1883, but by 1888, he had had enough of the meddling young Prince Wilhelm (1859 – 1941). Caprivi resigned because of constant interference from the Prince 'who loves the navy and thinks he knows everything about naval matters'. Caprivi returned to the Tenth Army Corps and was made Commander in Chief of the Infantry Regiment at Osnabrück.

At the Ides of March of Chancellor von Bismarck, General Leo von Caprivi, the formidable soldier with impeccable good manners was invited to succeed Bismarck. He was one of 'the finest human beings in the Prussian army', said one of his men. Yet there was resentment against Caprivi from some politicians because a general had been appointed to become Chancellor. Was General Caprivi a substitute until a young full-blooded aristocrat who was neither a liberal nor a conservative could be appointed? No one knew the answer. But the Kaiser's military entourage supported the appointment of the experienced Prussian General Caprivi. In their opinion, Caprivi was the best candidate for the high office to

succeed Bismarck. The state needed a strong Chancellor to fill the vacuum left by the fall of the Iron Chancellor.

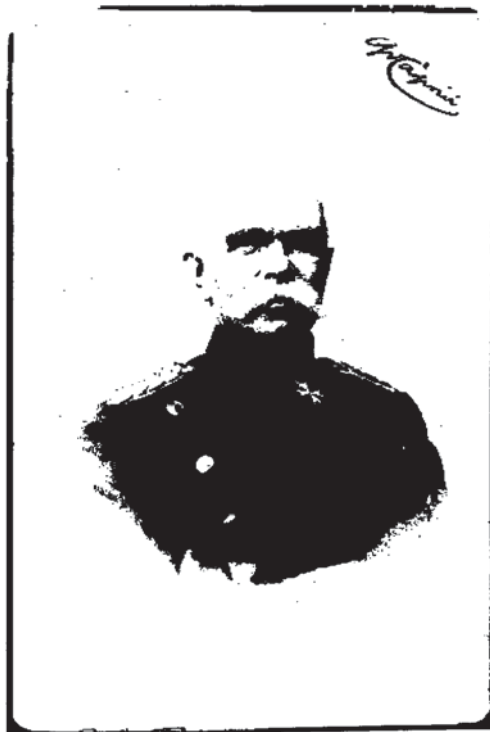


Plate 10: Leo Graf von Caprivi in Berlin 1894.

Source: Bildarchiv preussischer kulturbesitz, Berlin.

Caprivi was fifty-nine when he took up the Chancellorship; he was very tall and white haired. He was an impressively good-looking man with the refined, strong, upright, relaxed frame of a professional ballet

dancer, and not the ramrod stiff posture of a soldier. He had a fine forehead with protuberant bushy eyebrows, and a walrus moustache guaranteed to terrify babies. The overflowing moustache was typical of the army officers of his generation and his class. His forehead was not wrinkled for his age. There was no evidence of some of the usual soldiers' vices of drinking, smoking and whoring. Caprivi led a simple military life dedicated to duty. 'The day has twenty four hours of service' divided into work and reading as relief from work. He spent the twenty-four hours of service and seven days a week working fearlessly for the Fatherland. He was a devout Lutheran.

As an experienced soldier, Caprivi's pre-eminent quality was quick thinking on his feet and not allowing exceptions to go unnoticed. He was bright and animated and was at ease with himself. According to Nichols (1958:32) Caprivi spoke English and French fluently and, 'with the sharp intellect, which was peculiar to the lawyer's son, and with his unusual industry he could quickly comprehend every new brief and acquaint himself thoroughly with every problem'.

Caprivi did not marry and had no children lurking in any of the army bases where the Guards Infantry Brigade or the Tenth Army Corps had been stationed. Was Caprivi gay, as readers in the twenty-first century would ask? There was no hint of homo-eroticism in any of the primary and secondary sources.

Neither did Caprivi accumulate personal wealth from his various military offices nor from the naval high offices. Early in his Chancellorship a hatchet job was devised to oust him. There were newspaper smear campaigns that Caprivi had accepted M 400,000 from a dubious source. In Caprivi's refuting memo to the Chief of the Press Bureau of the Foreign Office, Nichols (1958:32) quoted Caprivi as having said:

I should like

- (1) To establish publicly that this story of the 400,000 M., which is, being systematically disseminated, is completely false; I have at no time had either wealth or any sort of connection with the banker Wolff. I am

without property in the fullest sense of the word, having 'stolen nothing and inherited nothing' (*niemand beraubt und niemand beerbt*).

- (2) To brand the perfidy of the editorial staff of the *Farmers' League*, who serve up lies to their readers to make me appear in a bad light and in bad company.

I believe it would be best to reply briefly and strongly in the *Nord Deutsche*. Perhaps you would be so good as to draft a few words.

Moreover, I authorise you to say, if you wish, that since I was a captain, I have lived on my pay, have paid for all my horses out of my pay, and am proud to have managed as a poor officer decently to make ends meet.

v.C

Caprivi was not forced to step down, and the Kaiser did not beg former Chancellor Otto von Bismarck to return to office. The malicious rumour about M 400,000 was the only attempt to compromise Caprivi's integrity throughout his years in office.

The period of transition from Bismarck to Caprivi was a very trying time for the general turned Germany's Head of State. Caprivi had to deal with all the problems created by Bismarck's very long administration as well as Bismarck's continuous sniping on the sidelines from his retirement castle.

Chancellor von Bismarck had entered into several defensive alliances that came up for renewal in the 1890s. The Reinsurance Treaty with Prussia was due for renewal and the Kaiser had already given his consent, except that the document had not been signed before Chancellor von Bismarck was dismissed from office. So anxious were the Bismarcks to have the document signed that according to Holstein, Herbert Bismarck, the Chancellor's son remained in office for a day or two to complete the transaction. Gooch (1923:69) recorded that the day after the fall of his father, Herbert asked for the papers, and was told that they were in Holstein's room. He turned his steps thither, and an angry scene ensued.

Caprivi invited the written opinion of the Räte of the Foreign Office before a final decision could be made. The Triple Alliance of Germany, Austria-Hungary and Italy were renewed. But the Kaiser decided not to renew the Russian-German Secret Treaty, and it was allowed to lapse.

In a memorandum by Chancellor von Caprivi dated 28 March 1890 recorded by Dugdale (1928:3):

His Majesty hereupon directed the Ambassador, on his return to Russia, to explain in the proper quarters that the definite desire to maintain the best relations with Russia persists here as it did before but that the reason why we consider it wiser to abstain from renewing the Treaty is to be sought in the change of personnel that has just taken place in Germany. This inclines us to go slowly for the time being and to keep clear of far reaching engagements.

General von Caprivi did not want to become a frontman for the Kaiser, as he was his own man, with his own principles. He explained that the source of prosperity for Germany should be in the expansion of trade and industry and not in colonial pursuit. 'Either we export goods or we export people'. Industrialisation should be the quintessential policy. Thus, Caprivi tried to make the German population enter the twentieth century with economic confidence. However, the vested landed interest of powerful Prussia was not interested in Caprivi's policy. Furthermore, the relationship between Caprivi and the Kaiser was becoming strained. The young Kaiser wanted to be Chancellor as well as retain his Kingship. It should be him, the Kaiser, who should reign and govern and not General von Caprivi. Many of the very able men appointed by Bismarck still retained their high offices and were not very co-operative with Caprivi. They administered the state as though Bismarck, the Iron Chancellor, was still in power and they continued to apply Bismarckian policies, thoroughly ignoring von Caprivi.

The signing of the Anglo-German Agreement 1890 that returned Heligoland to Germany established good diplomatic relations between England and Germany, because the trans-Cape to Cairo nightmare had disappeared. Caprivi, the General, maintained excellent peaceful working

relationships between the parliamentary parties, the Catholic Zentrum and the Liberals. Caprivi demanded that the sixteen million Marks withheld by Bismarck's administration should be paid to the Catholic Zentrum. The General too got on very well with the parliamentary politicians. But the Kaiser was contemptuous of Parliament and referred to the Reichstag as *Reichsaffenhaus*, 'the imperial monkey house'. Yet, the Kaiser was delighted with his new Chancellor's ability to outmanoeuvre the hostile *Reichsaffenhaus*. Cecil (1989:192) recorded that the Kaiser made General von Caprivi a Count after his numerous victories over Parliament.

Although Count von Caprivi was cautious and circumspect, he did not always do what the Kaiser wanted. The Kaiser had hoped that the soldier Caprivi would toe the Kaiser line, and would be more malleable than Bismarck, the politician, but the Kaiser was disappointed. He soon found Caprivi's "eternal contrariness, vexatious". Caprivi was intransigent.

Meanwhile, Bismarck in his retirement gave interviews and wrote scathing articles about Caprivi. Bismarck used his friend, Maximilian Harden, the editor of the irreverent paper *Die Zukunft* to hound Caprivi. Cecil (1989:218) noted that a Bavarian newspaper editor said: 'I once had a high opinion of Caprivi, quoted Bismarck, but I have been very much disappointed. In many ways he has no greater intelligence than a rather old major who suddenly has been promoted to head a school for non-commissioned officers'.

Again, it was becoming impossible for the very able General von Caprivi to work with the 'people's Kaiser'. For the Kaiser wanted to be Chancellor and Kaiser rolled into one, or even to abolish the Chancellorship. A simmering confrontation was brewing between Chancellor Caprivi and the Kaiser. In addition to the conflict with the Kaiser, Caprivi had to endure blistering criticisms from Bismarck and the Prussian *Junkers*. Caprivi tried to make the Reich that he had inherited from Bismarck into a more 'caring society', but the Prussian *Junkers* always put their own interest before that of the people.

The Reichstag had adopted a resolution in June 1872, for the introduction of compulsory civil marriage. But it was not introduced into Prussia until 1874, and into the Reich in 1875, noted Holstein. And on

one occasion, the unmarried Caprivi intervened when the Kaiser dismissed a German diplomat who had married a Belgian. The Kaiser did not approve of foreign marriages. He had no objection to the wives or to the form of marriage that they had entered into, but to the women's nationality. The Kaiser preferred that his representatives abroad should marry solid German women and not foreigners, as foreign wives tended to influence their husbands. Sparks flew between the Kaiser and Caprivi. Chancellor Caprivi sent in his letter of resignation, but since the Kaiser had recently dismissed Chancellor von Bismarck he did not accept Caprivi's resignation. 'He can't go, I simply won't let him go', the Kaiser told Kiderlen. Nichols (1958:208), 'I shall ask the ministers, and when the whole Cabinet council agrees with me then Caprivi will have to give in'. It would be a disaster for the nation, said the Kaiser. 'It is not nice to drive the cart into the mud and leave the Kaiser sitting in it'. Caprivi was persuaded to continue in office as the Reich Chancellor. The German Reich needed its second Chancellor, for the new Reich was like Humpty Dumpty, if broken apart, it could never be put together again.

Then on 18 March 1892, barely two years into his term of office, Caprivi sent in another letter of resignation intending yet again to retire from politics and public life. The Kaiser was incandescent: 'I can tell you it is quite difficult to get along with this fathead'. The Kaiser called his Chancellor '*starrsinnig*' — pig-headed. The Chancellor had no right to resign 'at a time like this for purely personal reasons', said one of the Kaiser's friends. Again, Chancellor von Caprivi was persuaded to continue in office.

Although the 1890s were a time of economic crisis, Caprivi introduced many reforms such as maximum working hours for factory workers, and only eleven hours of work for women. Children under thirteen should not work at all. Caprivi anticipated late 20th century rights of children not to be exploited.

There were several important bills during Caprivi's Chancellorship, but the most contentious were the Army Bill and the School Bill, issues of the church and the state. The School Bill infuriated the left, right and centre who had approved many of Caprivi's policies, because by the 1850s,

Germany already had mass elementary schooling. And in March 1872, the Prussian Chamber of Deputies passed a law placing the supervision of all schools in the hands of the state. Zedlitz's School Bill was to regulate religious instructions in primary schools and that new schools should be confessional. The Bill provided that religious instruction would be supervised and controlled either by local pastors or by priests. All the teachers at a given school had to belong to the religious denomination of that school, and the churches should have authority over the content of religious education. As religion was going to be a compulsory subject in the primary school curriculum, it was too important to be left under the direct control of the churches. Caprivi, Zedlitz and the centre defended the Bill.

Some of the people, who had co-operated so far with Chancellor Caprivi, argued that primary schools ought to have religious education, but not under the control of pastors and priests, 'especially not the Catholic Church'. The state should not hand control of schools to the churches. There were ferocious attacks from left wing politicians, avant-garde academics and the liberal heirs of Martin Luther who preferred freedom of thought. Accordingly, the School Bill was condemned and thrown out. Count Robert von Zedlitz-Trützchler and the Prussian Minister for Ecclesiastical Affairs resigned. Caprivi also resigned, but he was persuaded to remain in office, but he relinquished the Office of the Minister-President of Prussia. Being the Chancellor as well as the Prussia Minister-President was a dual role created by Chancellor Bismarck to give him control over the relationship between Prussia and the states within the German empire and over German foreign policy. Count Botho zu Eulenburg, the governor of the province of Hesse succeeded Count von Caprivi as the Minister-President. The authority of Chancellor Count Leo von Caprivi was thus weakened, because as was recorded by Holstein, the Prussian president had no constitutional rights: 'The Ministers do not even have to ask the President's permission when they go on holiday; they only inform him that they are going'. Thereafter, the battle lines between Chancellor Count von Caprivi and Count Botho von Eulenburg were drawn up.

As a General, the Army Bill was very dear to Chancellor Count von Caprivi, and Caprivi himself reintroduced the Bill to the Reichstag after the first attempt by General von Verdy was thrown out.² General von Verdy had introduced compulsory national service for every able-bodied German.

As there was no imminent danger of war, because Germany was at peace with all the neighbours of the Fatherland, even with Britain after the signing of the Heligoland Agreement of 1890, Caprivi in an engaging speech in Parliament, as recorded by Nichols (1958:229) said:

I cannot come forward with the slogan of 'War in Sight'—there is no question of that; I shall not rattle the sabre ('Bravo!'), nor indulge in pessimistic language, but as far as lies within my knowledge and conscience I shall lay before you the simple truth ('Bravo!') The German government maintains normal and friendly relations with all other governments ... As was declared to you once before from this same place, Germany is a satiated nation ... Nothing could have been more appropriate than the words of His Majesty the Kaiser in taking possession of Heligoland, that this was the last piece of German soil which we desire ... We have no further desires, no further demands.

We have no desire to annex a single square kilometre of French territory; we would be making trouble for ourselves by incorporating non-Germans into the German Reich. And even in the acquisition of French milliards we have in many respects found certain flaws (laughter). And finally, if someone tells me to take French colonies I should answer that we have quite enough of our own (laughter) ...

To make the Army Bill acceptable and to get it through the Reichstag, Caprivi reduced the cost of training Verdy's human resources from 117 million Marks to 57 million. The traditional three-year period of service

was reduced to two years. Furthermore, that the Reichstag would debate the Bismarck Army Grant every five years instead of seven years.

The Kaiser was not in favour of the two-year service; he wanted to retain the three-year service. And he was now determined to sack his Chancellor who already had a penchant for resigning. In a letter from General von Stosch to Bennigsen dated 3 July 1894 quoted by Gooch (1923:73) The Kaiser had told a friend:

Caprivi is useful to me, but not sympathetic. He lacks imagination, and does not understand me when I tell him of my wider thoughts. I shall choose as his successor a younger man, who is nearer to me; and he shall be exclusively my man.

Stosch added that the Kaiser was believed to be thinking of Eulenburg, and if he should refuse the post, then von Bülow.

For Chancellor von Caprivi, the problem with the Army Bill was the last straw, but it was a well-deserved victory. General von Caprivi had had enough of being the Chancellor of the Reich. Apart from the perennial battles with the Kaiser and his entourage, there was too much political infighting: there were Bismarck and his gravy train, and there was also the Reichstag and their ferocious intrigues. Furthermore, the Kaiser no longer consulted Caprivi on important policies as he had his own kitchen cabinet among his entourage. Chancellor von Caprivi had not been popular with some people in the Reich because he was a soldier who had succeeded the civilian Chancellor Prince von Bismarck who was at ease with being the Iron Chancellor. Count von Caprivi then became a scapegoat for the agrarians who blamed the economic depression of the 1890s on his policies. However, *The Times* (London) editorial of 29 October 1894 recognised Caprivi's special ability and recorded that:

He has served his country wisely and well, and he has made for himself the reputation not only of a prudent, far-seeing statesman, but also of a singularly noble, upright, honest

² Julius von Verdy du Vernois, Prussian General, Minister for War 1889–1890. The Holstein Papers p. 129, n. 2.

man, true to his Sovereign and at the same time true to himself.³

Caprivi was now sixty-three years old and thoroughly exhausted with being the Reich Chancellor. The spartan life of a disciplined bachelor general had taken its toll on him. He had had enough of the Kaiser, the Prussia Minister-President, Botho zu Eulenburg and the Prussian warlords who had been plotting his downfall. As Bismarck used to say, 'You know where a war begins but you never know where it ends'. Thus, the Prussian *Junker* elite outmanoeuvred General Count von Caprivi and threw him out of office. Caprivi sat down and wrote his final letter of resignation.⁴

The Kaiser too had for sometime been:

Prepared to accept the resignation of Caprivi owing to the Chancellor's reluctance to push some of the Kaiser's favourite legislation through the Reichstag ... The Kaiser's decision to accept Caprivi's resignation was spurred on by an article that appeared in the *Kölnische Zeitung* on 25th October giving an accurate account of the imperial conversation with Caprivi of 23rd October and stressing the irreconcilable breach between the political views of the German Chancellor and the Prussian Minister-President.⁵

Although Caprivi was a loyal and upright man, he was also rather obstinate and self-righteous, said the Kaiser. He had no illusions about Caprivi's humanity but 'one can't get anywhere with these virtuous, hypercritical bachelors', declared the Kaiser. 'I won't take any more of them'.

The Kaiser did not want to keep his intransigent Chancellor and he accepted Count Leo von Caprivi's resignation as well as the resignation of the Prussian Minister-President, Count Botho zu Eulenburg. It was a

³ pp. 5, 9

⁴ According to an analysis, from 1890 - 1894, Caprivi used the threat of resignation or tendered his resignation ten times.

⁵ The Holstein Papers, Vol. 3, p. 479, n. 5.

first class funeral for both Counts. Seventy-five year-old Prince Chlodwig zu Hohenlohe-Schillingsfürst who became Chancellor and Minister-President of Prussia succeeded Chancellor Caprivi. Prince zu Hohenlohe was recommended to the Kaiser by the Grand Duke of Baden and Count Philipp zu Eulenburg.

It was a tremendous relief for Caprivi when the Kaiser accepted his resignation. It was becoming impossible to work with the Kaiser. Caprivi was weary of His Majesty. The Kaiser had said to his Chancellor several times, 'Caprivi, you get terribly on my nerves'. And Caprivi always replied, 'Your Majesty, I have always been a very uncomfortable subordinate!' noted Nichols (1958:356).

The Times was very gracious to the fallen Chancellor General Count Leo von Caprivi. 'The general quits the political field ... with all the honours of war'.

On 30 October 1894 Caprivi made his last formal appearance before the Kaiser, who awarded the Chancellor the diamond insignia of the Black Eagle. Caprivi said goodbye and told his friends that they would never hear from him again, having suffered many barbed criticisms from his predecessor, Chancellor von Bismarck.

On 31 October without fuss or protocol, Count von Caprivi was accompanied to Berlin railway station by his faithful adjutant, Major von Ebmeyer and took the train to Montreux in Switzerland. It was the stress of office and ill health that propelled him to Switzerland. His years out of the army had been one long hell with civilians, the Kaiser and political weariness. He lived in a *pension*, not as a distinguished guest of the Swiss government but as a pensioner. He liked the rural countryside. It was quiet. It was going to be his home for a very long time. He had long solitary walks and enjoyed the scenery. And he read philosophy. He did not write his memoirs because he would have had to name and shame a few people:

... which, however, according to my own view of the duty of an officer or an official I find quite impossible. I must, therefore, deny myself any excursion into literature, and if it rains on me in the press, why I shall get wet ... Now as

before, I believe that the single service I can still do my Fatherland is to carry through to the end my thankless role as an honourable man, selflessly placing the state above the individual ...

Fearless General von Caprivi did not bear Holstein any malice or to anyone else in the role that they had played in his fall from office, although someone overheard Caprivi describe Holstein's office as 'that poison shop'. Chancellor von Caprivi left office without any regrets whatsoever. In a letter written by Caprivi to Holstein from Torgau dated 1 June 1895, he remarked:

Dear Herr von Holstein:

Many thanks for your friendly letter. On this occasion I denied myself the pleasure of looking you up in Berlin because I did not wish to go up to the "bureaux" and because I made a resolution to avoid all political conversations, a resolution I would not be able to keep when together with you. For seven months I have not talked politics and have even almost gotten out of the habit of reading the newspaper ...

Your old Chancellor
v. Caprivi⁶

Caprivi remained in Switzerland until the spring of 1895. He missed the Fatherland and he missed home. As he was getting weary with a life of self-imposed exile, he returned home to Germany, and settled at Skyren, near Crossen / Oder. He lived with 'his nieces and nephews, great-nieces and great nephews' and kept well out of politics and never made criticism of his successor or of the Kaiser. He did not defend himself against the misrepresentations of his domestic policies. Even if he had wanted to, he had no notes whatsoever to kiss and sell.

On 6 February 1899, General Leo Count von Caprivi, the Second Reich Chancellor of Germany died at Skyren near Crossen / Oder. He had

⁶ The Holstein Papers, Vol. 3, p. 515.

been dogged for some time by illness. It was during one attack of pains in his chest that his death occurred.

He survived the first Chancellor, Prince von Bismarck by just six months. As Caprivi himself had said in June 1892, 'It is my fate to stand always in the shadow of the great man'.

History has vindicated General Count Leo von Caprivi even if his people of the Fatherland do not remember him. Although as a teenager at the Wedersche Gymnasium he had wanted to be a career general, as an old man, he became a man of peace. Caprivi deserves a place in history, because he was the first leader who became weary of colonies, before other leaders contemplated giving up their colonies.

3.1 German Barotseland

Germany having annexed the hinterland of East Africa, required a passage to link the German South West Africa Protectorate on the South Atlantic Coast to the German East Africa Protectorate on the Indian Ocean. This would mean traversing the heartland of Africa, and the Zambezi, but there were impediments such as northern Bechuanaland (Botswana) and Barotseland (Northern Rhodesia, Zambia). The two territories were under the control of Great Britain and were subject to the British sphere of influence.

The Government of His Majesty the King of Portugal and of the Algarves, and the Government of His Majesty the Emperor of Germany, with a view to the development of civilisation and commerce in Africa, had concluded a Declaration on 30 December 1886 that defined their northern boundary. Article I provides that:

The boundary line between the Portuguese and German possessions in south-west Africa shall follow the course of the River Kunene from its mouth to the cataracts which are formed by that river to the south of the Humbe when crossing the range of the Cauna Hills. From this point the line will run along the parallel of latitude as far as the River Kubango, and thence it will continue along the course of the

same river to the village of Andara, which place is to remain within the sphere of German influence. From this place the boundary line will continue in a straight-line eastwards to the rapids of Catima on the Zambesi.

Accordingly, Otto von Bismarck the Chancellor of Germany, (1867 - 1890) had a grand project to construct a canal that would link the North Sea and the Baltic Sea. This was viewed by the Kaiser as 'a forward naval outpost for the German fleet' that would thwart the British Navy. The argument for the canal project was this: Great Britain controlled Heligoland,⁷ and the British Royal Navy was thus in a position to make heavy waves down the shores of Germany. Accordingly, it was impracticable for Germany to build up its navy in Bremen, Hamburg or Wilhelmshaven, as well as protect the estuaries of the rivers Elbe, Ems, Jade and Weser and the western outlet of the Kaiser-Wilhelm canal at Brunsbüttelkoog if Britain controlled Heligoland.⁸ Sometimes the British Royal Navy was a real threat, a very dangerous naval enemy for Germany's international trade. Thus it was argued that by controlling Heligoland, Germany would at least be able to counter the Royal Navy's supremacy on the Island. Otto von Bismarck was determined to develop Germany's naval capacity to challenge that of the Royal Navy, because naval power would be momentous in the twentieth century.

Regarding Heligoland, Rich and Fisher (1955:175) recorded that according to Holstein, 'the idea was developed that Germany must make her continued support of England conditional upon reciprocal concessions, such as the protection of German nationals in the South Seas, a greater consideration for German trade interests and possibly the cession of Heligoland to Germany by treaty'.

A letter from Prince von Bismarck to Count Münster, 5 May 1884 stated that:

Heligoland is useless to England in peacetime, and in wartime its usefulness would be very problematical. An

⁷ Heligoland is a small island in the North Sea about forty miles from the mouth of the Elbe.

⁸ For further reading on the German navy, see H. H. Herwig, (1973) and (1980).

agreement or treaty, handing the island over to Germany, with the additions of some condition binding Germany to construct a harbour of safety there would make a very favourable impression upon German public opinion, now not so friendly disposed towards England as formerly, and also facilitate for us our benevolent attitude towards British policy, of which Lord Granville has rightly expressed his appreciation.⁹

Townsend, (1930:164) also noted that Bismarck wanted Great Britain to cede Heligoland in return for Germany's support in Egypt and as a guarantee of friendliness, but not in return for a German colony.

However, Chamberlain argued for the cession of German South West Africa as *quid pro quo* for Heligoland. Bismarck's friends of the 'colonial place in the sun' would have none of that argument; they did not want Bismarck to cede German South West Africa for Heligoland. But Bismarck knew that Heligoland was worth more to Germany than its African protectorates, but reasoned, "We must wait until the English need us".

On 20 March 1883, although General Leo von Caprivi was an army officer, he was appointed as Chief of Admiralty in succession to General Albrecht von Stosch, Admiral of the embryonic German fleet, who had been dismissed by Bismarck. From about the 1870s, senior army officers had always commanded the fledgling German naval fleet. The army officers were usually aristocrats. Who better to launch Germany's ambitious naval project than the single-minded aristocrat General Leo von Caprivi?

The duty of Admiral of the Fleet was a completely new role for General Leo von Caprivi, but the Kaiser's army hierarchy supported the General's appointment, because Germany wanted to become a super naval power to challenge Great Britain's dominance on the waves. It was about this time that Crown Prince Wilhelm was allowed to acquire work experience in the Wilhelmstrasse under Chancellor von Bismarck. Prince

⁹ E. T. S. Dugdale (1928) *German Diplomatic Documents, 1871 - 1914*, p. 171.

Wilhelm, like his beloved British cousins, also had a love affair with the navy.

When von Caprivi became Chief of Admiralty, his cousin Alfred von Tirpitz who had joined the naval service in 1865 when he was sixteen had risen to be leader of the torpedo section. General von Stosch had appointed von Tirpitz as leader of the torpedo section. General von Caprivi was interested in defensive weapons. Accordingly, Craig (1978:304) recorded that Caprivi confirmed Tirpitz in his position and gave him 'authority over fleet training, dockyards and workshops, and instructed him to expand, and prepare manuals of tactics for the torpedo arm'.

Caprivi concentrated the torpedo boats as coastal defence and gradually built up the navy's defensive role. But that was not what Crown Prince Wilhelm with 'navy fever' in his brain cells had envisaged. The Prince had envisaged many things. Simply defending the coastline was not enough. The Prince expected that the building up of the navy would take into consideration the island of Heligoland, as well as the construction of big battleships that could challenge British naval supremacy. General Caprivi soon disagreed with the young Crown Prince Wilhelm and he resigned from the navy in protest against the Prince's interference. 'He thinks he knows everything'.

General Caprivi returned to the army in July 1888 and was appointed Commander of the Tenth Army Corps in Hanover. From that position he became Commander in Chief of the Infantry Regiment at Osnabrück.

Bismarck meanwhile was getting old and infirm, and was spending much of his time at Friedrichsruh, his elegant country house near Hamburg, and at Varzin in Pomerania. The Prince who had become Kaiser Wilhelm II on the death of his father, Wilhelm I (1797 - 1888) then summoned Caprivi and informed him that he was being considered as successor to Bismarck, because Bismarck was becoming frail. Caprivi was reported to have replied 'Bismarck dead and borne before him like El Cid would be of more use to the Kaiser than he, Caprivi would alive'.¹⁰

¹⁰ J. Alden Nichols (1958:33) quoting Keim, *Erlebtes und Erstrebtes*, p. 52.

The Reichstag election of 20 February 1890 was a disaster for the Reich Chancellor Prince von Bismarck. Nichols (1958:21) reported that General Waldersee¹¹ entered in his diary that 'the result of the election is worse than anyone expected'. It was a humiliating crushing defeat for the Chancellor. The young Kaiser demanded his resignation; the voters had had enough of Bismarck.

The Iron Chancellor was mortally wounded but he did not fall. Since Germany did not have the British Parliamentary form of election of first past the post, the crafty old Chancellor, in spite of having his policies rejected by the mass of the electorate continued to govern with a viable coalition. But the seventy-four year-old Reich Chancellor, was not given time to savour the coalition, because he soon fell out with the young Kaiser William II over many policies, especially with Bismarck's decision to invite all the German princes to 'draw up a new constitution'. Wilhelm II, the people's Kaiser, refused.

There was also the question of Ministers' access to the Kaiser and the repeal of Frederick William IV Cabinet Order of 1852. The Order stipulated, 'All business between Ministers and the King must be authorised by the Minister-President'. The young Kaiser demanded that the old man should repeal the 1852 Order or resign. Although it was the Kaiser's prerogative to ask the German Colossus to resign, Bismarck sensed from his electoral defeat that it was a new era of young people, and his age had caught up with him at last. Accordingly, Chancellor von Bismarck submitted his letter of resignation, and the young Kaiser for the good of the old man's health 'unwillingly' accepted the resignation.

The great Iron Chancellor von Bismarck had been ungratefully overthrown from office and he put it down to political intrigues. The voters did not give him another chance. His achievements as a civilian leader with three victorious wars had no parallel in the 19th century. Furthermore, there were no rivals for the Chancellorship.

The Kaiser then announced that General Leo von Caprivi would succeed Chancellor Prince Otto von Bismarck as the Chancellor and

¹¹ Alfred, Count von Waldersee had been the Quarter-Master General and Vice-Chief of the General

Minister-President. The Kaiser was determined to continue the military disciplinary legacy instilled into the Germans by the Iron Chancellor, Otto von Bismarck, and who better to continue the discipline than a General who was neutral in politics? Some qualitative life history researchers would ask why did Kaiser Wilhelm appoint Caprivi as the Chancellor, a man without the enormous political skill of Bismarck? The answer could be that perhaps the Kaiser remembered von Caprivi's integrity when as the Head of the Admiralty (1883 – 1888) Caprivi had resigned from the Admiralty rather than endure the interminable clashes with the Prince.

The elevation of General von Caprivi to the Chancellorship of the Reich caused a great deal of consternation. Caprivi was a soldier and not a politician. Few parliamentarians gave the General much chance of success even before he took office. But some politicians, however, agreed that things might run as smoothly under General Caprivi as under Prince von Bismarck. As Caprivi, the General was not affiliated or associated with any political party; he was accordingly considered to be above party political intrigues and chicanery. It was bad luck that the General did not have any of Chancellor von Bismarck's political and diplomatic capacity to walk on water. However, there were all kinds of surprises in store for the General.

When Bismarck received von Caprivi after the announcement of his appointment, Nichols (1958:34) noted that Bismarck said, 'If anything can lighten for me the oppressiveness of this moment, it is the fact that you are my successor'.

Meanwhile, General von Caprivi had to form a government. He had to find a State Secretary and Head of the Foreign Ministry who would be responsible to the Chancellor – a State Secretary who would be in sympathy with von Caprivi's as yet non-existent foreign policies. Chancellor Otto von Bismarck's favourite son, Herbert von Bismarck aged forty, who had been groomed to succeed his father also resigned.¹² He had been his father's Secretary of State in the Imperial Foreign

¹² Staff, 1882 – 1888, Chief of the Army General Staff 1888 – 1891. The Holstein Papers, p. 14, n. 2.

Ministry. Herbert resigned even though he had been assured that 'if Caprivi didn't work out' that he, Herbert would be in line for the succession. Herbert's replacement was harder to find. Otto von Bismarck was asked to persuade his son, Herbert to continue in office. Cecil (1989:168) noted that Bismarck was purported to have replied to Adolf von Scholz, Minister of Finance, Prussia, 'that Abraham was prepared on God's direct order to sacrifice his son Isaac, but no such heavenly command exists in this case'. Herbert von Bismarck preferred to work for his father rather than work with General von Caprivi.

In Herbert von Bismarck's letter of resignation, according to Nichols (1958:46) Herbert wrote that for the sake of his health he could not 'take over the increased duties and responsibilities which my name causes to be thrust upon me'. The Kaiser appointed Adolf Hermann Marschall, Baron von Bieberstein, and the Minister representing Baden in Berlin, 1883 – 1890 as the State Secretary in the Foreign Ministry 1890 – 1897. Marschall accepted the Kaiser's offer. Holstein recorded in his papers that Bismarck told Marschall, 'My son and I between us were hardly able to cope with the work of the Foreign Ministry, so how will you, with your lack of experience, bear this burden alone? Your future lies with the Ministry of Justice. The philosopher up at the top can't hold out much longer.¹³ And then, in my judgement, you are the right man for the post'.

Many of Bismarck's disappointed friends also resigned from the Foreign Office in sympathy. Bismarck's colonial affairs advisers, Dr Friedrich Richard Krauel and Heinrich von Kusserow resigned. Accordingly, few experienced senior officials were left to go on board Caprivi's fragile Afrika canoe. The senior officials who remained in their posts to continue to work for the Fatherland and crew the ship of state as part of their professional obligation were denounced as traitors and arch-enemies of Bismarck. They argued however that the Foreign Office ship could not be left to flounder because Herbert von Bismarck and his

¹² Herbert von Bismarck became State Secretary in 1885. The Holstein papers, p. 68.

¹³ Ludwig Hermann von Schelling, Prussian Minister of Justice, 1889 – 1894. The Holstein Papers, Vol. I, p. 150.

friends had abandoned ship. 'When Herbert gave a farewell dinner to the officials of the Foreign Office' wrote Lothar Bucher to Busch on July 10, 1890 'Baron von Holstein, Lindau, Kayser and Raschdau declined the invitation. All four owed everything to the Prince'.

In Herbert von Bismarck's letter to Baron Holstein, 5 April 1890, he wrote:¹⁴

Dear Holstein,

I see with regret from your letter just received that, for no reason, you have withdrawn your acceptance of the invitation for this evening, which I gave you yesterday; for you give no reason in your letter ...

Since you avoid me it will be some time before we meet again, for I am unlikely to return to Berlin.

Farewell

Yours ever,
H. Bismarck

When the German Foreign Ministry was established in 1871, Holstein noted that it consisted of two Divisions; Division 1 was political and Division 2 was legal commercial. However, in 1890, the colonial section was separated from Division 1 and became an independent division. Caprivi appointed Dr Paul Kayser as head of the department of this newly created office of Colonial Affairs. Otto Hammann was put in control of the press department of the Foreign Office.

In a letter from Karl von Eisendecher to Baron Holstein, he remarked that 'the Chancellor and Marschall are rather out of their depth, and you are really the only man in the Foreign Ministry who is completely *au courant*'. No matter, the Kaiser appreciated Caprivi's great energy, and Marschall wrote: 'You know, your Chancellor, Caprivi is growing in stature every day as a statesman! How lucky you are to have a man of such calibre again!'

Caprivi was not a supporter of German colonial expansionism. As far as Caprivi was concerned 'the less Afrika the better for us', since some

Germans were already 'weary of colonies'. There was hardly any economic advantage from having colonies, because the Reichstag would not let go of the purse strings to fund the colonies. Although the Reichstag had no inbuilt institution to administer the colonies, it had ways and means of controlling the expenditure for overseas protectorates. By statutory requirement, all colonial budgets were submitted to the Reichstag for review, in this way the budget was examined and funding was withheld for African adventures.

But some Germans wanted to acquire more African colonies like Great Britain and France. The colonial enthusiasts who would gladly throw von Caprivi to the lions of German South West Africa gravitated to the retired Bismarck as a focus of their disillusion with Caprivi's administration. Bismarck, like the modern statesmen and women rejected by their electorate, did not go away quietly into obscurity and retire with dignity. In self-justification, he tormented his successor that he could have handled the work much better and with much more subtlety. The colonial enthusiasts seemed to have forgotten that when the great Bismarck was in power he had said, 'England is more important to us than Zanzibar and East Africa'.

However, Caprivi continued Bismarck's colonial negotiation with Great Britain, because the African territories were already there. But he was damned if he was going to acquire more virgin colonies in Africa. Caprivi's lack of interest in African adventures simplified the settlement of the Anglo-German Agreement 1890, where Germany received Heligoland in return for Witu and Uganda.

Astute Caprivi who had been Chief of Naval Staff recognised the strategic importance of Heligoland and could have given more concessions to acquire the Island. This was one in the eye for the British government who failed to detect that the Kaiser and Caprivi were determined to have Heligoland Island at any cost.

Lewin (1915: 205) pointed out that in a letter from Lord Salisbury dated 14 June 1890 to Sir Edward B. Malet, British Ambassador in Berlin:

¹⁴ The Holstein Papers, Vol. 3, p. 334.

Her Majesty's Government is prepared to propose a Bill in Parliament, which shall transfer the island of Heligoland to Germany. It was probably retained by this country in 1814 because of its proximity to Hanover, the Crown of which was then united to England. It has, however, never been treated by the British government as having any defensive or military value, nor has any attempt or proposal been made to arm it as a fortress. Her Majesty's Government is of opinion that it would constitute a heavy addition to the responsibilities of the Empire in time of war, without contributing to its security. There is no reason, therefore, for refusing to make it part of a territorial arrangement if the motives for doing so are adequate.

So Great Britain accepted Germany's *quid pro quo* of Wituland and Uganda for Heligoland, off the North Sea coast. And as an act of a 'solid monument of statesmanship', Great Britain also granted Germany access to the Zambesi from their colony of South West Africa.

The river Zambesi is not navigable to the East coast because of the Mosi-o-Tunya, that is, 'the smoke that shoots and thunders' or the waterfalls 'discovered' by Dr David Livingstone in 1855 and renamed the Victoria Falls, in honour of Queen Victoria. However, a few miles from Katima Mulilo one could cross the Zambesi to Sesheke or to Barotseland.

'The cards of providence' as Bismarck called the agreement was well played 'by Caprivi and his imperial master, and although the result of the game was received with some dismay in Germany, it was nevertheless exactly what the players desired'. However, Holstein noted (1955:346) that even though Bismarck had started the negotiations of the Anglo-German Agreement he criticised Caprivi. In an interview, which Bismarck gave the editor of the *Frankfurter Journal*, published on 11 July, Bismarck criticised the Anglo-German Agreement and discussed in detail his differences of opinion with the Kaiser on social policy.

The Kaiser acquired the Island of Heligoland under the Anglo-German Agreement of 1 July 1890, and the navy budget passed effortlessly through the Reichstag, which also augmented the army by 18,000 men.

Colonial hopes in Africa were smashed to smithereens. Some short-sighted German colonial enthusiasts who failed to understand Caprivi's naval strategy were outraged by the loss of land in Africa. East Africa should not have been given up for Heligoland they raged. They had also lost the coastal land and gained a strip of land in the hinterland of Africa. Townsend (1930:162) noted, 'The acquisition of Heligoland blinds everyone to the losses sustained. With a pen's stroke England has acquired a dominating position in East Africa'.

The deposed Iron Colossus of Germany, Count von Bismarck assured his 'place in the sun' followers that he was opposed to the loss of land in East Africa. According to Nichols (1958:102) Bismarck had said that 'England had the best of the bargain; he, Bismarck, would not have made such a treaty'. Dr Karl Peters, who had brought Uganda under German sphere of influence, stormed with rage when he was told about the Anglo-German Agreement. Dr Peters had been away in Africa fighting to restore King Mwanga of Uganda who had been deposed by the Muslim fundamentalists of his time. Accordingly, Dr Peters' riposte when informed about the acquisition of Heligoland was that 'Two kingdoms, Witu and Uganda, had been sacrificed by Germany for a bathtub in the North Sea'.

Meanwhile in London there was also public outrage that Heligoland was transferred to the Germans and a twenty-mile strip of Barotseland and Bechuanaland were thrown into the bargain. There was strong protest during parliamentary debates on the Anglo-German Agreement Bill. For Heligoland had been in British possession for eighty-three years: 'three generations of the inhabitants have been loyal to us,' argued a Member of Parliament. And yet this cession had been made in a rash and hasty manner, without their feelings being consulted.¹⁵ It was agreed that cession would be 'subject to the consent of the majority of the male inhabitants of Heligoland as hereinafter provided'.¹⁶

¹⁵ Parliamentary Debates. Vol. 347. 17 July - 5 August 1890.

¹⁶ Parliamentary Debates. Committee: Reported. Third Reading and passed July 28. p. 1078.

Sir W. Harcourt (Derby) assured the House that: 'It remains only for us to enter our solemn protest against the proceeding which the Government have taken in the hope that it may not form a precedent in the future'.¹⁷

Then Mr Bauman (Camberwell Peckham) asserted that:

I cannot altogether approve the arrangement which Lord Salisbury has made, because I think the noble Lord has gone too far, and unnecessarily far, in allowing the Germans to come within our sphere of influence in that part of Africa. It is not only that he has allowed Germany to come east of the 20th degree of longitude, and as far as the 21st degree; but that when they reach the 18th parallel of latitude, he has allowed the Germans to go a great deal further east to the Victoria Falls in such a way as to block or cross the path of our expansion in the Bechuanaland Protectorate ... I have, therefore felt it to be my duty to protest against this unnecessary concession to the Germans in South Africa, especially as we receive nothing in exchange.

In return for Heligoland, argued the English in Cape Town, the Government should have asked Germany to retire from Namaqualand and Damaraland (SWA). If Germany had been induced to clear out of Damaraland and Namaqualand a great stride would have been made towards the realisation of a confederation. Other people further argued that introducing a German element into the north of Bechuanaland would be bringing Germany to within easy distance of the Transvaal. As a Member said, 'in return for Heligoland, the Government should have asked Germany to retire from Africa'.

Since nobody consulted the natives of Hereroland, Namaqualand and Barotseland, Dr Clark MP (Caithness) argued a point on their behalf. 'Why' he asked, 'should the Government hand over to Germany a portion of Bechuanaland upon which so much British money has been spent? The Makololo and the Bechuanaas will be partly under English and partly

¹⁷ Parliamentary Debates, 17 July - 5 August 1890. Vol. 347, pp. 782-783.

under German control. In exchange for all that territory we are getting a strip of coastland.'¹⁸

As far as H. M. Stanley was concerned, 'a new pair of trousers had been exchanged for an old trouser button'. For researchers interested in this area of history, a wade through the parliamentary papers would prove invaluable.¹⁹ Lewin (1915:211) explained that the Anglo-German Agreement certainly cleared the way for a better and more cordial understanding between Germany and Great Britain, and removed the many causes of dispute that had so long embittered the colonial relations of the two countries.

The Agreement between Great Britain and German Government, Respecting Zanzibar, Heligoland, and the Spheres of Influence of the two Countries in Africa, was signed in Berlin on 1 July 1890. The Anglo-German Treaty concluded by the two great powers was justly described as a 'tidying up' treaty after the great scramble for African territories. And in Article I (1) (2) (3) the Treaty set out to define and recognise the boundaries of German territories and their sphere of influence in East Africa. Under Article II, Germany withdraws in favour of Great Britain from her Protectorate over Witu, and Britain recognises the sovereignty of the Sultan and the boundary fixed in 1887. Article III is the South West African provision that would be discussed in detail after a brief outline of some of the other provisions.

Article IV (1) In West Africa, set the boundary between German Togo and British Gold Coast and Article IV (2) was the delimitation of the Cameroons and the adjoining British sphere.

Article V: there should be no restraint on the free passage of goods after payment of transit dues. Parties should notify the other of any treaties concluded between the Benue and Lake Chad.

¹⁸ Supra p. 80.

¹⁹ Anglo-German Agreement Bill. House of Commons, Parliamentary Papers, and Vol. 347.17 July - 5 August 1890. Second Reading, 24 July 1890, pp. 743-935; 25 July 1890, pp. 918-983; Committee Reported, Third Reading and passed 28 July. Royal Assent 4 August 1890, p. 1709.

Most important of all is Article VI that provides that the lines of demarcation in Articles, I, II, III and IV shall be subject to rectification between the two powers in accordance with local requirements.

Article VII provides, the two powers engage that neither will interfere with any sphere of influence assigned to the other by Articles I to IV. One power will not in the sphere of the other make acquisitions, conclude treaties, accept sovereign rights or Protectorates, nor hinder the extension of influence of the other. It is understood that no companies or individuals subject to one power can exercise sovereign rights in a sphere assigned to the other, except with the assent of the latter.

Article X:

In all territories in Africa belonging to, or under the influence of, either power, missionaries of both countries shall have full protection. Religious toleration and freedom for all forms of divine worship and religious teaching are guaranteed.

Article XII (1) provides that subject to the assent of the British Parliament, the sovereignty over the Island of Heligoland, together with its dependencies, is ceded by Her Britannic Majesty to His Majesty the Emperor of Germany. Articles XII (2 - 7) provides the rights of the natives of the territory of Heligoland.

To return to Article III: it provides that:

In South West Africa the sphere in which the exercise of influence is reserved to Germany is bounded,

- 1). To the south by a line commencing at the mouth of the Orange river, and ascending the north bank of that river to the point of its intersection by the 20th degree of east longitude.
- 2). To the east by a line commencing at the above-named point, and following the 20th degree of east longitude to the point of its intersection by the 22nd parallel of south latitude, it runs eastwards along that parallel to the point of its intersection by the 21st degree of east longitude; thence it follows that degree northward to the point of

its intersection by the 18th parallel of south latitude; it runs eastward along that parallel till it reaches the river Chobe; and descends the centre of the main channel of that river to its junction with the Zambesi, where it terminates.

Article III(1)(2) recognised South West Africa as a German sphere of influence, but a strip has been appended to the German Protectorate as a "solid monument of statesmanship":

It is understood that under this arrangement Germany shall have free access from her Protectorate to the Zambesi by a strip of territory, which shall at no point be less than 20 English miles in width.

The sphere in which the exercise of influence is reserved to Great Britain is bounded to the west and Northwest by the above-mentioned line. It includes Lake Ngami.

The course of the above boundary is traced in general accordance with a Map officially prepared for the British Government in 1889.

The delimitation of the southern boundary of the British territory of Walfish Bay is reserved for arbitration, unless it shall be settled by the consent of the two Powers within two years from the date of the conclusion of this Agreement. The two Powers agree that, pending such settlement, the passage of the subjects, and the transit of goods of both Powers through the territory now in dispute shall be free; and the treatment of their subjects in that territory shall be in all respects equal. No dues shall be levied on goods in transit. Until a settlement shall be effected the territory shall be considered neutral.

The delimitation survey took place from November 1898 to October 1903. The colonial area that was delimited among the Great Powers was then in dispute between the baLozi and the Batswana. The Anglo-Portuguese Treaty 1891 brought Barotseland under the sphere of British influence. However, under the terms of Article VI of the Treaty, the strip

for demarcation would be subject to local requirements. The eastern part of the strip was carved out from part of buLozi (Barotseland) province that formed the limit of the northern boundary of Bechuanaland along the Chobe River. The Zipfel was incorporated into South West Africa as German Barotseland, forming a quadripoint with Bechuanaland, British Barotseland and Matebeleland.

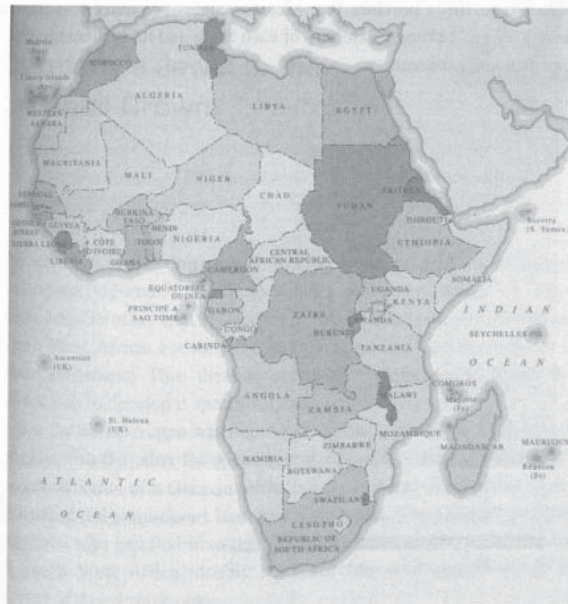
After the Anglo-German Agreement 1890, German colonial administrators attempted to codify the indigenous laws of their colonial subjects. German subjects in the Protectorate and those entitled to German protection ought to respect the existing customs and usages prevailing in the territory, but no new law could be created unless the old law is known. Accordingly, they were going to classify the customary laws and produce an authentic compilation of the indigenous laws of the natives. In 1895, Dr Albert Hermann Post, former judge of the Provincial Court of Bremen, processed the first set of pilot run questionnaires for the International Union for Comparative Jurisprudence and Political Economy of Berlin.²⁰

The only way that the native laws could be ascertained was by the use of questionnaires devised in Berlin and administered by missionaries and administrators in the protectorate. The questionnaires illustrated the thinking of the German jurists of that time.²¹ It served imperialist propaganda by disseminating irrational material about African indigenous laws. From the analysis of the answers provided by the questionnaires, the jurists in Germany would be able to extract, formulate and codify the various principles of native laws. As usual the anti-colonists and the place in the sun colonisers argued about the merit of codification of indigenous laws. Codification, it was argued, would put customary laws into a primitive ethnographic straightjacket, and prevent further development of any rational thought of the natives. The answers to the questionnaires were returned to Germany, analysed, compiled and published in

²⁰ Post has recently been rediscovered as an important early German jurist. See Hans-Jürgen Hildebrandt (ed.) (1989).

²¹ For further details on the preparation of the questionnaire concerning the laws of the natives in the German colonies, see A. B. Lyall (1980:12-30) and Alison Redmayne and Christine Rogers (1983).

pamphlets, but there was no restatement of native law in GSWA as Germany lost the First World War and the codification of native laws was abandoned.



Map 2: Inherited colonial boundaries.

As was predicted by the Member of Parliament for Caithness during the parliamentary debate on SWA, the ethnic groups are now split between South-western Zambia, Botswana and Angola. The inherited colonial boundaries may become the next flash point in inter-African state disputes.²² The Kasikili / Sedudu Island in the middle of the Chobe

²² See the Frontier Dispute Judgement of Burkina Faso v Mali, International Court of Justice Reports, 1986. Eritrea v Ethiopia, Cameroon v Nigeria, Benin v Niger.

River has generated ownership dispute between Namibia and Botswana. One major reason why there have not been many boundaries disputes in Africa appears to be that the Charter of the Organisation of African Unity 1963, Article III(3) provides that Member States solemnly respect the sovereignty and territorial integrity of each State and its inalienable right to independent existence.

Chapter

4

Germany's Jewel in the Colonial Crown

The creation of the Germany Federation came too late for Germany to participate vigorously in the scramble for *terra nullius* in Africa. However, Germany quickly acquired Togo, Cameroon, East Africa and South West Africa, but only the latter was environmentally friendly for white settlement. Thus the purpose of the occupation of South West Africa was to develop it specifically as a settler colony.

But the Schutztruppe was impatient. Germany wanted to catch up very quickly with the other European colonial powers in Africa. Accordingly, the construction of a German settler colony in South West Africa's green and delightful semi-desert land was very brutal. The German economic migrants, who had fled from their own oppressive society to the freedom of South West Africa, doubly revisited their own oppression on the natives of their Protectorate.

The Schutztruppe administrators believed that the natives would become amiable, docile labourers for the German economic migrants and furthermore, that the natives could be harassed in no time into abolishing their pagan practices and indigenous laws and accepting German property law. That the natives were human beings like themselves, was not taken into consideration. The colonial administrators had no idea how pretentious it was for them to want to reduce their fellow human beings into perpetual slaves. 'It takes a long time to change even a native's name from the heathen Komahke to the Christian Samuel, Daniel, or Gerhard.'

cautioned the old hard-bitten missionaries. 'It takes understanding of the peoples' beliefs and their indigenous law'. But the Schutztruppe had their own policies and they were in a hurry.

Having entered into colonial treaties with the traditional authorities, Imperial Germany regarded South West Africa as their crown land. Accordingly, the Schutztruppe administrators sold off the grazing land and the fertile areas of their semi-arid protectorate with waterholes to the *Schutzgebiete* (German settlers). Very soon the trickle of Germans who wanted to farm in the Protectorate turned into a flood of economic migrants desperate to exploit the riches of Afrika, and build baroque farmhouses. Their horses drank the water needed by the natives for their herds of cattle.

The Administration acquired more grazing land to build Army Forts with watchtowers, military stations and prisons. They expanded government buildings, staff quarters and parade grounds; target practice fields and built three- or four- roomed schools with playing fields for their children. The Administration then made an enormous expanse of land available 'as much land as they required' for the South West Afrika Company to build railway networks to get goods and passengers at first from Walvis Bay, then from the port of Swakopmund to the hinterland. Rathenau and Dernburg visited GSWA in 1908 after the German Herero and Nama wars and, according to Von Strandmann, (1985:78), Rathenau noted the size of German South West Africa in his report; that of the area of 835,000 square kilometres, about 500,000 was reckoned economically viable. And that economically viable tract of land was slowly appropriated by the German settlers.

Rich grazing land was very important to the pastoralists of South West Africa whom nature had squeezed between the Namib Desert and the Omaheke (Kalahari) Desert. The natives argued that the German economic migrants had appropriated 500,000 sq km of viable grazing land for themselves, but the Administration was unimpressed. The presence of the Schutztruppe and economic migrants created a large demand for beef.

Before the arrival of the Schutztruppe and economic migrants, the cattle of the pastoralists roamed the finest grazing land and waterholes. The people occupied areas with waterholes and fertile land that they called Otjimbingwe, Omaruru, Okahandja, Okandjose, Otjizasu, Otjomuise, Otjiwarongo and all the other 'O' places. The various Nama groups, the Damara and the San and the Owambo groups occupied the remaining areas.

The ovaHerero pastoralists, men, women, and children as well as their deceased ancestors had multitudes of domesticated animals stretching from the north to the centre of South West Africa. The goats, sheep and herds of cattle outnumber the pastoralists a hundred to one. These large herds were almost a part of the family. To prevent a person's herds of cattle from decimation by either livestock pathogens or by drought, it was usual for the rich owner to bail the herds of cattle among several cattle-poor *eanda* relatives in different parts of the land. Hence many domesticated animals survived the eruption of rinderpest disease that reached Southern Africa from 'Western Europe in the late nineteenth century, slaughtering literally millions of domesticated and wild ungulates'. The impoverished *eanda* relatives benefited from good bailment and the bailee, to whom the cattle was entrusted had a very important duty to inform the bailor when an animal died by producing the skin.

The rich ovaHerero counted their cattle by the hundreds, for cattle looked after themselves, and propagated in large numbers without much help from the herdsmen. A person could own a thousand to two thousand heads of cattle and hundreds of sheep and goats. The ovaHerero preferred cattle with fine bushy tails and long picturesque convoluted horns as if sculpted by Rodin. The ovaHerero pastoralists have innate knowledge about the herding of cattle, for they had a cattle industry. Cattle were quintessential for milk, yoghurt, meat, leather clothes, goat-rugs and sandals, and the majestic horns were used for decorative grave art. (Surviving ancient graves are constituted of long striking horns.) Cattle provided the people with employment, income, fuel and food. The

pastoralists were beefeaters, more than goat meat or mutton, but some of them survived on only milk and yoghurt.

Among the Herero, the Mbanderu and the Himba, three or four tall impressive-looking herdsmen usually accompanied the large herds as they grazed gently along the lush valleys to the cattle posts. The herdsmen did not use the *sjambok* (whip) on their precious oxen, for they were spoken to in Otjiherero and the oxen did what they were told to do. The ovaHerero according to Rathenau, were 'considered courageous but peaceful people, vigorous and intelligent. Because of their tall, slim build they were reckoned one of the most beautiful tribes of Africa'.

In as much as the deceased ovaHerero still had rights in the land, the deceased also had cattle that were sacrosanct to them (*ozongombe ozomwaha zoviruru*). These ancestral sacred cattle were vested in the senior *oruzo* men, who could not alienate them. The Keeper of the sacred fire and the senior *oruzo* men were the trustees of the sacred cattle. The milk from the sacred cows was first tasted, *makera*, by the Keeper before general consumption by members of the household. Only when the Keeper died would a sacred ox be slaughtered, for the hide of the sacred animal was the ideal burial shroud within which the Keeper joined the ancestors as their equal. The magnificent horns contributed to the grave sculpture.

There was also the *ozondumehupa*, the sacred cattle assigned to the sacred fire of each *oruzo*, but not dedicated to the ancestors. These sanctified but not dedicated cattle could only be alienated in case of dire necessity in the *oruzo*, because the cattle were family property, which belonged collectively to them. On special occasions, members of the *oruzo* consumed the meat and the milk. However, individual cattle wealth was encouraged, because men, women and children should possess their own cattle and not rely on family property.

OvaHerero men, women, children and their deceased ancestors, plus their domestic animals and wild animals jointly owned the land, water and air. Men, women, children and animals also had a right to life and a right to survive. Human beings and domestic and wild animals had participatory rights to be on the land, but only the two-legged ones could

manage the land. Although adult humans had the use of the fertile land, they did not own it. Ownership was vested jointly in the deceased ancestors, the living, as well as generations yet unborn. The land was not the property of traditional leaders to convey; their duty was only to see to it that the land was well managed. Small-scale farmers were entitled to possession of land because they worked on the land, but they did not own the land. They had only possessory rights in the products farmed by their labour, possessory rights in their huts, and in their chattels. There was no concept of private ownership of what one did not fabricate with one's hands; no private ownership of land, air and water.¹

Accordingly, when the first foreign white merchants followed by their missionaries arrived in South West Africa, they were not killed, neither were they cannibalised nor abused by the natives. Parts of the fertile land were allotted to them to build a couple of mission houses, a church, trading stores and their cemetery. The people showed no animosity over the land allocated to the white strangers, for the 'strangers' like everybody else had only a possessory interest in the land. The land belonged to the community and the mission.

The mission settlement had agricultural land attached to it, because some of the missionaries brought seeds with them from South Africa, and wanted to grow all sorts of vegetables and fruits, tomatoes, spinach, water melons, oranges, peaches and pawpaw. But malaria, cholera or typhoid took a toll off the majority of the early missionaries who did not live long enough to reap the harvest. The biblical inscriptions on the gravestones were the evidence of their life expectancy that had been stolen in the tropics; whereas the red-faced merchants who fortified themselves with whisky and gin seemed to have fared better in the heat than the missionaries.

As the surviving missionaries had to support themselves during their pastoral work, they exchanged their second-hand clothing for milk and butter and for goats. When the traditional leaders visited the mission settlement, they were compelled to cover up their semi-nudity in the oven

¹ For more information about indigenous land law and family property, see Okupa, (1998:189-207).

heat of South West Africa. Kienetz, (1977:567.n.79) asserted that at the missionary centre and trading entrepot of Otjimbingwe, which came to be the most Europeanized place in Hereroland virtually all Herero wore European clothes by 1880. 'Indeed, most had even acquired decent suits for Sundays and holidays'.²

The white traders came in with wagonloads of reconditioned rifles, ammunition, gallons of whisky, gallons of gin in exchange for cattle, and then they disappeared. They brought no seeds with them and had no interest in the land, and asked for none. Several more traders appeared with gallons of brandy to exchange for elephant tusks and ostrich feathers and promptly disappeared. The traditional leaders agreed that as the missionaries and merchants were white foreigners who would one day return to their own homeland; entitlement to land in perpetuity was not an issue.

In a copy of a letter written by Robert Lewis to Prince von Bismarck at the Foreign Office, Berlin on 16 November 1887, Lewis explained honestly how he acquired his land:

In 1877 the Chief granted me the Ebony Mines, and in 1883 a prior lease of Otavi having lapsed, he granted me this also, with a tract of country round the Mine. I had lent the nation guns, and sold them ammunition to enable them to defeat various invasions of their territory, which, but for my assistance, might again have overthrown them, and in consideration of this and other services, these Mines were granted me. I hold receipts dated November 1883 for £180 on account of the future royalties, which may become due and payable to the Paramount Chief.³

The missionaries built their settlements and the merchants their baronial lodges and warehouses that they padlocked. The Africans did not have padlocks for their huts. Their doors were left unpadlocked because

² Quoted in *Zeitschrift der Gesellschaft für Erdkunde zu Berlin*, 20 (1885), 53.

³ Described by Bismarck "as the most rapacious Mr Lewis". W. L. Kingon (1889:180). Annexure D. Lease of Ebony Mine. And Annexure marked G-G2.

their only worldly four-legged possessions could amble in and out. Their wealth was in cattle. They did not need fancy suits and dresses, and there was no grinding poverty, as everyone owned some cattle, goats and sheep.

However, when the European merchants opened their warehouses for business, the African buyers had no money. They simply stated what they needed and the traders told them how many goats, cows, and sheep or elephant tusks were required for barter. Some traders encouraged the traditional leaders to drink and be merry, and to buy goods on exorbitant credit. Most of them were unable to meet the obligations of their personal debts and the creditors demanded that they should use family property to pay the debts.

However, decades later the Schutztruppe and economic migrants moved into the fertile plains that were thick with cattle and people. Some Germans had already settled in the New World, in Australia, North and South America, New Zealand and South Africa, but there was a mass exodus to German South West Africa. The land in GSWA was beautiful beyond their extravagant imagination. It was a land suitable to raise a large family and grow plenty of fresh foods and hunt wild animals. This was the garden of paradise. The new economic migrants were not interested in the natives' land tenure, where ownership vested in the community. Theirs was a quest for farmland. They wanted to own the freehold title that they could alienate or transfer when it suited them. They would not plough their labour and money into community land. Accordingly, the Schutztruppe administrators simply appropriated more land from the natives' and declared it Crown possession. They applied their own property rights. Major Leutwein wrote succinctly:

There are two matters on which the Herero act in a way contrary to our colonial aspirations. For one thing, they do not wish to sell land to whites, but are only prepared to allow them to live there, and for another, they do not want to make use of their cattle herds, but tend to build them up beyond all measure ... In being exclusively concerned with the

enlargement of their cattle herds, the Herero are becoming unproductive for our trade and industry.⁴

Then the blast of the rinderpest cattle disease of 1897 answered one of Leutwein's questions, as the disease diminished the large cattle holdings of the natives. Some cattle however survived the plague because of the customary law of bailment. But many pastoralists became destitute as a result of the disease and were forced to work for the economic migrant farmers as either labourers or farmhands, or as general dogs' body, working for food and cast-off clothing.

Some strong young pastoralists were encouraged to work on the railway track. The new railway construction industry spawned pastoralists' male employment in quarrying stones, building bridges, roads and station depots. The girls and women worked in the kitchens of the farmhouses and laundry rooms and as housemaids and nannies for the children. The masters' sexuality did not distinguish between little girls and their mothers; employment of the mothers also made their daughters available. White men and black women procreated the mixed race children and the children acquired their mothers' subservient status. However, some men filled positions with their nephews and mixed race children. The white wives saw the mulatto children playing in the outbuildings at the back of the big farmhouse; they knew, but could not countermand their husbands' licence to rape native girls. The mulatto children must have fallen from the skies above. As black women say, 'White male rakes make the best husbands for white women'. The monogamous men of Judeao-Christianity were scarcely different from polygamous native men.

Rape was not only a physical violation of a young native girl, but also a moral violation. No husband would accept as his *ondjova* wife a sullied girl who had been broken into by white men. Descent may be matrilineal, but virginity guaranteed paternity. The ruined girl would end up in a polygamous union. What of rape of wives past child-bearing age? As they said, the husband would reply that you did not throw away a perfectly

⁴ Horst Drechsler (1986:85) Imp. Col. Off. File No. 2100, p. 101. Leutwein to Hohenlohe-

good chair because someone sat on it. But among the economic migrants, descent is patrilineal, accordingly, married women's children were affiliated to the husbands' family. If the mother was unmarried and had brought shame on her family, the illegitimate child was affiliated to her family and could be put up for adoption. The adopted child was then legally absorbed into the new patrilineal family, and would be given the adoptive father's surname and acquire his social status.

But in matrilineal Otjherero community, a rape child could not be abandoned or offered up for adoption as a meaningless life. All children were affiliated to their mothers' *omaanda* (matrilineage) whether or not their mothers were married or unmarried. As the Himba say, 'the love of a mother is blind'. The argument was that at least maternity was certain; paternity had too many elements of uncertainty. The blood tie of the mitochondrial DNA was very powerful. The ovaHerero based their social and legal organisations of succession and inheritance and war on the blood tie. The family members as they argued were, uterine brothers and sisters, sisters' children, mother's brothers' children and mother's sisters' children. The child may grow up in his father's house, but would inherit family property. However, the new radical problem facing the colonial natives was what should be done to stem the tide of mixed race rape children? The mixed race population of children were life prisoners of their fathers' sexuality whom the inclusive *eanda* had not anticipated. Venereal diseases and infanticide ruined the native womens' lives, and they paid the price of German colonialism with ruined lives and mixed race children and there was no remission of their sins, as the Christians said.

Most of the ethnic groups in central and northern South West Africa were matrilineal, but the Christian males then imposed and legitimated a new ideology of patriarchy and male dominance on the native Christian converts. Simple question such as:

'What is your name? I mean your surname, your father's name', asked the Christian migrants as they wrote down the surname.

The OvaHerero men were assured that they were the heads of their household, accordingly, only their first son should inherit the fruits of their labour. Some native adults who were in daily contact with the missionaries were converted and baptised and their Otjherero first names were changed to biblical names appropriate to their physique or temperament, such as Goliath, Job, Solomon, Judas and many more. The introduction of primogeniture made the Christian African men extremely happy. They reflected their new baptismal status by acquiring more credit facilities from the trading stores for themselves as well as for the benefit of their sons rather than for those of their sisters' and aunts' children.

The new rail track became a 'logistical weapon' for more expropriation of land from the natives. Major Leutwein simply told Chief Samuel Maharero that the land was required for the railways. The traditional authorities argued that the natives walked, and that they did not need the railways. Major Leutwein assured them that the railways would bring in new technology and development that would heave GSWA from its Stone Age torpor. The protectorate had to be modernised. Accordingly, the South West Africa Company that had won the franchise to construct the railways acquired acres of land on both sides of the proposed tracks, and retained the rights to treasure trove and minerals that might be found on the land.

The German colonial office sent a military railway brigade to help with the surveying and construction. These fresh men from urban Germany took the decisions about which stretches of land between Swakopmund to Windhuk would be suitable for the railway tracks. They did not bother about whose grazing land was being appropriated to run the railway tracks. Their instruction was to lay the railway tracks. Thus, the new railway track would traverse large expanse of Herero heartland between Swakopmund and Otavi to Windhoek. It would run through flat countryside and grazing lands, the few natives who occupied the fertile land were unceremoniously removed. However, only three hectares of land were delimited for the first few stations.

The *Eisenbahn-truppen* (the railway troops) of the German army, and the white miners and engineers were to construct the railways, but

African navvies with their shovels were drafted in to shift the sand and rocks and build embankments before the tracks were laid. Sometimes mules and men were used to heave the tracks into position. The rail track did not follow the old mule tracks and ox-wagon trail from Swakopmund to Tsaobis then to Otjimbingwe; instead a new track was carved out from Swakopmund to Nonidas in the desert. As international development funding was unavailable for the engineers to hack through the mountains around Otjimbingwe, the railway tracks by-passed Otjimbingwe, which lost its historic importance as 'the most Europeanised town in the Protectorate' and became a deserted village. Lack of 'passing trade' further reduced Otjimbingwe and Otjikango (Gross Barmen) to the backwaters of the colony. Even the Augustineum School was transferred from Otjimbingwe to Okahandja.

The colonial expansion into the hinterland of GSWA was for patriotic reasons, and this gave the astute German businessmen the opportunity to expand their businesses, as well as to acquire more land around the proposed railway stations. When it was decided that the railway track could not be routed through Otjimbingwe, Mr Hälbich, the businessman cleverly claimed to have bought 24,000 hectares, north of Otjimbingwe from Zacharias Zerawa, the chief of Otjimbingwe. Hälbich called his acquisition Karibib. Karibib station was large. Hälbich built new houses, shops and a hotel for new German arrivals.

Railway track construction was one of the most dangerous jobs in 1890s Africa for humble pastoralists. They had the finest climate for pastoralism, but not for heavy construction industries. The usual railway track hauling team was composed of native navvies and oxen as used by Pharaoh's engineers to build the pyramids. The native navvies worked for very long hours with very little pay. These men who were trained pastoralists and not navvies did not survive the gruelling pace of work. The death rate was very high. Bravenboer and Rusch (1997:27) pointed out that between Christmas 1897 and 22 January 1898, twenty-four men died of stomach fever.

The human instinct for survival was very strong, so the native workers who survived the physical hard grind and 'stomach fever' disappeared.

This made the further supply of native labourers from the hinterland almost impossible. The only effective way to deal with indigene labourers was to import hardy Italian labourers to bridge the gap of not obtaining natives. The Italian death rate was low but they drank profusely and wanted more money for the job than the natives had done - for old blankets and a couple of marks.

On 20 November 1897, Nonidas station was opened for business and the German flag on the flagpole fluttered to fine military music. Although Nonidas in the desert was only ten kilometres from Swakopmund, it became a watering station for the steam engines. Depots, supply stores and a windmill were built in Nonidas.⁵ From Nonidas, more new stations were carved out of Herero grazing land. The stations were christened after famous Germans.

The next station after Nonidas was Richthofen, named after Baron von Richthofen. There was a plentiful supply of water in Richthofen station, and forty kilometres after Richthofen the station was christened Rössing, after Baron Nonus von Rössing. Welwitsch station was named after the indigenous Damaraland plant found only in South West Africa. Its habitat extends from the Kuiseb River to the 'Petrified Forest'. The stem grows a few inches above the soil and has two enormous leaves that can grow to about eight feet but are split lengthwise into segments. In some instances, the plant has been recorded as surviving for about a thousand years.

Apart from the railways, the German administrators would not sink any more money into their Protectorate. But with the building of the *Staatsbahn*, and the finding of zinc and lead between Nonidas and Pforte stations, there was another exodus of German economic migrants who wanted to fulfil their dreams of acquiring untold riches in the Protectorate. Times were very hard in Germany and land was plentiful in Afrika. Townsend (1930:130) noted that the size of GSWA was 835,100 sq. km (one and a half times the size of the German Empire). The territory was therefore far too large for the natives. The economic migrants, who postulated that they would make better use of the land,

⁵ Brenda Bravenboer and Walter Rusch (1997).

evicted more natives from their fertile land. It became an issue of survival between 'settlers and savages'.

There were also disputes over land between the Boers, who claimed they had bought the land from the natives and sold it to the Germans, and the natives who said that the Boers could not have bought the land as they would not have sold their country to the Boers for the land was not theirs to sell. Furthermore, they said, nobody had paid them for the land. There was even disagreement between reasonable Germans and Boers as to 'what to do with the natives of GSWA?' Both sides in the argument of what to do with the natives proposed to the Berlin government that a reserve should be created for the Africans.

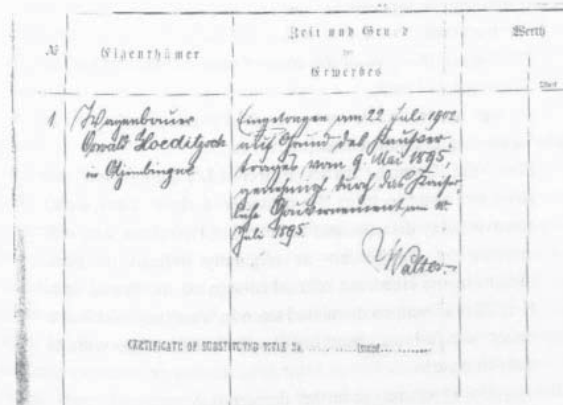


Figure 1: Title deeds.

Source: Deeds Office, Ministry of Land, Resettlement & Rehabilitation.

Thus, on 10 April 1898, Imperial Proclamation of the Highest Order Regarding the Establishment of Native Reserves in the GSWA was proclaimed.

Article I provides that:

The Imperial Chancellor and with his consent the Landeshauptmann is empowered to declare certain landed

property within the SWA Protectorate belonging to the natives or being at the disposal of the Government to become the inalienable property of a native tribe or community of tribes and to reserve as dwelling areas for the members of the tribe or persons of tribal communities.

As a result of the Proclamation, the German Chancellor and the Landeshauptmann, appropriated the remaining fertile land which was given to the economic migrants, and they set up 'Collection camps' and 'reserves for natives'. Two reserves were carved out, one in Hereroland and the other in Namaland. Even though a native delegation of Headmen, according to Drechsler (1986:116) quoting Diehl, the missionary, had told the Governor that the land was:

- (1) too small;
- (2) located in a part of the country more or less unfamiliar to most of them;
- (3) left much to be desired in terms of grazing land.

The missionary continued that:

Zürn (the German district officer-H.D.) summoned the Headmen again to bring the matter to a close. They were, however, very disappointed to hear that Herr Zürn was still insisting on the borders as originally defined by him. Indignant, the Headmen refused to sign on the dotted line. Herr Zürn thereupon dismissed them in what they said was a rather rude fashion, observing that he could well do without their signatures ...

The Imperial Proclamation further decreed that:

No non-member (stranger) may dwell in the reserve, make use of land, trade or conduct a business without the permission of the Landeshauptmann'

Article 5 provided that contravention was punishable with 3 months imprisonment or a fine of 3,000 Marks or both.

'Reserves' were the lesser catastrophes that would befall the indigenes. There were deportations of natives from the outlying villages into the reserves, what today would be called ethnic cleansing. The Africans were

evicted from grazing lands in their tribal areas and packed into the reservations even though their representatives had humbly suggested that the land was inadequate for pastoralists. When they lived in their scattered villages, they had been less susceptible to diseases associated with living in overcrowded reservations, and they had not been vulnerable to diseases brought in by servants of the settlers, as there were not many indigenes crowded into villages to incubate the diseases. Their ancestors had lived as free pastoralists and died without damaging the environment, they were healthier for walking twenty or more miles a day with their grazing cattle. They lived in Hereroland, but this was no longer their Hereroland.

Reservations killed off the long and prosperous pre-colonial pastoral native economy. They had worked in their meat industry, buying and selling livestock; making skin clothes from hides, sandals, sleeping mats, milk and yoghurt. 'Unemployed indigenes' or those who were idle in the reservations became easy targets for compulsory labour on the railways, road construction, government buildings, and for farmland and domestic services. The economic migrant preferred the use of free native labour for food rather than wages, but some payment when it was made, was sometimes in the migrants' tattered and cast-off clothing as in the years of the rinderpest. But now some tobacco and old wool-bare blankets were sometimes thrown in for good measure in lieu of wages. As the men could not feed their family on cast-off clothing they refused to go and work for the economic migrants. When the natives saw the missionaries and migrants coming into the settlement to recruit them for labour on the farms, they disappeared, terrified that they would be hauled off at gunpoint.

If pastoralists who had adapted themselves to their environment for centuries refused to plough the land or drive the wagons, they were flogged senseless into modernisation until they learned to do what they were told. And when services were not performed properly in the house for example, they received the correctional *sjambok*. Natives who ran away from their masters and mistresses, because of maltreatment were in breach of their employment contract; and when found, they were flogged

and imprisoned. The punishments were carried out under the Criminal Jurisdiction of the Decree of the Imperial Chancellor with Regard to the Exercise of Criminal Jurisdiction and Powers of Punishment over Natives. Dated 8 November 1896.

Section 17 provides that Natives who are employed as servants or under a contract to:

work may, on the application of their masters or employers, be sentenced as a disciplinary measure. ... to the following punishments, viz. Corporal punishment, together with imprisonment in irons or imprisonment in irons alone, for a period not to exceed 14 days, for the following offences: Continued neglect of duty and idleness, insubordination or unwarranted desertion from their places of service or employment, as well as any other serious breach of the condition of service or employment.

Life in the reservation for those without cattle, those without employment contracts with the economic migrants became a life of grinding poverty. Some pastoralists were forced into a sedentary life, as there was not enough space for everybody and their cattle.

According to the ovaHerero, poverty bred more poverty and alcoholism, and crime bred undisciplined children. Undisciplined children were too humiliating for the *eanda*, the matriclan, even for the shedding of tears. All their sufferings were in the names of Christianity and civilisation. The economic migrants did not show any respect for the customs of the people. Missionaries and teachers ventured into the appalling reservation poverty to convert the natives and tell them about God. Ecclesiastics 7: 13-14:

Think about what God has done. How can anyone straighten out what God has made crooked? When things are going well for you, be glad, and when trouble comes, just remember: God sends both happiness and trouble; you never know what is going to happen next.

But the natives who still owned a few cattle and were squabbling for grazing land among themselves knew what would happen next. Some of

the clever women and men foresaw what native reservations would mean to their age-old freedom of movement with their cattle. They had to do something; they did not expect anyone to do anything for them. Accordingly, hundreds of men, women and children decamped with their cattle across into Ngamiland.⁶

In the 1860s, Chief Kamaharero and Chief Letsholathebe had agreed by exchanging cattle that there should be free movement between their people. The Shekgalagari, Setswana and Otjiherero speaking people had long historical contact with the European explorers who had followed the natives' existing trade routes, well trod trails that resembled roads that connected their various polities. There had always been friendly relations between the people in Ngamiland and Hereroland and many had intermarried. The new colonial borders had no effect on their movement through dirt routes that had been used by their ancestors since time immemorial. The rock artists too might have used the routes in their migration for water. During Iron Age technology, the early people could have travelled on the route, but made a detour to Otjikoto mines. Many groups crossed the routes regularly for trade.

The Schutztruppe had wanted to close this escape route. As far back as 12 November 1889, Lord Salisbury refused to accept the proposal by Count Leyden of the German Embassy London, that the district surrounding Lake Ngami 'is geographically and economically part of the interior of the German Protectorate ... King Moremi is opposed to German influence', recorded the Colonial Office.⁷

Sooner or later there was bound to be trouble because of the tyranny of the powerful economic migrants farm owners, because the indigenes were grazing very near to their land. Other natives from the reservations flaunted the draconian restrictions on their pastoral life style by crossing the German demarcation line and grazing their animals. The new owner of the land promptly confiscated the cattle for trespassing.

⁶ I. Schapera (1945) and T. Thlou (1985).

⁷ Foreign Office. 244 / 470; XC 7135. Public Record Office, London.

Between the construction of the railway tracks and the creation of the reservation, there was another influx of German economic migrants who shipped themselves into the Protectorate. Construction of the railways had encouraged the economic migrants to travel about seeking more fertile land for farms far away from the Boers. Some appropriated the natives' well-kept sacred cattle. The German peasants had received loans to settle in GSWA; they were marginalised by the elite Boers, who argued that their white status was being compromised by the German proletariat's brutality to the natives.

More train stations were constructed very quickly and each took up more hectares. There were stations with acres of land for the Stationmaster's house, staff houses and farms, restaurants and shops. The economic migrants appropriated more land for farming in the vicinity of the stations; creameries for milk, butter and cheese were started. More land was required for electricity supply, hydraulics and telegraph lines. Some telegraph lines were dangerously low for the gentle bull giraffes and cow giraffes during the mating season, so the telegraph poles were raised to 9.5 metres.

Sphinx station was named after the local weather-beaten mountain that looked like a human head with the recumbent body of a lion. And there was Kubas station at kilometre 147 built with white marble that was obtained cheaply from the local marble quarries. The Herero *ozonganda* were demolished because of their proximity to waterholes needed for hydraulics. Marble settlements and large farms sprouted near stations and water holes.

On 13 April 1899, Swakopmund was connected by cable to Germany for the economic migrants to keep in touch with home, and there was a flood of more Markless Germans who wanted to settle and farm on the best land, but not in the desert. And more natives lost their fine herds of cattle.

The railway engineers continued to build bridges across dry riverbeds linking some of the new stations to deserted Herero villages. Some of the railway stations bore the names of honoured Germans and some significant local place names were retained. Twenty-four railway stations

were finally constructed along 382 kilometres of track from Swakopmund on the Atlantic Ocean to Windhuk in the hinterland. They were Nonidas, Richtofen, Rossing, Khanfluss, Welwitsch, Pforte, Jakalswater, Sphinx, Dorstreiveir, Kubas, Abbabis, Habis, Karibib, Otjimukoka, Kamumbonde, Okasise, Kamukoto, Kapermouen, Okahandja, Otjihavera, Brakwater, Osona Halt and Windhuk.

On 1 July 1902, the Staatsbahn was officially opened. Bravernboer and Rusch (1997:47) recorded that the Staatsbahn had cost the German government 14,472,132.05 Reich Mark and the construction was completed in four years and ten months.



Map 3: Train stations: Tsumeb – Swakopmund – Windhuk
Source: Transnamib Museum, Windhoek.

There were daily goods trains from Swakopmund to Windhuk. A weekly passenger service shunted from Windhuk at 6.30 on Monday morning and the passengers had coffee at Okahandja and lunch in Karibib. After lunch the male passengers went to the beer gardens and the ladies had a siesta. The train got into Swakopmund on Tuesday at nine o'clock in the evening. The return journey from Swakopmund was on Thursday at 6.30 in the morning, coffee at Nonidas and an overnight stay

at Karibib hotel, and the passengers arrived in Windhuk on Friday at seven in the evening.



Plate 11: Okahandja Railway station.

After the opening of the Swakopmund to Windhuk railway line, *Otavi Minen-und Eisenbahn-Gesellschaft* (OMEG) wanted to exploit the rich copper deposit in the Tsumeb area. OMEG would have liked the line to run from Otavi through Kaokoland to the estuary of the dry Khumb River then to Cape Frio on the Skeleton Coast. On 1 October 1903 construction started on the railway track from Karibib to Tsumeb and the track through Kaokoland to Cape Frio was abandoned.

In January 1904, after the Christmas and New Year holidays, the mass absenteeism of native navvies, and labourers from farms, and domestic servants gave the Missionaries glimpses into the natives' unusual behaviour, that they were up to no good. All was not as it should be in the reservations: something was not morally right. Labourers could not even be recruited for an initial New Year increase in their wages. The native navvies had disappeared. Accordingly, the few natives who continued to work on the railways, as Bravenboer and Rusch (1997:60) noted, 'In an attempt to prevent the remaining Herero from joining their compatriots, and then taken out daily to work as chain gangs, until they too disappeared when the slightest relaxation of their servitude occurred.

Jahrplan
der Kaiserlichen Eisenbahn
Swakopmund – Windhoek
(Deutsch-Südwestafrika)
vom 1. August 1902 ab.

Station I: Swakopmund – Windhaef.					Station II: Windhaef – Swakopmund.					
Personen- und gemischter Zug		Güterzug		Entfernung km	Stationen	Personen- und gemischter Zug		Güterzug		
an	ab	an	ab			an	ab	an	ab	
	7:00		7:00	0	Swakopmund	an	8:05		8:00	
7:00	7:05	7:40	7:45	3,80	Nomboes	↑	7:22	7:22	4:12	4:17
7:30	7:40	8:14	8:14	10,40	Nichtjelen		6:52	6:52	3:19	3:27
9:10	9:20	10:19	10:29	30,20	Näffing		5:36	5:40	1:44	1:54
10:20	10:30	11:49	12:01	57,00	Khan		4:10	4:20	11:20	12:10
10:55	11:05	12:29	12:39	62,70	Welmuth		3:40	3:50	10:40	10:50
12:45	12:55	2:19	2:29	85,00	Pietric		2:21	2:30	9:00	9:10
1:15	2:00	3:20	3:30	98,20	Sakafswater		1:50	1:55	8:05	8:10
3:22	3:32	5:00	5:10	121,30	Opfing		11:20	11:24	5:10	5:20
4:12	4:22	10:20	10:45	133,50	Dorfweiser		10:51	10:45	1:55	2:10
5:10	5:25	11:55	12:25	147,30	Rubas		9:50	9:45	11:45	12:30
6:22	6:32	1:55	2:05	165,00	Wäbbis		8:50	8:50	10:50	10:50
7:21	7:26	3:10	3:15	172,00	Qebis		7:55	7:50	9:45	9:50
8:22	8:15	4:20	4:15	181,20	Karibib		6:52	6:50	8:50	8:50
7:05	7:10	5:19	5:29	202,60	Tafelmoos		5:54	6:00	7:51	7:51
7:30	8:00	10:00	10:30	212,90	Lijmsale		5:08	5:18	6:50	7:00
8:15	8:25	12:25	12:50	240,20	Kamwatsche		3:30	3:45	12:20	12:30
10:45	10:55	2:02	2:05	263,30	Maße		2:30	2:30	10:40	10:50
12:15	1:10	4:30	4:30	288,00	Salden		12:18	1:00	4:25	5:00
2:25	2:40	10:45	10:50	311,00	Osfanbos		10:46	11:00	3:20	3:30
4:00	4:10	12:55	12:55	334,90	Zweifelsd.		9:10	9:30	12:00	1:00
5:05	5:10	2:08	2:18	351,20	Lijmsaentzier		8:17	8:25	11:00	11:15
6:20	6:20	3:30	3:40	364,10	Stalooter		7:21	7:26	9:40	9:50
7:25		4:35		381,70	an Windhaef			6:30		8:15

Erläuterung: Personenzug ab Swakopmund Donnerstag, an Windhaef Freitag, ab Windhaef Montag, an Swakopmund Dienstag, ab Swakopmund Freitag, an Windhaef Dienstag, ab Windhaef Donnerstag, an Swakopmund Freitag.
Personenzug befördert nur weiße Reisende.
Eingehorene dürfen nur mit geschlossenen Güterwagen befördert werden.
Die Nachfahrten vom 6:00 Uhr abend (letztes bis 5 Uhr 50 Minuten (5:22) sind durch Unterbreichungen der Winterfahrpläne gestoppt.

Kaiserliches Eisenbahn-Kommando.
Reprint: Trans Namib Museum

Figure 2: Train Timetable
Source: Transnamib Museum, Windhoek.

There was widespread speculation among the economic migrants that the natives were up to no good. Some German economic migrants were surprised, and disgruntled with the resentful natives considering what they had done in German South West Africa? The missionaries assured the migrants that the natives were like that. They were brewing witchcraft and were about to butcher German men and boys, and rape the women. The rape fear was about rampaging black, strong native men. What if native men, God forbid, should rape white women? Their women were as pure as Christmas snow in Helgoland, delicate as Meissen porcelain and were perched on a pedestal reaching the stars far above native men. The white men had so sexually abused native women that they had accordingly put their own wives and daughters at the mercy of native men.

It had not occurred to the economic migrants that twenty years of colonial expropriation of land and brutal imposition of colonial laws had reduced the once proud, free native men and women to squatters in reservations. They had become landless labourers in the immigrants' farms. The economic migrants had been so obsessed with turning pastoralists into farm labourers and builders that they did not bother to understand the people's beliefs and customary laws or even to see them as fellow human beings.

The outbreak of the native war was not for the purpose of killing the Germans who treated them abominably and to create German widows; it was simply that among them, when other tribes encroached on another tribe's patch of grazing land, there was always resistance. Pre-colonial wars among the ethnic groups were essentially about grazing land and raiding of cattle; but the war against the Germans was about many fundamental issues. Several of the listed crimes committed by the self-righteous economic migrants against them included colonial appropriation of their land and cattle, disintegration of their indigenous laws, and abominable sexual licence with native girls, women and boys. The dissolute German prodigal sons sent to the colony could not restrain themselves from whoring and drinking. They greedily appropriated

grazing land for their amusement, pillaged cattle, destroyed the wild animals, and raped women and boys.⁸

Furthermore, according to oral customary law sources, intelligent natives who objected to the Schutztruppe administration were assassinated. And the assassinations were accompanied by persecution of their families who clung to their heathen beliefs. The economic invaders had destroyed the people's indigenous laws, and this was the meaningful source of law that had flourished for hundreds of years before their arrival.

Accordingly, another wave of oppressed natives sneaked out of German territory with their remaining cattle into Ngamiland. The new arrivals agreed that pastoralism in the newly partitioned Bechuanaland was more integral to their own indigenous way of life than in German territory.

The desperate natives who remained in GSWA reservations knew that they could not take on the might of the Schutztruppe and fight back, because the Schutztruppe too were preparing for a war of extermination against the indigenes. The natives were being provoked into war. A war would give the Germans well-reasoned arguments to impound the natives' cattle and appropriate the remaining arable and grazing land from them and rape more women. Drechsler (1986:117) noted that as far back as 'in October 1895 the Governor declared that a war against the Herero would be a profitable undertaking given the size of their herds. The quelling of an uprising by the Mbanderu in 1896 - 1897 proved very lucrative indeed for him, as he seized no less than 12,000 head of cattle. The capture of livestock invariably played a major role in subduing the local rebellions that occurred in the following years'. Thus, the economic migrants and the Schutztruppe goaded the natives into war, for that was the simplest way of acquiring more of their land and cattle.

⁸ Their defence against murder, rape, grievous bodily harm was that they suffered from tropical hallucination, tropical frenzy brought on by the heat.

4.1 The Kaiser's Hottentot War

There were cumulative reasons for the war that unleashed the fury of the firepower of the Schutztruppe on the natives of German South West Africa protectorate. Many historians of Africa have personal interpretations about the origin of the war.⁹ Gewald (1999) tried to expound that Zürn went off message, as the 21st century would say. What historians who write about the war failed to understand was that the natives, no matter how docile, could not endure patiently and forever the tyrannical yoke of Schutztruppe brutality. The natives showed more courage in going to war with the Schutztruppe than in assassinating them secretly, one by one in an ambush near waterholes and train stations. If the Schutztruppe had been attacked secretly, this would have unleashed mass reprisals and revenge killings on all unarmed natives, especially old men and women and children who could not fight back.

No matter, the reader would recall that Curt von François and his elite Schutztruppe, had constructed heavily fortified fortresses with battlement towers in areas near large locations of native population in anticipation of native uprisings. The Schutztruppe had been ready for war for a very long time. There were Forts Sesfontein, Grootfontein, Namutoni and Outjo in the north. Fort Omaruru, Fort Okahandja, and the 'Alte Feste', and Fort von François in Khomas Hochland, Windhuk and Fort Gobabis in the central region; and in the south, the Forts in Bethanie, Gochas, Gibeon, Keetmanshoop, and Warmbad. Even the Powder Magazine in Otjimbingwe was occupied during the war. Each fortress was stacked with plenty of food and weapons and connected to pipelines for water from wells. The fortresses were huge buildings housing officers of different ranks and soldiers. There were also horse and cattle depots sheltered within the fortress, a hospital, a bakery, abattoir, a refectory, ammunition depot, uniform depot, and medical reserve depot.¹⁰ All

⁹ For details see Report on the Natives of SWA 1918: Helmut Bley (1967) and (1971); Robert Cornevin (1969); J. M. Bridgman (1981); Horst Drechsler (1980); Neville Alexander (1988); Gerhard Pöhl (1991); N. Mossolow (1993) and Jan-Bart Gewald (1999).

¹⁰ *Die Kämpfe* Vol. I. Skizze 8, p. 249.

German houses in neighbourhoods where there were heavy concentrations of economic migrants were barricaded.

But the liberal Lutherans back home in Germany did not support the shedding of any blood whatsoever, either German blood or the blood of natives. They argued that it was not a religious war. War by the German economic migrants against heathens was not the acceptable Christian way of achieving a just society. It was murder to slaughter the unbaptised. What the liberal Lutherans back home argued about was irrelevant. The great Chancellor von Bismarck was dead and General von Caprivi too had died, but Kaiser Wilhelm II, known as the 'All-Highest' was very sympathetic to the aspirations of the economic migrants who aimed to extend the Fatherland into the darkest heart of Afrika. The economic migrants were dedicated empire builders for the Fatherland. German South West Africa was worth a war; it was the jewel in the colonial crown.

On 9 January 1904 orders were given by telegraph from Okahandja and by heliographs to the other forts that, as a precaution, all German women and children with their moveables should make for their nearest fort and take refuge therein. They would return to a free lifestyle again after the threat of war had receded. Meanwhile, the German women collected their jewellery, drinking goblets, fine bedlins, tablecloths and napkins. Some also carted off their fabrics and fine wines imported from Germany. These were the precious items that enabled them to recreate their German life style in Deutsch-Südwestafrika. The goods also aided parents in deciding which daughter would get what as a dowry. By sunset when the women and children were safely inside the forts in their district, some of the men dug large holes under trees in their farm, and boxed all their remaining precious heirlooms, and buried the boxes six feet under.

Deutsch-Südwestafrika was the first war of His 'All Highest': 'The Kaiser's Hottentots war' as the German papers christened it. Germany had the most powerful and well-disciplined army in the world, because Chancellor General Leo von Caprivi's Army Bill that enlarged the army had paid off. It was beginning to pay dividends in Africa. The Army was the pride of the 'All Highest'.

The Kaiser's Schutztruppe were armed with modern weapons. The German government had purchased a batch of Madsen light-machine guns from Denmark specifically for use in Afrika and had them shipped to Swakopmund. The German Navy and Army had also adopted the 1894 DWM Maxim.¹¹ The Schutztruppe engaged natives who were using old flintlocks, obsolescent rifles salvaged from the Prussian-Franco War 1870-1871, and muzzle-loading percussion muskets. Sometimes when the natives faced the Schutztruppe, their antiquated guns could not and would not fire.

Hoornkran, the Witbooi village was an early example of a well-equipped Schutztruppe exercise in Blitzkrieg tactics with a slight difference. Machine guns and bayonets quickly emptied the village and the huts. In the words of Witbooi, in one of his letters number 103, dated 18 April 1893, he wrote:

Captain von François attacked us early in the morning while we were unsuspectingly asleep, and although I took my men out, we were unable to beat them back; and the Captain entered the camp and sacked it in so brutal a manner as I would never have thought a member of a White civilised nation capable of — a nation which knows the rules and ways of war. But this man robbed me, and killed little children at their mothers' breast, and older children and women and men. Corpses of people who had been shot he burned inside our grass huts, burning their bodies to ash. Sadly and terrifyingly Captain von François went to work, in a shameful operation.

... All told, the number of souls lost in the war against Captain von François is eight men and two young lads, i.e. ten men, and of women and children, ... 78. That is a total of 88 people killed by the Captain, all innocent souls who had not offended the Captain.¹²

¹¹ David Goldsmith (1989:133-139).

¹² The Hendrik Witbooi Papers. (1989:115).

Of the two young boys who were killed, one of them was Witbooi's twelve year-old son, and the other was his ten year-old nephew. On the day of the attack on Hoornkran, according to a statement made to the Under Secretary for Native Affairs:

The Germans captured an old man, who was a church elder. He was too disabled to run away so he hid himself between the rocks. The Schutztruppe captured him, tied him up and took him to their wagons and shot him with three bullets ... All the women and children who were not killed were taken away as prisoners. One woman was killed, and her child ran to her screaming. A soldier shot the child through the head, blowing it to pieces ...¹³

The Schutztruppe looted Hoornkran; they stripped the living and the dead of their possessions:

"We lost one buck wagon of the Captain, two horses, several foals, cows and calves that were shot down, and some cows they took away, and also some sheep and goats. We lost ... one good gun and some old ones, and some loose powder and a few cartridges". Drechsler (1986:70) was more succinct, he recorded a list of one harmonium, (it was used to accompany the choir during divine service) 212 pairs of stirrups, 74 horseshoes, 44 dentures, 12 coffee pots, 12 cast-iron coffee-grinders and 3 wooden one, 51 spoons, 38 forks, 48 pairs of scissors, 1 slate, 9 tin plates, 25 tin cups, 3 flat-irons, 3 violins, and 1 pair of opera glasses.

He further added that the soldiers even carried away the Witboois' chickens "which were most welcome, as ours were reluctant to lay eggs".¹⁴ Some people might think the list was sheer trivia, but that was the sum of their worldly possessions.

¹³ Statement of Klein Hendrik Witbooi (son of Captain Hendrik Witbooi) and Keister Keister, deputy Captain of the Witbooi tribe and statement of Petrus Jesta. In Witbooi Papers, appendix 2. Cape Archives, NA 221, enclosed in Cleverly to Under Secretary for Native Affairs, 9. 5. 1893.

¹⁴ Horst Drechsler (1986:120, n. 13).

After the departure of the Schutztruppe from Hoornkrans Witbooi and his men who had fled into the mountains returned to find what they could salvage. Someone's sharp eyes noticed that a mine had been laid and they had to disconnect the spring gun that fired the mine. Witbooi, one of the few literate 19th century African leaders who kept a diary in Cape Dutch language found that his Journal that held minutes of Church meetings, letters to the local Chiefs and communications with various leaders of the Schutztruppe, accounts of campaigns and battles had been commandeered. It was 'a large ledger bound in red leather containing entries of 183 pages'. The Schutztruppe carried away the ledger.



Plate 12: Schutztruppe, 4 cannons, 2 batteries and a heliograph.
National Archives, Windhoek, Namibia.

The news of the Blitzkrieg massacre by the Schutztruppe at Hoornkrans travelled quickly throughout Deutsch-Südwestafrika with the result that when the natives heard that the Germans were coming, they disappeared. A visit from the Schutztruppe meant massacre. The natives as the economic migrants said, 'became straightforwardly unfriendly and were prepared for war'. After the massacre at Hoornkrans, General Leo von Caprivi recalled Curt von François. Major Theodor Gotthilf Leutwein replaced François. Leutwein was a man of the old military school who did not massacre natives, as he did not wish to create a 'second Hoornkrans'. In his fine book, *Elf Jahre Gouverneur in Deutsch-Südwestafrika*, (1906:17) Leutwein wrote that:

The position in the territory on my arrival was certainly not rosy, and in certain respects resembles the position today ...

The natives were openly our enemies or at best preserved a very doubtful neutrality. Only the Bastards of Rehoboth openly took sides with us.

Leutwein further recorded that 'Major François has left me a bad legacy with which I will remain saddled for a long time to come. However ruthless one's colonial policy, it is necessary to give one's actions a semblance of legality'¹⁵ he added bitinglly.

So when Leutwein wrote to Chief Kambonde of the Owambo that he would soon have the pleasure of paying him a visit, the Chief replied, according to Leutwein (1906:172):

All that I had written in my letter was very nice, but that, as far as concerned him, Kambonde did not wish to see me as long as he lived. Because the Germans came with friendly words, but once they were there they wished to rule, and that he (the Chief) could alone rule in his country.

Leutwein did not repeat François's deadly mistake of mass killings; he simply set up a Schutztruppe Court, where rebellious traditional leaders were tried then put before the firing squad. As the ovaHerero said, 'first they had the white traders, followed closely by the missionaries, then they had a school and a trial Court'.

Within three months of Leutwein's arrival, the Schutztruppe descended on Naasonobis, the traditional seat of Andries (Andreas) Lambert who had refused to sign the Protection Treaty. They were not going to conduct François's Blitzkrieg. The Schutztruppe camped in the middle of Naasonobis and tried the Chief Lambert for two days then executed him for theft. His brother, Eduard was appointed as the new Chief of the Khaas.¹⁶

¹⁵ Horst Drechsler (1986:81) Imp. Col. Off. File No. 2126, pp141-143. Leutwein to Hohenlohe-Schillingfürst, 28 November 1895.

¹⁶ Theodor Leutwein (1906:23-27). H. Bley (1971:10-11).

The execution of Lambert was meant to terrorise other unruly heathen Chiefs who had aspirations of defying the Kaiser's representative. How did the Germans negotiate with the natives? Drechsler (1986:85) noted that on the Governor's arrival the Schutztruppe would take up their position, 'rifles at the ready'. The assessor, Lindequist, reported:

It would have been an easy matter to bring home to the Herero the German superiority in weaponry, to dislodge them from their position by firing a couple of shrapnels from our superb tactical position on the left bank of the Nosob, and to blow the whole place to smithereens.

Chief Nikodemus Kambahahiza Kavikunua¹⁷ and Chief Kahimemua Nguvauva, potential troublemakers for Leutwein, were also tried and executed on 12 June 1896. The Chiefs gave themselves up to prevent the further massacre of their people, for the Schutztruppe had fired indiscriminately into villages killing many women, children and old people who could not take cover in the caves.

But nothing would have made the unbaptised Kahimemua Nguvauva renounce his benign paganism for the murderous, slaughtering Christianity of the Schutztruppe. The Christianity imported into Afrika was not that of the gentle Jesus, the just and peaceful religion received in Europe in the first six centuries. In the version of African Christianity, no worse crime could be committed against God than by worshipping other gods at the sacred fire. Chief Kahimemua also rejected the doctrine of hell fire. How could a father roast his dead children, his own handiwork in a fire? The missionaries would have none of that. They argued that to deny hell was to remove the fear of divine retribution from the natives after death. But why should one be punished after one has died? It proved nothing. Kahimemua's God punished immediately after the transgression, here and now, not after death.

As the Chief of a matrilineal society, Kahimemua's people could have been devotees of the Blessed Holy Virgin if they had wanted to. The Holy Virgin was about the matrilineal womb of creation and lactation, which

¹⁷ He was the nephew of Chief Kamaharero (1820 - 1890).

were the two creative activities that were beyond the capabilities of men. They approved of the cult of the Virgin, which is evidence of male obsession with virginity since time immemorial.



Plate 13: The trial of Chief Nikodemus Kambahahiza Kavikunua before his execution.

Left to right - Lt. Von Ziethen; Hauptmann von Sack; Lt. Schwabe; Lt. Graf Kageneck.

Source: National Archives, Windhoek, Namibia.

After the terrifying Schutztruppe treason trial of Chief Nikodemus Kavikunua and Chief Kahimemua, the next day they were sent before the firing squad. The Conventions Respecting the Laws and Customs of War on Land were not extended to natives. Drechsler (1986: 93) recorded that Leutwein argued that:

To adopt the same approach towards rebellious natives is to be inhumane towards our own fellow countrymen. After all, any captive who escapes will fire on us again at the first opportunity that offers. Given that, a consistent colonial policy would require that all prisoners capable of bearing arms be killed.

Thus in the case of Chiefs Kavikunua and Kahimemua, according to Schwabe, (1910:304):

On 12th June ... the First Field Company under Estorff arrived to fetch the condemned men (Nikodemus and Kahimema) to whom, at their request I gave some wine. Then they were bound and put on an ox-cart and the procession started. Mounted police led the way, then followed Estorff and myself on horseback, a half-company under Kageneck on foot, the cart surrounded by horsemen and in the rear Ziethen, on foot with the remaining half-company.

We had to travel through the entire village. There was no male Herero to be seen; but the women were rolling about on the ground and covering their heads with sand and earth. From every house, every hut, every garden, the long drawn blood-curdling lamentations accompanied the distinguished Chiefs on their last journey. In silence, and drawn up in a great square, the guns unlimbered at the sides, the troops received us. Then we went on through the deep sand of the riverbed to the place of execution. Commandos of Hendrik Witbooi's and Simon Cooper's Hottentots guarded the place. Halt! The condemned men were lifted from the cart. Proudly, and with head erect, Kahimema walked to the tree to which he was bound.

According to the sources for the Michael Scott Oral Records Project, Kahimemua was calm and conducted himself with great dignity while going before the firing squad. He approached the end of his life with courage. Kahimemua spat in front of the Captain, Hauptmann von Sack and said: 'If you are going to execute us, start with Kambahahiza; for should you kill me first, Kambahahiza will be anguished'.

The young and Christian Nikodemus, 'half dead with fear, had to be dragged' by Schutztruppe Christians and tied trembling to a tree.

To the very end, Kahimemua despised the Christian Schutztruppe. In spite of their hangings and shootings, they made too much of hell fire and

monogamy that they did not observe. Ninety-nine point nine percent of mixed race children were brought into the world by the activities of so-called monogamous Christian men who enjoyed native women and little boys; these were the men who were going to shoot him. He walked with firm strides and spat at Lt. Graf Kageneck:

The eyes of the two were then bound, and the firing sections under Lieutenants von Ziethen and Count Kageneck marched into their places. Captain von Estorff gave the signal: Short commands: Present — Fire! The volleys rolled like thunder through the neighbouring mountains ...



Plate 14: Chief Nikodemus Kambahahiza Kavikunua fusilladed on 11 June 1896.

Source: National Archives, Windhoek, Namibia.

And so ended the life of Kahimemua, the last of the great pagans. As Nikodemus was a Christian, his corpse was untied and placed in a coffin and taken to Okahandja. He was buried in a consecrated cemetery next to the grave of Wilhelm (1849 – 1880), the good Maherero. The Christian God would procure for him all the comforts he never had on earth, as well as the hope of resurrection in the New World of heaven. Because, Kahimemua was a pagan, his corpse was interred where he had been

executed, near the Okahandja-Osona railway line.¹⁸ His people did not wish to further violate the bullet-ridden corpse of their beloved Chief, especially since he had joined the ancestors and his potent pagan spirit would live on. They gave up the corpse to the bloody, murderous Schutztruppe.

According to the Government Notice:

Kahimemua Nguvauva, born in 1850, was headman of the Mbanderos and was fusilladed on 11th June 1896 for his part in the rebellion of 1896. The grave consists of a heap of stones with a granite gravestone.¹⁹

Thereafter the natives christened Major Theodor Leutwein, 'Bloody Leutwein'.²⁰ Paganism did not die with Kahimemua, but survived in a different form: virulent anti-Schutztruppe. It was even thought that given the anger of the indigenes, all Central Hereroland might revert to paganism. This was the anxiety of many missionaries.

However, back home in the Fatherland, the German Army had replaced their Franco-Prussian traditional arms with lightweight arms better suited to the twentieth century. They adopted the *Deutsche Waffen und Munitions Fabriken*, DWM model MG08 Maxim guns. The Maxim guns of this period were so heavy that each needed a crew to serve one Maxim gun. The guns were mounted on tripods on the battlements of the fortresses. Maxim-guns were superior to crank-operated guns in times of siege warfare because they killed many more people efficiently.

The Kaiser's Schutztruppe, the Colonial Protection troops were ferocious crack shots. The Schutztruppe was the most awesome army that had ever trampled on the soil of Afrika. They must have begotten the future SS Panzer Division. The Schutztruppe soldiers were in Deutsch-Südwestafrika not to protect the natives with whom the Administrator had signed protection treaties, but to protect the economic migrants and the miners. Curt von François had been the first commander of the

¹⁸ G. Pool, (1991:153).

¹⁹ OG 4081 No. AG 6:1980. See also A. Vogt (1995:106).

²⁰ A. Heywood; B. Lau & R. Ohly (1992:128).

Schutztruppe in Deutsch-Südwestafrika, who had been instructed to survey the land and build fortifications, and keep order. Hauptmann François was extremely pleased with the addition to the Schutztruppe when he first saw them at Walvis Bay. Harper (1982:13) described them as 'medium to small in stature, but sturdy with broad shoulders, faces alive with interest in their new surroundings'. The young men demonstrated their physical fitness in the desert heat by marching from Walvis Bay to Windhuk 360km in twelve days.



Plate 15: Recording from a heliograph.

Source: National Archives, Windhoek, Namibia.

The excellent, free German elementary schools, and secondary education, and in the Gymnasia, guaranteed that the soldiers from whence the Schutztruppe were mostly recruited into the colonial army were literate men. Some of the soldiers were also from the NCO Academies where the children of soldiers and former soldiers were given free military education. From the several stunning German victories in wars against their neighbours, Denmark, (1864) Austria (1866) and Franco-Prussian (1870 – 71), the German soldiers had polished the art of slaughtering their fellow human beings and minimising their own casualties. Thanks to Chancellor General Leo von Caprivi, the German

army was the most formidable military force in the late 19th century world.



Plate 16: Transmitting with a heliograph.
National Archives, Windhoek, Namibia.

The Schutztruppe were trained to massacre, kill or be killed. They had an infantry division, which exhausted the resources of the native population in the course of their duty to supply the Schutztruppe needs. In addition, there were the riflemen, the cavalry and the marines. The camel corps was created for the Nama desert warfare after the Herero had been annihilated. The camels were very vulnerable targets so they were used mostly as pack animals. The marines and the camel corps did not know the terrain, but they carried awesome weapons. The *Landespolizei* (1905) were armed with the Austrian 7.65mm Roth-Sauer and some economic migrants even had Gewehr 98 rifles and Luger 08 pistols.

The Schutztruppe in the jewel of the colonial crown were very powerful. Why would the most powerful army in the world fight natives far away from their own Fatherland? How did the Schutztruppe reach this state of affairs that they were determined to decimate the natives? The Schutztruppe sang '*Deutschland, Deutschland, über alles*' and that before God and man, the land rightly belonged to Germany. *Gott mit uns*.

German mobilisation started in the colony, and all the Schutztruppe Reservists were called up to join the troops. Able-bodied young and old men were dragooned into the survival of their colony. Some Boers who had fought the British in South Africa offered their services. Their housewives were trained to use the Gewehr 98 and were taught how to shoot. Witbooi and some other Chiefs supplied fighting men under the treaty that Leutwein had persuaded Hendrik Witbooi to sign that:

he would respond unconditionally and instantaneously, with all men capable of bearing arms, to any call from the Governor appointed by His Majesty the German Emperor to resist external and internal enemies of the German protectorate.

Although the murders and assassinations of some Chiefs had made Hendrik Witbooi wary of bloody Leutwein, he was under obligation to supply fighting men. Leutwein issued the native troops with Gewehr 71.

What the Schutztruppe called the native revolt, or the uprising, or the beginning of the Kaiser's Hottentot war started as skirmishes between employers and employees, revenge killings, settling old scores between rape sons and their obnoxious biological fathers. In between settling old scores, some natives attempted to remove their sacred cattle from the farms of the economic migrants; the native owners of the cattle knew where to find their earmarked cattle. However, they encountered formidable firepower from the settlers and the Schutztruppe and many natives were killed.

The native survivors then attacked some merchants in isolated farmhouses, but only the menfolk were killed. Accordingly, the powerful Schutztruppe declared war on the natives. They maintained that the natives were in breach of their treaty obligations. It was a *casus belli*. If the seasoned General von Caprivi had been the German Chancellor in 1904, would there have been a war against natives in their tribal homeland? Was Afrika worth a war?

4.2 Native Mobilisation

Some human beings have always fought and killed each other since the origin of human beings or, according to the missionaries, since Cain slew Abel. Some powerful states even retained professional soldiers who fought other proficient human beings with courage and hate, and were then handsomely rewarded for killing their contemporaries.

In pre-missionary and colonial communities, pastoralists had disputes about grazing land or theft of cattle which resulted in wars that lasted for a day or two, then the victors returned to their villages with hundreds of cattle and the contents of granaries, if the vanquished had any. The tribal survival motto was, 'fight fast, collect cattle, and go home'. The victims who survived to fight another time or to repossess their cattle would then bury their dead. It was very important that the dead should be buried with due ceremony in their villages, the place that gave them life, especially if their placentas were also buried there. The dead had fought well and died to preserve the lives of those who survived. The dead too needed protection in death. They were not abandoned in a far off cemetery, far from their loved ones. The ancestors had only recalled their bodies by the long sleep, but their spirit would live on to fight another day.

There are no oral traditions of long protracted wars that lasted for years and brought about the death of thousands of human beings who were slaughtered like animals. How could they have endured killing other human beings for weeks and months with the killing technology at their disposal?

Some patrilineal polities had storm troopers of young men who raided for cattle and for wives. The ovaHerero did not have professional soldiers - men trained and paid to kill other men who were considered to be the enemies of the polity. Not because the ovaHerero lacked the courage to fight, but because they were trained for peacekeeping and resolutions of disputes grounded in aggravations of cattle trespass. Their argument was that if they had to maintain professional soldiers, the soldiers unwittingly would leave far too many widows and children by their deaths. The unnecessary creation of war widows was considered to be a violation of the rights of the male ancestors, and the rights of their unborn children to

be brought into the world. The fertility of the ovaHerero men was crucial. Although perfect mitochondrial DNA was transmitted unchanged through the female bloodline, a woman could only have one or two children a year, whereas a fertile man could have fifty or more sons and daughters a year if he chose to do so. How would more children be brought into the world if all adult men went to war and were killed? This was their argument.

However, if it was necessary to defend the Motherland and their cattle property, the ovaHerero knew how to raise an army. All men should have many sons, hence polygyny, accordingly fathers who had more than two sons sent their spare sons to the leader of the army for training to defend their mothers, sisters and wives, and cattle property. The son left at home became the nucleus of the homeguard.

All able-bodied men with the arrogance of bull-owning pastoralists were obliged to fight to their last breath. Njanekua (1992:145) noted clearly that the Herero do not use violence, but when they fight, they fight to the last man, and that last man will continue fighting until there is no one left. This was the only self-sacrificial duty demanded by the *eanda*. Thus, mobilisation for war was confined to only spare adult men.

However, after some groups made contact with merchants and missionaries, a few powerful Chiefs copied the merchants and the Afrikaans, and created a volunteer standing army. This killed off many of the spare adults especially in the 1863 and 1880 wars.

The war against the Schutztruppe had been brewing for a very long time; it was a holy war, war for their sacred cattle and their land, and war for the preservation of their own indigenous laws. There was no justice under the economic migrants' law. The Schutztruppe civil law in Berlin and in Deutsch-Südwestafrika did not promise the natives justice. When Major Leutwein wrote to Witbooi, he demanded, 'I ask you therefore to tell me even now your reason for breaking your holy promise and turning rebel against the German Government?'

Witbooi explained succinctly to Leutwein:

It goes back a long way ... I have for ten years stood in your law, under your law, and behind your law — and not I alone,

but all the chiefs of Africa. All the souls, which have for the last ten years perished from all the nations of Africa and from among all its chiefs, without guilt or cause, without the justification of warfare in time of peace, and under treaties of peace, accuse me ... You also accuse me of murdering helpless White people, and say that 80 of my men are in your custody, who shall pay for the White people. I beg you, when you have read this letter sit down quietly and reflect. Count up the souls, which have perished in this country in the ten years since you arrived, and up to the present day. And reckon the months in ten years, and the weeks and days and hours and minutes since they died. Then count the Whites who have fallen into my hands in this short time ... I further ask Your Honour not to call me a rebel.²¹

Major Leutwein did not ask the natives. As far as the natives were concerned, it was a war against the military might of the Schutztruppe, not an insurrection, rebellion, uprising or revolution, for they, the people, had neither consented nor acknowledged Schutztruppe sovereignty. Although their own religion and rule of law had disintegrated, the contest was not to retain their old customary laws, but to move forwards at their own pace. The warfare was against Schutztruppe barbarism.

Each self-governing clan had its own courageous man, a just leader who then became head of the clan, an omuHona. There was no overarching Paramount Chief among the semi-nomadic pastoralists who voted with their feet. The nearest to paramountcy was the Keeper of the sacred fire, who held a religious office. Every brave man who had cattle property and could maintain several wives and many sons was a very important person. When the settlement could no longer accommodate all the powerful male egos, the adult sons who were famous for having inherited ancestral fighting prowess and bravery moved out of the settlement with their wives, children, in-laws and friends, and set up their own *onganda*, and proclaimed themselves ovaHona. They lived in

²¹ Letter no. 151, Leutwein to Witbooi, Rehoboth, 21 October 1904. Letter no. 152, Witbooi to

thatched round mud houses like the people in Celtic Iron Age villages in Hampshire who also lived in great, round thatched houses. There is a great misconception about natives, not about humanity in a state of development. The moon was round, the sun was round, children's faces were round, all meaningful things had something circular, explained the ovaHerero about round thatched huts.

An omuHona would then set up his councillors. In the beginning, the duolineal system of the *eanda* and *oruzo* could not throw up an omuHona. Nobody was born an omuHona, you became one. All the related clans had basically the same indigenous laws. There was no fighting amongst the clans, as a man might end up killing his matrilineal nephews who were his *eanda* heirs. But when called upon by father or senior *eanda* and *oruzo* uncles to defend the motherland in times of attack, all the ovaHona would appear with their brave men.

When Palgrave visited the ovaHerero in Okahandja on 9 September 1876, he recorded that he was handed a petition signed by 58 chiefs, under-chiefs, and headmen to give to Sir Henry Barkly. There were several 'great' Chiefs when Dr Göring was in Deutsch-Südwestafrika. There was Chief Kamaharero²² of Okahandja, Chief Manasse Tjisisseta of Omaruru, Chief Kambazembi of Otjozondjupa, Chief Zacharias Zeraua of Otjimbingwe, Chief Tjetjoo of Okandjose, Chief Nikodemus Kambahahiza Kavikunua of Nossob, Chief Kahimemua Nguvauva of Otjihaenena, Chief Nguatjindu and Chief Munyuku and Chief Hendrik Witbooi of Kowese, Chief Andries Lambert and many more who have been forgotten by oral historians and the Schutztruppe.

The Otjiherero-speaking Chiefs were closely related by marriage or kinship. For example, Tjamuaha married his father's niece, Tjoruzumo. Tjoruzumo was the sister of Kagombe, the mother of Kambazembi. And when Maharero Tjamuaha died in 1890, he left over ten elite widows.

Leutwein, 14 November 1904.

²² The affectionate diminutive prefix *Ka* was later left out of Kamaharero and became Maharero. Katjamuaha: Tjamuaha.

many powerful sons and sons-in-law and brave grandsons.²³ Schapera (1945:6) recorded that Maharero married into all the important Otjiherero families. Under customary law a man should have many wives so that he could procreate many children. A polygynous husband could not discard a grumpy old bag and hanker after a younger version. He kept all of them. Polygyny was the backbone of the structure of the polity, especially if the man had many powerful sons. Polygyny is the privilege of the rich and powerful; usually the poor are not polygynous. For women avoided the drudgery of marriage to a poor man and submission to daily intercourse - whereas polygyny operated by rotation. The pastoralists justify polygyny by saying that:

A man must marry many wives, and later his house would become the cornerstone of houses because it had given birth to many boys: and not to deny any one of the children as not his: but to accept all the children as his own ... when the house has many sons, the cattle will not be raided because there will be many sons to protect the herds.

Furthermore, especially with the high rate of infant mortality, women wanted children of their own who would survive them. The birth of twins especially twin boys was sheer delight, as the children were great gifts from the ancestors. Maternal and paternal relatives would bring gifts of domesticated animals to the twins. Twin girls too were *okurangereera*; they brought good luck and wealth to the *eanda*.

The *ondjova* wife was the husband's child-betrothed first wife who should be *virgo intacta* on marriage. A virgin bride was highly preferred as the *ondjova* wife for procreation of legitimate heirs. It was only the exalted *ondjova* wife who was allowed to tend the sacred fire, *okuruuo*, just as the Vestal Virgins of ancient Rome in the Temple of Vesta tended the sacral flames. Customary law condemned the marriage of direct matrilineal first cousins. It was taboo. Otjivareke betrothal cattle and *ovitunya* bridewealth cattle were given at the bride's village of domicile for the marriage formalities. The *ovitunya* transferred the domicile of the

²³ Chiefdom is a very important topic. For an overview of the literature see Okupa (1998:25-39).

children to the father's domicile, even though descent is matrilineal. She would give consent to the marriage when she showed physical maturity to carry a child. The bride and groom could only become husband and wife during the *ondjova* marriage ceremony conducted by both families. The first ceremony was at the bride's family sacred fire, the *okuruuo*, where the couple were introduced to the ancestors and to prevent the curse of sterility. The second ceremony at the groom's sacred fire affiliated their children to the husband's *oruzo*. For a man's second marriage to his "love" wife and subsequent wives and inherited wives, there was no elaborate body smearing *ondjova* marriage ceremony at the sacred fire. However, the husband must proffer *ovitunya* to the bride's family and members of both families must unite to pronounce the couple husband and wife.

If an *ondjova* wife with children predeceased her husband, it was considered proper for the widower to marry his deceased wife's unmarried sister, if she had one. The rationale for the genetic sororate marriage was that an aunt would be more solicitous of her sister's children, than the widower's 'love' wife.

Among the ovaHerero the double descent system of the *eanda* and the *oruzo* was not problematic, it was simply the equalisation of justice between mother and father. Neither parent is superior or subordinate to the other; they simply perform different 'law jobs' in the polity. The *eanda* remains unchangeable, because it is the mitochondrial DNA, one is born into it and one dies in it. *Eanda* gives a person his or her clan, and citizenship of the ovaHerero polity. In order to inherit the uterine blood that gives life to a child, the child's mother must be a Herero, an Mbanderu, or a Himba.

The *oruzo* is the father's spiritual contribution to the child. It is the link between the ancestors and the male descendants. After birth, the child is affiliated to the father's *oruzo*, the patriline; this gives the adult male, religious, political, legal and social obligations. By birth and by marriage, a woman is a temporary member of an *oruzo*. On her marriage she would

See also F. M. d'Engelbronner-Kolff, M. O. Hinz and J. L. Sindano, (1998).

be adopted into her husband's *oruzo*, on divorce and remarriage she would change into her new husband's *oruzo*.

The keeping of the sacred fire, the *okuruuo* is vested in the eldest, usually the most powerful male member of the *oruzo*. The keeper of the sacred fire was also one of the trustees of the sacred cattle, set specifically aside for the ancestors, *ozomwaha zoviruru*. The cattle are *ozondumehupa*. The sacred cattle, *ozomwaha zoviruru*, and the *oruzo* sacred cattle, the *ozondumehupa* would vest in the *oruzo* heir by *ius accrescendi*.

After the old Keeper's demise, the fire would be sanctified and devoted to the new Keeper. It would become his 'fire,' the fire of 'tate Tjambiru'. The duty of the Keeper of the *okuruuo* was based exclusively on male seniority in the matrilineage. Like monotheistic religions all over the world, Buddhism, Christianity, Confucianism, Hinduism, Islam, Judaism, Zoroastrianism, *okuruuo* is based on male leadership. But the *okuruuo* is not patriarchal, it only maintains the spiritual link between the deceased ancestors and their surviving descendants interceded by the Keeper. The surviving descendants met at the *okuruuo* regularly to discuss the existential dilemma induced by the arrival of the Schutztruppe's in their colonial place in the sun.

Usually, the *okuruuo* would vest in the deceased's nearest, oldest male agnate. The first would be the immediate uterine brother, who would be proclaimed the *oruzo* heir and Keeper of the sacred fire. If the deceased Keeper of the sacred fire had no surviving uterine brothers, or maternal uncles, and sororate nephews, then the next person entitled to the *okuruuo* is the deceased's eldest son by the *ondjova* wife. If the deceased had only daughters and if he had grandsons then the eldest daughter's son would take the title. In the absence of a grandson, then a half-brother would take the title as Keeper.

An *omuHerero* who had converted to Christianity forfeited the right to be the Keeper of the sacred fire because of his belief in the missionaries' celestial God. An *eanda* heir who had become a Christian was not deprived of his *eanda* cattle if he wanted them, in spite of his Christianity, because the cattle belonged to him by mitochondrial birthright. The

trusteeship of the cultural property, and the *oruzo* cattle would then be vested in the new *okuruuo* heir and the *oruzo* trustees.

In the distribution of the estate, the *eanda* heir is assisted by the personal representative, the *omujanua*, who is a senior member of the deceased's *oruzo*. After the funeral ceremony, and the 'paying of homage' to the ancestors, the estate is distributed. But sometimes, a dying person who has capacity could make an *okurumatisa*, an oral will before male agnates who are not beneficiaries under either the *eanda* or *oruzo* rules. The oral testator could ask any of his immediate agnates to marry his young widows, not because they were his property to be devised, but because a virtuous man made provision for the sexuality of young widows still capable of bearing children. By *okurumatisa* a testator could also indicate the place where he wished to be buried, as well as identify the cattle with magnificent horns that would be slaughtered after his interment. The *okurumatisa* gifts were usually small specific personal items that were bequeathed to "say thank you". The witnesses already knew from years of friendship and association in the same *otjiwondo*, age set as the dying person, the *okurumatisa* bequests, but affirmed again before death.

The deceased's nephews, his uterine sister's sons, usually inherited his personal chattels.²⁴ The sororate nephews are the recognisable fixed *eanda* heirs who have the same blood relationship as the deceased. In the absence of surviving sororate nephews and nieces, the deceased's maternal aunt's eldest son, and following him, the chattels would vest in the deceased's younger brother. The deceased's son is ineligible to inherit the chattels, because he is not of the same *eanda*, mitochondrial blood, as his father. However, the deceased sons will succeed to the chattels of their maternal uncles.

The deceased's bailed cattle would be collected from the various grazing posts and settlements, and herded back to the deceased's *onganda*. The deceased's cattle would be separated from his widows'

²⁴ The deceased's chattels included his personal herd of cattle, a horse or a donkey, sheep, goats, blankets, sandals, slippers, headrest, leather bags, snuff containers, wooden spoons, drinking vessels, jewellery, musical instruments, keiries, a knife, a rifle etc.

livestock, and the children's cattle would be identified and set aside. If the joint cattle accumulated by husband and wife / wives had not been severed in their lifetime, then the cattle would go to the *eanda* estate. Cattle to be used for the deceased's debts and the ones to be used for the funeral feast were also jointly set aside.

At the funeral of a very rich man, the poor would expect to be fed for weeks. They would pour in daily to offer their condolences to the bereaved, and by their very presence in the *onganda* acquired the right to be fed. After all is said and done, it was not the cattle of the bereaved family that were being slaughtered for the funeral feast; the cattle belonged to the deceased who had made generous provision to feed all mourners.

The *eanda* heir took the remaining cattle, but he was bound under indigenous law to maintain the deceased's *eanda* dependants: the minor children, widowed aunts, mother, the elderly, the sick and the vulnerable people in the *eanda*. The *eanda* heir and the men of the matrilineage are the trustees of the *eanda* cattle that would be used to maintain these dependants. They could not sell the cattle. Usually, some of the cattle would be left in the *onganda* as provision for meat and milk for infant dependants, who otherwise would be on a diet of mealie meal. The rest would become the *eanda* cattle or the insurance protection of the matrilineage. Some of the cattle would be used for *ohakera*, or naming ceremony, for child betrothal, *otjivareke*; for the teeth-filing ceremony, circumcision of boys, bridewealth, payment of fines for cattle trespass, and health payment for cures during and after illness. If the widow or widows did not remarry or return to their *onganda*, they had a right to remain in their matrimonial hut, and no one could evict them. The *eanda* heirs and trustees assumed all these responsibilities.

A deceased woman was succeeded by her uterine children. If the deceased was childless, her husband was not entitled to her cattle or her personal chattels. He had no marital rights to her chattels. The deceased's beneficiaries were her uterine brothers and sisters, or her sister's children. The property of an unmarried deceased child devolved on his or her mother or mother's uterine relatives.

4.3 Chiefs and Children

There were many powerful heads of clans in German South West Africa, but Hauptmann Curt von François (Governor of GSWA 1891 – 1894) wanted to deal with only one Chief in each polity. Accordingly, when Kamaharero died on 7 October 1890, this was Hauptmann François's chance to create Herero Paramouncy.²⁵ Dr Felix Meyer (1905) was very clear that 'an ordained leader of all the Herero tribes was not known in Herero law at the time of the German occupation. Only the knowledge of their national community of origin held the various tribes together'.

In pre-colonial times, when the most senior male died there was no squabble among the surviving matrilineage and patrilineage, because every adult person was conversant with the rules of succession, inheritance and the distribution of the estate. The indigenous rules of intestate matrilineal succession were well known, if not, the powerful would have grabbed the inheritance of the weak. The intestate rules were binding on everybody, pagans as well as Christian converts, who wanted to enrich themselves. The ovaHerero had their own beliefs, their own name, and their own religion. They believed in a Supreme Deity, *Mukuru*, who was the father and mother of all human beings. He / she was not a vindictive celestial *Mukuru* who killed unbelievers or offered believers a heavenly afterlife. The Otjisherero indigenous laws evolved from the exegesis of their situation as semi-nomadic pastoralists. In their considered opinion, their law was just and peaceful, and they lived under their own justice system. The hard life of a pastoralist was not a motive for murder and war and revenge killings. Their indigenous law was not static; it was evolving with the beliefs of its younger adherents from the experience acquired by them outside their polity.

However, the missionaries and the Schutztruppe were determined to impose their Christian rule of primogeniture and God of battles on the majority of the natives, despite the provision of the Berlin Afrika Conference, 1884 – 1885. This provided that natives should have freedom of conscience and religious toleration. The natives argued

²⁵ This topic has a very large literature. For an overview see Okupa (1998:217-228).

convincingly that why should they exchange their own form of heathenism and embrace a Christian form of heathenism? Why should they believe in the ancestors of the Schutztruppe, instead of their own ancestors and even take the first names of the Schutztruppe's ancestors?

The rules of Herero succession had been explained to Hauptmann Curt von François, but as he noted 'it can only be in our interest if the Herero break up into numerous rival chiefdoms'. At that time Prof Josef Kohler of the Berlin Oriental Seminary was trying to compile the indigenous laws of the natives in their colonies. Prof Kohler had devised questionnaires that administrators, missionaries, travellers and the Schutztruppe should apply to the natives in order to ascertain the laws of marriage, succession and inheritance, as well as the criminal law and the land law of the Protectorate.

The missionaries and Hauptmann Curt von François were unimpressed by the learned juristic opinions of Prof Kohler and the researchers, and pressed on with their law reform. They nominated the Christian, Samuel Maharero as the Paramount Chief and superimposed him on the Otjiherero speakers. Samuel Maharero was neither the first in the *oruzo* or *eanda* line of succession. The missionaries and administrators would have preferred his elder brother, Wilhelm, but he died in 1880, and they had to make do with Samuel. Their argument was that Samuel, as the eldest-surviving son of the deceased Chief Kamaharero (1820 – 1890) was the rightful heir under German law of succession.

Crafty Major Leutwein had noted that there was nothing very biblical about Samuel Maharero. '... the Mission got little joy out of him, he none out of the Mission, as he was selfish, had a weakness for alcohol, and last, but not least, a fondness for women'.

Hauptmann Curt von François was more scathing, 'Samuel was a vain, selfish drunkard'.

Vedder (1938:505) had agreed with them that Maharero was very much addicted to liquor.

In spite of Samuel Maharero's lack of any saving Christian virtues, the shrewd Administrators put forward Samuel Maharero's name and recommended him to the colonial office in Berlin. Thus, in August 1891.

Caprivi's colonial diplomats in Berlin recognised Samuel Maharero as the Paramount Chief of the ovaHerero.

Felix Meyer (1905:24:38) noted astutely that:

Thereby the Colonial Administration created not only a new authority (which probably was in the interests of a simple centralised system of government); but it also, as will be indicated, broke into the laws of succession and inheritance of the Hereros ...

It can easily be understood how deeply this illegal interference with their laws must have aroused the feelings of the Hereros: more particularly when, at the same time, a hitherto non-existent *de jure* ruler over the whole nation (i.e., paramount chief) was forced upon them. One can appreciate how bitterly disillusioned Nikodemus and his supporters were, when not only the dignity to which he aspired, but also the *oruzo* assets (i.e., the holy cattle and the religious order) of his late uncle, were taken from him and bestowed on a younger and less worthy person.

There were no praise songs about Herero Kings or Paramount Chiefs. They had not had a Paramount Chief as far as any oral historians could remember. They did not believe in Paramountcy, as only one Chief like one Omnipotent God was very inconvenient for the ovaHerero social structure. One Chief was open to pressure from other powerful rulers.

The other traditional leaders did not recognise the Paramount Chief created and imposed on them by the Schutztruppe. As a Herero Paramount Chief, the Christian Samuel Maharero could not officiate at the *okuruuo* because he had forsaken his ancestral sacred fire in lieu of the Christian monogamous God, and praying to the Schutztruppe ancestors. How could Paramount Chieftaincy be vested in a Christian man who had not been prepared for the position of Chief Priest, as well as have the *oruzo* assets vested in him? It was calamitous. Chief Samuel Maharero was a particular Christian who had been lost to his ovaHerero egalitarian polity. Some of his disgruntled people rechristened him, Chief Calamity.

Nikodemus Kambahahiza Kavikunua appealed to Major Leutwein that he was the *oruzo* heir under Herero law. His father, Kavikunua was Chief Tjamaaha's eldest son. Chief Tjamaaha had several wives, but Kavikunua's mother, Tjoruzumo was the *ondjova* wife and she had six children, three girls and three boys. Utjina was the eldest daughter and Kavikunua was the eldest son. Several children survived Kavikunua who predeceased his father, Chief Tjamaaha, and he Nikodemus Kambahahiza Kavikunua Tjamaaha was the eldest surviving son. Accordingly he, Kambahahiza Kavikunua, was the rightful *oruzo* heir. Major Leutwein knew the Herero law of succession, for he wrote to Chancellor von Caprivi:

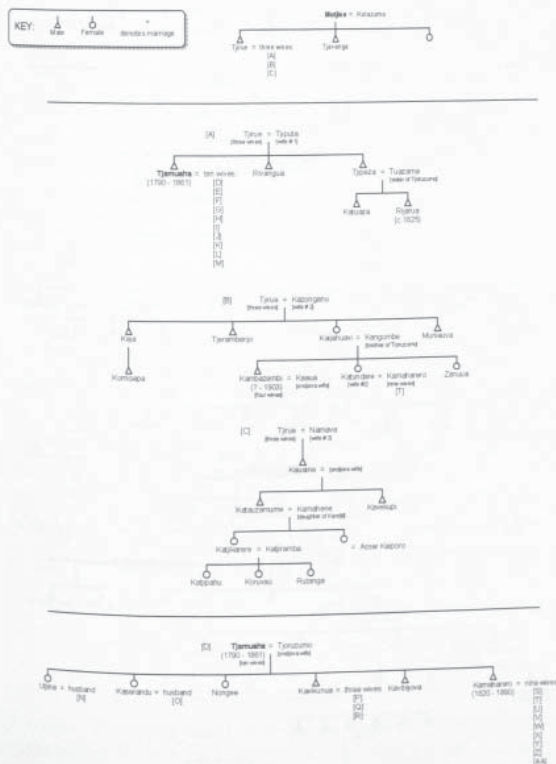
In accordance with Herero law, Nikodemus was indeed next in line to succeed the old Maharero, and the recognition of Maharero's son has made him a dangerous opponent of the German Government. To support his plea for recognition as an independent chief is, therefore, not only a matter of justice being done, but also a sign of political shrewdness. It is self-evident that a politically divided Herero nation is more easy to deal with than a united and coherent one.²⁶

Major Leutwein played off the Otjijherero traditional leaders against each other. Chief Samuel Maharero relied on Major Leutwein's Schutztruppe power to crush the *eanda* and *oruzo* heirs and all the various native beneficiaries under the rules of Herero succession who resented the Schutztruppe interference.

Wily Major Leutwein first of all created a new map of settler boundary in GSWA. The new boundary encroached and appropriated more Hereroland for the economic migrants. The additional boundary incorporated the land of the pretentious heathen relatives of Chief Samuel Maharero who were the most vociferous critics of the newly proclaimed Paramount Chief. The lands of Chief Nikodemus Kambahahiza Kavikunua and Chief Kahimemua were appropriated. Chief Tjetjoo was the son of Chief Tjamaaha's eldest daughter, Utjina, who had married

²⁶ H. Drechsler (1986:84).

Kandjii, the son of powerful Chief Seu. There was also Chief Rjarua, the son of Tjamaaha's uterine brother, Tjipeza who had married Tuazama, Tjoruzumo's sister as well as Chief Zacharias Zerua of Otjimbingwe. Their lands were appropriated and they were kicked out of their cattleposts. The ovaHerero were crushed.



The new boundary appropriating the land also included 2,000 marks payment to Chief Samuel Maharero (payable half-yearly) provided that the 'Southern boundary line as determined upon ... is respected by the Hereros and that their cattle posts are withdrawn from the territory now falling within the area of the German Government'. Major Leutwein (1906:64) noted sardonically: 'This difficult agreement for them to assent to was signed by Samuel, as was always his way, light heartedly and with pleasure; but his headmen pondered earnestly over it'. Without consultation with the other leaders, the Christian Chief Samuel Maharero who had no commitment to indigenous justice signed away the ancestral lands to the Schutztruppe. Accordingly, if the cattle of the pastoralists trespassed into the new boundary, Major Leutwein impounded them.

When Nikodemus, Kahimemua and Tjetjoo and other chiefs whose land was confiscated protested at this unjust enrichment, Leutwein called them rebels and the two most fanatical were quickly put before the firing squad as a lesson to others. The remaining herds of cattle of Chief Nikodemus and Chief Kahimemua were impounded and their surviving families fled to Bechuanaland. Leutwein wrote (1906:92):

... A force under Major Mueller took away several thousands of cattle belonging to Hereros at Heusis and Aris. Only then did the significance of the agreement become clear to the Hereros ... The impounded cattle were sold and the proceeds divided between the German Government and the paramount chief ...

He added:

I here wish to mention that the son and nephew of the paramount chief, who, at the time were doing voluntary service with the troops at Windhuk, burst into tears on hearing of the confiscation of these cattle and begged for immediate release from military duty ... Outside Okahandja however the desire for war increased, and eventually even the Europeans were infected, not only private persons, but also members of the Government ... the war fever combined

with under-estimation of their opponents, was very noticeable.

Under the German law of primogeniture imposed on the Otjiherero, the Paramount Chief Samuel Maharero could move into his father's house at Okahandja, but Maharero preferred to live at Osona. He was afraid that he would be assassinated either by his own people, or by the Schutztruppe who would execute him when they got him blind drunk.

The appointment of Chief Samuel Maharero as the Otjiherero Paramount Chief was a Herero revolution: a revolution of indigenous law against the Schutztruppe law of succession. Old Chief Rijarua had received a demonstration of the might of Major Leutwein. After his land was appropriated, the old chief had refused to move. The Schutztruppe took up a position and fired into Rijarua's settlement killing several women and children. For the sake of the survivors in his *onganda*, the old Chief treated with Major Leutwein, because everyone remembered the raw brutality of the Schutztruppe when Andreas Lambert was shot for refusing to sign a Protection Treaty. Thus, Chief Rijarua pleaded for the lives of the surviving old women and children and begged for his own life. Nevertheless, old Chief Rijarua was chained like a criminal and was guarded very closely by about '400 of Leutwein's men, and Samuel Maharero's men as well as Rehoboth Basters'. He was ejected from his land, suffered from loss of his cattle and ended up an exile. He was barely alive, but he had survived. The Schutztruppe had publicly humiliated him. Rijarua became a lesson to other pretentious idolatrous Chiefs under the ruthless Schutztruppe.

Old Chief Rijarua was one of Kamaharero's *oruzo* and *eanda* legatees under Herero law. Rijarua's father, Tjizepa was old Kamaharero's paternal uncle and his mother Tuazama was Maharero's aunt. He was a man of cattle property and authority. And the Schutztruppe deprived Rijarua of his *eanda* and *oruzo* legacies as well as stripping him of thousands of herds of his personal cattle, which were promptly distributed and sold to the economic migrants.

The natives were appalled by the Schutztruppe's crimes against them and their old chiefs and more so by the collaboration of their very own

Samuel Katjikumbua Maharero. The masses of cattle-impoverished, but intelligent heathens, goaded their drunken and negligent elite leaders with fancy Jesus Christian names to go to war. The Amos, Barnabas, Bartolomaus, Christian, Daniel, David, Ezekiel, Fanuel, Gerhard, Gottfried, Habakkuk, Haggai, Hendrick, Hugo, Isaac, Isaiah, Jacobus, Jeremiah, Joel, Johannes, Jonah, Josaphat, Leonhard, Malachi, Martin, Micah, Nahum, Nikodemus, Obadiah, Paulus, Samuel, Saul, Solomon, Timotheus, Viktor, Willibald, Wilhelm and all the Zacharias and Zephaniahs of Hereroland and Namaland who had ruined their people's benign, gentle traditions. The baptised natives were having the best of both Christian and pagan worlds.

The pre-European history of Hereroland or Namaland was about the history of the mass of survivors, not about the kings, chiefs, their marriages and divorces and their wars. These Christian native men baptised with fancy single Christian names, 'like the lion, the elephant, and the giraffe, that have only single names', as the people say, already had a right to a name from their parents, and paternal and maternal grandparents. However, by baptism, the heathens belonged to God and had formally jettisoned their pagan, heathen names for Biblical or Germanised names. Some married Christian women who were even christened Comfort, Charity, Patience, because some of their Christianised husbands were behaving badly. These Christians with their fancy names had given up listening to the ancestors.

One of the characteristics of being a Christian, as the missionaries explained, was that several wives were forbidden to a Christian husband. Monogamy and indissolubility of Christian marriage was the divine law. A Christian husband was not allowed a wife and a *concubina*. Polygyny was immoral. A Christian husband and wife joined together in Holy Matrimony could not sever the unity that God had put together, because they became one flesh, *una caro*. The husband became the head of the wife, even as Christ is the head of the Church.²⁷ The principle of indissolubility means marriage for life by one woman to one man, as

²⁷ Ephesians, 5:23.

'Christ's union with the Holy Church through the liberty of love'. A husband and wife should be content with each other. The Christian wife had no earthly right to divorce her husband. The Canon law is clear, 'Women who without just cause have left their husbands and formed unions with other men, shall not be admitted to Holy Communion even at the hour of death', and 'Whosoever shall marry a woman put away by another, committed adultery'. Marriage should be executed in the Church in the presence of the priest / pastor so that it could not be contracted with several women. The converts were told about the marriage at Cana, but they preferred the point about the wine rather than the marriage.

When a polygamous pagan converted to Christianity he must abandon all his wives except the *ondjova* wife, if she was willing to become a Christian. Pagan husbands found it very hard to take only the first wife. The disposal of unwanted wives was too agonizing. But if the first wife refused to convert with her husband, then he was free to choose another wife from his harem, but not yearn after a new wife. Baptism, for the good of his soul, would liberate him from the formalities of customary marriage, which was not marriage at all. But what of the children, the innocent children? The missionaries agreed that all the children of polygamous converts were legitimate in the eyes of God. For Christ said, 'Suffer little children to come unto me'.

Polygamous converts who returned to their abandoned wives were excommunicated and deprived of Christian rites. If they refused to return to the Church, then their property was forfeited. Converts could not understand how marriage, the union of a man and a woman found itself part of the Church? The marriage of Adam and Eve was monogamous, so where did Adam find all his other wives, they asked? The Law of Moses permitted the patriarchs to have plurality of wives, because God told them, 'to increase and multiply and replenish the earth', but the plurality of wives was not applicable to pagans. Lamech was the first to have two wives, remember what happened to him? Conversion of the polygamous chiefs to Christianity slowed down and most simply remained non-Christians, but their children became Christians. It took centuries for rich and powerful men in Christendom to be monogamous.

However, the non-Christians' decision to take on the might of the Schutztruppe was an embodiment of democratic principles that all of them should do something about their condition. In a matrilineal egalitarian society, the men were all equal, not cattle equality, but equality as human beings. It was this equality as human beings to share the little of what the Schutztruppe had left them with everybody else that contributed to the longevity of their justice system when confronted by a non-sharing patrilineal Schutztruppe. It was the masses of non-Christians, and not their elite Christian leaders who at first rose up against the tyranny of the economic migrants and the Schutztruppe.

What goaded the heathen and Christian natives finally into action after twenty years of grinding discontent under the Schutztruppe colonial burden? As some oral historians explained, it was the grief of the gradual disintegration of their indigenous laws and the suffering of their matrilineal people. They could no longer survive under their own ancient laws because the economic migrants appropriated their land and cattle under Schutztruppe unjust laws. Furthermore, while the Christian converts were revelling with the Rhenish, Lutheran and Calvinist missionaries and their merchants, their mothers, sisters and wives were being raped or murdered. The disintegration of indigenous law and lack of authority became a matter of *oruzo* politics.



Plate 17: Long road to monogamy and indissolubility.

Source: R. Dickman. National Archives.

The non-Christians were very anxious to end the Schutztruppe domination of their laws, their religion and the impounding of their cattle and land. They clamoured for war in order to fight for their land and their matriliney. It was the masses of the oppressed that were in the forefront of resistance against Schutztruppe brutal oppression. The elite Christians cautioned them, 'No war! We say no war!' What was needed was peaceful negotiation without bloodshed. The situation of colonial injustice could not be remedied by war. The Schutztruppe would wreak destruction on the people. The Christians accepted that they were not in a position to instruct the heathen masses to go to war and die, because of colonial oppression. They had no divine right to call on God to kill the Schutztruppe. But if the masses who had suffered most from Schutztruppe injustice wanted to go to war, they were free to do so, but they should remember that Christ said: 'He who is not with me is against me, and he who does not gather with me, scatters'.

The heathens were unimpressed. They had a duty to protect the lives of their children, wives and mother and the land. They had a responsibility to the ancestors. They had a duty to the yet unborn. They would accept the Schutztruppe murderous destruction of a few people but at least they would have stopped further violence against the majority of women and children and the land. They had a duty to confront the might of the Schutztruppe.

The non-Christians having spoken on the war drums, the elite Christians had to go along with their *omaanda* and *otuzo*. Once again, the Christians asked all non-Christians that there should be no violence and no atrocities. As matrilineal polities, they must respect the lives of German women and children. No women and children should be wounded, raped or killed. The Christians and heathens agreed, and convened an on the spot War Command Council. It was a just war simply to chase the Schutztruppe and the economic migrants back across the waters from whence they had come.

As Daniel Kariko who 'by the grace and mercy of Almighty God has survived German rule and live to tell the tale', said in his affidavit: Report (1918:57):

We met at secret councils and there our chiefs decided that we should spare the lives of all German women and children. The missionaries, too, were to be spared, and they, their wives and families and possessions were to be protected by our people from all harm. We also decided to protect all British and Dutch farmers and settlers and their wives and children and property ... Only German males were regarded as our enemies, and then not young boys who could not fight — these also we spared ...

Chief Calamity had suffered from the death of many of his *eanda* and *oruzo* relatives, even his remaining old uncles, aunts and their spouses and some of his own children had turned against him. Many of his relatives had been executed or assassinated and others had fled to Bechuanaland - the Otjherero were suffering under Schutztruppe yoke. The mighty Chief Kambazembi, his favourite great uncle had died on 21 August 1903. Old Kamaharero had married Chief Kambazembi's sister as his second 'love' wife.

The indigenous *oruzo* heirship had been unwittingly thrust upon Chief Calamity, as he was his father's sole, surviving son, but most of the Otjherero people had no confidence in him. Thus, Chief Calamity was a German-accredited Paramount Chief without Paramouncy, and a Christian who had forgotten his ancestors. But Chief Samuel Maharero had become disillusioned with Schutztruppe administration and with his Schutztruppe supporters. The non-Christians had made him recognize himself as a Schutztruppe puppet paramount chief, who had conveniently forgotten the meaning of *oruzo* servitude. Chief Samuel Maharero had indigenous law conversion and woke up from his long sleep. He agreed to serve his people and become a good *omuHona*.

The 'ethnic cleansing' inflicted by Hauptmann von François and Major Leutwein on the traditional leaders and their people was beyond belief. Atrocities were committed against native men, women and children, and the respect due to them as fellow human beings was not accorded to them. Chief Calamity also knew that he could not declare war on the Schutztruppe because his people had no arms and no ammunition

whereas, the Schutztruppe had inexhaustible supplies of ammunition for the repeating rifles and for the 'guns that made so much noise'. But the non-Christians decided that the lack of ammunition and barbarities of war 'could not be worse than what we were undergoing ... we would be better off even if we were all dead ...'

Accordingly, the now famous instruction was said to have been issued by Chief Samuel Katjikumbua Maherero that his ill-equipped people should fight the mighty Schutztruppe in possession of hell firepower. The Herero Gam version of the declaration of war was that at the Council meeting about the war and the liberation from the Schutztruppe, held in Otjimbingwe, the Chief made a speech in Otjherero about freeing the land of our ancestors. His words were dutifully written down by some Christians to inform those who had been absent from the gathering:

I am the Chief leader of the Herero, Katjikumbua Maherero. I have proclaimed a law and a lawful order and it ordains for all my people that they shall not lay hands on the following: namely, Englishmen, Boers, Bastards, Berg-Damara, Nama (i.e., Hottentots). We must not lay hands on any of these people. I have taken an oath that their property will not be regarded as enemy property, neither that of the missionaries. Enough!

When Major Leutwein and the missionaries read a copy of the speech, they balked at the paramount monster that they had created. The shock of Maharero's speech, as far as they the Schutztruppe were concerned, was that their man Maharero, who had been on their side, was preparing to kill them all. Whether or not the non-Christians wrote the speech and made the repentant Chief Katjikumbua Samuel Maharero sign it, they neither knew, nor cared. What mattered was that they had agreed to die fighting. Many historians have argued about the authenticity of the letter, as if the native problems would have gone away with or without the Maharero letter. During the native wars with the Schutztruppe from 1904 - 1908 only one German *Kinder* (child) was accidentally killed, and four

Frauen (women) who had reached for rifles were killed.²⁸ Christian converts had enormous admiration and respect for special virgin missionaries, brides of Christ and other unusual virgins.

At the War Command Council, they had agreed that it should be a concerted attack on German men only. The non-Christians had not forgotten how the Christian Samuel Maharero had betrayed them; accordingly, Katjikumbua's ovaHerero in Okahandja were urged to strike first at the Schutztruppe.

It so happened that the natives in the South of Deutsch-Südwestfrika, the Bondelswartz in Warmbad, had dared to kill three Schutztruppe Officers. In its time, Warmbad village was very important. The London Missionary Society, under Abraham and Christian Albrecht set up a mission house in Warmbad in 1805 then at Blydeverwacht. Jager Afrikaner pulled down the mission house and kicked out the missionaries. Then in 1834, Rev. Edward Cook restarted the Warmbad mission, which he christened 'Nisbetts Bath'.²⁹ Warmbad had a German fort that has since been converted to a Police Station.

However in 1903, Lieutenant Jobst, the District Commissioner at Warmbad had summoned Chief Jan Abraham Christian of the Bondelswartz to the fortress. The old Chief, was afraid that he might be executed by the Schutztruppe and accordingly refused Jobst's summons to appear before him. So Lieutenant Jobst accompanied by fifteen mounted Schutztruppe, in full imperial military splendour glittering in the sunshine, descended in order to teach the recalcitrant native chief a lesson in obedience. Native chiefs who had had the impudence to challenge the might of the Schutztruppe were always incarcerated, their cattle impounded and their villages razed.

Lieutenant Jobst and his men galloped into the Chief's village by the Hot Springs not too far from the Orange River to arrest the chief. The natives gathered to watch the Schutztruppe arrest their Chief. Two

²⁸ The number of German dead civilians in the (1904 - 1908) war was engraved on the granite slab of the Schutztruppe Rider monument: *Maenner 119, Frauen 4, Kinder 1*.

²⁹ K. Dierks (1992:126) // Khauxa'ns.

soldiers went into the hut and dragged out the old Chief by the scruff of his neck. The Chief struggled to free himself from such ignominy, and the arresting Sergeant pulled out a Luger pistol and shot him dead on the spot.

The natives who had just about had enough of the Schutztruppe had their revenge killings of Lieutenant Jobst, and the Sergeant who had shot the old man and the other soldier who had dragged him out. The rest of the Schutztruppe galloped for their lives to the safety of the Fort in Naiams to protect the water hole and the stables.

The natives knew that a squadron of Schutztruppe would descend and exert a bloody revenge and reprisals on their old women, old men and children. Accordingly, the native fighting men and the grieving male relatives of the deceased Chief dispersed and joined other bands of native guerrillas harassing the Schutztruppe.

Predictably, Major Leutwein and the Schutztruppe, and their mongrel troops of Basters, Hottentot, Boers and some native collaborators launched a big offensive to crush the impudent Bondelswartz natives at Warmbad, and to execute all their leaders and impound their cattle. A massive bloodletting began of old men and women, children who were incapable of fleeing, and rape. Leutwein ordered that the surviving Bondelswartz should:

- 1) Surrender all arms and ammunition and restoration of all looted property
- 2) The delivery of all persons charged with murder
- 3) The cession to the German Crown of the entire territory of Keetmanshoop and the Karas Mountains, and the confinement of the whole tribe to a relatively small reserve at Warmbad.

Thus, the demand by Major Leutwein started another theatre of war in 1903 in GSWA that lasted until the death of Jakob Marenga in 1907.

However, when Bloody Leutwein who was in Warmbad heard that his very own Paramount Chief Samuel Maharero had rebelled against him, he ordered Major Franke and his troop to gallop straight back to support Okahandja. Major Leutwein could not fight two wars simultaneously: the Bondelswartz in the south, and the Otjijerero people in the central region.

He followed on later with his mongrel troops and reached Okahandja on 18 February 1904 to take on Chief Samuel Maharero.

Before the ovaHerero declared war on the Schutztruppe, Chief Samuel Maharero had written to old Chief Hendrik Witbooi, Hermanus van Wyk and Nehale Mpingana to join the ovaHerero in the war against the Germans who had stolen all their land. Perhaps, the letters were intercepted and were not delivered to the Chiefs, or the leaders did not take Chief Samuel Maharero seriously. As far as they were concerned, here was Samuel Maharero, a tall, rather good-looking man, who wore fancy German uniforms with lots of gold braid. More often than not, he wore a Stetson hat with panache, and drank gallons of brandy supplied by Major Leutwein. The Christian Playboy of Hereroland had at the age of fifty suddenly decided to play the great native warrior chief. In the chiefs' considered opinion, Samuel Maharero did not possess the virtues of a general capable of leading his people into war against the mighty Schutztruppe. The Chiefs did not join forces with Chief Maharero. No matter, Samuel Maharero wrote a second letter to Chief Witbooi dated 11.1.1904. It reads:

I make known to you that the white people have broken their peace with me. Hold on well as we have heard (you are doing). And if God so wills it, don't let the work in Namaqualand go backward ... I am without ammunition. When you have acquired ammunition help me and give me two English and two German rifles, as I have none. This is all. Greetings.

Chief Witbooi must have recalled the letter that he had written on 30 May 1890 to Chief Samuel Maharero's father, about German rule in Hereroland:

But you, dear Captain, you have now accepted another rule, and have handed yourself over to a human supremacy for protection against all dangers. To be protected and helped by the German Government. But my dear Captain! Do you realise what you have done, or for whom you did what you

have done? Have others talked you into it, or did you do this out of your own illuminated understanding?

But it seems to me that you took too little account of yourself, of your land and of your people, and your heirs; nor have you thought about your captaincy ... But my dear Captain! You will come to rue it bitterly. You will eternally regret that you have given your land and your right to rule into the hands of white men ...

Captain Hendrick Witbooi of Hoornkrans.³⁰

³⁰ Witbooi Papers. Letter number 30. Hendrik Witbooi to Maharero.

The Siege of Fortresses

As protection against the hostile natives in their colony of Deutsch-Südwestafrika, the Schutztruppe had built several strategic forts near villages with dense native populations.

Thus, on 12 January 1904 only a few Schutztruppe were left to hold the fort at Okahandja, because the rest of the soldiers had gone to Warmbad in the South to crush the rebellious *Bondelswartz* Chief. The Schutztruppe in the fort at Okahandja 'wired' Wilhelmstrasse in Berlin to announce that the long awaited native rebellion in GSWA had materialised. They also telegraphed Swakopmund and Windhuk and asked for support because native mobs were gathering in Okahandja. The Schutztruppe officers in Windhuk then heliographed to the officers in the forts at Gobabis, Gochas and Gibeon to instruct the Maxim gun crew to position themselves in the battlement towers.¹ The riflemen were also to be ready at the ports in the walls of the fort. The cavalry from Windhuk then galloped out at full speed to pass on the dire warning about a native uprising to the settlers in the outlying districts.

All German women and children in and around Okahandja were now safely inside the defensive walls of the Okahandja fort. Some of the

¹ By Morse code. The message was tapped out using mirrors that reflected the sunlight. At night, the Morse code was tapped out on instrument that used acetylene gas. The heliograph stations were on top of the forts and two soldiers were usually stationed there to transmit and relay messages to remote forts in the colony. Each heliograph has a distance of 300km.

women had collected their fine wines, food and fabrics and they exchanged tales about hordes of native movement into Okahandja. The civilian German merchants and the railway construction employees barricaded themselves in the railway stations.

The ovaHerero at war had no modern weapons. Some of them had a couple of obsolete rifles that jammed now and again, bows and arrows, *assegais* and *kieries*; but they would fight to the last man. They were prepared to fight on a one-to-one basis, hand-to-hand fighting, and they would make hamburgers of the Germans. The natives were used to fighting in large formations on such a basis.

Chief Samuel Maharero's massed followers poured into the deceased Kamaharero's village, west of the Okahandja Railway station. As preparation for the engagement with the Schutztruppe, the non-Christian warriors filed passed the spot where Kamaherero's sacred fire used to be lit. The people of the same *oruwo* walked round the sacred fire and those whose *oruwo* were far away had ashes daubed with the forefinger on their forehead. It was a sign for the ancestors to return them safely to the bosom of their sacred fires. The non-Christians beseeched their ancestors to protect them against the Schutztruppe firepower. And the Christians prayed to Almighty God to help them to defeat the Schutztruppe.

The large group of Otjherero-speaking warriors were gathered far from the Okahandja fort and the railway station, the new Augustineum School and the white settlers' quarters. Native armies had a tendency to fight in enormous groups. They had no experience of siege warfare, nor of attacking fortresses. The natives were expecting the Schutztruppe cavalry to canter a dozen abreast out of the big fort gate, for a full massed frontal attack on them. Unfortunately, after the Franco-Prussian war, and the Boer war, fighting was not like that any more. The Germans had changed their tactics in the colonies from formation confrontation to siege warfare. Only guns respected guns. The natives did not have the modern Maxim guns, whereas the Schutztruppe and the Reservists were supported by formidable firepower and excellent intelligence gathered by the missionaries from the Christians.

The natives did not know what they were up against in the Okahandja fort. They had no idea of the firepower of the new deadly Maxim gun. They went into the Okahandja battle with their reconditioned rifles from the various wars; rifles, which even German elephant hunters would not use. Since the Schutztruppe would not come out and fight man-to-man like men, it suddenly occurred to the Herero commanders that they needed a siege engine to ram the gates open.

The pastoralists had neither heard of the mighty *trebuchet* (a military engine for throwing stones) nor of the Trojan horse. They thought that this was not how to fight, fighting was out in the open, man to man, and not hiding behind women and children in the fort.

The native masses surged forwards towards the fortress. The Schutztruppe had observed how the Boers used their weapons against the formal blocks of the British Army. Three or four Boers concealed in the bush and using smokeless powder were able to put a whole battery of English field guns out of action in about ten minutes. As a rule they succeeded in killing all the men and horses before the English could find the range or ascertain from what quarter the explosive projectiles were coming at them.²

The Schutztruppe crackshots on the Okahandja battlement towers and the machine gunners held their fire; they waited until the range of the Maxims was only one hundred yards from the massed bodies. Big native groups were excellent targets for the Maxim guns. They waited.

The Schutztruppe crew tilted the angle of the support. The Regimental machine gun officer gave the order, and the Maxim gun fire directed itself into the massed body of the natives. The noise stunned and halted the natives in their attack. In less than three minutes the gunners fired about one thousand five hundred rounds with deadly accuracy. The natives' massed body disappeared. The flower of the Herero *oruwo* lay dead in a stream of blood.

For the non-Christians this was a very noisy baptism of fire. The fire mowed them down finely like a lawn. 'People who stood next to you fell

² D. L. Goldsmith (1989:114).

on their faces. It was terrible as heads were blown off. They went down in rows, and some bodies were five and six deep', recorded oral historians. 'There was smoke and fire and the bell inside the fort was ringing'. The Schutztruppe delivered another slaughtering, pounding of fire from the Maxims.

The natives were driven back by the fire. How could they knock out the machine guns, or disable the Maxim guns? The natives did not have the fire support or *trebuchet* to bring down part of the watchtowers. To minimise their casualties, the surviving natives who did not know how to react with Schutztruppe wielding machine guns, retreated and took cover, but the grass under their feet was then set alight. The machine guns were very effective colonial weapons for decimating large numbers of the native population; the Schutztruppe exercised their rights to use the Maxim guns against the natives. Hundreds of people died. And hundreds more were wounded and the remainder singed by fire. How many widows did they create on that day?



Plate 18: Okahandja Fort with wagons.
National Archives, Windhoek, Namibia.

Meanwhile, Mossolow (1993:72) described the simultaneous attack on 12 January by the natives at Otjikango known by the Germans as Gross Barmen:

Kirstein, the farmer and Rosenthal who lived near Otjikango, and Lange at Klein Barmen were killed. Mrs Lange and her three daughters, and her sister, Miss Gabel were not attacked, but were escorted by some Herero as near as possible to the railway station at Okahandja. The German women and their children then made their way to the Okahandja fort.

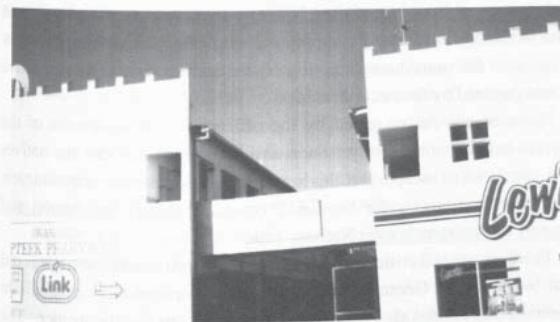


Plate 19: Okahandja Fort, as it is today.

There was serious reflection by the ovaHerero soldiers who survived 12 January execution of the natives by the Maxim. How could they minimise the effect of 'the devil's own Maxim guns?' Accordingly, the ovaHerero attacked the farmhouses of the dreaded German economic migrants, the unscrupulous traders who had paid their leaders in liquor, which trapped them into a vicious circle of permanent debt, and the German men who had produced numerous mixed race children. From the dead German farmers, they amassed modern rifles and ammunition. The native soldiers repossessed their sacred *oruzo* cattle appropriated by the migrants and then set the stores on fire.

A few days after the slaughter of the natives at Okahandja, several German women from outlying farms whose husbands had been killed, found their way into Fortress Okahandja for refuge. They recounted tales of horror of how some hostile natives who survived the booby-trapped

farmhouses had besieged them on their farms and killed off their menfolk. But the women and girls had not been raped. After this tale, the Schutztruppe who were barricaded in the fort went berserk. In vengeance, the native prisoners who had been held in the fort as chain gangs for Railway construction work, or for attempted thefts of cattle, were executed. Their bullet-riddled corpses were displayed outside the Fort.

This was in accordance with Section 15 of the Criminal Jurisdiction and Powers of Punishment over Natives, 1896, which provides that in case of mutiny, hostile attack, or any pressing emergency owing to urgent reasons ... the immediate execution of the death sentence upon a native seems required by the circumstances ...

However, the reason given by the officers for the execution of the natives held as workers or prisoners inside the Fort was that the natives had attempted to escape. But this was improbable, as their imprisonment had been in irons, under Section 2 of the Criminal Jurisdiction and Powers of Punishment over Natives, 1896.

There are several criticisms by historians regarding why the natives did not 'wipe out the Germans' before more Schutztruppe were poured into Deutsch-Südwestfrika? The reasons need not detain the reader. The natives did not have the technology. For one could just as well ask, looking three or four decades into the future, why did Hitler not launch scud missiles into Britain? Or why did Hitler not use the Airborne Laser gun against the French, and why did the Reich Panzer Division not have computer-assisted rifle grenade launchers? In nineteen hundred and four, the technology was there, but it was still inside the brain cells of military scientists. The aim of the Herero war was not to kill all German men, women and children, but it was to chase them into ships that would sail safely back to Wilhelmshaven, Bremerhaven and Hamburg and even Heligoland.

Meanwhile, von Zülow's train from Swakopmund was steaming towards Okahandja. It was hauling more Schutztruppe and ammunitions and railway workers to repair the tracks. It also carried post and telegraph engineers to reconnect the telegraphs. When parts of the hastily constructed railway tracks on riverbeds collapsed, from the unusual

heavy January flood, the ovaHerero were blamed for sabotage. Whereas the railway from Swakopmund to Windhuk was not exactly the work of a combination of Isambard Kingdom Brunel and Stephenson.

At each Railway station from Swakopmund, the Schutztruppe and Reservists who got off were put in charge of the station. They took cover in the barricaded station with the local male civilian economic migrants.

Bravenboer and Rusch (1997:61) described how the train from Swakopmund became armour-plated at Karibib station:

In the light of the anticipated resistance, von Zülow decided to protect and armour the train. In this respect, a goods train which had been stranded at Waldau station since 12 January was of great service. Corrugated iron was fastened to its sides and cases of provisions were packed on the inside of the open goods wagon. On top of this, bags, cases which had been ordered by dealers and other available material which could provide protection were placed so that there was space for ten men to stand to defend themselves from attack. To protect the footplate personnel, sacks of coal were fastened onto the outside of the locomotives. All that now remained was for the train to cover the last 22 kilometres to Okahandja.

The train in actual fact consisted of three separate trains, which followed one another at a distance of approximately 500 and 1,000 metres respectively. The first train pushed three wagons out ahead of the locomotive. The first two wagons were those which had been armoured for railway workers and the other one was for the troops who were to protect them. The last wagon in front of the locomotive was laden with approximately 200 one-metre mounted rails. The main train came next, consisting of two locomotives with tenders, six armoured wagons with troops, a wagon for the women and the wounded, an ammunition wagon, a goods wagon with mail and one wagon with railway workers. Lastly followed the third train — about 500 metres behind

which was made up of two locomotives and a tender, pulling an illing locomotive which was not under steam.

Zülow and his men had to stop four times to repair the track. Finally, at 11.30 a.m. on 15 January 1904 von Zülow's troop train screeched into Okahandja station. The people in the fort told them that they owed their lives to the Maxim. They were congratulated on the great slaughter of Okahandja. The gunners who had held the fortress until the arrival of the support crew from Swakopmund were especially honoured by von Zülow and his crew. The fresh soldiers from Swakopmund were very amused by the natives' attempt to besiege the fortress. They knew that the natives did not have the capacity to attack a German fort. If the mass of natives had known about siege warfare, then the Schutztruppe, the world's most powerful and successful army would have lost Fort Okahandja.

Meanwhile, the German Imperial Navy warship, the *Habicht*, equipped with 1894 DMW Maxim guns mounted on brass pedestals to prevent corrosion was cruising along the South African coast. The young marines on deck were having educational fun trying to differentiate between the very fat Southern White whales and the numerous dolphins and brilliant white and black Jackass penguins braying like donkeys. The marines were ordered to divert from the Cape and sail immediately to Swakopmund to boost the Schutztruppe in their war against the rebellious natives. The young marines were filled with the sheer joy of seeing wild animals instead of whales and dolphins.

The *Habicht* anchored in Swakopmund on 18 January 1904. The officers of the rapid reaction *Kriegsmarine*, and fifty-five wild, first-class fighting seamen took the evening train immediately to Okahandja. Dying for the Fatherland was the noblest death for a young marine, because the greatest gift that a man could give to the Fatherland was his life.

Their progress was slow; because of the unusual January torrential rains in the hinterland that had inundated the rock-dry, sandy riverbeds. The ferocious floods had snapped the lines like twigs and washed them away. It was not the native fighters' malevolence that slowed down the trains. The tracks had to be repaired several times in order to continue the journey to Fort Okahandja.

Eventually, Officer Gygas and his men steamed into barricaded Karibib in the evening. When the news from Okahandja and Gross Barmen reached the beleaguered German economic migrants in the Karibib, the marines went on the rampage and rounded up all the natives around Karibib as prisoners. Gewalt (1999:165) observed that the prisoners were immediately subjected to an extensive interrogation whereby they betrayed one another. 'In this way we captured a number of the murderers, who were sentenced to death and hanged from the nearest tree as a warning example for their tribal comrades (*Stammesgenossen*); these criminals were not worth a shot of powder.' The marine lynch mobs performed genital mutilation before the natives were strung up with their penises stuck in their mouths.

Next day as the train steamed towards Okahandja the marines took pot shots from the moving train at fleeing natives in the bush. Men, women and children were used as moving target practice. The unarmed natives from up country who were unfortunate enough to be hanging around the new stations were stopped dead in their tracks, as guns did not distinguish an Owambo from a Nama or a Herero from a Damara. The marines exacted revenge from the tribes; all the natives had to pay for the rebellion whether or not they had participated in the uprising. The marines' reputation for savage warfare and for being bloodthirsty arrived at Okahandja, Omaruru, and Otjimbingwe long before they set their boot on the station platform.

According to Dierks (1999:62) on 15 January, Streitwolf and his cavalry slaughtered the ovaHerero at Oparakane, then the ovaHerero ambushed some Schutztruppe at Okanjande. On 16 January, the ovaHerero attacked Fort Gobabis, and the Schutztruppe, safely in their towers, repulsed the natives with machine gun fire. At Uitkomst near Fort Grootfontein, the Schutztruppe did not allow the natives to come anywhere near the Fort as they were hunted and mown down.

All around Windhuk, there were small observation posts to protect the Germans and their livestock from attack by either the Witbooi Nama or the ovaHerero. So on 19 January, the ovaHerero in Otjomuise, Windhuk advanced towards the fortress harbouring the remaining Schutztruppe.

part of the First Field Company who had not gone South to slaughter the people of Warmbad. The fortress had battlements for mounted heavy calibre Maxims and slits in the walls for rifles. The Windhuk Schutztruppe did not charge from the fortification in formation. They were ready for the ovaHerero.

From the baptism of fire in Okahandja, the natives had learned how to minimise their casualties by keeping out of the firing range. However, the marines and the Schutztruppe from Okahandja who had steamed into Windhuk to reinforce the Windhuk Schutztruppe had encircled the natives. Again, the Schutztruppe inflicted a very heavy toll on the natives. The cavalry was the Schutztruppe's colonial army gallant tradition and Captain Viktor von Franke and his men were exemplifiers of this proud horsemanship. Captain von Franke who had been on his way to the South had been ordered to return and rescue the Germans at Fort Omaruru. On the way back the Schutztruppe cavalry gave the natives a bloody lesson in war. They massacred a party of ovaHerero warriors at Aris, in the south of Windhuk, then, north of Windhuk at Teufelsbach, the cavalry and the marines made mincemeat of the remaining ovaHerero fighters in central Windhuk.

While the German civilians were barricaded inside their forts and railway stations, the natives accumulated more rifles and ammunition from their fortified and booby-trapped farmhouses. Furthermore, the Schutztruppe patrols that were sent out from the forts to spy on the belligerent natives, as well as to collect intelligence about the activities of the leaders never returned. Thus the natives acquired more lightweight machine guns. But never having been to machine gun schools or trained in 'marksman' units, they did not know how to assemble or dismantle the guns or carry out essential repairs. There was no time to practise firing at the moving cavalry or even at fixed targets. They learnt how to repair jams very quickly; their lives depended on handling the captured guns during battles with the Schutztruppe outside the forts.

Meanwhile, in Otjimbingwe, the old Powder Magazine built in 1872 by Missionary Hahn to protect the mission station was useful again. Otjimbingwe was the most Christianised native settlement, and was

briefly the Schutztruppe's supply base to conquer the hinterland of South West Africa. German women and children from farms in the outlying district struggled into Otjimbingwe to seek refuge in the ancient impregnable fortress. The reservist Schutztruppe von Frankenburg according to Gewalt (1999:163) made a speech to the Herero of Otjimbingwe:

I reminded them of their longstanding peaceful nature (*alte Friedfertigkeit*) and appealed to their reasoning which would inform them that Germany's power would immediately suppress every revolt, whereafter the natives would lose their land and freedom. Therefore they should be wary of making common cause with those of Okahandja and not descend into rotteness with them.

Notwithstanding von Frankenburg's fine speech, the ovaHerero in Otjimbingwe had heard that the Schutztruppe had 'guns which can kill thirty Hereros at once'. On 23 January war broke out in Otjimbingwe and a few German male traders were killed. The natives suffered heavy losses when the Reservists opened reprisal fire. Whether or not the natives were Christian ovaHerero, or heathen ovaHerero, it made no difference, they were natives and, as such, they were mowed down. The Chief of the Otjimbingwe Herero, Zacharias Zeraua, a Christian, and some of his people fled into the surrounding mountains. The Reservists burnt down the abandoned native quarters, and hunted them into the mountains, as they were determined to wipe out all natives. The old, the sick and the disabled who were unable to run for their lives were put into 'heavy chains and kept under secure guards, they drew upon them for all forms of hard labour' until they died.

While the trains had not been in use noted Bravenboer and Rusch (1997:64):

Grass had grown so long and thick that railway personnel had to walk 20 metres ahead of the locomotive to see where the line had washed away and the long grass made the locomotive slip on the rails, sometimes bringing it to a standstill. The military decided to take over the running of

the trains and maintenance of the track, in short to take over the *Staatsbahn*. The line was divided into two sections, the first, between Swakopmund and Karibib, was protected and patrolled by railway troops while the *Habicht* marines would be responsible for the second section between Karibib and Brakwater. This kept the trains running and German troops flowing between Swakopmund and Windhuk.

The Fort at Outjo³ was very important, for it was the gateway to Fort Sesfontein, Fort Omaruru, and Forts Grootfontein and Namutoni. Fort Sesfontein was not besieged because of the *Schutztruppe blitzkrieg*. The usual traditional suspects in the Reservations were simply rounded up and taken as prisoners to Fort Outjo where they were shot for high treason after summary proceedings.

Then on 28 January, armed Owambo warriors under the command of Shivute made an audacious attack on the northern fort of Namutoni. This northern boundary fortress strategically separated the masses of the Owambo natives in the north from the natives in the South. Fortress Namutoni had well-barricaded lookout posts inside the towers. It had not occurred to the Germans that Fort Namutoni could be vulnerable to attack, so there were only seven *Schutztruppe* with light artillery posted at the Fort, and the soldiers had been celebrating the Emperor's birthday the night before.

Some of Shivute's warriors drove off the cattle stolen by the *Schutztruppe* while the rest exchanged fire with the defenders inside the towers. As the *Schutztruppe* volleyed fire after fire into the massed body of the warriors, they slaughtered many of them and several were also wounded. The seven *Schutztruppe* gunners outgunned the natives. Accordingly, the natives retreated for cover to attend to the wounded, but they did not know that the seven soldiers had exhausted all their ammunition.

The next day after the surviving natives had duly buried their dead, they regrouped for the final showdown with the *Schutztruppe*, and there

³ The fort at Outjo has since been demolished. See D. J. Terblanche (1975:61-69).

was not a single shot fired from the watchtowers. At night during the Owambo retreat, the wounded *Schutztruppe* had escaped to Tsumeb then to Fort Grootfontein. The fort was set on fire and reduced to debris.⁴



Plate 20: Fort Namutoni.
National Archives, Windhoek, Namibia.

Meanwhile, Hauptmann von Franke and the Second Field Company were fighting and killing the natives on their way from Windhuk to Okahandja to Karibib in order to relieve Omaruru. News of von Franke's cavalry victories spread as he advanced towards Omaruru, attacking and burning native village settlements. At Okahandja, Hauptmann von Franke put on his famous immaculate white uniform and mounted his grey horse. The fixed bayonet glistened in the sun.

On Wednesday 4 of February 1904, the Otjijherero natives tried to attack the fortress in Omaruru. The German economic migrants, their women and children had taken shelter in the fort under Stabsarzt P. Kuhn, until von Franke returned to resume his command. The well-protected *Schutztruppe* and Reservists inside the fort did not come out to fight, but they had a good view of the field around the fort from their battlement

⁴ On a plaque at the entrance of Fort Namutoni, is the inscription: 'On the 28 January 1904, 500 Owambo attacked the station. Seven brave German men repulsed the attack victoriously. In honourable memory of, NCO Fritz Grossman; Medical Ord. (Sanit. Sergeant) Bruno Lassmann; L / Cpl (Gefreiter) Richard Lenke; L / Cpl (Gefreiter) Albert Lier; NCO Jacob Bsendowski; L / Cpl Franz Becker; L / Cpl Karl Hartmann.'

towers. The natives were mown down by machine gun hell fire. Those who survived learned the hard way and retreated from the Maxim gun fire. But von Franke and his troop who had fought their way to Omaruru had arrived in good time. They charged with fixed bayonets the retreating native survivors and butchered and dissected them skilfully with superior bayonet precision. The natives were also overwhelmed by firepower from the towers. In the fixed bayonet spree to relieve Omaruru that lasted eight hours, hundreds of Herero died in the fight and the Schutztruppe lost one officer, one warrant officer and six soldiers.⁵ Hauptmann von Franke and his horse were streaked with native blood. The siege of Omaruru was not the end of the remaining ovaHerero who had survived the bayonet revelry. The Schutztruppe were determined to drive all of them out from their rocky central stronghold. Accordingly, Major von Estorff's company murderously assisted by the Marines, pursued the native survivors into the valleys until they were trapped on 25 February in a fight to death in what has become known as the battle of Otjihinamaparero.

Meanwhile, according to Vogt (1995:155) Hauptmann Viktor Franke returned to Germany due to serious illness, but he recovered and returned to South West Africa to continue to torment the natives. Hauptmann von Franke was decorated with the *Ordre Pour-le-Mérite*, the highest German honour for gallantry. Hauptmann von Franke was the 'Bravest Schutztruppe Officer ever known in SWA', according to the economic migrants.

After the war, the Germans in Omaruru contributed large sums of money to erect the Franke Memorial Tower on the site of the battlefield across the river where he had butchered many natives. The Administration provided the land. The Damara and Namaqua Trading Company supplied the materials transported free of charge by the Otavi Railways and the Mining Company. The German economic migrants erected the Viktor von Franke Tower in commemoration of the relief of Omaruru on 4 February 1904. The commemorative plaque states:

⁵ Warrant Officer Müller, Lieutenant von Wöllwarth, NCO Otto and Prüss and soldiers Scherrer, Gerlitz, Linke and Seelmand. (Lensen, 1966:133-134) Vogt, 1995:135).

*Zur Erinnerung an die Belagerung von Omaruru durch die ovaHerero vom 17. 1. bis 4. 2. 1904 und an den Entsatz durch das Gefecht vom 4. 2. 1904 errichtet.*⁶

By the battlefield around Franke Tower near the Omaruru River, A Government Notice declares:

On this battlefield Victor Franke and his men suppressed the Herero revolt on 4th February 1904. In the fight against the superior numbers of the Hereros, about 100 Hereros fell while six men on the German side were killed. The Franke Tower on the side was erected shortly afterwards to mark Franke's liberation of Omaruru.⁷



Plate 21: Monument to Lt. Colonel Viktor von Franke.
Omaruru, Namibia.

⁶ Freely translated it reads erected in remembrance of the siege of Omaruru by the ovaHerero from 17.1. - 4. 2.1904 and of the relief by the battle of 4. 2.1904.

⁷ (OG 3473 No. 615:11972) Vogt 1995:134.

The dates 14 – 16 February 1904 were terrifying days for the natives. For while Major von Estorff was tracking down the natives from Omaruru, the Marines too had been in action terrorising the natives of the Schwarze Klippen Bei Seeis near Lievenberg. The details were inscribed with precision on the impressive Marine Korp Monument in Swakopmund, dedicated to the exploits of the sailors. The Marines fresh from the Fatherland into unfamiliar Deutschland South West Afrika suffered more than the Schutztruppe who were a law unto themselves, almost like a co-operation. Many of the young men sacrificed their lives for the Fatherland and gained a few metres for the colonial empire and the economic migrants.

No sooner did the Marines change into their summer uniforms, and fastened the cartridge belt and water container, that they were engaged in their very own first battle. On 14 February 1904, they massacred the natives at Schwarze Klippen Bei Seeis. For two days they killed for the Fatherland. A few days later they sorted out the ovaHerero at Lievenberg and Gross Barmen.

Meanwhile, on the 18 of February, Major Bloody Leutwein who had been travelling by land and sea from Warmbad finally reached Okahandja. As Major Leutwein decided to teach the uncontrollable paramount monster that he had created a lesson, he wrote a letter to Chief Samuel Maharero. The aim of Major Bloody Leutwein's letter was not to know why the Chief had rebelled against German Administration, but to locate the Chief's hiding place. The letter was given to missionaries with instructions to find and deliver it personally to the Chief. The Christians led the missionaries to the Chief and the Chief fell into Major Leutwein's letter ambush, and betrayed his whereabouts and that of the mass of his people.

Chief Samuel Maharero and the survivors from the attack on Fort Okahandja, Fort Otjimbingwe and Fort Omaruru and the Alte Feste, Gobabis, Forts Outjo and Grootfontein were assembled at Otjosasua, Ongandjira and Otjozonjati.⁸ This was the largest gathering of the

⁸ G. Pool (1991:222).

ovaHerero with their children and cattle in the central plateau. 'There were thousands of us, very large numbers of us entering Waterberg from all directions. My family was reunited at Ohamakari,' explained a very old man who survived the war as a child and had returned to Namibia from Botswana. The natives were fleeing for their lives. They had gathered there awaiting the arrival of the other leaders and their people, because the Schutztruppe, the Marines and the Reservists were hounding them out of their homeland. The Schutztruppe wanted the *Schutzgebiet* to become a place where only whites could settle peacefully and permanently without any more trouble from the natives.

However, this was Chief Maharero's reply to Major Leutwein from Otjozonjati as he had abandoned his Osona base, because the Marines were converging on the village to kill him.

To the Great Ambassador of the Kaiser

6th March 1904

Governor Leutwein:

I have received your letter, and what you have written to me and my headmen is well understood. I and my headmen reply to you as follows:

I did not commence the war this year; it has been started by the white people; particularly traders, with rifles and in the prisons. And always when I brought these cases to Windhuk the blood of the people was valued at no more than a few head of small stock, namely from fifty to fifteen. The traders increased the troubles also in this way that they voluntarily gave credit to my people. After having done so they robbed us; they went so far as to pay themselves by, for instance, taking away by force two or three head of cattle to cover a debt of one-pound stg. It is these things, which have caused war in the land.

And in these times the white people said to us you (i.e., Leutwein) who were peacefully disposed and liked us, were no longer here. They said to us the Governor who loves you has gone to difficult war; he is dead and as he is dead you

also (the Hereros) must die. They went so far as to kill two Hereros of Chief Tjetsoo: even Lieutenant N began to kill my people in the gaol. Ten of them died, and it is said they died of illness; but they died by the hands of the labour overseer and by the lash. Eventually Lieutenant N. began to treat me badly and to see a reason for killing me. He said, 'The people of Kambazembi and Uanja are making war'. He called me to question me. I answered him truthfully 'No', but he did not believe. At last he hid soldiers in boxes at the fort and sent for me so that he might shoot me. I did not go, I saw his intentions and I fled. Thereupon Lieutenant R. sent soldiers with rifles after me to shoot me. For these reasons I became angry and said 'No, I must kill the white men, they themselves have that I must die' This — that I must die — was told me by a white man named X.⁹

I am Chief Samuel Maherero.

The missionaries had gone to the Herero camp to deliver the Major's letter and to talk peace with the Chiefs, but had used the opportunity of peace talks to estimate the number of armed men and their weapons, and reported to Leutwein. Kuhlmann's report concerning the general spirit amongst the tribesmen is equally enlightening, recorded Pool (1991:223). 'The young people were still just as war-minded as before the outbreak of the revolt. Especially the heathens, who daily performed war dances'.

From Maharero's reply the Schutztruppe were able to pinpoint with deadly accuracy where to find him and his people; the natives were not in Onjati Mountains as Leutwein had expected. Chief Samuel Maharero was aware that he faced many dangers even from among his people; the power to lead them into a bloody war was not his by birthright under the indigenous law. The mass of the ovaHerero had started the war against the Schutztruppe without any organised leadership. In the process, they had lost thousands of their people, men, women and children.

⁹ The full names were suppressed. G. Pool 1991.

The Germans had never lost a war, and they were not going to start with the Hottentot war. With the track and trains properly maintained, the German ports began pouring well-trained soldiers into Swakopmund port. Apart from their killing skills, some of these soldiers were also trained in the maintenance of field hospitals and the telegraph wires.

The arrival of more Imperial gunboats from Germany brought fresh troops who had taken plenty of quinine, and were ready for action. All Major Leutwein's Schutztruppe cavalry sustained by the infantry of mongrel entourage came out to sort out the natives. The cavalry had their horses fitted with *schlittenlafette*, a sled or sledge, sledmounts: attachments mounted on horses. Some mules and horses were also used as pack animals.

As a consequence of the 'breach' of the Treaties between Germany and the Chiefs (the agreement of the lamb and the lioness), the Schutztruppe abandoned General Leo von Caprivi's military code of behaviour and descended into a vigorous war of slaying Christian and heathen natives alike. Thus, Major Leutwein and his three warlords planned a four-pronged assault on the large body of the ovaHerero. Major Leutwein's troops set off from Okanhandja to get Samuel Maharero's head, whilst Von Glasenapp's squadron set out from Onjatu to attack Chief Tjetjoo and his followers. Lieutenant Gygas went after Chief Zacharias, and von Estorff trooped off to the West to massacre natives fleeing back to their tribal homelands.

This was Herero country, and the Herero pastoralists knew the terrain very well and had been waiting for the hand-to-hand fighting for a long time. They no longer 'rushed the forts' but waited until the Schutztruppe came after them, but the natives had been unprepared for the mounted Schutztruppe killing machines carrying sledmounts.

On 13 March the squadron under Von Glasenapp detailed to prevent Chief Tjetjoo and his men from regrouping was ambushed at Ovikokorero. According to Drechsler (1980:149) the detachment consisted of 11 officers and 38 men, machine gun and ox cart ambulance; and 7 officers. The ovaHerero inflicted heavy losses on Major von Glasenapp's men, 19 men were killed and 3 officers and two men were

wounded. Thus, half the armed force survived. Amongst the dead were Captain Hugo von François and Oberleutnant Otto Eggers. The German soldiers who survived fled for their lives without burying the dead. They returned a couple of days later and quickly buried the soldiers in a mass grave.

Major Leutwein's troops and the Marines were also ambushed, but the superiority of the cavalry with sledmounts saved them from another crushing defeat. The ovaHerero were fighting for the right to life in their own homeland, and the right to be pastoralists. They were defending their territory fiercely. For the natives who lacked modern arms, the decision to take on the most powerful army in the world had not been taken lightly, and the survivors were determined to chase the Germans back to Swakopmund and into their boats. Most of the natives who had survived thus far were still using crank-operated weapons. They could not obtain any Maxims. But with the battle of Ovikokorero, they had captured some guns, which they were learning how to assemble.

After the battle of Ovikokorero, the Schutztruppe were even more determined to stop the ovaHerero. On 3 April 1904, using von François's road map, the Schutztruppe moved to Otjikuoko, near Okaharui to join the main division of the Marines from the West, whereas, the ovaHerero soldiers who knew the terrain hacked their way through the bush and ambushed the Schutztruppe. They pounded the disastrous Schutztruppe convoy with their own weapons, one officer and thirty-one men were killed and two officers and fifteen men were wounded. The rest of the troop escaped again as fast as they could without burying their dead comrades. Their dead soldiers were left to the mercy of wild animals and lions that had developed a taste for human flesh, as the natives said. When the Schutztruppe reinforcement returned a couple of days later to bury their dead they blamed the natives for atrocities and mutilations against the dead. Non-Christian native soldiers who did not kill women and children did not desecrate dead men. The dead soldiers were no longer going to walk anywhere; accordingly their shoes and guns were removed from their feet and hands.

According to Major Leutwein in *Elf Jahre*, there were several battles, but it is not necessary to narrate all of them here. However, 9 April 1904 was one of his last battles. The Marines and the cavalry with sledmounts had reorganised themselves and pursued the ovaHerero. They were resolved to wipe out the ovaHerero remaining insurgents. They would stop at nothing to get rid of all the natives. The Schutztruppe and the Marines then engaged some ovaHerero at Ongandjira, and 'in front of one machine-gun alone' Schwabe (1910:213) reported 'lay 14 native bodies'.

Four days later, the ovaHerero survivors of the sledmounts attack, retreated and regrouped. They hid during the day and moved at night, and encircled the Schutztruppe at Oviumbo. They were ready for the final show down of man to man fighting and would overrun the Schutztruppe and take the officers as prisoners. But the Schutztruppe made an audacious escape at night to prevent their complete annihilation in the morning. The natives applauded the German soldiers for their sheer audacity in the lion and lamb game.

Major Bloody Leutwein did not attack the ovaHerero again after the near defeat of the mighty Schutztruppe and the Marines. Having lost many officers and infantry, the Major held his regiment until more Schutztruppe reinforcements arrived from the Fatherland. Although engagements with the native forces were halted, the Reservists mounted forays into native villages killing the old and ailing who had been hidden with food and water to cope as best as they could. While the Schutztruppe waited for more troops, the German economic migrants too mounted bloody forays into the hills and waterholes and rounded up natives whom they deemed were sympathetic to the revolt, or who were involved in the burning of German stores. There were savage reprisals against them. Old men and women and children were marched to the nearest fort. Daniel Esma Dixon, a European who was a transport driver for the Schutztruppe during the rebellion stated under oath:

... I spent a great part of my time during the rebellion at Okahandja, loading stores at the dépôt. There the hanging of natives was a common occurrence ... One day alone I saw

seven Hereros hanged in a row, and on other days twos and threes. The Germans did not worry about rope. They used ordinary fencing wire, and the unfortunate native was hoisted up by the neck and allowed to die of slow strangulation. This was all done in public, and the bodies were always allowed to hang for days as an example to the other natives. Natives who were in gaol at that time never came out alive ...¹⁰

The Stormtroopers and Reservists moved from *onganda* to *onganda*, and they even collected knives and the odd muzzleloader. They raided and ransacked the huts searching for women and children who were gang-raped. Many young non-Christian husbands died defending their wives. The big Herero nursing mothers who were taller and stronger than the medium-sized Schutztruppe fought and struggled against violation and ended lying in their own blood. The natives' herds of cattle and the domestic animals were amassed and their vegetable patches were trampled. Their huts were then gutted. The natives who found themselves before the soldiers, were simply shot as if they were lions. A few very old wise Herero men beat the drum message with lots of shouts and curses simply to warn their unarmed women and children in the bush to disappear further into the thicket. Under customary law, it was not the sprinter who carried the tribal message but the drummer. This could be heard far and away over Hereroland. The old men and women were found dead on their knees as if they had been grovelling in prayer to be spared.

5.1 Why Did the Germans Come?

Major Leutwein had escaped audaciously to save the lives of the German soldiers and elude capture by the natives. When the news of the daring escape at Oviumbo reached Germany, people began to realise that the Hottentot war was not going too well for Germany. The All-Highest-Kaiser Wilhelm also decided that it was time to remove Major Leutwein

¹⁰ Report (1918:66).

from the war against the natives. Accordingly, Major Leutwein and some high ranking Afrikan experts in the Colonial Office, whom they called 'a bunch of old ladies created by Caprivi' were sacked by the All-Highest. They too should have been compulsorily retired when old Caprivi was dismissed but although Major Leutwein was withdrawn from military operations he was ordered to continue as the Governor of GSWA.

There were several experienced German officers available for service in the *Schutzgebiet* after Major Leutwein was ousted from the German South West Africa operations. Gudmundsson (1989:21) recalled that soon after the end of the Franco-Prussian war, the Japanese discharged their French military advisers who had been training the Japanese army since the 1860s, and replaced the French with German officers who had been dispatched from the Russian-Japanese war to crush the native revolts. The Kaiser had a large pool of officers to choose a Commander-in-Chief from for the Hottentot war in Deutsch-Südwestafrika. He appointed Lieutenant-General Lothar von Trotha as the Commander-in-Chief of the *Schutztruppe*.¹¹

Pool (1991:245) noted that the Kaiser appointed von Trotha saying, 'I entrust this command to you with the fullest confidence in your insight, energy and experience'. Lieutenant-General von Trotha had acquired a reputation as a formidable, no-nonsense cold-blooded murderer, capable of crushing all the natives in the *Schutzgebiet*. He was a professional soldier of the old military school who took war murderously. It was said that he never missed artillery practice and military science lectures. He agreed that Afrika was not worth a war, however, he was determined to ensure that 'never again would there be a native rebellion' in the *Schutzgebiet*. He would give the ovaHerero the flogging they deserve.

While Lieutenant-General von Trotha prepared for the ovaHerero offensive there were no recruitment problems whatsoever in the Fatherland. More and more young *Schutztruppe* clutching photographs of

¹¹ Lothar von Trotha was born in Magdeburg in 1848, the son of an army officer. He fought in the 1866 war, and the Franco-Prussian war 1870 - 1871. He was appointed a Lieutenant Colonel in 1894 and Deputy Governor and Commander of the German troops in East Africa. He suppressed the Wabebe revolt in 1896. He took part in the suppression of the Boxer Revolt in China. H. Bley (1971:159); G. Pool (1991:243); H. Drechsler (1980:153).

their beloved mothers were shipped into South West Afrika. The young soldiers were very disciplined efficient killing machines. But the ordinary Germans walking along the Kaiserstrasse knew that something 'was fundamentally wrong' when more and younger boy-soldier reinforcements had to go out to Afrika to exterminate the natives or be killed. Their voices were unheard by the Kaiser.

On 11 June 1904 the new Commander-in-Chief, Lieutenant-General von Trotha arrived in Swakopmund, Deutsch-Südwestafrika, to succeed Major Leutwein. Trotha spent months working on a strategy of how to strike at the very heart of the hostile rebellious ovaHerero Chiefs whom he called 'a generation of vipers'. He would teach the savages how to behave. Lothar prepared meticulously. It would be a Waterberg *blitzkrieg*, the final solution to the native rebellion. Lieutenant-General von Trotha had a very high opinion of himself as if he was the Emperor Trajan in the Dacian campaigns.

As part of the preparatory campaign action against the ovaHerero, General von Trotha wanted the railway line from Okahandja to Otavi completed quickly in order to facilitate moving the troops from Swakopmund to Okahandja then to Otjiwarongo. Otjiwarongo would be the nearest railway station to the Herero heartland but the natives kept retreating further and further into the mountains. As there were no native labourers available to work on the railway tracks, the *Otavi Minen-und Eisenbahn Gesellschaft* (OMEG) line recruited more Italian workmen. The Italians were not docile natives so they objected to the oppressive hard drive to lay the track on schedule, and they also protested against the derisory pay. They went on strike for more *Reichsmark*. The Italian strike delayed the work of the OMEG Line Railway operations. Accordingly, packhorses, mules and hundreds of wagons were used to move the mountain machine gun detachments from Okahandja into the Waterberg plateau. General von Lothar then established strategic command operations posts, several operational headquarters, corps headquarters, signalling posts, field hospitals and telegraph lines in order to facilitate the annihilation of the ovaHerero. More and more Schutztruppe reinforcements poured in from Germany.

When Lieutenant-General von Trotha, the overall military chief was ready to crush the ovaHerero, he had almost 15,000 Schutztruppe, and a few thousand Reservists. There were also thousands of mongrel native allies who had been summoned to fight with the Schutztruppe, and thousands of Boers from South Africa with their leftover arsenal from the Boer war. The Schutztruppe had thousands of Gewehr Rifles 98, and the officers were even provided with field glasses, but the native allied troops were equipped with Gewehr 1871. The battalions were issued with one or two Maxims and the mastermind had twelve mounted machine guns and thirty cannons. The light artillery was mounted on the horses.

The movement of troops was a large-scale display of battalions of cavalry, mounted infantry and foot infantry. General von Lothar's strategic plan was that six detachments should encircle the ovaHerero in the Waterberg plateau.

Pool (1991:252) explained that:

- 1) Major von Estorff was to advance from the northeast, first along the Omuramba Omatako, following the southern mountain slope, as far as Waterberg station.
- 2) Major von der Heyde was to attack from the southeast, from the Omuramba at Hamakari.
- 3) The main section, accompanied by von Trotha himself, would also advance towards Hamakari, moving from the south via Ombuatjipiro.
- 4) The new troops from Germany, comprising the Second Field Regiment under Colonel Deimling, were to advance on Omuveroume from the south-west
- 5) Captain von Fielder had to ensure from the northwest that the Hereros did not perhaps elude Deimling and escape in that direction via Omuveroume through a defile between Great Waterberg and Little Waterberg.
- 6) Oberleutnant Volkmann had to prevent the Hereros from escaping either via Omuveroume or across the neck between the sandstone plateau and Great Waterberg.

It would be the bloodiest massacre in colonial history, as the six operational commanders would hold the ovaHerero in a vice-like grip ready for crunching. Drechsler explained (1980:155) that if, however, the Herero were to break through, such an outcome of the battle could only be even more desirable in the eyes of the German Command because the enemy would then seal his own fate, being doomed to die of thirst in the arid sandveld that would prove to be the most subtle massacre in colonial history. The Epukiro River and some waterholes were thoroughly covered by the Schutztruppe operations.

The Schutztruppe, the Reservists, the Boers and the native allied troops advanced towards the Waterberg Plateau from the South and Central Regions.

The ovaHerero spies as well as the animals of the Ohamakari watched the boy-soldiers fresh from Germany wilting in the sun, as they hauled their wagon and pack animals on to the Waterberg plateau. (Ohamakari was renamed the Waterberg, Water Mountains by the 'Dorslandtrekkers' who interrupted their journey at the Waterberg from 1875 – 1880 on their way to other very rich pastures in the northwest.)

Meanwhile, the Otjherero speakers had nowhere else to hide in their home land. Thousands of them gathered in the Ohamakari Central plains of the Waterberg. This was the largest gathering of Otjherero peoples. They were preparing for their war of survival. There was no time for machine gun schooling, and they could not afford to waste the little ammunition they had firing at moving dummies. But they would fight to the last man, and there would be no surrender. They knew that they were being encircled by a massive number of soldiers, Maxims and canons, but they did not know when they would be attacked. The Christians sang '*Harre meine Seele*' and prepared their souls for the hand-to-hand fight to life's end.

This was not a war between equal European killing powers of the Franco-Prussian war variety, the Boer war, or the Russo-Japanese war, but a massacre of the natives in their villages, in their homeland for their land and for their women. In the Boer war, both sides were educated and were equipped with the latest efficient killing machines. 'They used many

of the same types of guns, notably the rifle calibre Maxim and its 3.7cm big brother, the Pom Pom'. The Schutztruppe had many advantages over the natives who could not even incapacitate one field gun.

The Ohamakari was the heartland of the eland, and it had its unique fauna and flora. Vogt (1995:22) noted that the Waterberg had a colony of sable antelope, roan antelope, tsessebe, buffalo and white rhinoceros. There were dinosaur tracks and rock engravings in the Karakuwisa, the original home of the San. A troop of giraffes had descended to the plains to watch the Schutztruppe proceedings. Accordingly, when the Schutztruppe and their allies poured out hell fire, both the natives and the animals of the Waterberg were roasted.¹²

5.2 The Battle at Ohamakari, Waterberg

On Thursday 11 August 1904, the sun was shining as usual as it does every day from clear, azure blue skies on the largest gathering of Otjherero speaking peoples. Lieutenant-General von Trotha, and his commanders and their well-equipped battalions fanned out in the Ohamakari Mountains. However, a passage into the desert-roasting oven had been left for those who could survive the hellish gunfire. They were ready to decimate the natives, as well as to prevent the wounded from escaping across into Owamboland.

General von Trotha's Mountain Machine gun detachments were not going to attack the natives in the massed formation that they had learned in the academies; instead, they would imitate the Boers who had taught the massed British troops lessons in warfare. Under the various field commands, the Schutztruppe crack shots with the repeating rifles formed into sections on vantage hilltops overlooking the enemy. The Protection Treaties with the traditional authorities had been abrogated so let the human slaughter commence.

¹² The white rhino and the impala have been reintroduced from Natal to the Waterberg; the eland and giraffe from Mangetti, roan antelope from Kavango, sable antelope from West Caprivi, blue wildebeest from Daan Viljoen to repopulate the Waterberg.

At dawn, the Schutztruppe opened the machine gun arsenal fire. The smoke turned the azure blue skies into mauve, and the decibel level of the guns deafened many howling children. The Schutztruppe unleashed the Maxims on Maharero's command and killed several of his followers before the survivors found out from which direction the explosives were cascading on them. The ovaHerero survivors fought back desperately, but they were constrained by technological inferiority and were decimated in von Trotha's inferno. Meanwhile, cannons exploded and decapitated women and old men who were far away from the battleground. Others were set alight by the exploding canons. Some children were shattered to smithereens and their stray bones hung on trees:

The Schutztruppe started shooting at us from crack of dawn before we realised what had happened. They were pounding us until late at night, then the old men and children left while the ovaHerero troops fought to give them cover and a chance to escape.

Explained an eighty-eight year-old man whose mother had survived the fiery passage across the Omaheke desert. The wounded Schutztruppe were carried back to the field hospital by the support troops and 'towards evening we buried our dead under the tree'.¹³ While the Germans buried their dead, the natives who had survived the slaughter carried out what they considered a fearless escape and fled westward at night with their wagons and some cattle. Lieutenant-General von Trotha had left a gap that stretched for about two hundred miles into the Omaheke Desert.

The next day, the Schutztruppe blasted the ovaHerero positions again with all hell fire while the Schutztruppe commandos descended from their mountain hideouts to capture the ovaHerero chiefs. But some of the ovaHerero and their chiefs had escaped; except for some heathen soldiers who decided to die fighting for Hereroland. The dying and the seriously wounded also remained. There was no escape for them. The Schutztruppe who were out to get their revenge on the natives had threatened to castrate all the wounded enemies; instead, there were frenzied mass

¹³ German military cemetery, a few kilometres from the super modern Bernabe de la Bat rest camp.

bayonet attacks. Klein Waterberg ran red with the blood of the ovaHerero. Thus, after the Ohamakari hell fires, roastings and massacres, Von Trotha acquired a new sobriquet: He was christened Butcher von Trotha by the native contingent.

The ovaHerero survivors had one-night head start against the Schutztruppe but rather than let them go without water or food, the Schutztruppe pursued them into the Omaheke Desert. Rathenau (1985: 81) wrote in his 1908 diary that:

... the Hereros were driven into the Sandfeld and the greatest atrocity that has ever been brought about by German military policy took place: a whole nation, with its women and children, languished for weeks in mortal agony.

Aristotle noted that one must be courageous in war but also magnanimous and merciful in victory. Not the Schutztruppe. They said they were Christians. They said they were civilised. They said they were bringing Christianity and civilisation to the natives in the heart of Darkest Afrika. Aristotelian philosophy of compassion and the virtues of Christianity were wasted on them as the Schutztruppe pursued the fleeing half-starved natives into the desert.

Butcher von Trotha ordered that the Herero should be haunted down and killed as sport. The Schutztruppe descended into a war of extermination of the native people. It was simple slaughter. They destroyed everything. Demolished everything. Killed everything, dogs, children, and women. It was a war without rules for the living. The native dead littered the flight path into the villages. As there was not enough German gunfire support to kill all the natives, some escaped into the desert. The traumatised natives who escaped one war front were now trapped between the Omaheke desert and the deadly German Gewehr rifles behind them.

Jan Kubas, a Griqua ally at the time living at Grootfontein stated under oath in the Report (1918:65):

I went with the German troops to Hamakari and beyond ... The Germans took no prisoners. They killed thousands and thousands of women and children along the roadsides. They

bayoneted them and hit them to death with the butt ends of their guns. Words cannot be found to relate what happened; it was too terrible. They were lying exhausted and harmless along the roads, and as the soldiers passed they simply slaughtered them in cold blood. Mothers holding babies at their breasts, little boys and little girls, old people too old to fight and old grandmothers, none received mercy; they were killed, all of them, and left to lie and rot on the veld for the vultures and wild animals to eat. They slaughtered until there were no more Hereros left to kill. I saw this every day; I was with them.

The Schutztruppe massacred the ovaHerero in order to create an Oberhausen out of Hereroland for the economic migrants. The soldiers' obeyed von Trotha's command to shoot armed and unarmed people, until the desert ran red with the blood of the natives.

Gustav Frenssen (1908:189) wrote, the next morning we ventured to pursue the enemy:

We left our unmounted men with the sick and wounded ... and set out towards the east, two hundred horsemen in number ... The ground was trodden down into a flour for a width of about a hundred yards; for in such a broad, thickly crowded horde had the enemy and their herds of cattle stormed along. In the path of their flight lay blankets, skins, ostrich feathers, household utensils, women's ornaments, cattle and men, dead and dying and staring blankly ...

Frenssen (1908:190) continued; wherever I turned my eyes lay their goods in:

Quantities: oxen and horses, goats and dogs, blankets and skins. And there lay the wounded and the old, women and children. A number of babies lay helplessly languishing by mothers whose breasts hung down long and flabby. Others were lying alone, still living, with eyes and nose full of flies. Somebody sent out our black drivers and I think they helped

them to die. All this life laid scattered there, both man and beast, as if it had all been thrown down out of the air.

The Schutztruppe cavalry pursued the ovaHerero in platoons from base camps, because their horses were useless in the desert; apart from their hooves and stamina, the horses required plenty of water and oats. Accordingly, the Schutztruppe made dashes for the waterholes, watered their horses and fed them from the eight pounds of oats carried in every saddle-bag, then poisoned the waterholes, even though they knew that the natives were going into 200 miles of desolate desert. Epukiro waterholes were covered by the troops. The cavalry pursued the fleeing ovaHerero, the stragglers and the walking wounded in the rear guard were shot, and death was a relief. Johannes Kruger appointed by Major Leutwein as 'chief' of the Bushmen and Berg-Damaras of Grootfontein area stated under oath that:

I went with the German troops right through the Herero rebellion ... We refused to kill Herero women and children, but the Germans spared none. They killed thousands and thousands. I saw this bloody work for days and days and every day. Often, and especially at Waterberg, the young Herero women and girls were violated by the German soldiers before being killed ...¹⁴

Some ovaHerero who survived hunger and exhaustion gave up, and surrendered to the cavalry Schutztruppe. Those who surrendered or were captured were not taken as prisoners of war; their survival depended on who were the Schutztruppe field commanding officers. In Report (1918:65), Hendrik Campbell (War Commandant of the Bastard tribe of Rehoboth) who commanded the Bastard Contingent forced by the Germans to help them against the ovaHerero said in an affidavit:

At Otjimbende we (the Bastards) captured 70 Hereros. I handed them over to Ober-Leutenants Volkman and Zelow. I then went on patrol, and returned two days later, to find the Hereros all lying dead in a kraal. My men reported to me

¹⁴ Report (1918:65).

that they had all been shot and bayoneted by the German soldiers.

Hendrik Campbell continued in the Report (1918:65) At Katjura we had a fight with the Hereros, and drove them from their position. After the fight was over, we discovered eight or nine sick Herero women who had been left behind. Some of them were blind. Water and food had been left with them. The German soldiers burnt them alive in the hut in which they were lying ... I immediately went to the German commander and complained. He said to me, 'that does not matter, they might have infected us with some disease'.

Sometimes, the Schutztruppe formed themselves into human pyramid as in a military gymnastic display to see further afield for the miserable camp fires made by the natives from driftwood and anything else that they could burn. August and September were miserably cold winter months:

Then came the news that the enemy, after overcoming and passing the great stretch of waterless country, where thousands of them had perished, were situated far to the east on the further side of the sand field by some miserable water-holes. The general decided to follow them thither, to attack them and force them to go northward into thirst and death, so that the colony would be left in peace and quiet for all time.

Fransen (1908:199) again reported that: 'Safe is safe. They can't raise a gun against us any more nor beget any children to fight against us. The struggle for South Africa will be a hard one, whether it is to belong to the Germans or to the blacks'.

The missionaries failed to prevent the Schutztruppe from slaughtering the natives, but the missionary support groups persuaded a few surviving ovaHerero Christians to return, from their path of damnation, 'that no more blood will be shed' because 'your souls have been entrusted to us'. The missionaries promised to negotiate peace terms for them. This was for the salvation of their immortal souls because they were embarking on

eternal damnation. So some of the Christians agreed especially the black preachers and teachers and some chiefs, and they were taken into missionary custody. Thus, the once free ovaHerero men and women were chained and force-marched by the Schutztruppe to Windhuk. The important prisoners had their hands tied behind their backs and a rope slung round their necks, while they ran along side the horses, or were dragged along behind the horses. Men and women who had starved for weeks dragged themselves along behind the triumphant cavalry like slaves. Many ovaHerero prisoners of war died along the way and those who tried to escape or could not walk or crawl any more were shot by the Schutztruppe guards. Some lucky people got back to Ohamakari and were herded into stinking cattle wagons to Okahandja and then they walked to Windhuk, while Trotha decided what to do with the Chiefs.

Indeed, no blood was shed on arrival in Windhuk as the missionaries had promised. It was their religious duty to save lives, but the natives who survived the economic migrants' civilian lynch mob were incarcerated in prisoner-of-war camps. There was very little food, and the cruel punishments meted out to them were the onset of their degradation and decay.

Implacable Butcher von Trotha went from bad to worse, because his strategic plan to annihilate the ovaHerero was unsuccessful. So after weeks of murderous pursuit in the desert, on 2 October 1904, General von Trotha announced his famous Proclamation that sent shivers down the collective spine of the civilized world. Not even a decree from Caesar Augustus had been issued threatening the extermination of a race:

I, the Great General of the German Soldiers, address this letter to the Herero people. The Herero are no longer considered German subjects. They have murdered, stolen, cut off ears, noses and other parts from wounded soldiers, and now refuse to fight on out of cowardice. I have this to say to them: Whoever turns over one of the kaptains to one of my garrisons as a prisoner will receive 1,000 Marks and he who hands over Samuel Maharero will be entitled to a reward of 5,000 Marks. The Herero people will have to leave

the country. Otherwise I shall force them to do so by means of guns. Within the German boundaries, every Herero tribesman, armed or unarmed, with or without cattle, will be shot. No women and children will be allowed in the territory: They will be driven back to their people or fired on. These are the last words to the Herero nation from me, the great General of the mighty German Emperor.¹⁵

Signed: the Great General of the Mighty Kaiser von Trotha.

Butcher von Trotha's Proclamation that had terrorised the natives was not bayonet rattling, because deadly venom was flowing through the decree. His 'cunning and pitiless egotism' was evident in his order. Lieutenant-General von Trotha was a distinguished military warlord who had to teach the natives a lesson in Schutztruppe ways of destruction.

Some German Christians in the Fatherland were horrified by von Trotha's brand of German imperialism that was killing God's handiwork and urged the colonial enthusiasts in Berlin to negotiate peace with the natives. Gewald (1999:183) cited the letter sent to Trotha:

His Royal Highness the King and Kaiser wishes to grant mercy to all those Herero who surrender voluntarily and orders that, apart from the incontrovertibly guilty and the leaders, their lives be granted. You are to make this known to the Herero in a suitable manner. You are to accept the good services offered by the evangelical mission to care for the initial accommodation of the surrendering Hereros.

Thus, the great General von Trotha of the Mighty Kaiser was obliged to rescind his Proclamation that no prisoners of war would be taken. Accordingly, thousands of ovaHerero still wandering in the desert were persuaded by the missionaries to surrender. They were to be placed in concentration camps (*Konzentrationslagern*). Drechsler (1980:207) 'the number of Herero taken captive men, women and children ... attaining 4,100 by early March 1905 and 8,040 by late May 1905'.

¹⁵ International Court of Justice Reports, Vol. II, pp. 376-377.



Plate 22: Captured skin and bone Herero prisoners of war.
Source: Hintrager 1904. National Archives, Windhoek, Namibia.

In the prisoner-of-war camps, the able bodied were carted off as slave labourers on the railways. With the severity and vengeance of the German Criminal Code, many natives were tried and sentenced to death. Many executions took place east of the Alte Feste, the German Fort. And as for the natives, who received long prison sentences, their death rate in prison was spectacularly high. Prison was terrible; life in prison with its fever and pain and pustules that suddenly appear was a struggle for survival. The prisoners stripped bare of every vestige of their humanity faced death.

Although Chief Zacharias Zeraua of Otjimbingwe still had a price on his head, he and some of his people surrendered to the German missionaries. Some of the big name Christians who were purported to have led the revolt were tried and sentenced to death. Chief Zacharias was tried, 'for the murder of white settlers' and was lucky to be imprisoned with hard labour but would never be allowed to return to Otjimbingwe in his lifetime; only his corpse would be taken back.

These were the Schutztruppe's finest days of victory and vengeance. They had slaughtered thousands of natives and it was not a sin to

slaughter the unbaptised. They were on their way to hell anyway. Godspeed. Most of the ovaHerero who survived were languishing in the desert facing certain death by thirst, and some of their leaders had been executed for rebellion or imprisoned for life. This was a crushing victory over the rebellious natives.

5.3 Death is Not to be Feared

After the Waterberg offensive, and the slaughter at Ohamakari, the mass of ovaHerero fled:

At Otjihenda waterhole, the Schutztruppe were there waiting, so we fanned out in different directions and walked for days. Some of us were attacked by wild animals. We suffered our greatest loss during the pursuit by the Schutztruppe killing squads. It was summary execution of old people, pregnant women and children.¹⁶

Some ovaHerero survivors, rather than die by starvation, fled northwards into Owamboland for sanctuary with Shivute and the warriors of King Nehale of Ondonga. They had survived injuries by gunfire from the Schutztruppe and their native contingent, and against all the odds made it into Owamboland.

A few survivors found the ancient Trans-Omaheke iron-age mining route that led from Otjikoto into Ngamiland. However, the majority of the survivors was trapped in the desert furnace, and was relying on their traditional resources to navigate the Omaheke desert.¹⁷ The divine presence of their ancestors was leading them on, far away from the Schutztruppe genocidal squad, one of the most barbarous manifestations of colonialism. It was how to get to Ngamiland without food, water or their animals that was excruciating. They were plodding forwards; they were heading for Ngamiland, to find a land free from Schutztruppe with guns hunting them. A land of free movement of the Khoisan.

¹⁶ Interview with an elderly returnee in Gam, May 2001.

¹⁷ The sun has baked the desert sand into fine red powder that the ovaHerero called 'Omaheke'.

Shekgalagari, Setswana and Otjiheroero-speaking people and their animals.

Some of the survivors argued about whether or not they should give up and surrender to the Schutztruppe yoke. They could turn back and surrender, but they were not going to; although they were dying slowly of thirst and hunger, they would not surrender to the Schutztruppe. The ghastly tale had reached the refugees that Joel Kavizeri and his followers who surrendered at Ombakaha had been killed. With the help of the missionaries who were doing the Lord's work, Joel Kavizeri, a Christian, and his people had wanted to negotiate the salvation of their immortal souls. Joel Kavizeri and about 70 of his followers who survived the attack on Fortress Okahandja, as well as several battles and Ohamakari had returned to a German camp and surrendered. 'Having welcomed the *Herero* one by one, I began to negotiate with them', continued Drechsler (1980:160):

The enemy were now presenting a completely different picture. They had fanned out in a matter of five or ten seconds, whereupon I gave orders to open fire. For a brief period of time the enemy vigorously returned the fire, but then careered down the hillside, pursued by our shells and bullets, to come to a halt at a distance of approximately 300 metres. In the meantime the Kapteins and headmen had tried to escape and had all been killed within a radius of 10 to 300 metres ... About 12 noon the remainder of the enemy withdrew ... There were no casualties on our side.

The ovaHerero refugees were now facing a lonely and painful death in the desert, but they would not surrender to the Schutztruppe. The Schutztruppe had tracked down more of the fleeing Christian ovaHerero to the waterholes where they were attacked at dawn. The Schutztruppe slaughtered nearly everybody before the men who were brutally awoken by the murderous Schutztruppe could reach for their guns. The captured bewildered Christian natives were unprepared for the brutality of the Schutztruppe Christians. They pleaded, but we are thy namesake in Christ while they were massacred. The non-Christian captives were in a state of

shock and could not understand what made the Schutztruppe behave in such a barbaric way.

The ovaHerero had suffered the greatest loss of their able-bodied fighting men at Ohamakari where everybody was shot at without mercy. Old people, children, pregnant women, and even the disabled were killed. It was like a fast execution of the natives and a slow massacre of the survivors. Some people had been on their way to the Waterberg to be reunited with their families when the killing started, and they had been cut off on several fronts by gunfire from retreating. Accordingly, they were unprepared for days of dehydration in the desert. Their people and their sacred cattle had died in the Schutztruppe attack.

They had escaped from Ohamakari caked in blood. At first, some families were fleeing together with their animals and a few possessions. But they did not stand a chance against the likes of Schutztruppe on horsebacks who had formidable death machines. The sides of the Waterberg had been impregnable with the Schutztruppe and their machine guns.

They fled at night. A blizzard of sand had cleaned out the track of the leaders who had wagons and bullocks, and they had to rely on their ancestors, and their sense of direction to get them safely across Omaheke to Ngamiland. They wandered all over the place from Okakarara to Okamatapati, Okathimbe to Ozonguti. It was bitterly, wretchedly cold at night one of the coldest winters since the Schutztruppe came. The Christians had to rely on the heathens' sacred fire sticks to start a fire.

They had nothing to drink. They lay on the ground, huddled round small campfires for warmth. The fires were made from driftwood, bones, shells and anything that could burn. The fires twinkled like the stars in the black, cold sky above them. Again, Fressen (1908:204) reported that:

One fire was burning not far from us in the thick bush ...

Before dawn we got up, discovered the exact place in the bush, and stealthily surrounded it. Five men and eight or ten women and children, all in rags were squatting benumbed about their dismal little fire. Telling them with threats not to move ... We then led the men away to one side and shot

them. The women and children, who looked pitifully starved, we hunted into the bush ...

The ovaHerero were demoralised people herded together for warmth. The temperature was very cold at night; a drop of water when one could find it had frozen solid at night. The tufts of grass with frost were like sharp needles. The leather clothes of the non-Christians cracked with the early morning frost.

The old and the dangerously wounded who could not keep up with the massed human beings were helped as best as they could. They were hidden behind sand dunes with a couple of Tsama melons that were the only sources of water and food in that part of Omaheke. They also left bunch of edible yellow grass. The not so seriously wounded were carried. Heavily pregnant women dawdled along; but progress was very slow in the sand. The soles of the children's feet cracked open and they howled in pain, and with hunger and with the cold. The old soon gave up and lay down gracefully for the long sleep.

The missionaries had bequeathed their sense of shame of the naked body to the Christians who soon became guiltily aware of their nakedness. Their tattered cast-off clothes barely covered their nakedness. They hid in the daytime. 'Yesu have pity on us', the Christians prayed. Their pagan brethren assured them that if God had nothing better to do than to condemn naked natives to hell, so be it. Hell could not be worse than the pursuing Schutztruppe. God did not descend to free the ovaHerero Christians from the Schutztruppe and their sacred cattle had died in the assault.

The refugees had to put out the warming fires, get up very quickly and navigate the desert at night, as there were terrifying companies of Schutztruppe hit squads coming for them. They went astray several times because they travelled at night and they were tired and drowsy, and when the few animals lay down, it was difficult to get them up again.

The Schutztruppe patrol hit squad sent out to get the Christian leaders "the generations of vipers" missed them, but they punished the native girls. The Schutztruppe pursued the ovaHerero further into the desert. When the Schutztruppe tracked them to death, some of them screamed

out warning with their last breath, or drummed on anything that could send a message, 'Run for your life!' for the other survivors to hear, before they were butchered. The Schutztruppe pulled out the bayonets and ran after other escaping natives or shot them in the back of the head. The bodies of dead ovaHerero lay densely on the ground like dead animals during the rinderpest outbreak.

Before the ovaHerero during the daytime was this vast red sand of the Omaheke desert with its venomous sand snakes. The movement of hundreds of people whipped up dust storms, choking dust that made them cough and rub their eyes. Even the air was very hot, no wind and not a *mopane* tree in sight. It was difficult to breathe and some children choked on the dust. They were sandsick. There was no milk for the children, and no water to drink so mothers licked their dear children's parched, swollen tongues. Yet the human body still secreted urine and sweat when there was nothing to drink.

In the morning, the sky was azure blue at first and the sun was warm, but then the sun turned fiery yellow, then white and the ground became baking hot in the afternoon. They tied bits of wood and goatskin to their feet to make walking on the cracked skin on the sole of their feet bearable. To prevent desert blindness, they stripped barks from driftwood to provide shelter for the eyes from the glaring sun. These were the simple survival skills that the non-Christians knew as herdsmen.

The dry hot sand mummified human bodies very quickly, especially the bodies of sterile newborn babies free of bacteria. Some mothers who went into labour in the desert also died. The Christians had no time to give all their loved ones proper Christian funerals; as they were still being hunted down by the Schutztruppe. The Christians prayed; it was very short:

O Father of all mankind, we pray to thee for those whom we love, but see no longer. Grant them thy peace and let light perpetual shine upon them, through Jesus Christ our Lord. Amen.

The non-Christians listened in terrified silence. Did the Christians say, "Father of all mankind? What did they mean by Father of all mankind?"

Did they share the same Father as the Schutztruppe? What has the Schutztruppe God got to do with them? Where was the Father of all mankind when the Schutztruppe killed thousands of His children? The Christian God is a God of war. Did you not hear the Germans say '*Gott mit uns?*' Father was on the side of the Germans. It was an unjust war of all mankind.

The non-Christians who took death very seriously also prayed and buried their loved ones quickly. They prayed to their ancestors that those who had gone before them should lead them safely into Ngamiland. They added:

In nature there is no vacuum, the places that our loved ones have left empty by the good they did, the kindness they showed to others should not be left vacant. We the survivors must carry on. They died rather than live under German yoke.

For their countless beloved dead children they prayed:

The Germans have taken you, may you rest with your ancestors. *Eanda* of our *eanda* lie in eternity. If people should ever remember us let them know that we died for them to have land, cattle and freedom.

The ovaHerero were dying miserably in the desert. The bodies of the dead had changed colour and were also fearsomely bloated; gases were being released. The smell of decomposition blew in the direction of the Schutztruppe and hastened their retreat from the field camps, as they were also wilting from the heat. Some of the Schutztruppe boy-soldiers were ill with malaria, typhoid and debauchery. However, it was the outbreak of the Nama war in the South that ended the Schutztruppe further pursuit of the ovaHerero into the desert.

There were far too many dead bodies lying around unburied to take up survival time, but the ovaHerero buried a few very quickly in unmarked graves, and plodded on into the blazing landscape. Soon the survivors had no energy left to dig and bury the dead. Tjetjoo, Utjina's favourite son and many of his followers and *eanda* had died in the desert, although they had survived the battle of Ohamakari.

The remaining survivors walked for days and weeks; there was no food and no water. What time was it? What date? They did not know, and they did not care. They simply wanted to survive. The abled-bodied who knew the terrain moved faster leading the horde to the next waterholes, but there was no water. Instead of water, it was carnage, dead animals and corpses. The waterholes were stone dry.

Sometimes when the desert storm appeared the lifeless unburied corpses rolled and continued rolling as if they were following their loved ones to the next waterholes, beseeching the hungry and the dehydrated not to leave them behind, until the corpses were halted either by boulders or dried up tree trunks. This was their Golgotha, skulls and bones and the pity of war. They were the lucky ones.

The refugees knew that they faced a slow painful death in the desert, but 'death is not to be feared'. Their flight into Ngamiland had turned into hell in the desert. Women who miscarried and women who had periods had blood running between their legs that had caked with sand and lacerated their thighs when they walked, but they plodded on.

While the vultures circled overhead, some women were dreaming of water and yoghurt, boiled pumpkins and the sweet aroma of boiled beef wafted across, but the survivors were too weak to make shelters, light the sacred firesticks or divert to find roots, tsama melons or water. They were sleep-plodding through oven temperatures into Bechuanaland. There were no waterholes, no trees for shade, and no roads. A few lived on roots when they could find and dig them up. Some of them developed intestinal ailments; respiratory diseases and others were severely dehydrated. Some people died just from sheer exposure and exhaustion.

Since time immemorial, breast milk has been the infant's life giver, but the milk in the lactating ovaHerero women's breasts had dried up, and the breasts too had shrivelled. Under Herero tradition, usually, nursing mothers did not go on long pilgrimages, until the infant had been weaned. In case the mothers' milk dried up and the babies died of thirst. Lactating mothers were encouraged to churn the yoghurt milk goards in order to stimulate the pectoral muscles and breasts to produce more milk for the baby. In the Omaheke desert, there was no life-giving milk left in the

shrivelled breasts to feed even dying infants, never mind suckling adult men. What some male authors recorded about suckling adult Herero men in the desert was pure myth.¹⁸

The ovaHerero showed the world that human beings could endure and survive brutality. The human spirit can triumph over adversity. Some of the heathen ovaHerero who survived the desert with their pagan fetishes and the sacred fire sticks did not hate the Schutztruppe. All that the ovaHerero had wanted was a Schutztruppe-free Hereroland with a sense of its own tradition. They had conducted the war without killing the women and children of German economic migrants.

Chief Samuel Maharero and some of his followers, the great smelly unwashed were the first to arrive in Bechuanaland in September. The Chiefs and their councillors who had prices on their heads and who knew the terrain and still possessed ox-teams and Cape wagons laden with provisions managed to reach Bechuanaland. They knew from the experience of Kambahahiza and Kahimemua that the Germans would strip them of their power, their land and their life and they would be executed. Thus Lord Selborne, the British High Commissioner, gave them permission to remain in Bechuanaland. Hodson (1912:85) recorded that:

You will first direct refugees to hand over to you all guns, rifles, and ammunition, taking an accurate list, and you will send such guns, rifles and ammunition to Gaborone by any reasonable opportunity, giving the carrier a special permit to proceed with them. Furthermore, you will warn refugees that they must not return to German South West Africa as long as hostilities continue ... You will instruct the local headmen that the refugees must not be molested.

Later, more starving and thoroughly exhausted skeletal men, women and a few children who paid the ultimate price for German colonialism staggered into Ngamiland. Their survival through the desert was sheer

¹⁸ In the 12th century, St. Bernard had a vision of the Blessed Virgin Mary while he was kneeling at prayers in the desert. A jet stream of milk from her left breast flowed into his mouth. The lactation of St. Bernard. Flemish painting, c.1480. For more about breasts, see M. Yalom (1988).

grit. Prolonged weeks of hunger, weight loss and dehydration reduced them to walking twigs. Hodson noted that (1912:92) 'It made my heart bleed to see the poor little native children, who are, ordinarily, jolly little things, and in appearance like plump partridges, so emaciated that they were nothing but skin and bone.' No bands played for their safe arrival and there were no welcoming be-ribboned parties. The exhausted refugees were terrified of becoming hostages to the Schutztruppe. Was it worth it, the adults kept asking themselves?

The people of Bechuanaland were seething with anger and grief when they saw the ovaHerero skeletons, as thin as twigs crawling from the desert into their land. The journey had crippled some of them, and the prolonged weeks without food and water through Omaheke had dehydrated them. Some of the children could not speak and were also deaf, others had very bad coughs, and most adults were streaming with virulent smallpox. Hodson (1912:91) again recorded:

These poor natives presented a terrible appearance; men, women and children were all in an absolute state of starvation, and to add to their miseries, were suffering from smallpox. I placed them in a long line, single file and counted them. Their number all told amounted to rather over two hundred and fifty ...

Another batch of lucky traumatised crawling survivors in a daze led by Nikodemus Nguvauva arrived and were settled in the Makakung-Nokaneng noted Alnaes (1989:269) These survivors too had fought the war without killing German women and children. The refugees with one good leg, an eye and an arm were the lucky survivors. A few more skin and bones rattled into Southern Bechuanaland from Rietfontein and others entered in Ghanzi then moved on to Ngamiland. OvaHerero dead littered the passage to Bechuanaland. The refugees had crossed the desert and were alive, whilst others paid the absolute price with their unmarked graves. The unwashed refugees, infested with lice and smallpox were treated in camps. The traumatised men, women and children who got to Bechuanaland were the lucky ones. Most of their *eanda* and *oruzo* were lying around unburied somewhere in the Omaheke desert.

How many natives died in the German-Herero war?¹⁹ There were estimated numbers at the beginning of colonialism and at the end of the war.²⁰ Before the war, there were no quantifiable statistics of the population of the natives in Hereroland. No census of the pastoralists had been taken before colonialism, during colonialism and after the war. The Schutztruppe administrators might have counted the natives' villages, then estimated the number of natives living in them; accordingly, to write about the number of natives who died would be guesswork. At the best of times, semi-nomadic pastoralists were not an easy group to enumerate.

The first wave of ovaHerero who had migrated at the beginning of German colonialism helped to save the lives of the refugees from the Omaheke desert. There were far more survivors than the ovaHerero and the people of Bechuanaland who knew the desert had hoped for. However, how many ovaHerero survivors from the Omaheke reached Bechuanaland? Panzera, the Acting Resident Commissioner, suggested that in January 1905, on the basis of the estimate of Lieutenant Williams that there were between 200 and 300 Herero in Ghanzi District, while in the Batawana Reserve in Ngamiland there were about 1,500.²¹

A reasonable compromise of all the estimated number suggested that there were about 8,000 Herero survivors in 1906. Since most of the 1906 ovaHerero population in Bechuanaland was composed of refugees from German South West Africa, the analysis indicated that the number of refugees had been underestimated. Pennington and Harpending (1991:217) argued that it appeared the people of Bechuanaland had saved many more ovaHerero from the Germans than had been previously realized.

¹⁹ John Iliffe (1995:208) recently calculated that a census in 1911 showed only 15,130 ovaHerero survived the battle at Waterberg.

²⁰ Drechsler (1980:55; footnote 8) noted that Reverend Irle in 1874 estimated that there were between 90,000 – 100,000 Hereros and 20,000 Mbanderu. Further repetition of these numbers appeared in books. W. C. Paigrave (1876:21) estimated 85,000 Hereros and 13,000 Mbanderu; Leutwein about 70,000 – 80,000.

²¹ Alnaes (1989:269) Acting Resident Commissioner to High Commissioner, 21 January 1905. PRO CO 879 / 86.

So how many ovaHerero survivors were there? Pennington and Harpending (1991:214) stated that in 1946, when Bechuanaland still enumerated its population by ethnic groups, 5,798 ovaHerero were counted. (Research Publications 1973) ... but the implied growth rate is probably underestimated due to an under-count of population in the census. Although the quality of demographic data in Botswana has much improved over the last decades, the 1946 government census was subject to substantial error (Central Statistics Office 1981). The greatest difficulties occurred in remote areas like western Ngamiland, where even today there are few roads and population density is low.

In Pennington and Harpending's (1991:209) reconstruction of the 1906 ovaHerero population in Bechuanaland, their projection indicated that there were between 6,000 – 9,000 refugees to reproduce the 1986 ovaHerero population estimated at 12, 500.

After the German-Herero-Nama wars, no funds were made available to carry out a map of the dead, or population census of the living. The native dead were not counted. The Schutztruppe had a tally of German dead in good gold lettering on magnificent granite monuments. But there were no funds available to quantify the number of natives killed in the war of 1904–1908. They had been forgotten in their unmarked graves. It was not politically correct to know the number of natives who were killed in the wars. The number of native dead might have enflamed the socialists in the Fatherland who had denounced the brutalities of the Schutztruppe and the Christian colonial enthusiasts. The Schutztruppe had wiped out most of the traditional leaders and the prospect of any more rebellions from German South West Afrika.

5.4 Unjust Enrichment

After the Schutztruppe had left the ovaHerero in the Omahake desert, the property of the traditional leaders was sequestered with due process. The ovaHerero were stripped bare of land and cattle by the Imperial Decree Pertaining to the Sequestration of Property of Natives in the Protectorate of South West Africa, 26 December 1905. The Schutztruppe acquired

more ovaHerero territorial land than they had already procured by colonial brutality. The estates of the deceased and the property of refugees were not restored to the surviving *eanda* or the *oruzo* heirs. The Schutztruppe Administration sold the land and redistributed the cattle among the economic migrants and the Reservists. The economic migrants became very rich on the death, misery and poverty of the natives.

Furthermore, the Protectorate and the economic migrants claimed compensation from Germany for war damage and destruction of their property. They claimed for the railtrack built on dry sand. And there were government funds to aid the distressed settlers, and in May 1906 additional funds were also made available 'to aid distressed settlers in SWA'. The economic migrants and the Schutztruppe did extremely well for themselves. Matthias Erzberger from Wurttemberg joined the few protesters who denounced the compensation paid by the Government to the settlers in Deustch-Südwestafrika for losses they incurred during the Herero uprising.

Luckily for the Schutztruppe and the economic migrants, a few years later, prospectors found diamond deposits in the desert sands between Walvis Bay and Bogenfels. There was a rush of more economic migrants from the Fatherland, who benefited from the new diamond mining industry.

The war left the ovaHerero worse off than the Germans had found them in 1884. Furthermore, the Schutztruppe Administration was determined to grind the natives into dust by legal sequestration of their property. Accordingly, the Schutztruppe Administrators of the Protectorate submitted the following questions to the draftspersons in Berlin that ought to be incorporated into a new Decree. The questions were:

- (1) Under what conditions can the movable and immovable property of natives be confiscated for the benefit of the South West African Treasury? The natives affected would be those who have committed, or aided and abetted, warlike acts against the German Government or against natives in the Protectorate

- (2) What line ought to be taken if, as has happened in the case of the Bethanie tribe, part of the tribe takes part in the rebellion while another remains loyal?
- (3) Should only tribal property be confiscated or individual property as well?
- (4) Should the reserves, which have been established by Imperial Decree of 10th April 1898, be confiscated, too?

In conclusion, I should like to point out that the projected draft will also have to make provision for the abrogation of the protection treaties.

Enclosed you will find a copy in French of the sequestration order issued for Algiers on 31 October 1845, a directive that is still in force and contains many a valuable hint for the draft to be submitted.²²

These were the answers from the draftspersons in Berlin to submitted to the questions to be included in the Decree:

The tribal property of the tribes fully or partly involved in the rebellion will be subject to confiscation. Whether they have carried out, or aided and abetted warlike acts, will make no difference.

It would be a sign of weakness, for which we would have to pay dearly, if we allowed the present opportunity of declaring all native land to be Crown territory to slip by. Only the territory of the Rehoboth Bastaards must remain in the possession of the natives for the time being ... The non-rebellious section of tribes partly involved in the uprising (e.g. the Berseba Hottentots) may be granted the free use of part of their former tribal area by the Governor for the lifetime of their kaptein or as long as political considerations make this necessary ...

²² Drechsler (1980:214) note 190. Imp. Col. Off. File No.1219, pp. 23-24. Col. Dept. to the Administration in Windhoek, 9 May 1905.

With the confiscation of their land, the natives will be deprived of the possibility of raising cattle. All objections notwithstanding, they must not, as a matter of principle, be allowed to own cattle because they cannot be conceded the grazing lands required for this purpose.

For the moment, however, the non-rebellious natives and especially Bastards, will be allowed to keep their cattle and horses nor will these be taken away from the Berseba Hottentots.

The reserves established by Imperial Decree of 10 April 1898 will have to be confiscated by all means. This plan will be relatively easy to put into execution as few reserves have been created thus far ... The reserves can be abolished without difficulty with one stroke of the pen. The only tribal area to remain, apart from Ovamboland, would be that of the Rehoboth Bastards. Besides, the area of the Berseba Hottentots would also be spared for the time being. Some kind of locations would be created for the other natives, but any form of tribal organisation would be eliminated and the treaties concluded with the former tribes annulled.

The natives would be settled on individual *werfs* in proximity to the places of residence of the whites. Those living on such *werfs* will serve as labourers to individual farmers ... *Werfs* in outlying areas not subject to police control will not be tolerated. They would only provide a nucleus keeping alive memories of the tribal system and land ownership. No major community of natives must be left to their own devices lest they form a self-contained unit.

Freedom of movement will be abolished and passes will be introduced as a compulsory measure. Some districts have already made a move in this direction. The natives have been given an identification tag with a number, the name of the district and the Imperial Crown imprinted on it. The introduction of the tag, which is seen as the 'Emperor's

sign', has proved quite a success. In due course it will be possible to register the natives so identified — or rather the men to begin with — and to keep a closer watch on their movements and activities. Any native found without a tag can then be arrested as a person of no fixed abode ...

I frankly admit that my proposals are of a very draconian nature. Yet half-way measures would only cause resentment without breaking resistance once and for all and ruling out another rebellion ... Here in this settler colony the natives must never be allowed to forget for a single moment that they are in a country ruled by the white man and that they are subject to German legislation. All the sacrifices made in terms of blood and gold will then not have been made in vain.²³

Matthias Erzberger attacked the Imperial Decree of 26 December 1905 that:

Basically, it amounts to nothing else but robbery on a large scale, with the natives suffering more or less, depending on the way it is carried out. It is not only that the tribal system is to be abolished, which one may find understandable, but all tribal property is to be taken away from the natives. In this day and age such plunder is unworthy of a State which has inscribed law and justice on its banner. If put into operation, the Decree will leave the native in South West Africa impoverished and enslaved, making it impossible for them to improve their lot by their own efforts. So the ideal of the 'economically oriented colonial politicians' is nearing realisation: the blacks will serve as lowly toiler for the white man. The Decree marks the entry of modern slavery into South West Africa.²⁴

²³ Drechler (1980:229, n. 191) *Imp. Col. Off. File No. 1220*, pp. 28-35. Tecklenburg to the Col. Dept. 17 July 1905.

²⁴ Drechler, (1980:229 n. 194).

August Bebel could not let the Imperial Decree pass without comment:

Gentlemen, with the Decree promulgated in December last; our colonial people have achieved in the end what they have always urged should be done from the moment the uprising broke out. He said the uprising had merely served as pretext to 'wrest the land from the natives and transfer it to the settlers'. We are well aware that the Government would be only too happy to grab the whole of Africa if it were given a chance.

The natives' humble reply was: 'We did not give you our land and our cattle, you stole them'.

There was also the Proclamation by the Governor of German South West Africa that came into force on 1 October 1907 with regard to a native Pass System which provided that:

all natives in the Colony are bound to have a pass, except children under 7 years, the Bastards of Rehoboth, as long as they are resident within their district, and such coloureds that have foreign nationality and according to the laws of their country are not considered natives.

Section 2 provides that:

those, to whom the pass law apply, must upon implementation of this proclamation obtain from the nearest Police Station within their residential area, a pass token. The pass token must be carried at all times and upon demand must be shown to any Police Official or European.²⁵

There were 18 sections in the Proclamation. The Proclamation ensured that there would be no likelihood of any more rebellions from the natives.

By the end of the war the natives of GSWA were miserably worse off. Over a million of them had either been killed or died of starvation, hunger, thirst, diseases, or smallpox or were in exile. The fate of the desolate prisoners of war who did not return to their home villages was distressing. The unemployed were brutally punished if they were found

without a pass. The civilised nations in Christendom looked on at this massacre of innocent natives in their homeland and approved it, until Germany unleashed its full-militarised killing machine on them in the 1914 – 1918 war and wiped the smile off some faces.

²⁵ It had to be a metal pass token that could not be forged by the natives, and worn around the neck. Violation of the pass law was punishable by corporal punishment.

Chapter

6

God Alone Knows Peace

Some of the Nama mongrel troops who had fought with Butcher von Trotha in the Ohamakari war had disappeared, shocked by the Schutztruppe's merciless massacre of the ovaHerero. The Nama contingent decided that it was not a just war, but a slaughter of natives for their land. The Nama soldiers fled from the killing Schutztruppe. To prevent any more Nama desertions and to punish Captain Hendrik Witbooi, their leader, the Germans deported 119 Nama who were sympathetic to the Herero cause to Togoland.¹

Once the ovaHerero had been sorted out, 'it would be the turn of the Nama'; the Schutztruppe told the Witbooi contingent. All other natives would be taught how to behave after the Herero genocide. In a letter to the Colonial Department in Berlin, Major Leutwein had recommended that all Hottentots should be disarmed at a 'suitable time'.²

Accordingly, Hendrik Witbooi declared war first on the Schutztruppe. He was not going to sit and wait for Bloody Leutwein and Butcher von Trotha to take him on. He had heard of their superior killing weapons and in spite of their pitiless armed superiority his people claimed the right to live on their land and not to give it away to the Schutztruppe.

¹ On board the Woermann at a cost of 16,065 marks. H. Drechsler (1980:185; footnote 46).

² J. H. Bridgman (1991:136).

Captain Witbooi was the first traditional leader to emerge after the defeat of the Paramount Chief Samuel Maharero. Hendrik was born c.1830 at Pella, and like many Africans of his generation, Hendrik was educated in a mission school. He was one of the few literate African Chiefs with a bruising pen and who also kept records of his letters with the administration. Witbooi and his wife were baptised and received into the communion in 1868.³ He was a monogamous Christian who had twelve children.

Captain Hendrik Witbooi's audacious declaration of war on 3 October 1904 probably saved the desert ovaHerero from further deadly punishment by the Schutztruppe. Captain Witbooi saved them from being hunted down to the last omuHerero by Butcher von Trotha. The declaration of war at another front alarmed the Schutztruppe. Witbooi had declared war on 3 October 1904, because of inspiration from the Holy Spirit. The war was not to kill the Schutztruppe but to drive them back to Germany. There would be no more German rule in his nation as his ethnic group was disintegrating. About 40 economic migrants were killed in a battle on that day. Drechsler (1980: 184) recorded that, like the ovaHerero, the Nama did not want to kill the Germans for the pleasure of killing, but the economic migrants had attacked them first. Captain Witbooi noted:

Sergeant, I leave it to your discretion to transport all women and children to Luderitz Bay in ox wagons so that they may return to Germany. Men without weapons bearing the Witbooi mark are also free to join them. They will not be molested.

General von Trotha then ordered Captain Hendrik Witbooi and his tribesmen to lay down their weapons at once or the Schutztruppe would lay the weapons down for them. Captain Witbooi's Nama soldiers knew that if they surrendered they would die, and if they did not, they would die. Either way they would die, they might as well die fighting. To the last man.

³ Witbooi Papers (1989:iii) Archives of the Evangelical Lutheran Church 'Kerkboek' Windhoek.

The other tribes who had been loyal to the Schutztruppe and had fought alongside von Trotha had been disarmed; their arms had been confiscated. The Zwartbooi Nama in the North, the group sandwiched between the ovaHerero and the Damara had a very stormy time:

The Zwartbooi Nama and the Topnaars, who lived in the district of Franzfontein and Sesfontein and Outjo outside the main Namaland, and the Boldelswarts in Warmbad, whose leader was Johannes Christian, were taken prisoner by the Germans in a *coup de main* before they were able to join in the uprising.⁴

According to oral tradition in Fransfontein, the Nama and their leader Lazarus Swartbooi were disarmed and marched into captivity in Outjo. Their traditional leaders were tried for treason - some were murdered and others shot. Their land was confiscated. Their 'Heiden-kinder' pagan children were permitted to go into exile and were employed as labourers in 'public works'.

The Witbooi Nama in the South declared war on the Schutztruppe not to kill them, but simply to confiscate their arms and ammunition and horses and drive them back to Germany. When the economic migrants attacked Witbooi and he fought back, the Schutztruppe up North in the desert wielding Mausers and bayonets charged to the South to crush Captain Witbooi and his followers and capture them, dead or alive. The Nama soldiers attacked the first detachment of the Schutztruppe who had rushed to Namaland to crush them. The leader of the Schutztruppe, Lieutenant von Stempel and two soldiers were killed and the rest of the Schutztruppe fled for their lives to the nearest Fort Naiams.

More Schutztruppe descended on Namaland and they tried again to capture Witbooi, Jakob Marenga and the other leaders, but they did not know how to fight in the terrain. 'Even though the German army was the most powerful in the world,' Marenga had told an interviewer from the

⁴ H. Drechsler (1980:221 footnote 37) In all likelihood, the Kapteins of the Swartboois and Topnaars were murdered while held captive by the Germans. In any case, von Trotha reported laconically on 6 July 1905 that the Kapteins Lazarus Swartbooi and Jan Uichamab 'died of natural causes while awaiting trial on charges of high treason, murder and incitement to murder'. Imp. Col. Off. File No. 2136, p. 13. Trotha to the General Staff in Berlin, 6 July 1905.

Cape Times, on 29 May 1906, 'They cannot fight in our country. They do not know where to get water, and do not understand guerrilla warfare'.

Why did Captain Witbooi declare war on the Schutztruppe, when between 1895 – 1904 according to Major Leutwein, Witbooi had been a faithful 'brother-in-arms'? Some historians would describe this period as when Witbooi's was 'sleeping with the enemy'. He collaborated with the Schutztruppe in order to save his people from further *blitzkrieg*. He did not 'accept another rule'. For as he warned Kamaharero in 1890:⁵

... it seems to me that you took too little account of yourself, of your land and of your people, and your heirs; nor have you thought of your captaincy. You think that you will keep all these things as an independent captain ... But my dear Captain you will come to rue it bitterly. You will eternally regret that you have given the right to rule your land into the hands of white men.

The Herero war gave Witbooi the opportunity to liberate his people from the burden of Schutztruppe rule, so he took it. He understood with horror the meaning of Schutztruppe administration, 'nothing but the destruction of all our people', and Witbooi, being a good Christian had to stand up for God and his people. 'God alone knows peace, for He Himself is peace'.

Captain Witbooi, as did Chief Samuel Maharero before him, entreated and begged and bullied the other traditional leaders to join him and jettison Schutztruppe's German tyrannical yoke. Captain Simon Koper joined Witbooi, but the other Chiefs who had been disarmed by the Schutztruppe refused. However, before some leaders could join the rebellion, a *blitzkrieg* took place.

Meanwhile, Major Leutwein was still communicating by heliograph to Rehoboth. In Witbooi's Papers, letter number 150, dated 8 October 1904, was preceded by transcription of a heliograph message that reads:

⁵ Letter No. 30 Witbooi Papers.

Ascertain situation in !Hoaxa!nas,⁶ and Rietmond, using well-paid spies. Trace von Burgsdorff who rode to the Captain at Rietmond on 3rd October. Since then no news. Captain's participation improbable. Leader of rebellion apparently his son Izaak Witbooi, whom Captain may no longer control.

Leutwein.

Then Major Leutwein sent a letter to Captain Hendrik Witbooi, Rietmond:

I am hearing bad things of your people, but I trust that you yourself are not involved, but have kept your word ... If, however, you are involved, I should, in the light of our present friendship, regret it deeply. You would have broken your word and become a rebel against your lord, the German Kaiser. You would fare badly since the Herero war is almost at an end, and many soldiers are again available. And what must I do with your men who are still in the field with my troops?

In another letter dated 14 November 1904, letter no. 152, Witbooi recorded:

As you point out, I have for ten years stood in your law, under your law, and behind your law — and not I alone, but all chiefs of Africa. For this reason I fear God the Father. All the souls which have for the last ten years perished from all the nations of Africa and from among all its chiefs without guilt or cause, without the justification of warfare in times of peace, and under treaties of peace, accuse me. I will have to answer a great reckoning to God our Father in Heaven. He has heard our tears and pleas and sighs, and has delivered us. For I was attending on Him, and calling to Him to dry our tears in His own time. God from Heaven has now broken the Treaty.

⁶ Established as a mission station in 1853. Witbooi Papers (1989:180).

You also accuse me of murdering helpless white people, and say that 80 of my men are in your custody, who shall pay for the white people. I beg you, when you have read this letter sit down quietly and reflect. Count up the souls which have perished in this country in the ten years since you arrived, and up to the present day. And reckon the months in ten years, and the weeks and days and hours and minutes since they died. Then count the Whites who have fallen into my hands in this short time.

Notwithstanding Major Leutwein's intervention, and Captain Witbooi's letter, a large Schutztruppe contingent descended again on Captain Witbooi's stronghold in the Aruob Valley. 'We have not come to fetch cattle for the settlers, but to crush the enemy'. Drechsler (1980:188) recorded and the Schutztruppe proceeded accordingly to crush the enemy. Many children, women and the elderly were crushed. Captain Witbooi managed to escape the *blitzkrieg* and took to the desert. The Nama buried their dead very quickly and disappeared.

As some people would say today, Witbooi had the 'Jesus-Christian bug' very badly. Was that why he collaborated with the Schutztruppe's administration religiously, courtesy of the missionaries? Witbooi saw himself as the biblical Messiah of his people. He established an Independent African Church for his people. God had told him that he could not defeat the Schutztruppe so he collaborated with them. Some of the non-Christian Chiefs had collaborated with the Schutztruppe Administration because of the capitalism of the economic migrants. In this century, collaboration is infamous, whereas the early African Christians collaborated with people wielding guns in order to save their people. It should be recalled that Captain Witbooi was one of the last Chiefs to sign the German Protection Treaties and submit to German colonialism. Hauptmann Curt von François had attacked Witbooi's village. In a letter cited by Major Leutwein (1912:57) Witbooi had written:

As you know, for a long time I lived under the law ... but with the hope and in the expectation that God our Father

would in the fullness of time ordain our redemption from all the misery of this world. For this reason alone did I endure everything that weighed so heavily on my mind. I tolerated it all because I trusted in the Lord.

The Schutztruppe Administration in Windhuk relied on the supply line from Luderitz Bay to Keetmanshoop to reach the Schutztruppe fighting in the South. The Fort Keetmanshoop was the centre of operations of the battle against the Witboois. The Nama were very fine horsemen, and with flair and courage regularly attacked the Schutztruppe supply convoys in guerrilla raids. They were not going to confront the mighty German firepower in pitched man-to-man battle as the ovaHerero found out to their cost by dying in vain. Thus, there were several Nama guerrilla raids that left the Schutztruppe wondering who and what had attacked them. The Fort in Warmbad was raided and occupied by the Nama, until relieved by von Trotha's army.

On 22 April 1905 Butcher von Trotha delivered another Proclamation. The Nama should surrender unconditionally:

The mighty and powerful German Emperor will grant mercy to the Hottentot people and will spare the lives of those who voluntarily surrender. Only those who at the beginning of the uprising murdered whites or ordered others to do so will forfeit their lives in accordance with the law. I announce this to you and further say that those few who do not submit will suffer the same fate that befell the Hereros, who in their blindness believed that they could carry on successful war with the mighty German Emperor and the great German people.

I ask you where are all the Hereros today? Where are their chiefs? Samuel Maharero, who once called thousands of head of cattle his own, is now harried like a wild beast and driven over the border into English territory. He has become as poor as the poorest field Herero and possesses nothing. It is the same with the other chiefs, the majority of whom have lost their lives, and the Herero people too have been

annihilated — part of them dying of hunger and thirst in the desert and part murdered by the Ovambos. The Hottentots will suffer the same fate if they do not surrender and give up their weapons. You should come with a white piece of cloth on a stick together with your whole village and nothing will happen to you. You will get work and receive food until the war ends at which time the Great German Kaiser will regulate anew the conditions in this land. He who believes that mercy will not be extended to him should leave the land for as long as he lives on German soil he will be shot — this policy will go on until all such Hottentots have been killed. For the following men, living or dead, I set the following price. Hendrik Witbooi - 5000 marks; Sturmman - 3000; Cornelius - 3000; for the other guilty leaders - 1000 each.⁷

Witbooi and his men did not surrender. They had heard of Ombakaha from the Nama soldiers who fought with the Schutztruppe, and they understood what surrender means.

In letter No.153 to the 'Bezirksamtmann', Mr Schmidt, in 1905, Captain Witbooi wrote:

It is true and I agree with what you say to me, about your might and abundance in everything, and I also agree with you that I am very weak. But you have not told me what you want me to say: you only boast of your might which I know only too well. You also mention the price on my head; so now I am an outlaw. As for your grievous concern for my nation, I do not share that. Because I did not create men, nor did you, but God alone. Thus I now sit in your hand and peace will be at one and the same time my death and the death of my nation. For I know that there is no refuge for me under you.

To your remarks on peace I reply, don't lecture me like a schoolchild on your peace. You know very well that I was

⁷ J. M. Bridgman (1981:145).

right there with you many times during your peace, and have come to see in it nothing but the destruction of all our people.

On 29 October while attacking a German supply convoy near Fahlgras, Witbooi was fatally wounded. Some of his soldiers carried him far away from the Schutztruppe firepower. He was seventy-five years old and had lost a lot of blood. It was said that as old Witbooi lay dying he talked incessantly about God and peace. However, old Hendrick Witbooi had died fighting and fought his last battle at Fahlgras near Tses. He died from the wound sustained during the battle; as Butcher von Trotha had a reward price of 5,000 marks on Witbooi's head, dead or alive, the old warrior was quickly buried in an unmarked grave and was laid to rest in peace, forever. All indications of the burial mound and patch were removed and some of his followers surrendered.

The Schutztruppe sighed with relief when they heard about the death of Captain Witbooi and the Nama surrender. A few surviving Witbooi fighters and their followers signed the Treaty of Surrender with the exception of Jakob Marenga and Simon Kopper and their followers, who would die fighting, as they said. The Nama prisoners of war 1,732 of them were hauled off to Shark Island off Angra Pequena, where 1,032 died of brutality. Some of the leaders who were captured or had surrendered were strung up. Dierks (1992:77) noted, 'It is said that the huge camelthorn trees below the vertical precipices at the southern edge of the fortress mountain were used by the German forces to execute a large number of Nama warriors. They were reportedly hanged with telephone wire ...'

But there were other younger men who continued the guerrilla war against the Schutztruppe. All the able-bodied young fighters and followers of Witbooi who did not surrender their weapons rallied to Jakob Marenga or Cornelius Fredericks. Even some ovaHerero who survived the massacre at Ohamakari came and enlisted with Cornelius Frederik.

So Captain Witbooi's death did not end the war. But as far as the Schutztruppe and their Commanding Officers were concerned, the armed Nama resistance had ended with the death of Captain Hendrik Witbooi.

so Butcher von Trotha could safely leave GSWA. He left on 19 November 1905.



Plate 23: Schutztruppe and Nama prisoners.

Source: National Archives, Windhoek, Namibia.

Major Leutwein wrote this obituary on the death of Witbooi.

Had he fallen into our hands we could no longer have taken into account his loyal service to us; he would have had to pay the penalty. I therefore regard the German bullet which finally struck him as a mercy for him and us. It brought him an honourable warrior's death, and spared us a painful dilemma. The name of the little Captain will, however, remain engraved upon the history of South West Africa forever. His stubborn resistance against the mighty German Empire at the head of a small warlike band, ragged and poor; his ten years of loyalty to our cause; and finally the daring of another rising against; these have lined his name inseparably with the history of the Protectorate. I still see him before me, the little Captain, ten years my faithful brother-in-arms. Modest yet self-possessed, loyal yet not without political cunning, never deviating from what he considered his duty or his right, fully understanding the superior culture of the

Whites, yet by no means always in love with those who purveyed it, a born leader and ruler: this was Witbooi, who would undoubtedly have become an immortal in world history had not the fates decided he should be born to an insignificant African throne. He was the last national hero of a race doomed to destruction.⁸

6.1 Cornelius Frederick

After the death of Witbooi, although Chief Cornelius, as he was popularly known, had a price of 3,000 marks on his head, he continued the war. He had a band of about 300 guerrillas to carry on the raid against the Schutztruppe. The well-armed Schutztruppe were far superior to the native guerrilla forces, but the natives attacked the Schutztruppe fearlessly and collected their arms. As did Captain Witbooi before him, Chief Cornelius and his men did not kill indiscriminately; on the contrary, it was the Germans who slaughtered indiscriminately with Maxim guns any two-legged natives as well as the non-migratory wildlife. The Maxims caused fires that damaged the ecosystem. After several audacious daylight and night attacks on the Schutztruppe convoys, the Germans had to admit that Chief Cornelius was 'the smartest of all Nama leaders, who was constantly threatening both access roads to the southern theatre of war and eluding his German attackers with virtually unparalleled celerity and skill'.⁹

However, after a ferocious shoot out with the Schutztruppe, Chief Cornelius's second lieutenant and many of their followers were killed or wounded. The fighters who survived were thoroughly worn out by the guerrilla fighting, and surrendered to the Schutztruppe, wisely or unwisely; thus the capture of Chief Cornelius himself was inevitable. The natives who surrendered were carted off to Shark Island in Luderitz Bay so that they could not regroup with the other fighters. Some surviving

⁸ Elf Jahre Gouverneur in DSWA, p. 306. Reproduced in Hendrik Witbooi Papers. (1989:168).

⁹ H. Drechsler (1980:193).

Nama native soldiers were deported and sent into exile in Togoland and Cameroon, German West African colonies, far away from their beautiful Namaland. They were offered nothing for resettlement. They were simply deposited in the tropical colonies where the 'climate' would kill them off.

On 3 March 1906, Cornelius was captured and was banished too to Shark Island with some of his fighting men. The Kaiser sent the Schutztruppe a congratulatory telegram on their remarkable achievement, but Fielding, Cornelius's lieutenant carried on the guerrilla warfare until he too surrendered on 5 April 1907. Chief Cornelius died on 16 February 1907 in Shark Island where the chief and hundreds of other Nama prisoners had languished before deportation to German West Africa colonies.

The Schutztruppe had defeated the natives in the battle for the acquisition and ownership of their tribal homeland and their cattle. The economic migrants took over the natives' fertile land. The Germans wanted 'to secure the speedy ending of the uprising which has costs us so much of blood and gold'. So on the 31 March 1907, by order of the All Highest, the Kaiser's Hottentot war was declared officially ended.

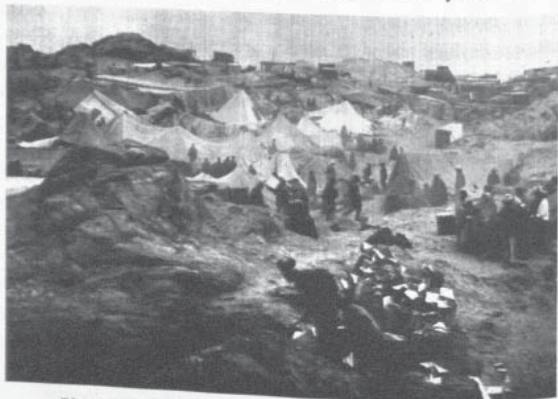


Plate 24: Life in the desolate prisoner-of-war camp, Aus. National Archives, Windhoek, Namibia.

6.2 Jakob Marenga

When Jakob's son, Charles was interviewed by Cristoph Borbowsky in 1974, Charles said that his surname was Marengo.¹⁰ It is a long-running debate whether the name was Jakob Marengo, Marenga or Murenga? Dierks (1992) recorded that according to a Catholic Priest in the Order of St. Francis de Sales, Jakob had a Herero father and a !Gami-nun mother. Thus, according to Herero scholars, his father's surname should be Marenga not Marengo which is not Otjiherero. As Jakob had a missionary education and was Christian, the surname could have been modified and Christianised and spelt any old how, not according to Otjiherero orthography.

Jakob Marenga or Marengo was neither a traditional omuHerero chief, nor Nama chief, nor a chief appointed by the Schutztruppe administration, but he had an unusual group of about 600 young men from among the Bondelswarts, Herero and Nama and Damara-speaking groups who made him their chief. Because Marenga was the finest guerrilla warrior of his generation, his followers nicknamed him Black De Wet, after the Boer General that led Great Britain a merry dance.

Chief Marenga Black De Wet and his warriors taught the Schutztruppe lessons in guerrilla warfare. The guerrilla war against the Schutztruppe started with only a few hundred natives who kept the well-armed Schutztruppe stranded and immobilised. They could no longer distribute provisions to the local forts. Drechsler recorded that in early October Marenga attacked a German convoy near Wasserfall, taking away all their horses. A study commissioned for the Kaiser's General Staff noted that the company 'was virtually immobilised by the loss of their horses' and had to return to Fort Naiams near Seeheim. Black De Wet was reputed to have sent an impertinent letter to the commander in which he 'requested him to feed his horses better in future because he had no use for emaciated nags like these'.¹¹

¹⁰ N. Alexander (1983:3).

¹¹ H. Drechsler (1980:220 footnote 16).

Black De Wet and his men also ambushed the Schutztruppe convoy near Hartebeestmund, 'inflicting heavy casualties on them'. A price of 20,000 Marks was put on Marenga's head as well 'to wipe out the whole bunch without mercy'. Accordingly, Marenga and his followers fled from South West Africa, about 10 kilometres deep inside South Africa. However, the Schutztruppe led by Captein Bech went after Black De Wet into South Africa, violating all international border controls. Drechsler (1980:194) noted that the Schutztruppe 'crossed the border on 4 May and slaughtered the Nama who were completely taken by surprise. Twenty-three Nama were killed, but Marenga, albeit wounded, managed to escape once again'. The Nama guerrillas had been giving the Schutztruppe a very rough time for a very long time. Although the Kaiser had declared the war officially ended on 31 March 1907, the hardcore Schutztruppe would have none of that and murderously prolonged the war to 1908. The Kalahari expedition with Camel Corps was formed to track down and blast the remaining desert guerrillas out of the Kalahari Desert.

There were more Schutztruppe violations of territorial boundaries and incursions into South Africa in order to try and kill Marenga, but Black De Wet always seemed to have half an hour head start before the Schutztruppe assassins. Black De Wet gave himself up on 7 May to British South Africa to prevent further Schutztruppe forays into South Africa to kill his followers. He would not surrender to the Germans. The British imprisoned Marenga for one year at Tokai prison, in Cape Town, far away from the German South West Africa border.

Although Marenga was in custody, the guerrilla war still raged in German South West Afrika while typhoid fever also carried on its own deadly non-combatant war against some of the Schutztruppe. The Schutztruppe Administration bogged down in war against the natives could not administer the Strip acquired by the 1890 Anglo-German Treaty, or derive any financial benefit from the Protectorate. There had been no German investment in the Protectorate since the Herero-Nama war broke out, and the prestige of the mighty German army was very low. So at the end of Marenga's sentence, the Schutztruppe Administration persuaded South Africa to hold him for a further six months in prison as

his early release might provoke more rebellions in German South West Africa.



Plate 25: Jakob Marenga (centre) with his lieutenants.
Source: National Archives, Windhoek, Namibia.

When Black De Wet was finally released from prison, he was given strict instructions to report regularly to the local police station. Marenga was one of the last significant guerrilla fugitives whom the Schutztruppe wanted dead or alive. Marenga took himself to Upington to lead a quiet and restful life far away from his beautiful homeland. And with a price still on his head, dead or alive, he knew that he would not be safe anywhere in German South West Africa. He was also aware that he could

not continue the guerrilla war with only his devoted band of beloved relatives, as several of his trained followers had been killed. But the quiet life that Marenga had opted for was soon shattered when the South African Police (not the Upington local Police) asked him to report for interrogation. Black De Wet fled into the mountains with a few of his relatives. Perhaps he was afraid of deportation to the Schutztruppe in German South West Africa. According to Adam Witbooi, as reported by Drechsler (1986:201) 'Morenga had wanted to live in peace at Kuydas, but then made for the border out of fear'.

The natives in Deutsch-Südwestafrika were exhilarated that Marenga and his remaining dedicated band of followers would continue the war against the Schutztruppe. But Governor Bruno von Schuckmann (1907-1910) was dismayed. He reported that: 'Morenga's appearance was like an electric shock, causing great excitement among the natives, all the way to the north. To restore calm it was necessary to stop sending soldiers home so as not to leave the north entirely unprotected'.

According to Drechsler (1980:201) the Governor ordered 'a build-up of forces in Namaland, with twelve companies, three field batteries, four platoons of mountain artillery and four machine-guns ... two recoil-operated 7.5 centimetre mountain guns were sent on their way from Hamburg'.

The British Police also pursued the fugitive Marenga. The roll of the 'S' squadron, from the Cape Colonial Forces, that operated against Marenga in the mountains were:¹²

Cape Mounted Police Commanding Officers	3
Cape Mounted Riflemen (No. 1. Troop)	27
Cape Mounted Police (No. 2 Troop)	23
Cape Mounted Police (No. 3 Troop)	26
Cape Mounted Police (No. 4 Troop)	24
Scouts	8

¹² Archives A.474.

One hundred and eleven mounted sharp shooters from the Cape pursued Jakob Marenga. This was the message from Major Elliott:

On the German border, he gave the troops the slip with ten men. The spoors were, however, found and the chase was commenced by Major Elliott with a force of sixty men. Both men and horses were 48 hours without water before Marengo was encountered.

The squadron under my command overtook Morenga in the Kalahari at a place called Witpan, and an engagement started at 1.30 p.m. and finished at 3.p.m ... He was killed together with five other men and two men wounded. Major Elliott desires me to make it quite clear to you that Marenga's gang has been wiped out.¹³

They cornered him and his men near Eenzambeid on the 20 September 1907, hundred kilometres north of Upington and slaughtered him. Marenga's body was simply riddled with bullets like a wild animal whose pelt was not valuable. The British accomplished the execution of Marenga that the Schutztruppe had been quite incapable of doing for several years:

The elimination of Morenga from the ranks of the enemies of the Germans was a significant success of German arms. Even though this event could not have the same effect as the death of Hendrik Witbooi because of the rapidly sinking reputation of Morenga among the Bondels, yet this Herero bastard stood out above all the other Hottentot leaders because of his personal stature, his determination, his will to act, his courage. He can be seen as the intellectual source of most of the Hottentot attacks, which were executed with such great skill. His internment was a blow to the cause of the Hottentots that could not be repaired.¹⁴

¹³ From *Cape Times*, Tuesday 4 September 1907, p. 5. 'Riddled with bullets'.

¹⁴ N. Alexander (1983:8).

Governor Schuckmann reported to the German Government in Berlin that:

Morenga's death has unquestionably removed the open threat hanging over us, and it will go a long way towards calming down the Hottentots, notably the Bondelswarts, because he was invested with a certain charisma in their eyes and many dissatisfied with their lot had linked their hopes for a better future with his person.¹⁵



Plate 26: Setting out on their desert campaign: camel-mounted Schutztruppe.

Lead camel rider, Captain von Erckert.

Source: Roth. National Archives, Windhoek, Namibia.

6.3 Simon Koper

After the death of Jakob Marenga, Simon Koper and typhoid and malaria continued to plague the Schutztruppe in the Kalahari Desert. As the Schutztruppe could not fight without regular water supplies, Koper ambushed the patrols by the waterholes. According to Drechsler (1980:226 fn.136) Koper, who had retreated into South Africa, had been

warned not to cross the border into Deutsch-Südwestafrika. Koper replied that 'he and his ancestors had always looked upon the area in question as their property and frequently moved from one place to another, but then the Europeans had come and drawn a line on the map which he did not know and which meant nothing to him'. So Koper and a few Nama warriors continued to cross the border to fight the Schutztruppe and they were going to die fighting the Schutztruppe.

In March 1908, recorded Drechsler (1980:203), Captain von Erckert and his soldiers set out on their campaign against the Fransmanns:

his forces comprising 430 men, four machine-guns and 700 camels. At that time Simon Koper was encamped at Seatsub, approximately 90 kilometres inside British-ruled territory, where he fancied himself safe from the Germans.

The Kaiser's soldiers, however, once again flouting international law, crossed the border to penetrate 90 kilometres deep into foreign territory until they spotted Simon Koper's men on 16th March 1908. Pouncing on the completely surprised Nama, they killed 46 of them, but could not prevent Simon Koper and the rest of his men from escaping. The casualties on the German side included 14 dead, among them Captain von Erckert.

The death of von Erckert horrified the Schutztruppe, so they slaughtered the remaining Nama, old men and women and children. Koper and a few survivors fled into British Bechuanaland. The Nama soldiers managed to escape total annihilation. This was due, not to German clemency and humanity, but to the superior skill, 'mobility and experience of the Hottentots as elusive and hardy guerrilla fighters'. In the safety of British Bechuanaland, Koper was persuaded to stop his guerrilla operations against the Schutztruppe in return for a yearly payment of an agreed sum of money, which he accepted. Simon Koper died in Bechuanaland on 31 January 1913 and some members of 'his tribe still live in the British territory' of Bechuanaland / Botswana.

¹⁵ H. Drechsler (1980:203).

On the death of von Erckert, Lord Selborne, the British High Commissioner for South Africa was reported to have told Dernburg that Simon Kopper is a savage who does not know the first thing about international law. Moreover, he is a thug who is not worth the bones of a single Pomeranian grenadier — to use a classic saying. And that people as valuable and dependable as Herr von Erckert and others should lose their lives because of him is something he would deserve even less.¹⁶

6.4 Take Back Your Lies

According to Foreign Office Papers (1919:59) within the sixteen years that the natives of GSWA were taken under the protection of the German Government, very few natives retained land, chiefs or tribal organisations. The native population had been reduced to half its size. The exceptions were the ovaHimba who were semi-nomadic and were too isolated in the Kaokoveld to invite extermination; the Owambo, who were far too numerous for the Schutztruppe to take on, and the natives in the Okavango and the Zipfel who were simply too poor to be worth wasting ammunition on. The Germans could not administer the Strip of land acquired under The Anglo-German Treaty 1890, because they were bogged down in numerous conflicts with the natives in their territory.

There was an acute labour shortage in the South West Africa Protectorate, because the Schutztruppe had deported, interned and slaughtered most of their able-bodied native male labourers. The natives who had surrendered and survived, as well as those who had spearheaded the revolt, and who had not been driven into the Omaheke desert had been summarily executed. The guerrillas, firebrands and non-Christian dissidents were identified, tried and strung up, because thinking natives were suspected of being dangerous rebels who would foment endless troubles. Others were flogged into obedience. Chieftainship was

¹⁶ Drechsler (1980:226 fn. 145).

abolished. 'Thus, of the 1,800 Hottentots interned on Shark Island, 1,200 perished within 6 months'.¹⁷

The extermination of natives was only halted because it became clear to the Schutztruppe Administration and the economic migrants that there were no able-bodied natives left to work, either to do the dirty work on the farms or in the diamond deposits recently discovered in the desert sands between Walvis Bay and Bogenfels.

Drechsler (1986:207) reported, 'Tecklenburg made the following comment on the high mortality rate among the captured natives:

The more the Herero people experience personally the consequences of the rebellion, the less will be their desire — and that of generations to come — to stage another uprising. Our military successes have not made much of an impression on them. But the ordeal they are now undergoing is bound to have a more lasting effect.'

Drechsler (1986:227. n.160) continued:

Tecklenburg ... economically speaking, of course, the death of so many natives will signify a loss. However, the robustness of the Herero people is such that the gaps will have been filled before long and the next generation will be weaned on subordination to the white race.

Three Decrees concerning the natives were promulgated in 1907. Henderson, (1993: 113) explained that there were:

The first made it obligatory for natives to carry identity cards

The second forbade natives to possess land, cattle or horses without the governor's permission, though they might keep sheep and goats.

The third decree laid down the conditions under which the natives might be employed. For example all labour contacts had to be registered with the police. The object of the

¹⁷ Hartmut Pogge von Strandmann (1985) (ed.) Walther Rathenau, p. 82.

decrees was to prevent natives from gaining economic independence and to force them to become labourers.

As there was a crisis of manual labourers, in August 1907, the missionary, Meier, and Captain Kurt Streitwolf, a formidable adversary of the Mbanderu and the Herero were briefed to go to Tsau. Tsau was near Lake Ngami in Bechuanaland. Their order was to lure back the natives in Bechuanaland who had survived the flight across the Omaheke desert. Captain Streitwolf was the district officer at Gobabis. He was not going to Ngamiland out of affection for the natives or on the principle of common humanity, but because of the natives' usefulness as labourers for the economic migrants. They would be useful labourers. The terms and conditions on which the natives, who had survived the Omaheke crossing, would be allowed to return to GSWA were according to Drechsler (1980:209) the following:

1. The Governor, conscious of their desire to return home, would forget everything and permit them to settle at Otjihaenena.
2. They would be allowed to keep the cattle in their possession, and grazing land would be allocated to them. There could be no question, however, of an unlimited increase in their cattle holdings, the size of their herds being dependent on the conditions for grazing. They would no longer own the land, but enjoy permission to use it as long as they respected law and order.
3. So as to earn some money and acquire some movable property, the eldest among them should urge younger people to seek jobs, which would be made available. The workers should take their wives and other dependants with them. At the same time, the Herero should be warned that they no longer owned any land and that able-bodied persons would not be allowed to while away their time near the cattle herds.

Captain Streitwolf obtained permission from Lord Selborne and then went to Ngamiland in British Bechuanaland. He travelled in covered wagons with plenty of food and water. Chief Samuel Maharero and some of his followers who survived the battle at Ohamakari had registered in Tsau on their arrival, then moved to northwestern Transvaal in search of work. Accordingly, when Captain Streitwolf arrived he was obliged to see Chief Traugott without Chief Maharero. The adversity encountered crossing the Omaheke desert had made Traugott, the grandson of Utjina, the senior sister of Chief Kamaharero into a real Otjiherero Chief. In the face of overwhelming odds Traugott had survived the battles, though battered and severely wounded. The dead had given their lives for him and others to survive.

The ovaHerero survivors and Chief Traugott gathered to meet Captain Kurt Streitwolf, who received a very icy reception. He was treated with the contempt reserved for a mass murderer. Drechsler (1980:210) reported Streitwolf's meeting:

On the second day, when I said to Traugott that the war was over and that he could come back, I realised at once that he would never do so. Later on, he said quite openly that he was frightened and that if we could forget that - which he found difficult to believe — he was not the man to forget it. After all, he asked, what point was there for him to go to a country where he would live in constant fear of being shot down like a *klipspringer*, unarmed as he was?

Chief Traugott explained to the ovaHerero that Captain Streitwolf had brought them remarkable news that they should return to German South West Africa but they did not wish to submit themselves any more to the Schutztruppe yoke. That was their answer to Clause 1.

It was Clauses 2 and 3 that terrorised the survivors. They would no longer own the land that the Schutztruppe had pillaged. They would not and could not accept Clauses two and three. And they were not going anywhere.

They declared that Captain Streitwolf had no business to intrude on them in Ngamiland, and then demand that they should return to German

South West Africa under Clauses 1 and 2 and 3. They had renounced and lost everything, even the little that they had possessed. They had survived the Omaheke. They had lost their *eanda* and *oruzo* relatives. They preferred to live and die in exile. They did not want to be burdened by Captain Streitwolf.

After Captain Streitwolf's attempt to persuade Chief Traugott to return had failed, he then tried to separate the Mbanderu from the Herero and to negotiate with the Mbanderu behind Chief Traugott's back. He failed - as the Mbanderu and Herero heathens called him a double-mouthed lion. According to the natives, the Schutztruppe believed that the privations the Germans had suffered in Afrika were greater than those they had inflicted on the natives. The Schutztruppe had forgotten that they themselves were the aggressors and persecutors. They had glossed over the punishment and reprisals that they had meted out to the natives.

What of the ghosts of thousands of the ovaHerero who died excruciatingly in the desert? They, the survivors of Schutztruppe extermination orders had been made wiser and older by the experience of crossing the Omaheke. It would be cultural suicide for them to return, as they no longer had a tribal homeland in their own country. They would not feel at home in Reservations where no one would be allowed to accumulate cattle herds. They would not be free human beings. They were tired of fighting. The old people were dead. The young were dead. Their cattle would no longer cover Hereroland and they, the survivors, would fight no more.

They did not believe a single word uttered by Captain Streitwolf and his Clauses one, two and three. He was told to take back his lies. If they returned, they would be handing over Hereroland forever to the Germans. But as long as they were in British Bechuanaland, Germany would always have an unlucky colonial card.

In his report Captain Streitwolf stated:

Here again, no one indicated a desire to return. Clapping their hands, they flatly rejected my offer. So I broke off all negotiations, having become sick and tired of my embarrassing mission, which had kept me 14 days at Tsau.

Whether the Herero had ever had any intention of returning or not is anybody's guess. My impression was that it had never occurred to them¹⁸

6.5 Peace and War

The Schutztruppe who had modern weapons and an inexhaustible supply of ammunition eventually won the war by their concerted annihilation of the natives. His All Highest, Kaiser Wilhelm II (1888 – 1918) the Second Emperor of Germany and the King of Prussia awarded General von Trotha a high bravery award, the *Ordre Pour-le-Mérite* for exterminating the natives in the Ohamakari and Omaheke. The Emperor also minted a special military decoration for the selfless courage and bravery of the officers of the German South West Afrika war to commemorate the battles and campaigns against the Herero and Nama.



Figure 4: Südwest Afrika medals.

The decoration was a circular gold medal that showed on one side the head of Germania, a warrior with wild headdress. Inscribed around the

¹⁸ Streitwolf's Report, 2 December 1907.

edges of the head of Germania were the words, 'Sudwest Afrika 1904 - 1906'. On the obverse of the medal was the royal cypher with the inscription, DEN SIEGREICHEN STREITERN. The gold medal had a ribbon of horizontal red stripes on a background of white horizontal stripes. Inserted was a white vertical band and on the outside, a black vertical stripe. The name of the campaign or battle in which a Schutztruppe officer participated was inscribed on the gold bar. The medal was bestowed on the Schutztruppe officers of South West Africa for services to the Fatherland and the Kaiser. All the Schutztruppe Officers were commended for participating in the war against the natives.

Apart from promotions to higher ranks, medals, bars and clasps were the only visible decorative rewards for the officers who slaughtered the natives in the various campaigns. The wearing of decorative medals was very common in German South West Afrika and the Schutztruppe set a very high value on their military decorations. With ceremonial dress, many officers wore the Emperor's Medal of 1888; one cadet, wearing kid gloves, wore his medal of distinction from the Military Academy, whilst another cadet distinguished for 'general good conduct' had a gleaming ceremonial sword of honour. On formal imperial occasions the medals and bars were very smart on dress uniforms with gold embroidery and heavily braided epaulettes, and braid running down the side of the trousers. In Deutsch-Südwestafrika uniforms were the Schutztruppe's favourite dress.

The Schutztruppe were awarded medals for valour in killing almost one million natives, or for meritorious behaviour in chasing thousands into the Omaheke desert to die a pitiless and cruel death. For every wounded Schutztruppe, twenty natives died, and for one dead Schutztruppe a hundred natives were killed.

There were only about fourteen battles and engagements that His All Highest, Kaiser Wilhelm deemed worthy of awarding the gold bar and clasps to commemorate the war:¹⁹ Auob; Fahlgras; Gross-Nabas; Gross-

Namaland; Hereroland; Karas-Berge; Nossob; Nurudas; Ongajira; Oranje; Omaheke; Omaruru; Toasis; and, Waterbeg.

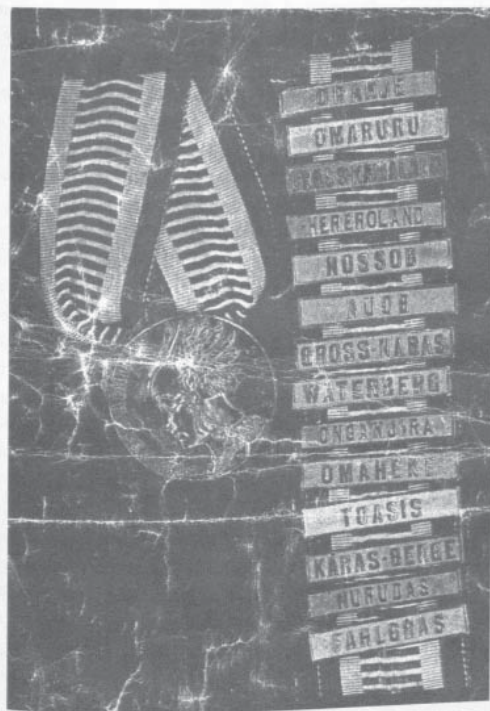


Figure 5: South West Africa medal and bars.
Imperial War Museum, London.

Each Schutztruppe Officer received a medal for his first battle and three gold clasps for subsequent battles or campaigns. Thus, Captain Kurt Streitwolf received the German Southwest Afrika Medal, Omaheke Clasp, Gross-Namaland Clasp and Hereroland Clasp. The name of the

¹⁹ The Imperial War Museum, Lambeth Road, London, SE1 6HZ.

campaign was inscribed on the bar and the first campaign or battle was placed lower down in ascending order. The subsequent clasps and battle inscriptions were easily attached. The Schutztruppe who was present at only one battle received the gold medal for that battle, without any gold clasp.

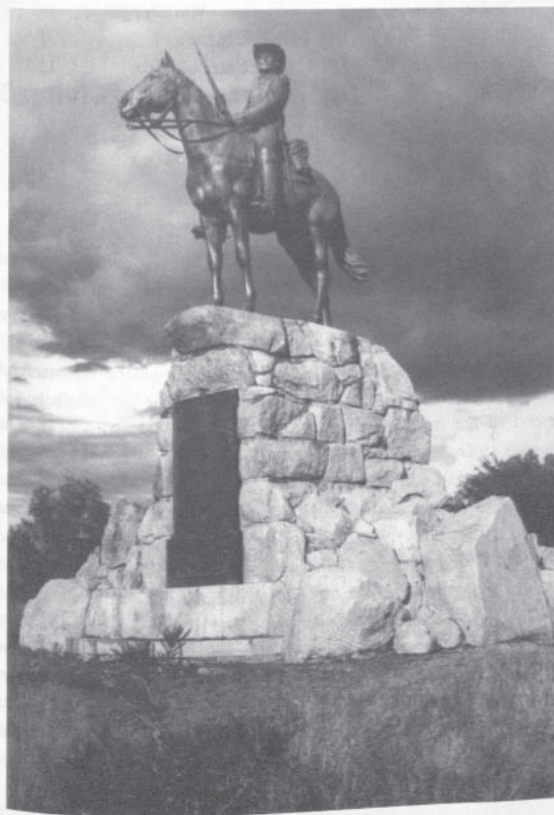
The officers were decorated for three battles, or for one battle and campaigns. One gold medal and three clasps were inscribed with the name of the battle in the order in which the battles took place. For example, at the outbreak of the Nama war, the Schutztruppe attacked Witbooi and his tribe and the natives were driven into the Aruob valley towards the Kalahari, accordingly, there is an Aruob Gold Clasp.

In spite of the Maxim guns, the German Administration could not understand why the Schutztruppe had suffered the loss of one thousand five hundred and thirty four men, although they had given the natives a baptism of fire? Not all of the Germans had died in battles or in campaigns; many had died of typhoid and debauchery rather than being killed by the natives. No matter, the Germans back home who were far away from the theatre of war in Hereroland and Namaland and did not know where to find Bechuanaland on a map, whispered that the natives had poisoned the Schutztruppe.

The German Administration then decided to erect a memorial to honour all the Schutztruppe and marines who had fallen in the campaigns to exterminate the natives. Oberstleutnant L. von Estorff chose the site of the highest hillock in Windhuk with a spectacular view of the valleys from the Alte Feste. The bronze statue was cast in Berlin by Adolf Kurlé and shipped to Swakopmund.

On 27 January 1912, Kaiser Wilhelm's birthday, the high and mighty bronze statue of a lone Schutztruppe carrying a rifle and apparently on a perpetual reprisal raid against the natives was unveiled in Windhuk. The Governor of German South West Africa, Dr Theodor Seitz (1910 – 1915) unveiled the equestrian statue mounted on a slab of huge granite. The enormous memorial statue of a Schutztruppe striding the Alte Feste overlooking Windhuk was named the Rider of South West Africa, but is popularly known by the Germans as the 'Reiter Monument'. The Rider

still exudes the firepower of Schutztruppe brutal authority over the natives.



*Plate 27: Rider of South West Africa.
National Archives, Windhoek, Namibia.*

The inscription at the base of the Rider:

Von der Schutztruppe:		Von der Marine:	
Offiziere	100	Offiziere	7
Unteroffiziere	254	Unteroffiziere	13
Reiter	1180	Mannschaften	72
Im Aufstande erschlagen			
Maenner	119	Frauen	4
		Kinder	1

The young Schutztruppe in bronze will forever encapsulate what Bucholz (1997:61) recorded, as youth is very much to be envied. There is no more beautiful way for a young German officer to die. On the one hand he has the Iron Cross, in the other the heart of his mother.

Adolf Kurlle, the sculptor who had already produced the statue of Herman von Wissman in Dar-es-Salaam, came to Windhuk and supervised the mounting of the Rider of South West Afrika. Then he returned to Germany. A couple of weeks later the people of Windhuk heard that Adolf Kurlle had died of a disease inflicted on him by the ancestors of the natives. And a Herero non-Christian in Ngamiland was reputed to have seen the ghosts of thousands of the ovaHerero who died crossing the Omaheke lead the soul of Kurlle up the mountains and hurling him into a furnace. In May 1912, Kurlle was posthumously awarded the Kaiser Wilhelm Order of the Red Eagle.

However, there were no medals and no monuments to remember the valour and gallantry of the natives: the men and women who died or were severely wounded in General von Trotha's inferno or those who survived the overwhelming odds of the Omaheke. The sheer bravery of the children went unrecorded.

Caprivi Zipfel

The Schutztruppe in German South West Afrika fought a series of battles from January 1902 to March 1908 against rebellious native chiefs who had signed Protection Treaties at the point of the Gewehr 71. The Schutztruppe in East Africa too had been active in crushing the Maji-Maji revolt of 1905 – 1906; accordingly, the Schutztruppe officers could not administer the natives of the Zipfel acquired under the Anglo-German Treaty of 1890. German Barotseland¹ was too inaccessible from the rest of German South West Afrika for administration and even for ordinary travel.

After the brutality of Schutztruppe confrontational administration of their colonies in Africa, and the slaughter of thousands of their rebellious natives in their homelands, some reasonable, liberal-minded Germans in the Fatherland were outraged. How could they redress the balance of justice in favour of the natives? The colonial atrocities in the German African territories, and the scandalous licentious behaviour with native heathen women brought German rule in Africa into disrepute. Some Germans who were already weary of their African colonies and those who opposed German imperialism were incandescent. They mounted a

¹ Used by Richard Rathe, March 1906, in a letter and report addressed to the Imperial Government. Windhuk. For further information, see C. E. Kruger, Chapter 3, p. 1, and R. Herman, *The Caprivi Zipfel and its political significance to the neighbouring countries*. Kolonial-Zeitung, February 1904.

vigorous campaign against supporters of 'the place in the sun' lobbyists, and settlers who wanted to uphold German sovereignty in Africa. Nichols (1958:102) wryly noted that 'people believed that if we had colonies and bought an atlas and in it painted Africa blue, then we were somebody'.

The Reichstag did not encourage any more financial and military expenditure in Africa, and accordingly withheld funds for military operations against the natives. Townsend (1930:173) has a fine description of the generals and adventurers who composed the colonial personnel: 'they possessed no experience, no education, no training for colonial service and, indeed, had not won their position on that basis. Rank, title, gold lace and uniforms ...' In Africa, colonial officers liked dressing up in uniforms with gold braid and medals to overawe the semi-naked natives with the authority derived from the uniform. The more impractical the colonial officers, the more they liked dressing up. Military bands played martial music, and there were frequent parades.

After the Hottentot war, many Schutztruppe officers were dismissed from the colonial service while other resignations were willingly accepted. The Chancellor Prince Bernhard von Bülow (1900 - 1909) appointed Dr Bernhard Dernburg as Colonial Secretary in the Foreign Office. Dernburg's brief was to modernise and reform the Colonial Department and Administration so that the colonies could pay their own way and affirm justice for the natives.

In 1908, a decision was taken that German Barotseland; the strip of land that had been carved out by Article III(2) of the Anglo-German Treaty of 1890 should be administered. Article III(2) provides that 'Germany shall have free access from her Protectorate to the Zambesi by a strip of territory which shall at no point be less than 20 English miles in width'. This finger strip of land protected by many large perennial rivers stretches out almost into the aorta of Africa.

As a result of the great distance between Windhuk, the capital, and German Barotseland, there were numerous problems in the administration of the Strip. Barotseland was remote and was also deemed to be thoroughly unsuitable for the economic migrants who needed prime land for commercial farming. Furthermore, the Okavango and the Kwando

rivers were very large expanses of water that could only be crossed using barges. After crossing the rivers swarming with crocodiles, hippopotami and colossal snakes, the economic migrants were told that they would then land in swamps. However, if they survived wading waist-deep through the swamps, they would then have to negotiate the long uninhabited stretch of treacherous elephant tracks.



Plate 28: Hauptmann Kurt Streitwolf.

Source: *Society for Scientific Development, Swakopmund, Namibia.*

Thus, on 15 November 1908, the thirty-eight year-old Hauptmann Kurt Streitwolf, one of the heroes of the German Hottentot war and a highly decorated Schutztruppe, was appointed as the most suitable first Administrator of German Barotseland. The most significant work of the

first Imperial Administrator was to integrate German Barotseland into the main colony of German South West Africa.

Kurt Streitwolf was born in Heide (Schleswig-Holstein) on 3 July 1870. In 1891 he became a Lieutenant in the Prussian Army, then he joined the Schutztruppe in 1899, and became the Resident in Gobabis on 12 April 1903. He was a distinguished Schutztruppe who fought in the German wars against the Herero and the Nama. The photograph shows Streitwolf festooned with medals for selfless gallantry and for victorious offensives against the natives. He was awarded the Hereroland and Gross-Namaland gold campaign medals and his crown of merit was the Omaheke Service Medal for baptising the Herero with fire.



Plate 29: Hauptmann Streitwolf's medals for gallantry. A medal and three bars: Hereroland, Gross-Namaland, Omaheke. Swakopmund Museum, Namibia.

Meanwhile, the Kaiserliche Government in Windhuk had to find a name for the strip of land. Although Prince Bernhard von Bülow was the distinguished Reich Chancellor in 1908, German Barotseland was christened the Caprivi Zipfel after the deceased Chancellor Leo von Caprivi (1831 – 1899) who had signed the Anglo-German Treaty, 1890.

But in 1908, as Hauptmann Streitwolf was already in Gobabis, and he had visited Ngamiland after the Herero war, he obtained permission from the British to travel again through Bechuanaland. He had crossed to Ngamiland the year before to try to persuade the ovaHerero Omaheke survivors to return to German South West Africa.

According to the maps in the appendices to Bertrand's book (1899), there were two possible routes by which to reach German Barotseland in the 1890s. Bertrand had made the journey to Sesheke, Sefula, and Lealui,

the capital of Barotseland. One route to the Caprivi Zipfel was to travel the length of South Africa, from Cape Town to Worcester, Kimberley, Mafeking, Kanye, Molepolole, Shoshong, Polapye to Tamasetsie, cutting off Bulawayo then to Kazungula and Sesheke.

The second route was to sail to Cape Town then on to Port Elizabeth, East London, Durban then by road to Johannesburg, Pretoria and across the River Limpopo to Bulawayo which was then the important town of Matabeleland, then to Tamasetsie, Daka, Panda Matenga, Leshoma, Kazungula and Sesheke.

Thus, instead of going through South Africa, Captain Streitwolf decided to travel by ox cart and use the route of native people and traders to Ngamiland. According to Hauptmann Streitwolf (1911:2-3) his contingent expeditionary force to administer the German Caprivi Zipfel consisted of four whites

1. Sergeant-major Ansorge. 'Ansorge had been with me for the last six years. Therefore, we knew each other very well, and I, in particular, was fully aware of the quality of this absolutely reliable, never tiring soldier'.
2. First-aid sergeant Schulz who had also been serving with my unit for the last three years.
3. Police Sergeant Brunk whom I took from Windhuk
4. And Streitwolf himself.

In addition, there were 14 natives to serve as drivers of the oxen, as well as 1 wagon, 1 cart with 30 oxen, 3 horses, and 13 mules.

Captain Streitwolf and his party travelled from Gobabis to Kalkfontein, then to Ghanzi, towards the British colony of Ngamiland and to Tsau. He reported that the English helped his party at various stages of their journey through Bechuanaland. Streitwolf continued to Maun, Rakuku, Kasane, where he crossed the Zambesi by barge to Sesheke. The journey took them eighty-three days.² At that time eighty-three days by dirt track

² For more details about the journey of Streitwolf, see M. Fisch (1996).

and river barge to Sesheke on the bank of the Zambesi was considered a remarkable achievement.

The Zambezi is a languid stretch of open water until it gets to Kazungula, then it gathers cascading steam and pours into the gorge.³ This is known locally as Mosi-o-Tunya (the smoke that thunders).

The land between the flood plains of the rivers Zambezi, the Kwando, the Okavango, and the Liyanti-Chobe was densely populated. For centuries, the Zambezi has been used as a water transport system by the riverine communities when they devised how to cross the river with rafts and dug out canoes. As a result of the fertile soil of the flood plains, there were Iron Age communities on the floodplains before the arrival of the Europeans who displaced the natives from the land. These indigenous people fled further north and west displacing others from the land. Oral tradition claimed that by the 1850s when Dr David Livingstone first penetrated the Central Zambezi most of the densely packed huts on the banks of the big river had become spectacular ruins.

The natives believed that wherever the Schutztruppe administrators went in Africa, death seemed to hunt them. The news of the Herero and Nama massacres and Maji Maji and various other atrocities travelled ahead very fast like the Maxim and Krupp gun that killed 'ten Hereros at once'. The natives decamped before the arrival of the Schutztruppe.

When the news reached Barotseland and Itenge that the baDostela (Deutsch people) were coming to monitor their movements under Schutztruppe administration, the able-bodied men and women escaped with their children and cattle. They would not be restrained by the boundary agreement between the Germans, the British and the Portuguese. It had nothing to do with them. The agreement should not obstruct their free movement. The Herero and Nama wars were dire warnings to the natives that if they did not escape they would be ambushed and annihilated by the Schutztruppe.

When the *Kaiserliche Residentur* for Caprivi Zipfel was two days journey away, the natives disappeared. The baKwengo fled into the

depths of the Kalahari. Some beKuhane escaped across the River Chobe into Bechuanaland, the baLozi fled over land, the baSubia decamped across the Zambezi with their cattle, the baYeyi into Batswanaland. Some people took to their dugout canoes, cooked, ate and slept in them and stayed in the middle of the river where they would be safe from the Schutztruppe. There were several islands in the Zambezi, which they used as shelters. Livingstone (1857:56) had described the Yeyi as 'the Quakers of the body politic in Africa'. The baYeyi did not like killing people either in war or in peace. When there was trouble, Livingstone (1857:65) recorded that the Yeyi disappeared in their canoes. Canoes were safer homes on water, than huts on land. 'On land you have lions' say the Yeyi, 'serpents, hyenas, and your enemies; but in your canoe, behind a bank of reeds, nothing can harm you'.

Other people in German Barotseland who did not follow their maLozi sub-chiefs into exile prepared for war. Some old people decided that they were too old to be running away from the Schutztruppe and that if they were going to be massacred, so be it. Streitwolf (1911:79) recorded that the Marotse policy 'aimed at moving out the last native from our territory so that we would leave again, as we really could not stay in a land where nobody lived'.

So in February 1909, when Captain Streitwolf, the first Imperial Resident arrived in the Caprivi Zipfel, he was astonished that there were only a few dozen people left for Germany to rule. Streitwolf (1911:74) recorded that:

Lastly, there was also agitation against us among the inhabitants of our area. Whenever there was talk about the Germans, the essence was that the Germans are very cruel, they always undertake war, they slay all men and take away the women and the cattle ... That, in recent years, we conducted very many wars in the Southwest was, of course, well known to the Marotse. The news of such events quickly spread in Africa, and those telling about them — in this case

³ The Zambezi Mission, known in England as the Barotse Mission was located at Kazungula and

surely Hereros who via Libebe got to the Luanyana, and one even to Luanika's Court in Lealui — certainly did not let us appear in too nice a light. It is quite understandable that the Marotse did not welcome our occupation of the land, which they had expected for several years. It is also understandable that the remaining natives looked forward to the cruel Germans with great unrest and timidity.⁴

Captain Streitwolf set up his administrative headquarters at Luhonono. Luhonono, was an attractive area on a hilltop above the flood plains overlooking Sesheke on the other side of the Zambezi. The choice of Luhonono was to irritate the British on the opposite bank at Sesheke. On some days one could hear the clear vigorous voices of children swimming on the British embankment, wafting across the river. The district of Luhonono was described by Kruger (1984:3.13) as being heavily sanded and that Luhonono was named after the mahonono trees (*terminalia sericea*) 'that through the ages have stood there, some of them outstanding representatives of that species'.

Luhonono was later renamed Schuckmannsburg in honour of the German governor in Windhuk, Geheimer Legationsrat Bruno von Schuckmann (1907 – 1910). Schuckmannsburg remained the administrative capital of the Caprivi Zipfel from 1909 until 1935 when it was transferred to Katima Mulilo. *Katima Mulilo* means the fire extinguisher, in reference to the heavy moisture from the falls that extinguished the portable fires of early human beings.

Captain Streitwolf's interpreter appealed to the remaining natives that they should not flee, that the people who 'would rule you were friendly and would not abduct women'. Furthermore, this particular German Residentur was a man of peace, and that he would give them more freedom than the Lozi Chief. The natives did not believe a word, for they had heard how Streitwolf had tried to coerce the ovaHerero in Bechuanaland into returning to slave labour in German South West Africa.

⁴ Sesheke.

There were about five powerful sub-chiefs administering the area before the Imperial Residentur took over the territory. Streitwolf appealed to the chiefs to return with their people and cattle. Chief Litia, the son of Paramount Chief Liwanika (1885 – 1916) declined and remained in Sesheke on the opposite side of the Zambezi far away from the Imperial Residentur. Chief Siluka refused to return to the Caprivi Zipfel, but some of his people returned to their villages after some time. As for Chief Mwanota, whose people were the maTotela and the baSanjo, some of them remained in the Zipfel and 'awaited their fate', while others fled with their Chiefs into exile.

Accordingly, Captain Streitwolf appointed new chiefs for the people. He summoned a representative meeting of the maSubia tribal khuta, and explained that they had to choose a new chief; it was a decision that they had to make for themselves. Thus, Chikamatondo, who was not of royal blood, nominated Liswaninyana, the son of Liswani of the maSubia royal family, who lived with King Liwanika at Lealui. Streitwolf did not support Liswaninyana as chief of the maSubia because of his youth. Captain Streitwolf ordered that they should appoint as a chief:

a man who was not too young, who had the respect of the people, whose words disclosed the experience of age, who was strict and who knew how to lend weight to his words. Without respect and energy no man could be chief. A choice of chief was a serious matter not to be settled in five minutes. They should consider carefully whom they chose, because when they had chosen one as chief he would remain chief for life and they could not return after a few weeks and say that they wanted someone else as chief.⁵

The natives kneeling or grovelling in a semi circle before the Imperial Residentur knew that under their indigenous law, chieftaincy was not for life. A cruel chief was easily deposed, dematted. Subia chiefs sat on a

⁴ Memorial of the Republic of Namibia. Vol. V. Annex 141.

⁵ K. Streitwolf (1911:111). Also see C.E. Kruger (1984), chapter 3, p. 15.

mat; Herero chiefs sat on skins, thus a chief was easily deskinning; Ashanti chiefs sat on stools, thus some were destooled.

However, Captain Streitwolf commanded the people to nominate Chikamatondo. Captain Streitwolf trusted Chikamatondo. He returned with Chikamatondo to Schuckmannsburg and he was installed as the Chief of the maSubia on 4 May 1909 before a large crowd of the Subia.⁶ The *Kaiserliche Residentur* appeared resplendent in Imperial Parade uniform, with gilded embroidery on the high collar. 'Behind him was a policeman who carried the German flag on a spear as the flagstaff ... All these impress and every native opened eyes, ears and nose wide, at the great mighty chief'.

Chief Mamili who, because of his age, had refused to budge when the Germans appeared, was appointed chief of the other tribes, the maFwe, the maYeyi, maTotela and the Mbukushu. Captain Streitwolf travelled to many tribal districts and he encouraged them to keep their indigenous laws, as he relied on the authority of the few traditional leaders whom he had appointed for the effective administration of the territory. In Captain Streitwolf's geographical survey report sent to Windhuk, Kruger (1984:3.23) reported that Streitwolf wrote: 'as these natives are practically unarmed, we are not likely to come into warlike conflict with them unless they are so governed that they at length become infuriated'. Streitwolf drew maps of the Caprivi Zipfel and from his geographical notes he published *Der Caprivizipfel* in Berlin in 1911.⁷ In a letter from Streitwolf to the Governor in Windhuk, he wrote:

According to the agreement between Germany and England of the 1st July, 1890, the southern boundary is to run from the point of intersection of the 21st degree of eastern longitude with the 18th parallel of south latitude, in an eastern direction along this line of latitude, until it reaches the Chobe (Linyanti) River. As the northern boundary at Andara lies under 18° 1' 26" according to my calculations,

⁶ He died on 18 July 1945 and was succeeded by Moraliswani, son of Mayiba.

⁷ Deutsches Kolonial Lexikon, (1920:430).

the passage according to which we have free access to the Zambesi by means of a strip of land which is nowhere less than 20 English miles broad, becomes questionable.

Now we hold that the southern boundary of this strip is formed by a parallel of latitude, while the English are of the opinion that the southern boundary is to run parallel to the line Katima-Molilo-Andara. This question must be cleared by negotiations between the German and English Foreign Offices before the Commission meets.

We must at all events insist on the southern boundary being a parallel of latitude, as has been originally provided, otherwise we would lose a great deal of territory especially above 48km. of important Linyanti bank and the Munembaba drift. The communication between this station and the Colony would become even more difficult then⁸

Trollope (1940:n4) noted that Streitwolf gave his opinion in a report to the German Government that the only land that should be considered in exchange for the Strip would be Walvis Bay — the British port situated amid ships in the coastline of South West Africa, or 'really good land' to be added to Togoland. Streitwolf concluded his report by stating that: 'The Caprivi Zipfel is useless to anyone else but of the highest value to the English'.

Captain Streitwolf left the Caprivi Strip and returned to Windhuk in 1910. He was succeeded by Lieutenant Hans Kaufmann. Kaufmann was transferred from the garrison of Fort Namutoni. After the Fort was rebuilt, Lieutenant Kaufmann, Dr Jodtka and eight other non-commissioned officers and twenty-five riders were responsible for gathering intelligence from Owamboland.

In the Caprivi Zipfel, Lieutenant Kaufmann was known locally as 'Samukosi' the one with a thick neck, because he was intransigent. No

⁸ Extract from K. Streitwolf to the Governor in Windhuk, 18 November 1909, cited in despatch from Union Government, 23 July 1930, PRO, DO 116/4, No. 104. Memorial of the Republic of Namibia, Vol. IV, Annex 38, p. 165.

matter Kaufmann wrote, 'I resort to the stand-still policy that Hauptmann Streitwolf recommended to me and 'govern' as little as possible'.⁹

Samukosi, who had 'governed as little as possible', returned to Windhuk after a year and was succeeded by Lieutenant Victor von Frankenberg, who became the last Imperial Residentur because the First World War broke out in 1914.

7.1 The Empire is at War

'The Empire is at war, consequently South Africa is at war with the common enemy', so noted Morris (1915:21). It was bad luck for the Germans that British territories surrounded her African colonies. Accordingly, when war was declared, the few able-bodied native males left in the German colony were ready and willing to drive the Germans back to the Woermann Line that operated '43 merchant ships on the West Coast of Africa'.

In German South West Africa, the Schutztruppe and the police, and the 'place in the sun' brigade and the settlers of African expansionism and the natives were expected to defend the mother colony. German settlers had been given military training after the various native revolts so that they would be well prepared to defend the colony. Thousands of German citizens in the prime of life, under a policy of repopulating the colony had also been drafted into GSWA to kill for their country. No old men, invalids, beggars or idlers were encouraged to migrate to the colony.

Some natives in the Polizei zones were evacuated from their settlements. A few of the leaders in the Epukiro native Reserve who were allegedly unco-operative with the German war putsch, by not even bothering to take off their hats and stand to attention before the Schutztruppe officers, were summarily hanged. Others were threatened with dire retribution after the Schutztruppe had won the war. The natives in the Otjituuo Reserve were rounded up as military carriers and porters for over 2,000 Schutztruppe and 3,000 economic migrants.

⁹ Extract from Kaufmann, Report for the period 20 January - 31 March 1910. (*Zentralbureau des*

The Schutztruppe in German South West Africa were outnumbered by the Union Defence Forces who fought their way over land and sea from South Africa to Windhuk. The Schutztruppe were also determined to fight over deserts and riverbeds for their land in South West Africa. They had survived native rebellions and they would survive Union Defence Forces attack. The Schutztruppe sang that Deutsch-Südwestafrika was German land. 'Through the German blood spilt on its fields it has become a part of our homeland and German land must remain sacrosanct', Walter Rathenau noted in his diary.

The British and German war in the Caprivi Zipfel ended as abruptly as it had begun. War was declared on 1 August 1914. It was the missionaries in Livingstone, who told the Germans at Schuckmannsburg that Great Britain had declared war on Germany. And on 8 August 1914, the British South Africa Police (BSAP) was mobilised to go to the Caprivi. The British South Africa Police under Major Capell, D.S.O consisted of No. 1 Troop from Salisbury under Lieutenant Stephens, and No. 4 Troop from Bulawayo under Lieutenant Parsons and a machine gun section under Lieutenant Tribe, and forty armed Native Police. However, only No. 1 Troop was ordered to proceed to Kazungula on 26 August to build a fort. The rest of the column marched to Livingstone, and was joined on the way to Sesheke by No.1 Troop.

Sesheke was the nearest British Post to Schuckmannsburg. The column arrived in Sesheke on 21 September 1914. Major Capell sent Lieutenant Stephens, accompanied by Corporal Vaughan and native sentries to Lieutenant Victor von Frankenberg, the German Imperial Residentur, to say that he should surrender. There was nothing that Lieutenant von Frankenberg and five Germans could do against the BSAP lined up against them. Lieutenant von Frankenberg surrendered without the necessity of being killed or killing others.

The next day 22 September 1914, the Troops assembled and the Union Jack was hoisted. Lieutenant von Frankenberg was sent under escort to

Livingstone and the natives returned to their farms and cattle.¹⁰ Thus, the war in the German Caprivi Zipfel ended.

Togo had surrendered on 26 August 1914 after a three week campaign. Togo and Caprivi Zipfel were the first German African territories to fall into British hands, but the world was not interested in petite Togoland and the Caprivi Zipfel; they were more concerned with their own survival against mighty Germany.

The black South African soldiers were not brothers-in-arms with the Afrikaner troops. They said it was the 'white man's war', accordingly only white soldiers could kill each other. The battle in German South West Africa had been a walkover for the Union Defence Forces, as the natives of German South West Africa did not join the German troops to defend the territory against the South African Forces. The instinct for survival made the native leaders exchange their German rule for another administration, but as oral tradition has it, after the war 'we ended up carrying the sun on our backs'. The people exchanged one brutal colonial master for another.

The declaration of the First World War is very important in African historiography, because instead of brutalising the natives of their colonies, the European powers were pre-occupied with slaughtering millions of their own people. After the war, some courageous natives took the opportunity to defy their European masters and demanded freedom from oppression for their people.

However, by May 1915, South African troops commanded by General Louis Botha (1862 – 1919) had fought and won Windhuk. Meanwhile, Lieutenant Colonel Viktor Franke of the Omaruru slaughter fame had succeeded Heydebeck, and by 6 July 1915, the German troops under the command of Franke had also fought their way to the northeast of Tsumeb. As they retreated, the Schutztruppe jettisoned their arms and boxes of ammunition, cannons and artillery into Lake Otjikoto rather than surrender them to the Union Defence Forces. They destroyed all their war materials and Schutztruppe records of German South West Africa before

¹⁰ Rhodesia Defence Force Journal, 1915. Vol. I. No. 3, p. 2, and C.E. Kruger, chapter 3, p. 28.

surrendering to the Union Defence Forces. Their surrender was accepted and The Treaty of Khorab was signed on 9 July by General Botha, Governor Dr Theodor Seitz (1910 – 1915) and Lt. Colonel Viktor Franke.¹¹ The local German Volunteer soldiers returned to their farms and to civilian life. But the professional soldiers had to give up all their military hardware and accept the authority of the conquerors.¹² The Schutztruppe officers were interned at Aus but not in the gruesome concentration camps where the Germans had confined their native prisoners.



Plate 30: Signing of the Treaty of Khorab before General Botha, 9 July 1915.

National Archives, Windhoek, Namibia.

Then the Union Defence Forces joined the Portuguese troops in the north and launched a punitive war against Mandume ya Ndemufayo, and the Uukwanyama of Owamboland. The beleaguered Mandume, king of the Kwanyama was killed in February 1917 before the Union Government was appointed as a Mandatory for the SWA Protectorate.

¹¹ Lt. Colonel Franke immigrated to Brazil where he died in 1937. Vogt (1995:156).

¹² Official Gazette of South West Africa. No. 1. 13 August 1915, p. 2. NAO 1 / 146. NAN.

The killing of Mandume, who had a short reign (1911 – 1917),¹³ was a momentous episode in the legal history of indigenous law. His death unwittingly brought Owamboland and Kaokoland under the rule of the Union Government. Other powerful chiefs were deposed. A Council of eight handpicked big headmen was chosen for their loyalty and to enforce the Union Government legislations. For almost immediately after the Treaty of Khorab, the victors exercised their right of conquest by establishing martial law in German South West Africa to weaken the authority of the Schutztruppe. Thus martial law superseded German law and the various indigenous laws of South West Africa.¹⁴

Martial law is not the military law that has recently been overdeveloped in Africa. Military law is enshrined in statute and its principles are 'certain, determinate and immutable'. Whereas martial law, according to Berkheimer (1892:294), 'is the will of a military commander operating without any restraint, save his judgment, upon the lives, upon the property, upon the entire social and individual condition of all over whom this law extends'. In Herero language, 'Martial law is the continuation of the war without weapons'. Because martial law is *ius non scriptum*, it gives those enforcing martial law the power to act immediately, but not the power to prescribe rules for future action; such power is left to the legislators. The occupying Union Defence Force also extended martial law to the Caprivi Zipfel.

A Military Governor was appointed from South Africa to Windhuk, but by Proclamation of 28 October 1915, the post of the Military Governor was changed into that of an Administrator, the Chief Executive Officer. The Administrator had all the powers and functions vested in the Military Governor. By the same Proclamation, German South West Africa became South West Africa Protectorate, and not a colony.

¹³ Hayes, P. (1993a:97) suggests Mandume's date of birth as 1894, but see her long footnote 46 for other suggested dates. For another study of Mandume see Sylvester, J. (1991) and Hayes, P. (1993b).

¹⁴ Acts carried out in pursuance of martial law require to be covered by an Act of Indemnity in order to protect the actors from legal proceedings. Accordingly, the Indemnity and Withdrawal of Martial Law Proclamation, 1920 SWA (Proclamation No 76 of 1920) dated 31 December 1920 was promulgated.

Before the Union Government was given the Mandate, and to demonstrate that their administration would be more benevolent than that of the Schutztruppe, the natives who had refused to return to their German employers were protected against the Germans. Land, which the economic migrants did not want, 'where one could not dig wells', was also returned to some natives.

Thus, the 1915 – 1921 martial law affected mostly the ethnic groups in the South of the Protectorate, who had been under the direct control of the Schutztruppe. But those in the North like the Himba, the Owambo, the Okavango and the San were not affected, because indigenous customary law was not carried out in pursuance of martial law. However, some Caprivians who had been under the undeviating Schutztruppe administration for seven years were influenced by martial law.

As a result of the geographical proximity of the Union of South Africa to the South West Africa Protectorate, South Africa wanted to annex the coveted territory that they had acquired by occupation. Germany, they argued, could retain German East Africa as that presented no threat to South Africa's security. However, when the Union Defence Forces were prepared to attack GSWA, many Germans in South Africa had defected in a bid to form a free South African Republic. Accordingly, the Union Government was determined to remove German influence from Southern Africa to prevent any danger of further rebellion. The Government argued:

- 1) That the Germans in South West Africa have shown themselves to be totally unfitted for the responsibility of governing the native races of that territory.
- 2) That the return of the country to the Germans would be regarded by every native tribe in South West Africa Protectorate as the greatest disaster in their tribal history.

The natives too had their say. Chief Zerua said 'to give this country back to the Germans is like consigning us to the grave. We had no peace under the Germans, but we know now what peace is'. Kamaheke opined:

I shudder at the thought of this country ever being German again. We tremble for our lives at the very idea. If this country is to become German again, I and my people ask to be allowed to leave and trek to another country where we may live in peace under the British flag. If the German soldiers come back a great revenge will be taken. The local Germans tell my people to wait until the war is over, and that when the German troops come back here they will deal with us.¹⁵

After the Allied Powers had defeated Germany, The Treaty of Peace between the Allied and Associated Powers and Germany was signed at Versailles on 28 June 1919. The Treaty of Versailles came into force on 10 January 1920 and Article 119, provides that:

Germany renounces in favour of the Principal Allied and Associated Powers all her rights and titles over her overseas possessions.

Article 120:

All movable and immovable property in such territories belonging to the German Empire or to any German State should pass to the Government exercising authority over such territories on the terms laid down in Article 257 of Part IX (Financial clauses) of the present Treaty. The decision of the local courts in any dispute as to the nature of such property shall be final.

Thus, under Article 119, Germany renounced her African possessions of South West Africa, Togoland, Cameroon and East Afrika. When the revelations surfaced of the Schutztruppe's brutal treatment of their hapless native population, it was deemed to be inhuman to hand the natives who had collaborated with the Allies back to Germany.¹⁶ Furthermore, as the victorious powers did not wish to strip Germany of

¹⁵ Correspondence (1918) pp. 8-12.

¹⁶ See Report on the natives of South West Africa and their treatment by Germany. Prepared in the Administrator's Office, Windhoek, South West Africa, January 1918. Presented to both Houses of Parliament by Command of His Majesty. London: HMSO.

her colonies, and then appropriate the territories for themselves, a mandate system was devised for the former German colonies. German South West Africa became a class 'C' mandated territory conferred on His Britannic Majesty, and to be exercised on His Britannic Majesty's behalf by the Government of the Union of South Africa. German East Africa was renamed Tanganyika in 1920 and was ceded to Great Britain, Rwanda and Burundi were ceded to Belgium. Togoland to the French and Cameroon was partitioned between France and Great Britain.

The Parliament of South Africa then passed The Treaty of Peace and South West Africa Mandate Act, 1919 (Act No 49 / 1919). This Act incorporated the Treaty of Peace into South African law and made the South West Africa Protectorate, in all but name, a fifth province of the Union of South Africa.

The terms of the C Mandate were defined in a Resolution of the Council of the League of Nations dated 17 December 1920. Certified copies of the Mandate were sent to the Government of the Union of South Africa as well as to the other signatories of the Treaty. The terms were set out in Article 2:

The Mandatory shall have full power of administration and legislation over the territory subject to the present Mandate as an integral portion of the Union of South Africa, and may apply the laws of the Union of South Africa to the territory, subject to such local modification as circumstances may require. The Mandatory shall promote to the utmost the material and moral well being and social progress of the inhabitants of the territory subject to the present Mandate.¹⁷

The mandatory system was to be administered in the interest of 'peace, order and good government' and of the material and moral wellbeing and the social progress of the inhabitants of South West Africa Protectorate.

Thus, Germany was stripped of all her African colonies. If Germany had won the war perhaps the penetration from the Caprivi Zipfel on the Zambezi into German East Africa might have created a Bethmann

Hollweg Zipfel¹⁸ through Barotseland, Northern Rhodesia, now known as Zambia or Southern Rhodesia, Zimbabwe. However, Germany lost the war as well as the Caprivi Zipfel.

When Germany renounced her colonial empire, legal historians have pondered why the Treaty of Versailles did not cede the Caprivi Zipfel to Barotseland from whence it had been carved out by the Anglo-German Treaty, 1890?¹⁹ After the war, many natives who fled to Bechuanaland during German colonial rule returned to SWA when it became a mandated territory, but those who were uncertain of the Schutztruppe's return remained in Bechuanaland. If the territory was ever returned to Germany, the natives were apprehensive of the German God of vengeance still raging with the anger of humiliation.

Since Germany renounced all claims to her colonies, martial law became a South African duty to confiscate the property of the enemy, and claim authority over all the military personnel. German nationals were expelled from most of their former colonies as enemy aliens.²⁰ As partial indemnity for the expenses and losses incurred during the war, the New Zealand government ejected the Germans from Samoa where many of them were working in the pineapple plantations. Germans in New Guinea were kicked out from their coconut farms by the Australians, and their property confiscated as spoils of war. In the Cameroon, East Africa and Togo the Germans were repatriated as a punishment for the enemy's bad conduct, but the Germans in the South West Africa Protectorate were not repatriated, because there were many Germans in the Union of South Africa who would have been outraged by such repatriation. Out of an estimated German population of twelve and a half thousand who had

¹⁷ For details see the *Official Gazette* 17 June 1921, p. 231, and the ICI Reports, 1966, Vol. 1-2, pp. 33-38.

¹⁸ Chancellor Theobald von Bethmann Hollweg (1909 - 1917).

¹⁹ It would have saved Botswana and Namibia a great deal of money in the closing years of the twentieth century.

²⁰ Liquidation of ex-enemy property in Mandated territories. Note by Sir Frederick Lugard to the Permanent Mandates Commission, regarding the effect of disposing of the estates of ex-enemy subjects on the Reparation Funds. C. P. M. 58, Reel CPM 1. 1920 - 1923.

survived the war, only a few high ranking Schutztruppe officers and some policemen and their families were given safe conduct out of the South West Africa Protectorate. The rest were granted permanent residence. However, after some time, the officers and policemen who had been repatriated and owned property in South West Africa were permitted to return and resume farming or business. Many Germans from the Union of South Africa, under a government emigration scheme to settle in South West Africa, for the purposes of administration, mining and farming, further increased their number. The Union Government encouraged these white economic migrants.

The influx of Germans into the South West Africa Protectorate raised two issues of nationality for the resident Germans, and the citizenship of German children born under the class C mandate. Were they Mandate citizens? It was argued that 'C' mandate was only applied to the natives. In any case, most of the Germans who were still seething with anger rejected Mandate citizenship. What was their relationship to Berlin, the Imperial capital? Should they hold on to their German nationality in the hope that at some future date Germany would requisition the South West Africa Protectorate because the Allied Powers had stolen the colony from Germany? They argued with the anguish of defeat that Germany did not lose the war; the German army had not been defeated inside Germany. One day Germany would be more powerful than all nations and the South West Africa colony would be returned to Germany.

Thus, under the South West Africa Naturalisation of Aliens Act 1924, the Germans, if they chose, could become British subjects with a guarantee of all their social and economic rights, freedom of speech, right to own property, cultural and linguistic freedom. But although they were British subjects, they were also German nationals. Union nationality was also conferred on the German subjects in the Protectorate, because if citizenship had been conferred on all British subjects that would have included the natives, who were British Protected Persons or Mandate citizens. However, if the Germans decided that they did not like Union nationality, they could opt out of it, but remain in the country as aliens, or they could leave South West Africa.

Meanwhile, in 1920, the Indemnity and Withdrawal of Martial Law Proclamation, No. 76 was enacted to restrict the taking of civil or criminal proceedings against those who in good faith participated in the administration and enforcement of martial law. In the Official Gazette of South West Africa No. 84, Windhoek 1 May 1922, doubts were raised whether the provisions of the Indemnity and Withdrawal of Martial Law Proclamation were applicable to Caprivi Zipfel as Caprivi Zipfel was being administered by Bechuanaland. The answer to the question is:

by virtue of the authority vested in me by the Treaty of Peace and South-West Africa mandate Act, 1919, I do hereby proclaim, declare and make known that the provisions of the said Indemnity and Withdrawal of Martial Law Proclamation relating to Indemnity apply *mutatis mutandis* as from the date of the military occupation of Caprivi Zipfel, to the High Commissioner of South Africa, and to all persons acting under him in the administration of the said area and to all persons employed therein in any military capacity as fully and effectually and to the same extent as if they had been expressly named in the said Proclamation.

This raised the problem of communication, and the administration of the Caprivi Zipfel, because of its enormous distance from Windhoek and the rest of South West Africa. Since the withdrawal of martial law on 1 January 1922, Caprivi Zipfel had been administered by the High Commissioner for South Africa, the Governor-General, who as the representative of the British Government was also in charge of Bechuanaland. By the Governor-General's Proclamation No. 12 of 1922, and the High Commissioner's Proclamation No. 23 of 1922, the Caprivi Zipfel was brought under the administration of the Bechuanaland Protectorate as from 1 January 1921 and the law in force in the Bechuanaland Protectorate was declared applicable to the Caprivi Zipfel. The reason given for separating the administration of the Caprivi from SWA Protectorate was 'By reason of its geographical situation and lack of communication the Administration of Caprivi Zipfel by this

Administration is impracticable'. Therefore, legally, there were two Administrators for South West Africa. One for the Caprivi Zipfel and the other for the substantial Mandated territory of South West Africa. As Caprivi Zipfel was administered by Bechuanaland, it was subject to the laws applicable to Bechuana. Thus sections 1 & 2, of Proclamation No. 23 of 1922 provided that

1. Caprivi shall be administered as if the same were a portion of the Bechuana Protectorate, and the Resident Commissioner and all officers of the Bechuanaland Protectorate shall have and exercise authority and jurisdiction in Caprivi Zipfel as if the same were included in the said Protectorate.
2. All laws in force in the Bechuanaland Protectorate and all rules and regulations made thereunder shall apply to and be of full force and effect in Caprivi Zipfel ...

Accordingly in 1923 during the Third Session of the Permanent Mandates Commission, Sir Frederick Lugard wanted to know why no separate Report had been submitted for the Caprivi Zipfel area? And the Commission in its Special Observations regarding administration of the Caprivi Zipfel recorded that:

It took cognisance of the fact that that part of mandated territory which was known as Caprivi Zipfel had, for geographical reasons, been detached from the general administration of the territory and was administered under the direct control of the Governor-General for South Africa.²¹

Furthermore in 1925 at the Sixth Session of the Permanent Mandates Commission, the legality of the administrative separation of the Caprivi Zipfel came up again for discussion. It was argued that the arrangement whereby the Caprivi zone was being administered as part of Bechuanaland was directly contrary to the mandate, and it was the duty of

²¹ Permanent Mandates Commission, Min. 111, p. 325, Annex 13.

the Commission to obtain complete information in regard to the laws and administration of Bechuanaland.²²

The issues were about delegation or separation of the administration of the Caprivi. Did the Mandatory Power have the right to delegate Caprivi Zipfel to Bechuana, another authority, without the permission of the Council of the League of Nations? In its Observation to the League Council the Commission noted that it would appreciate a clear and concise statement from the Mandatory Power explaining, from the legal standpoint, the administrative relations between Caprivi Zipfel and the Mandatory Power. It is particularly anxious to know whether the Administration takes its instructions from the Administrator for South West Africa or whether it is directly under the control of the Government of the Union of South Africa.²³

However, the Proclamation No. 196 of 1929 which repealed Proclamation No. 12 of 1922, provides that the Caprivi Zipfel shall be administered as a part of the Mandated:

Territory of South West Africa and that the Administrator of the said Mandated Territory shall be the administrator of the Caprivi Zipfel and hereby delegate to him the authority ... to repeal, alter, amend or modify any laws in force within that area and to make new laws applicable to the said area. And by Proclamation No. 26 of 1929, the laws of South West Africa were applicable to the Caprivi. Thus, the Caprivi Zipfel formed a portion of the District of Grootfontein created within the territory under the provisions of section two of the Magistrates' Courts Act 1917 (Act No. 32 of 1917).

Accordingly, from 1929 to 1939 the Caprivi Zipfel was administered by South West Africa. The administration was considered a failure because nothing was achieved. As a result of the difficulty of communication between Caprivi Zipfel, Grootfontein or Windhoek, the

²² P. M. C. Min 111, p. 61.

²³ P.M.C. Min. 111, p. 217 Annex 14.

period was known as 'a period of almost complete stagnation', and by Proclamation No. 147 of 1939 Caprivi Zipfel was transferred to the Minister of Native Affairs of the Union Government, so that more attention could be devoted to the welfare and interest of the native population.

The Permanent Mandates Commission was of the opinion that the arrangement 'calls for no observations on its part provided all the provisions of the Mandate are properly applied'.²⁴ In 1939, the Minister of Native Affairs in Pretoria took over the administration of the Caprivi Zipfel from Windhoek and L. F. W. Trollope was appointed as Magistrate and Native Commissioner and C.E. Kruger Assistant Native Commissioner.

Thus, the administration of South West Africa was like the administration of three separate states. First, the Administrator inherited a German South West Africa that had been partitioned by the Germans. The Northern natives of the non-Polizei Zone were prohibited from entering or leaving without having a permit issued to them by the Resident Commissioner. This was the Identification Pass, I.P. In the Ordinance, only policemen were charged with the supervision of the pass law, but every white person had authority to stop any native and demand to see the native's I.P. And if a native was found without a Pass, he or she was handed over to the nearest policeman. It was an effective way of policing the local people and upholding white superiority. As Anthony Kirk-Greene (1980:42) wisely noted, 'the European DC wore the bullet-proof waistcoat of his white skin: it might not stop the bullet, but it nearly always stopped the other party from firing'. Second, there was the administration of the Polizei zone and thirdly the administration of the Caprivi Zipfel.

Then the Second World War was declared. The historical exegesis from the Second World War to the long running resistance battles between South West Africa, the Republic of South Africa, and the United Nations, followed by the war of liberation until the independence of Namibia on

²⁴ P. M. C. Min XXXVI pp. 280-281. Annex 14.

21 March 1990, have been thoroughly covered and are beyond the scope of this very brief historical study and customary law.²⁵

However, after the Second World War, the newly created United Nations General Assembly took over the work of the League of Nations which had been dissolved, and South Africa declined to enter into a Trusteeship Agreement with the new Body. On 27 of October 1966, the General Assembly terminated the Mandate and asserted that 'henceforth South West Africa comes under the direct responsibility of the United Nations'. On 12 June 1968 and by Resolution 2372, the General Assembly adopted the name 'Namibia' instead of South West Africa.

However before concluding this chapter, one must add a coda to the saga of Heligoland and the Caprivi Zipfel. During the First and Second World Wars, Germany used Heligoland as a naval base. And today, there are buffet breakfast cruises from Bremen harbour to Heligoland.

During Namibia's liberation struggle, the South African Defence Forces set up two military bases in East and West Caprivi. The Alpha and Omega bases were forged by the dreaded Koevoet for the 'Bushman Battalion' to track down SWAPO insurgents. The Bushman Battalion was trained and was useful against SWAPO freedom fighters, and the bases were used to launch attacks on the anti-apartheid black frontline States. It is difficult to comprehend how intelligent human beings did not realise that apartheid could not last forever.

²⁵ For further information please see, J. M. Bridgman, (1981), H. Booysen and G. E. J. Stephan, (1975) G. M. Cockram (1976), A. D. Cooper (1982), J. Dugard, (1974), Y. Gorbunov, (ed.) (1988), L. L. Herman, (1975), R. Higgins (1972) A. T. Moleah, (1983), S. Slonim (1973), J. C. Smuts, (1918), A. Zimmer (1939).

8

Ancestors of the Caprivians

In the area known today as the Caprivi Strip, there is evidence of human settlements by the hot springs, the lakeshores and the banks and flood plains of the rivers Chobe, Liyanti, Kwando, Okavango and Zambezi for millennia. These are some of the perennial rivers of Southern Africa. However, whether or not the people living around the flood plains today are the direct descendants of the early riverbank indigenous people is open to question.

Before the hard line late 19th century colonial boundaries were drawn, communities sometimes migrated, for various reasons, from the security of their homes and villages to other parts of the land. It should also be remembered that it is not only the Europeans who have a 'proclivity for migrating overseas' in search of more land or a better life far from the religious and ethnic persecutions in Europe.¹ Africans too migrated within their vast continent, as there were no colonial boundaries to impede the free movement of families or clans determined to take the risk of migration. What were the reasons for migration? Sometimes there were pressures from more powerful ethnic neighbours to impose their predominant culture and assimilate the weaker groups. Sometimes, warlords invaded unorganised groups, then kept them subservient.

¹ Jones, H. R. (1981:254) between 1820 and 1930, well over 50 million Europeans migrated to the Neo-European lands overseas. They were able to cross the oceans safely in the new steamships.

Occasionally, the reason for migration was as mundane as an increase in the population of the ethnic group. Powerful half-brothers or sons of great polygynous fathers would shift their families and their matrilineal siblings and friends to a new settlement. Eventually the new migrants too would become powerful. Since powerful men tended to be neither celibate nor monogamous but polygynous, they soon increased and multiplied 'like the stars in the night sky'; thereby acquiring many more loyal blood relatives in their settlement. Famous sons or famous nephews sometimes rebelled against their fathers, stepfathers, uncles and half-brothers and then set up their own rival villages.

However other, not to be forgotten, reasons that sent people fleeing from their homes were the epidemics of disease, drought and war. As was explained earlier, until recently, African war was not prolonged inter-tribal genocide, but a war of acquisition of cattle and land and women of child-bearing age. Accordingly, able-bodied war survivors migrated and fled far into the interior with their matrilineage, and pastoralists too were always on the move for more fertile grazing lands for their numerous herds of cattle, sheep and goats.

Before the total abolition of slavery, the indigenous people were always moving further up country for better land and to be far away from the hunters and traders in human beings. Another simple reason for migration that ought to be noted was death and sanitation. Among the ovaHimba for example, when someone died, after the interment of the corpse, with due ceremony, according to the status of the deceased,² the deceased's personal possessions likely to harbour the pathogens of the cause of death were thrown in as grave goods for the deceased. The *onganda* would then move away from the site of disease and death and set up a new settlement.

Thus the earliest excavated district near what was carved out from Barotseland to create the Caprivi Strip was the Iron Age Kalomo culture. The people, it was argued, might have settled in the southern half of the Batoka plateau during the fourth century of the Contemporary Era. The

² Symbolised by masses of horns displayed above the gravestones.

Kalomo culture is well explained in Brian Fagan (1967) *Iron Age cultures in Zambia: Kalomo and Kangila* and is the source of my interest in African archaeology. Although, as of now, African indigenous law is very difficult to reconstruct from archaeological evidence, at least lawyers, historians, anthropologists and archaeologists are examining each other's work in search of evidence to elucidate what type of social organisations existed before transatlantic slavery.

After Carl Mauch 'discovered' the ruins of Zimbabwe in 1870, many archaeologists were inspired to excavate the attractive environs of the upper Zambezi. The district had a good supply of water, good farming land, and excellent grazing land. There was also an escarpment as protection against some four-legged and some two-legged animals. Four-legged animals do not rape women; steal ostrich eggshell jewellery, pottery, axes and hoes and herds of cattle. The sites investigated by archaeologists in the state now known as Zambia, included Kalundu, Gundu, Kangila and Isamu Pati near Kalomo. Daniels (1965) excavated an early Iron Age settlement at Dambwa near Livingstone.

Kalomo culture people survived, from about the 7th century to the 13th century. The deceased were buried in a squatting position; the skeletal remains had their front upper incisors filed into an inverted A shape. The skeletons, whose teeth were not filed, had the bottom two or upper two incisors knocked out, leaving a gap. This practice is still common today among some Himba and Otjiherero speakers. African dental aesthetics is a potential research area that could be of enormous interest, because 'non-condescending' dental literature is still very rare.

David Livingstone (1857:544), a valuable source of information, visited the Kalomo region in 1855. He wrote that on 30 November they crossed the river Kalomo and the altitude above sea level was over 5,000 feet. Furthermore the area was very salubrious, and 'the Makololo, who have been nearly all cut off by fevers in the valley, declaring that here they never had a headache, they may even be recommended as a sanatorium for those whose enterprise leads them into Africa ...'

The bands of people who lived in villages along the healthy high plains could have been satellite communities of the Kalomo culture people.

However, according to oral historians, the Kalomo culture people were succeeded by the Luyana, the Aluwi (Aluyi) who assimilated the sparsely populated riverine groups along the Zambezi, Kwando, Liyanti and Chobe rivers. It was an extensive province. Before the new young buLozi leaders conquered the Luyana rulers, they had instituted some chiefdoms. And prior to the Anglo-German Agreement of 1890 that demarcated the Caprivi Strip, Lewanika's Lozi kingdom was composed of several multi-ethnic people grouped around the great rivers, flood plains and valleys. For our purposes the ethnic communities included:

The Mayeye (Mayei) along the Zambezi between that river and the Chobe, the MaSubia in the neighbourhood of Kasungula and along the river, the MaTotela, inland between Sesheke and Lealui on the Ruyi, Lumbi and Njoko rivers and the Malea, as far south as the vicinity of the Mosi-o-Tunya.³

These ethnic groups provided the Lozi powerful rulers with tributes of labour.

Meanwhile in the 18th century, trouble was brewing in South Africa. It was a period of mass migration. Diseases of European civilisation derived from their lush urban populations came ashore in Cape Town. In 1713 smallpox arrived and killed thousands of the native population. 'The Khoikhoi lay everywhere on the roads ... cursing at the Dutchmen, who they said had bewitched them'. Worse infection was to follow. The white Christian men who did not bring their wives 'scattered their seeds in black wombs that had not heard of the Ten Commandments'. Some women contracted venereal disease, which they passed on to their men folks before it killed them. Crosby (1986:257) was very succinct about venereal disease. 'It kills parents, kills fertility, kills foetuses, kills children and erases the desire for children'. The whites let loose diseases that the natives had no immunity against and several fled into the hinterland taking the diseases with them.

³ M. Mainga (1973:159).

The aggressive white economic migrants who needed more land for farming and for grazing their cattle evicted the blacks from their farmland. The discovery of gold and diamonds in commercial quantities in South Africa led to more conflict with the black people. The natives were unused to fighting mounted galloping gunmen and they were slaughtered. Livingstone (1857:85) put it in very Christian terms, that Sebituane's '... people suffered severely in one of those unrecorded attacks by white men, in which murder is committed and materials laid up in the conscience for a future judgment ...'

The white economic migrants claimed the natives who survived as their subjects, and used them as cheap labour; the natives had to pay taxes as well for the privilege of working for the migrants. Thus more blacks were compelled to migrate into the interior and because of the superior skills with rifles that they had acquired from the whites, they were able to vanquish unorganised native groups and take over their land. The Nguni refugees invaded the weak communities as they moved up north.

However, for our purposes, it was the Kololo leader, Sebituane, (Sebitwane Sebitoane) and his ethnic band of Sotho marauders who are of interest because the small-scale societies that were not organised militarily were plundered and reduced to servitude by Sebituane's men. Livingstone (1857:84) who met Sebituane recorded that Sebituane was one in that immense horde of savages driven back by the Griqua from Kuruman in 1824. He then fled to the north (Bechuanaland) with an insignificant party of men and cattle.

Sebituane's Sotho refugees plundered and ravaged their way through Bechuanaland to Ngamiland, then to Tonga, causing havoc on their march up north. They had followed the route of the men who traded in ivory and cattle. Sebituane and his people killed many people and acquired many refugees. They depopulated many villages. By 1838 when Sebituane reached the Kalomo province in the middle Zambezi, his followers had increased and multiplied like the grains of sand in the Omaheke desert. They had conquered most of the 'tribes over an immense tract of the country. They vanquished the baLozi and established a Makololo empire'.

But on 7 July 1851, the old war-horse, Sebituane died. Livingstone (1857:90) who had been a house guest of the Chief noted that Sebituane '... was decidedly the best specimen of a native chief I ever met. I never felt so much grieved by the loss of a black man before'. He recorded that the last words uttered by Sebituane who pulled himself up a little and called a servant and said: 'Take Robert to Maunku (one of his wives) and tell her to give him some milk'. Robert was David Livingstone's young son.

Sebituane was succeeded by his very able daughter Mamochisane, who lived at Naliele, twelve days journey away from Sebituane. Before the patrilineal Makololo invaded the matrilineal Lozi, Mainga (1973:40) recorded that there had been a council of women, *anatabumu*, (mothers of the king). Accordingly, the appointment of Mamochisane as Sebituane's heir was accepted, but there were other men who wanted to be king. And a marriage was quickly arranged between Mpepe and Mamochisane in order for both of them to rule. Mamochisane did not relish the intrigue and when the marriage broke up she abdicated in favour of her half-brother, Sekeletu. According to Livingstone (1857:179) Mamochisane said: 'I have been a chief only because my father wished it. I always would have preferred to be married and have a family like other women. You, Sekeletu, must be chief and build up your father's house'.

Mpepe and others insinuated that Sekeletu was not the blood son of Sebituane, because his mother had been married to another Chief, and had not observed the period of purification before she married Sebituane and conceived Sekeletu. Furthermore, as Sekeletu's mother was not a Sotho, he was not accepted by the Sotho aristocracy.

Unfortunately for Sekeletu, he contracted leprosy and died. Mamili succeeded Sekeletu, but he was suspected of having inflicted the leprosy on Sekeletu by witchcraft and he fled to Ngamiland. Mpololo acted, as regent for Litali, Sekeletu's son, and that was the downfall of the Makololo kingdom. The buLozi saw their chance, and in 1864, they overthrew the weak Makololo leadership. Some Makololo fled for their lives but those who remained were obliterated. Thus, the Lozi started

their second empire that lasted from 1864 – 1909 when Captain Kurt Streitwolf, the German Residentur entered the Caprivi Zipfel.

The influence of the buLozi and the Kololo on the Caprivians is still discernible in the administration of justice under indigenous law.

8.1 The Caprivians

The people who live in the strip of land, the Caprivi Zipfel carved out by the Anglo-German Agreement of 1890, call themselves the Caprivians. The ethnic constituents of the Caprivians are the maFwe, maKwengo, maMbukushu, maSubia, maTotela and maYeyi.

Many modern anthropologists disagree as to the usage of the word 'tribe'.⁴ There is an ongoing debate about the nomenclature of the groups within ancient and modern African states. Should the word 'tribe' be used for all human ethnic groups or should it simply be reserved for societies described by anthropologists as primitive? The issue that anthropologists and historians should consider is the persistence of ethnicism or 'tribes' in modern Africa, as well as in modern Europe. What of the ethnic or tribal revivals and conflicts in Europe? For example, the Bretons, the Basques, the Catalans, the Corsicans, the Irish, the Scots, the Welsh, the Quebecois of Canada and many break-away 'tribes' in Eastern Europe. Are they 'tribes', ethnic groups, or communities?

I shall use ethnic groups to describe the various communities who live in what is now the Caprivi Strip. The colonial boundaries in Zambia, Zimbabwe, Namibia and Botswana separated the various communities that have lived there and had a shared legal historical development under the Luyana kings, the Kololo and Lozi empires. They shared the administration of justice and principles of cultural property. The modern states that form the quadripoint have segments of ethnic groups within each state, because the colonial boundaries created splinter groups in Angola, Botswana, Namibia, Zambia and Zimbabwe. For example, there are maYeyi and the maSubia in Botswana and Namibia, maTotela in

Zambia and Namibia. There are many ethnic communities in the new nation state of Namibia yet the people have quintessentially become Namibians.

The colonial ethnographic literature recorded that there are several 'tribes' in South West Africa. The missionaries, travellers and administrators rigidified the differences between the ethnic groups, because each ethnic community was obliged to work for its own development and interests. The communities of people that lived in a particular district before colonialism were used as the administrative basis of Bantustans, that is, tribal homelands and native reserves.⁴ Tribal Councils, Native Authorities, and native administration were deployed to keep each 'tribe' confined to its homeland.

In some other African states, ethnicity has developed further into ethnic mathematics for fear of domination by the rival elite ethnic groups. For example, ambassadorial posts are bestowed by ethnic quotas; the national football team should reflect ethnic quotas, national commissions, committees and ministerial posts, wherever there is a struggle for wealth and power ethnicity surfaces. The prosperity and economic survival of a group depends on the ethnic quota.

Many urban areas in Africa are very mixed ethnically because there have always been mixed ethnic marriages, and the assimilation of small ethnic groups by the surrounding dominant group. Only rural villages are still disposed to mono-ethnicity. Before slavery and colonialism many of the large communities were in the process of mono-nation formation. One should not forget the history of ethnic origins of early medieval Europe with Franks, Visigoths, Normans, Lombards, Picts and Anglo-Saxons.⁵

⁴ See Preston King (1978), P. H. Gulliver (ed.) (1969) Introduction. In tradition and transition in East Africa: Studies of the tribal elements in the modern era, pp. 5-38.

⁵ Odendaal Report 1964. Commission of Enquiry into SWA Affairs 1962 - 1963. Pretoria: Staatsdrukker. See also South West Africa Native Affairs Administration Act, 1954; Black Administration Act, 1928; Native Administration Proclamation, 1928, No. 15. SWA. Prohibited Areas Proclamation, 1919 No. 15.

⁶ See A. D. Smith (1986), B. Neuberger (1976), W. Connor, (1973) M. Esman, (ed.) (1977); P. Dixon (1976) and W. J. Argyle (1969).

In the north of Namibia, the Owambo, who have been extensively studied,⁷ consists of seven sub-groups: the Eunda, Kwaluudhi, Kwambi, Kwanyama, Mbalantu, Ndonga and Ngandjera. The Otjherero communities consist of a small group of Hakaona, the Herero, the Himba, the Mbanderu, and the Zemba. The Okavango groups are the Gciriku, Kwangali, Mbukushu, Mbunza and Shambyu. There are also the Nama and Damara people as well as the San with different sub-groups. Furthermore, there are other communities like the Tswana, Rehoboth Basters, Coloureds and White ethnic groups of Portuguese, English, and German origin and those whose ancestors have lived in Namibia for over a hundred years.

In this section, I am interested only in the group that has become designated as the 'Caprivians,' who live in the Caprivi Strip, delineated by the Anglo-German Treaty, 1890.

An interesting ethnographic phenomenon occurs in Northern Namibia. Owing to the mass movement of population hundreds of years ago, as well as due to climatic changes and other reasons, there is a wide band of ethnic groups who are predominantly matrilineal. The band stretches from the northwest corner of Namibia to the Caprivi quadripoint. This would be an interesting research area on how ethnic communities with the same matrilineal structures were organised. The Herero,⁸ the Owambo, and the Okavango have matrilineal descent, however, Malan, (1995:56) and Fisch (1996) have argued that the Caprivians too had a matrilineal system until they came under the influence of the patrilineal Luayana and Kololo in the 16th to the 19th century. Accordingly, the maSubia and maFwe have adopted patrilineal.

⁷ Just a few in English. C. Estermann, (1976) C. H. L. Hahn (1921) (1928), Hinz, M. O. (1995); P. Hayes, (1992) J. S. Malan (1978), G. Totemeyer (1978), F. N. Williams (1991), W. Zimmermann and G. B. Taapopi (1977).

⁸ The *ovaHerero* have a duolineal system.

8.2 Justice is Free

The effect of Lozi indigenous law bureaucracy is still with the Caprivians. The Caprivian ethnic groups still retain the basic structure of the administration of customary law justice imposed by the Lozi kings and developed by the Kololo. This is in spite of a German administration that ended in 1915, martial law (1915 – 21), Roman Dutch law (1922 – 1989), and the authoritative modernity of the Namibian Constitution (1990). The administration of indigenous law is an unusual legal system unique to all the ethnic groups in the Caprivi Strip.

Originally, before the upheaval of the Luyana kings and Lozi kings, most of the small-scale societies had their own form of administration of justice. At the head of each ethnic group of the maFwe, maKwengo, maMbukushu, maSubia, maTotela and maYeyi, an ethnic group had its own chief, who was the protector of his people and of the big animals, as well as the tribal land and its resources. The chief held the title to the land in the name of his people, however any man or woman who needed extra arable or grazing land would be given more land.

Accordingly, the people also made provisions for the king or chief to have fishermen, weavers of nets and baskets for granaries, canoe builders and paddlers, carpenters, farmers, and herbalists and keeper of the drums. As they said then, 'a king should not work, so that he has time for his people'. Originally, a deceased king was succeeded by the eldest matrilineal nephew, but this form of succession was changed by the patrilineal Kololo. Nowadays, the patrilineal aristocracy from among the deceased chief's married sons choose a new chief. The eldest son may be rejected in favour of a younger, full or half-brother, if he would make a better monarch.

The chief looked after his people and administered justice in the *khuta* with the help of the *manduna*, councillors. It was after the conquest of the people by the Lozi kings that the ethnic groups to the South of Barotseland were brought under the central control of one dominant king. He had his capital at Lealui.

Even when the Luyana kings and the Kololo subdued the ethnic groups in the south, their indigenous law did not fall into abeyance. The

indigenous law is the shared values of the ethnic group; the philosophical beliefs embedded in the ties that hold the community. However, what the Lozi kings did, as well as the Kololo rulers who modified the Lozi pattern, was to impose a centralised form of administration by royal princes and prince consorts, ably assisted by the local chiefs and elders of the ethnic groups. Accordingly, when describing the administration of justice in the Caprivi, whether it is among the maFwe, maKwengo, maMbukushu, maSubia, maTotela and maYeyi, the structure of their *khuta* is quintessentially the same. The colonial law, however, severed criminal from civil law, and usurped the power of the *khuta* to prosecute murder cases, witchcraft and grievous bodily harm.

As in most parts of Namibia under customary law jurisdiction, there is a hierarchy of indigenous courts or community courts as they are now called. However, all the ethnic groups in the Caprivi retain an identical structure of indigenous courts because of the Lozi imposition. At the lowest rung of resolution of conflict is the family court, not exactly a court, but a conversation piece, a chat, because as they say, 'children of the same uterus should not go to court'. The older members of the family try to patch up conflicts arising within the family. As soon as one was sorted out, there would be another. This is the *ngambolo*. If the *ngambolo* failed then the case would be taken to the village court, *nduna ya munzi*, the peoples' court, where family dirty linen is washed publicly.

The headman and some of the village elders try to resolve the family conflict, and the aim of the *nduna ya munzi* is reconciliation of the family members who are obliged to continue to live together after the settlement of the dispute. At the *nduna ya munzi*, minor civil cases are heard. For example, an incident occurred during the spring of 1998. A young man and a young woman had been courting secretly. Her parents were uncertain about the intentions of the modern young man, and they did not want to confront their daughter as confrontation might trigger her elopement to the big city. The young man's parents also disapproved of the girl as they said that she was 'very loose'. Even though it is a polygynous society, young women should not have pre-marital sex.

One evening, when the young couple had an assignation near a *mahonono* tree, a village elder interrupted them, and both parents were summoned. The young couple's behaviour was unacceptable to the elders of the village. The headman and deputy headman were also summoned and the researcher trotted along too. The *nduna ya munzi* was convened on the spot. The *nduna* gave the couple a lecture on pre-marital sexual morality and explained how the young people of his generation conducted themselves. Life was lived in the village according to generally accepted tribal sexual mores, and the purpose of the sexual law was to protect the virginity of the young, thus life was better for everybody. Unmarried mothers did not command high bridewealth. Who would pay high bridewealth for such a girl? What were parents for, but to negotiate marriage for the young people? The level of the moral debate between the village elders, which continued for a long time, was high.

Both parents too had their say. The girl's parents argued that since their daughter had been 'disvirgined' by the young man, and in all probability she could be pregnant, that the man was obliged to marry her. His parents accused the girl's parents of permitting their daughter to be 'loose'.

The *nduna* then asked the young man if he wished to marry the girl. As he agreed to marry the girl, the young man and his parents were fined twelve head of cattle, *likomu za mulatu* for 'damages', because of the man's clandestine behaviour leading to pregnancy. They were fined another set of twelve head of cattle, *likomu za mulobola* for the *lobola*, marriage settlement. If the young man had refused to marry the girl, the damages would have been doubled.

However, if an unmarried father should acknowledge paternity after the birth of the child, the damages would be tripled, as well as responsibility for confinement fees and the *lobola*. A man could also be fined *likomu za busholi* for cohabiting with a woman before marriage. On the dissolution of the marriage the *likomu za busholi* or the *likomu za mulatu* are not refundable.

In a complicated case, for example, which involved two people from different ethnic groups or villages, and the *nduna ya munzi* was unable to settle it, then appeal would be made from the *nduna ya munzi* to the

district *khuta ya silalo*. For the purpose of Local Government, each district elects fifteen councillors from the wards. Wards are composed of a couple of villages, *minzi* (plural). Each councillor or head of a ward is known as *nduna ya silalo*. There are usually about thirty people in the *khuta ya silalo*, the fifteen *manduna* and their fifteen deputies. To hear a case at the district level, there should be more than five judges on the mat. There are no *khuta* fees. Justice is free. Everyone has access to justice. The *khuta ya silalo* imposes compensation, restitution and fines.

If the litigants are not satisfied with the decision of the *khuta ya silalo*, the case is taken to the provincial *khuta*, *khuta ye tuna*. There, the most senior *manduna* from the district *khuta* who did not hear the appeal case are summoned to retry the case with the *khuta ye tuna*. The provincial *khuta* is composed of those who know indigenous law and those who do not. It could be compared to an English tribunal, which is composed of non-lawyers as well as lawyers.⁹ *Khuta ye tuna* maintains judicial control over the district *khuta*. *Khuta ye tuna* is the most senior and supreme traditional court. It also hears dissolution of marriages, domestic violence as well as the refund of the contract of *malobola* and land adjustment, and appeal cases. Only *khuta ye tuna* has the authority to dissolve and pronounce on the finality of customary law marriages in order that the parties understand that the marriage is definitely dead. Formerly, the *khuta ye tuna* also tried all criminal law cases before the offences were wrested from it by the magistrate's court, thus emasculating the judicial powers of the customary courts. The magistrate's court was the ultimate naked power of the remnant of imperial colonial model imposed on the native population for their own good. As the natives used to say, 'suffer any damages before you go to the magistrate court'. The principles of magistracy are not the shared ethics of the community. A white man or woman cannot be tried in the customary law court, and they are not permitted to be witnesses, only in the magistrate's court.

The *khuta ye tuna* is composed of the *Ngambela*, the *Natamoyo*, the *Makwambuyu* and the chief. Each chief, on accession, chooses his own

Ngambela. When the chief dies, the *Ngambela* as a non-royal and chief of indigenous protocol officers arranges the smooth succession and transition of the next ruler before he bows out himself. The *Ngambela* is the most senior adviser to the king or the chief. In *Lozi*, *Ngambela* means a spokesman. The *Ngambela* is the people's spokesman, the representative before the king of the ordinary man, woman and child in the ethnic group. He is a bulwark of the people against arbitrary treatment by the king or chief and other members of the aristocracy. He speaks to the chief on behalf of the people and reports back to them on behalf of the chief. As both parties' spokesman, the *Ngambela* is a restraining influence on them.

After the *Ngambela*, the other very influential person in the *khuta* is the *Natamoyo*, meaning the 'owner of life, or mother of life'. The *Natamoyo* is a member of the aristocracy chosen from the matrilineage. Before the German administration of 1909, anyone accused of very serious criminal offences sought asylum by touching the *Natamoyo*. Nothing could be done to the accused until his or her case had been heard in the *khuta ye tuna*. In modern terminology the *Natamoyo's* portfolio could be described as that of the Attorney General and the Ombudsman mixed into one.

Furthermore, before the separation of criminal and civil law, when indigenous criminal trial was by the poison ordeal, a Cabinet and a committee met in the *kashandi* (the dining hall) of the palace. This was known as the *Sikalo* Cabinet whose members were the *Ngambela*, the *Natamoyo* and senior members of the royal family. The committee, the *Saa Sikuto*, was composed of senior *makwambuya*, senior *likombwa* and junior members of the royal family who were being groomed to become seniors. They met the king or chief in the evening to brief him and take decisions on the poison ordeal.

However, when the full bench of the *khuta* convened to hear important cases, sometimes the king or chief attended the proceedings. There was no influencing the judge by the appellants. The royal drummers

⁹ For example, Social Security Tribunals, Rent Tribunals, Valuation and Use of Land Tribunals.

accompanied the king or chief who was not borne on a palanquin. The king or chief moved to the rhythm of the drumming and took his place on the dais. The princes and the prince consorts sat on mats in front of the king or chief. The *Ngambela* and the senior *manduna* from the provincial *khuta* who become *makwambuya* sat on the right of the chief or king. The *likombwa* or stewards sat on the mats on the left of the king. The clerks of the court and the traditional police or court messengers squatted opposite the *likombwa*, the litigants and their witnesses were opposite the princes. And behind the litigants were witnesses, various supplicants, interested parties and observers. The drummers parked themselves somewhere to the far right of the king.

This traditional *khuta* is a collegiate court. Although under indigenous law there are no career judges, and no separation of function between the judiciary, the executive and the legislation, the judges are not swayed by electoral accountability. The judges in the *khuta* are independent. Counsels do not represent the parties; the parties plead their own case; the problem was getting the case to the *khuta ye tuna*. Although the appellant is entitled to a hearing, he or she was obliged to pay what the people call a 'knocking fee' *kungongota*, this opens the door for a date to be fixed for the hearing: this was more of an administrative levy, rather than a fee for justice. An appeal to the *khuta ye tuna* is usually on quantum of damages. The appellant should have a very strong case if he or she expects to be awarded large damages and have the decision of the lower court reversed.

There are certain rules of procedure on the day appointed for the hearing. The *nduna* who referred the case, would speak first in the local dialect of the *khuta*. Hearing is *de novo*. The *nduna* is an *nduna* of truth not a mouthpiece for either party. He would state the case fairly without interruptions from the judges who are also the jury. The judges may ask or might not ask questions on obscure village practices.

The appellant would then state his or her case in detail. It is the appellant's day in the *khuta* to tell the full story, including irrelevant evidence. Free recollection was encouraged because it is the judges who

decide if the evidence would be prejudicial to the respondent. The applicant wants justice and the decision of the lower court reversed.

The judges would put questions to clarify and verify any points of contention. It might be a lecture on the behaviour of the appellant as a parent, husband or wife, neighbour, or farming partner.

Secondly, the respondent would be asked to reply by addressing the court. He or she would be interrogated and asked to call witnesses, *lipaki*, (*paki*: sing). All credible witnesses must be heard and interrogated. The witnesses of truth know that the *khuta* would give them adequate protection. 'I heard what he / she said, but ask him or her to explain ...'

The witnesses, like the *nduna* should be witnesses of truth. The judges would cross-examine the parties. The judges then deliberate in open court on the merits of the case. In exceptional circumstances, sometimes, the case is postponed. The judges give reasons for their decision and they are expected to follow precedents from previous cases, like cases should be treated alike with fairness. If the roles of the people under indigenous law were reversed, justice would still be the same. On the balance of probabilities and the learned authorities of *khuta ye tuna*, judgment is given. The judgment has something to offer both parties; compassionate equilibrium.

Appeals go from the traditional supreme *khuta* to the local magistrate court or the high court. There is an open dialogue between indigenous law and state law, because some of the things that customary law courts can do well are now being taken seriously by modern Family courts, for example, conciliation before divorce, and the welfare of the children.

The traditional *khuta ye tuna* insist on the right to exist alongside the modern high court, because the subject matter that the *khuta ye tuna* deals with is too important to have the legal philosophy of another system of law imposed on it. Cultural economic law, family law, child law, inheritance and succession, land law, the administration of estate under indigenous law and chieftaincy are the laws of the majority of the people and they should not be easily abandoned in favour of English legal systems. The Germans thought that indigenous law would go away, but a hundred years later, indigenous law is still with us. The longevity of

indigenous law has been recognised by modernists because Roman-Dutch law and English legal systems have not delivered what the politicians promised.

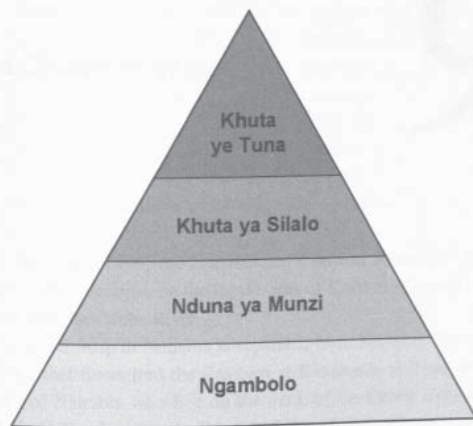


Figure 6: Hierarchy of traditional courts.

- Khuta ye Tuna*: Provincial *khuta*; with the Chief, *Ngambela*, *Natamoyo*, *Makwambuya*.
- Khuta ya Silalo*: District *khuta*; presided over by the district councillors; fines and compensation.
- Nduna ya Munzi*: Village court; headman's arbitration rather than a court; no jurisdiction to impose fine.
- Ngambolo*: Family arbitration (lineage).

Line Drawn in Water

On 13 December 1999, the International Court of Justice (ICJ) in The Hague¹ gave its decision on the legal status of Kasikili / Sedudu Island in the middle of the Chobe River.

The Caprivi Strip in Namibia is separated from Northern Botswana by the Chobe that flows into the Zambezi at Kazungula in Zimbabwe. The maSubia of Namibia who live on the bank of the Chobe christened the Island Kasikili, after the small spur of the Chobe and the *kasika* tree found on the Island. The baSubia on the Botswana bank of the Chobe call the Island Sedudu after the Sedudu Valley, hence the double appellation Kasikili / Sedudu used in this chapter.

However, the *dispositif* of the ICJ judgment finds in paragraph 1, by eleven votes to four, that the boundary between the Republic of Botswana and the Republic of Namibia follows the line of the deepest soundings in the northern channel of the Chobe around Kasikili / Sedudu Island. In favour were Algeria, China, France, Hungary, Japan, Madagascar, Netherlands, Russian Federation, Sierra Leone, United Kingdom and United States. And against: Brazil, Germany, Sri Lanka and Venezuela.

Secondly, and again by eleven votes to four in favour, the ICJ finds that since the deepest sounding is in the northern channel, Kasikili / Sedudu Island forms part of the territory of the Republic of Botswana.

Thirdly and unanimously, which was unprecedented for the ICJ, and a victory for common sense African customary law, the ICJ finds that in 'two channels around the Kasikili / Sedudu Island, the nationals of, and the vessels flying the flags of, the Republic of Botswana and the Republic of Namibia shall enjoy equal national treatment'.

Both the maSubia and the baSubia on the banks of the Chobe agreed that the judges of the ICJ got it right unanimously in the third *dispositif*. Under Subia indigenous law, the water of the Chobe belongs to everybody. The Subia know about the median line in water between two banks. However, the maSubia and the baSubia on both banks of the river are the same ethnic group, and in Subia law, riverine median line is not a boundary. Natural resources as well as their conservation were shared reasonably by the riparian groups who lived near the resources. Thus it was equitable that the foreign judges sitting in The Hague should uphold the right of *mokoro* (dug out canoe) navigation. In accordance with Subia indigenous law, there should be no line of demarcation on a river for canoe users who had paddled on the waterways freely since time immemorial. This was a simple principle of law recognised by riverine ethnic groups. They did not need expert judges in Europe to explain riverine boundary to them at the end of the 20th century.

So the ICJ ended Namibia's nightmare. The newly independent Republic of Namibia had woken up in February 1991 to find that the Botswana Defence Force had occupied Kasikili / Sedudu Island. When the first air war against Iraq began, Botswana surreptitiously moved its troops on to the Island. The troops built barracks and constructed two observation posts on high ground on the north and south of the Island. They hoisted the Botswana flag on the bank of the northern channel. Thus Botswana claimed Sedudu and was exercising its territorial sovereignty over the uninhabited Island:

Botswana took this action without any discussion or consultation with the government of newly independent Namibia. This action therefore constituted aggression and a

¹ The ICJ is also known as the 'World Court'. It was established in 1946 by the United Nations¹⁰

unilateral use of force to change the status quo, in contravention of international law, the UN Charter, established diplomatic procedures ...²

The government of new Namibia was incandescent with rage. The issue of Kasikili / Sedudu had not been referred to by Botswana in spite of reciprocal state visits. There had been no border dispute with the newly independent state of Namibia, and no suggestion from the Botswana that the Island formed part of Botswana. The military spirit to fight over the waterlogged land was boiling over amongst the Botswana; they were not interested in Subia indigenous peace law theories, but in war.

The first report that reached Windhoek from the authorities in the Caprivi Strip alleged that Botswana patrol boats, with guns blazing, were patrolling the northern channel of the Chobe where the BDF troops were stationed and that the Botswana Defence Force were terrorising the maSubia tribesmen in *mokoro*, who were going about their normal business in the southern channel of the Chobe. Furthermore, that there was a large Botswana military presence on Kasikili Island.

Additional reports from the Caprivi Strip baffled the new government of Namibia. What should they do? Kick out Botswana by a full frontal attack? That would be a most unusual way of celebrating the first anniversary of independence. Immediately after Independence, Namibia, without any confrontation or fanfare, had settled its Orange River boundary dispute with the then apartheid South Africa. Walvis Bay on the Atlantic Coast was promptly returned to Namibia without litigation.

Here was Botswana burning for a fight. Is Kasikili worth fighting and dying for, after decades of long protracted liberation struggles against South Africa Defence Force? More often than not, for three to four months in the year Kasikili Island was submerged by heavy Zambezi floodwater and became a mass of floating Island greenery. From January to early April, the Chobe acts as a reservoir, and a natural flood control device for the overflowing Zambezi.

determine international law cases.

² Written pleadings, ICJ case concerning Kasikili / Sedudu. Reply of the Republic of Namibia Vol. I. p. 165.

The Chobe that meanders into Namibia has its source in the mountains of Angola where it is known as the Rio Cuando. In the partition between Eastern Caprivi and Mukwe, the Rio Cuando then becomes the Kwando. This same volume of water changes its name yet again to the river Mashi as it meanders into the Linyanti swamp and flows out as the Linyanti river into Lake Liambezi. Almost half-dry from evaporation as it tries to reach the Zambezi, where it gets some of its water supply during the floods, the Linyanti becomes patches of lagoons of stagnant water, famous for its mosquitoes. When the Zambezi is in full flood again, the Chobe reservoir water fills up the Linyanti. Thus the long Kwando / Mashi / Linyanti / Chobe river is one extraordinary river.

The Subia knew that the Chobe was not navigable in some parts and was therefore, not a cultural economic waterway for trade with the people in the Mukwe area. The South Africans of the apartheid era and their tourists as far as the Subia could remember used the southern arm of the river.

Kasikili / Sedudu is only a speck of an Island nearly four kilometres in length (1.5 sq. miles) and seven hundred metres wide. And Kasikili / Sedudu is not as big or as impressive as its famous neighbour, the Impalila Island (14km long and 3km wide) with its own landing strip used by big game hippo hunters.

The hippopotamus, the large 'river horse' spends the long hot afternoons in the water and surfaces at night on the Island. Captain Eason stated that during his travel, 'a contributory difficulty was the great number of hippopotami in the pools and to the west of the Liambezi generally. I continually had to shoot them in order to get forwards and beyond Simatis. I was rarely out of sight of them.'³

In the hunting season, rich fashionable hunters from Europe and America come to shoot the 'large river horses' and elephants, buffalo, eland and the *lechwe* that have almost disappeared; while the blood-thirsty professional big game hunters prefer to shoot crocodiles and other reptiles. The disappearance of the *lechwe* simply showed how tourists

³ Captain Eason's Report 5 August 1912, para 3.

with guns affect the environment and the bio-diversity of the Chobe-Zambezi basins. The large mammals do not recognise any territorial boundaries, and are not confined to any stretch of the riverbank or islands. During the rainy season the animals move away from the floodplains. In a study made of nine individual elephants with a satellite transmitter attached to each elephant, the elephants were tracked from Namibia into northern Botswana, Western Zimbabwe, Southern Zambia and Angola. It was recorded that some of the tracked elephants covered areas of about 5,500km during their annual movements.⁴

Tourism in the Zambezi floodplains is not for backpackers in spite of their enormous stamina, for this is a paradise for the big game hunters and Eros cruises. The modern big game hunters live in air-conditioned lodges, chalets and luxury boats with viewing platforms for non-hunting wives and mistresses. The camera tourists can also get a closer view of big games on Impalila and Kasikili / Sedudu Islands. The cruises, safari lodges, hunting lodges and chalets provide employment for the local people, gardening, cooking, cleaning, and serving of food and cold drinks and sale of local artefacts. Some tourist boats ply up and down the Zambezi from Katima to Kasane and Kazungula on the confluence of the Zambezi and the Chobe.

However, owing to disuse by the baSubia, part of the southern channel of the Kasikili / Sedudu Island has become silted and is full of impenetrable weed and colourful water snakes; it is not very useful for tourism.

Since time immemorial, some human beings have enjoyed living on islands, if they could find one, as though it was a form of protective shell from marauding human enemies without boats. Even the forty-seven square miles of the volcanic island of St. Helena in the middle of the South Atlantic near Namibia is inhabited. The British Isles, Channel Islands, Le Reunion, New Zealand, small islands in the North Atlantic, Berlangas to the Salvages are all inhabited. All over the known world some people live on sea islands and river islands. Accordingly, although

⁴ C. Craig (1997) The ELESMAF project. Report. Namibia Nature Foundation. And J. Mendelsohn

Kasikili / Sedudu Island is small and shaped like a pangolin, it is a rich, fertile land inhabited for hundred of years during the dry season. It is a living island that sustained the Subia aristocracy who spent the hot season on the island. Some of them claimed that the river air in Kasikili / Sedudu has healing properties, and that a certain green mould that thrives on the island after the floods was guaranteed to reduce high blood pressure when boiled and swallowed. The Subia understood the importance of conservation so that their grandchildren too could enjoy the fertile island. Why should human beings not live on Kasikili that is full of reedbuck and waterbuck and contains life-sustaining properties?

To reach Kasikili Island, the maSubia village aristocracy got around the floodplains by using their dugout canoes. The families who had been visiting Kasikili / Sedudu in the dry season before the British carved it out in 1890, had their own small plots of land in the rich silt deposit that is very easy to till; they grew maize and millet. They also sowed pumpkins and gourds in the fertile soil, and when they were sun-dried, the enormous gourds were used for storing water and the small ones were used as drinking cups. The maSubia regularly rebuilt their temporary homes using fine aquatic grass to thatch the roof. Sometimes grass was also used to construct large silos for storing the harvest, and bunches of grass tied together made comfortable mattresses. Some young children were lulled to sleep by the colony of birds perched on the reeds. The birds on the island must surely sing in siSubia as the women sang along with the birds. The island was home to many colourful river birds.

The maSubia men go out in their dugout canoes to catch fish, crustaceans and molluscs, a concentration of species found nowhere else, that they manage and conserve so that some would be around for another hundred years. Their catch is exported to Botswana, Zambia and Zimbabwe. The Zambezi bream is a delicious export commodity, sought after in fashionable hotels and restaurant with international clientele. The fishmongers in Kasane are riverine maSubia from the Caprivi.

The maSubia respect their riverine environment and the small *kasika* trees have been protected for ages. The maSubia conserved the animals

and fauna of Kasikili / Sedudu Island until it was time for them to migrate again inland on to higher ground in Kasika and Bukalo. With their dugout canoes lashed together, the men and women moved their worldly possessions and silos to the safety of the high ground in the hinterland. Their domestic animals swim across, and their young people swim alongside rounding up stray animals going in the wrong direction. Thus for centuries the maSubia travelled with the seasons to and from Kasika and Bukalo to Kasikili / Sedudu in their *mokoro*.

After the First World War (1914 – 1918) the League of Nations conferred a mandate 'upon His Britannic Majesty for and on behalf of the Government of the Union of South Africa'. The Union Government as a mandatory had full powers of administration and legislation over the Caprivi Zipfel. The Governor-General's Proclamation No. 12 of 1922 brought the Caprivi Zipfel under the administration of the Bechuanaland Protectorate from 1 January 1921 to 1929, and the laws in force in the Bechuanaland Protectorate were declared to be also applicable to the Zipfel. But the natives of the Caprivi Strip were not subjected to the payment of hut tax. The operation of the Bechuanaland Protectorate Hut Tax Proclamation No. 9 of 1900 was suspended by the High Commissioner's Notice, No. 22 of 1922. The maSubia insisted that they wished to be treated like everybody else in the Protectorate:

The natives in Bechuanaland protectorate are accustomed to taxation. Notwithstanding this the Bechuanaland Administration did not extend the usual taxation to the Caprivi Strip, and it is a very interesting fact that some time ago the natives wrote and asked to be taxed. From the fact that they were not being taxed like the Bechuanas across the border they inferred that the Government thought they were insignificant — or as they expressed it that they were not people.⁵

Accordingly, Chief Liswaninyana, the *Munitenge* of the Subia who was a reliable taxpayer had to inform Captain Neale, the Resident

Magistrate at Kasane, in Bechuanaland that he was moving his court to Kasikili Island for the season. Captain Neale recorded the exodus of the *Munitenge's* court to Kasikili / Sedudu.

It was also recorded that there was a primary school in Kasika in 1927.⁵ For several years in the dry season, the primary school children moved with their parents to and from the mainland to Kasikili Island until about 1958. Then Kasikili / Sedudu Island was abandoned after one of the alarming inundations of the Zambezi. The maSubia did not return to the island for several years. The mammals gratefully moved back, because the two-legged animals had moved out. But the South African two-legged animals would not let the animals be; they hunted the *lechwe* on Impalila and Kasikili to extinction. And as a result of the creation of Chobe Game Reserve in Botswana in 1960 to encourage the wildlife safari industry, the population of elephants on Kasikili / Sedudu grew. The South African Government then stationed hunters on Kasikili Island to cull the elephants that were rampaging and destroying crops in the Caprivi.

The South African Defence Force also had two bases in the Caprivi Strip. They used helicopters and patrol boats to collect natives from the floodplains who were arrested and charged as being SWAPO infiltrators and spies. Thus the use of Kasikili / Sedudu Island by the maSubia as a retreat gradually fell into disuse. The maSubia could not return to their dry season farmlands on the Kasikili / Sedudu Island for when the SWAPO war of liberation began the natives who were found on the Island were classified as guerrillas and terrorists and faced the death penalty.

⁵ The Report presented by the Government of the Union of South Africa to the Council of the League of Nations concerning the administration of South West Africa, 1929, paragraph 427.

⁶ Report of the Government of the Union of South Africa on South West Africa for the year 1927, p. 122. A grant of £43 was made from the Bechuanaland Protectorate Native Fund to the School at Kasika. In 1929, a grant of £32. 13s. 4d was made from the Bechuanaland Protectorate Native Fund to the School at Kasika, p. 67. Report of the Government of the Union of South Africa.

9.1 No Surrender of Sedudu

The Botswana national flag was flapping away on the post in the Kasikili / Sedudu Island and the maSubia on the Namibian bank of the Chobe looked on in awe. The patrol boats were there to deter them. Kasikili / Sedudu still looked like an island only that there were now troops and field guns instead of women and children.

How did Namibia miss all the signs? Satisfied with themselves for having achieved independence after a long struggle, the Namibians did not notice the signs of impending invasion of Kasikili / Sedudu. For nobody knew that the Batswana had designs on Kasikili / Sedudu:

'I told you how old I am', snapped an old man.

'I have never seen the Botswana authorities saying anything about Kasikili, but it's only now when we hear that. What brought about this issue?' he inquired.⁷

The maSubia of Namibia were horrified, accepting that there was going to be a war with the Batswana, they deserted Kasika and fled further inland. But war was not contemplated in Windhoek, capital of Namibia. The occupation of Kasikili / Sedudu was a Batswana bluff.

'What in Africa had possessed the Batswana to occupy the Island after a hundred years? Why was there a recrudescence of title to Kasikili / Sedudu in 1991, and not in 1966 after Botswana's independence? Why did Sir Seretse Khama, President (1966 – 1980) not claim Kasikili / Sedudu Island? Why did the occupation take place after Namibia's independence and not when South Africa occupied the South West Africa Protectorate? There were so many unanswered questions. The issue before the newly independent Namibia was how to arrive at a peaceful settlement without loss of life. Namibia has no intention of smashing Sedudu to get back Kasikili, not because they do not have the military hardware and ammunition, but because the ex-combatants had had enough of fighting. The survivors still feel the stench of death in their nostrils and grieve over their lost comrades. The South African Defence Force had captured hundreds of Namibian 'liberation activists' who were

⁷ Namibia Memorial, p. 77 n. 64.

rounded up and then forced into military aircraft. They were either strangled or given lethal injections and jettisoned into the Atlantic Ocean.⁸

The Batswana were being belligerent. The occupation of Kasikili was almost suicidal, but it paid off because Namibia wasted no time in sending the Deputy Minister of Home Affairs and the Caprivi Strip Regional Commissioner, the Rundu District Commissioner of Police, and the Inspector of Police from Katima Mulilo to Kasikili / Sedudu Island. The Namibian delegation was accompanied by a large contingent of Namibian Defence Force, the press and a team from NBC Radio Station. The Botswana District Commissioner, Acting Officer Commanding No. 7 Botswana Police, and Immigration Officers from Kazungula and Kasane District met the Namibian delegation. Both delegations went to Kasikili / Sedudu Island for a physical inspection in their own Police Patrol Boats flying their national flag.

After polite introductions and thanking each other profusely for showing up at such a short notice, the Deputy Minister of Home Affairs, Namibia, in very clear terms told the Batswana that their national flag hoisted up in Kasikili was violating Namibia's territorial integrity. Furthermore, that the two governments should meet to clarify the situation, as Namibia did not expect any of her quadripointal neighbours to engage in action of this kind.

The Batswana representatives were not amused. However, they told the Namibian delegates that they should follow correct procedure and channel the matter through their High Commissioner in Windhoek and their Ministry of External Affairs.

Shuttle diplomacy then ensued between the Ministry of Foreign Affairs in Windhoek, and the Ministry of External Affairs in Gaborone, capital of Botswana. Top diplomats in sharp business suits conveyed themselves from the two states to and from Gaborone to Windhoek for several weeks signifying nothing, because Botswana would not surrender Sedudu.

⁸ Court hearing in Pretoria. *The Times*, Thursday 4 May 2000, p 19.

The Batswana made their position diamond clear to the diplomats from Windhoek, that they were relying on the provision of The Anglo-German Agreement of 1 July 1890. Article III(2) provides that:

In South-West Africa the sphere in which the exercise of influence is reserved to Germany is bounded:

To the east by a line commencing at the above-named point, and following the 20th degree of east longitude to the point of its intersection by the 22nd parallel of south latitude, it runs eastward along that parallel to the point of its intersection by the 21st degree of east longitude; thence it follows that degree northward to the point of its intersection by the 18th parallel of south latitude; it runs eastward along that parallel till it reaches the Chobe; and descends the centre of the main channel of that river to its junction with the Zambesi where it terminates.

(Underlining added)

'Please notice ladies and gentlemen that from the intersection of the 18th parallel by the Chobe river to the Zambesi River the boundary follows the main channel of the Chobe river. The issue between us therefore is, which of the two channels is the main channel?' The Batswana asked.

Well, the east latitude and longitude did not mean anything to the Subia who have had free movement of their people and their *mokoro* for centuries before the Batswana drew a line in the water. This was not the recognised African customary law procedure of dispute settlement for Batswana Troop to station themselves on Kasikili / Sedudu Island. The maSubia of Namibia and baSubia of Botswana were brothers and sisters who were separated by colonial boundary and statehood. The maSubia concluded that by resorting to force of occupation of the Kasikili the Batswana were adopting uncivilised European ways of dispute resolution. The Europeans had fought several wars in their lifetime and killed millions of people because they could not resolve their dispute.

The Botswana District Regional Commissioner in Kasane, Botswana, then complained that the Regional Commissioner for the Eastern Region

in Caprivi Strip, Namibia, had told 'the communities living along the border that they are free to fish and cultivate the land on any side of the river as they wish'. Accordingly, Botswana intensified the patrol of the Island to restrain the maSubia.

But as the Botswana Defence Force continued to patrol Sedudu, and their flag fluttered over the Island, the Zambezi cruises, and the wildlife safari and sex safari industries also ground to a halt. Very rich tourists do not like trouble spots in Africa as they travelled only to have sun and fun and not to get involved in African politics. Accordingly, the safari lodges owned by South Africans were perilously vacant; the fun-loving owners cut their losses and disappeared.

The usual procession of the four-wheel-drive tourists brigade from 'Vic Falls' as the locals say, through the Chobe National Park, the Caprivi Games Park to Etosha and Cape Cross was reduced to a droplet. The big game hunters too had disappeared.

Gaborone argued that there was no 'policy for preventing tourist cruises from Namibia'. In spite of the tension and loss of tourist trade, they the Batswana stood by Article three, paragraph two of the 1890 Anglo-German Agreement. The article made Kasikili / Sedudu Island a part of Botswana. That, in short, was Botswana's position, and Sedudu stands. The flag and troops would remain on the Island.

Windhoek argued that they had not the slightest intention of claiming Sedudu, but Botswana should withdraw its military presence from the Island while the disputed ownership of Kasikili was still under consideration. The demarcation of Botswana and Namibia in the Caprivi Zipfel was over a hundred years old, and as successor state Namibia had inherited continuity of the boundaries from South Africa. Namibia's right to the Island since before the British carved it out in 1890 was not an issue.

Botswana was unimpressed with Namibia's argument.

Namibia recalled that after Independence on 21 March 1990, President Sir Ketumile Masire of Botswana had paid a state visit to Namibia in July. The two Governments had agreed to establish a Namibia-Botswana Joint Commission for Defence and Security because of the excellent

brotherly relations existing between the two states. Furthermore, they also recognised that they had a duty to strengthen and consolidate existing political, economic and social relations. The newly created joint institution would be known as the 'The Commission'. The Agreement between the two states came into force on 26 July 1990. Accordingly, Namibia now argued that 'The Commission' should examine the Kasikili / Sedudu boundary dispute.

In spite of the Commissioners' shuttle between Gaborone and Windhoek, and Windhoek and Gaborone, they could not shift Botswana from its position on Sedudu. The national flag was still flying on the Island and the troops did not budge. Botswana held its existing position and claimed sovereignty over Kasikili / Sedudu Island under the Anglo-German Agreement, 1890. Sedudu would not be relinquished. The Batswana reiterated that the basis of the occupation of Sedudu Island was Article III(2) of the Anglo-German Agreement of 1 July 1890. The '*Thalweg des Hauptlaufes dieses Flusses*' in English means 'the centre of the main channel of the Chobe river'. Again, Botswana argued that the channel of the river flows through the northern channel. There would be no surrender of Sedudu.

Botswana rebuked Namibia for the hostility of its media coverage of the Kasikili / Sedudu Island dispute, that the press in Namibia was inciting 'the people of Namibia against the people of Botswana'. The Batswana produced the newspapers and showed the Namibians:

Take for example, New Era of 26th March. Botswana guilty under International law!

Furthermore, Namibian television also carried reports 'by persons in position of authority', which were not conducive to good neighbourliness. Namibia should restrain those in positions of authority from fanning the fires started by television or press reports.

The Namibian Deputy Minister for Home Affairs had appeared on Namibian television asserting that Kasikili Island belonged to Namibia, and Botswana had accused Namibia of not taking the issue through the correct diplomatic channels, and secondly they were turning Namibians

against the Batswana. The Batswana could not understand why Namibia was adopting an adversarial attitude.

In spite of these complaints, Botswana refused to transfer its troops from Kasikili / Sedudu Island back onto the mainland, because as the Batswana argued, they had a right to possess Sedudu Island.

It soon became evident to both state parties that the boundary dispute should be taken away from the inexperienced hands of the negotiating 'Commission' and put into the learned heads of international lawyers in river island boundary litigation. Their 'Ministries of Injustice', as 80% of the people who had their own indigenous law christened the Ministry of Justice, were activated. Governing an African state with two separate legal systems (customary law and the imposed common and civil laws) is not easy. The politicians know that eighty percent of the mandate has no faith whatsoever in the imposed colonial law. They prefer to resolve their disputes under indigenous law. Although elite politicians show contempt for customary law and its adherents, they argued that they are justified in layering more international and civil laws as a quick route to modernisation.

Nevertheless, Botswana and Namibia produced their top international lawyers from their Ministry of Injustice, as well as academic lawyers from elite English and American Universities to interpret rules of international law that existed in the Anglo-German Treaty, 1890. In addition to the lawyers, experts in hydrology, geology and hydrogeomorphology were also required to determine the territorial alignment that was negotiated in 1889 by politicians in Britain and Germany; who were the super powers of the time.

However, before handing over Kasikili / Sedudu Island dispute to the international lawyers and experts, President Sam Nujoma of Namibia, in the forlorn hope of persuading Botswana to change its position, invited President Mugabe of Zimbabwe to mediate. During the apartheid era, Zimbabwe was the Chair of the former Frontline States. Zimbabwe was also on nature's spectacular super highway of 'Victoria Falls: Mosi-o-Tunya', to the Chobe National Park, Etosha Park, Petrified Forest, Cape Cross to the Namib; then to the Kalahari and Omaheke deserts and on to

the trans-Kalahari or trans-Caprivi highways and back to nature's aberration of the Victoria Falls. Some of the educated tourists who quietly influence the thinking of the stay-at-homes in Europe, by their measured intellectual discussion, have learnt to take Africa in their strides. They expected Botswana to go to war.

African public opinion meanwhile, had turned against President Masire of Botswana as they accused him of 'land grabbing, grabbing Namibian territory'. President Nujoma hoped that President Mugabe would skilfully resolve the river island dispute. But, there had been two peace sessions of consultations between President Masire, President Mugabe and President Nujoma. The first peace session had been in Gaborone, then at Arusha, in Tanzania. Nothing came of the peace sessions because Botswana relied on Article III(2) of the Anglo-German Treaty of 1890, and would not remove its patrol boats with mounted guns.

The non-politicians of Namibia and Botswana comforted each other reassuringly that the Kasikili / Sedudu Island dispute is a storm in a teacup. This was a storm between brothers and sisters, which could easily be settled in the *Ngambolo*. Until they were separated by colonial boundaries, the people of the Caprivi Strip were brothers and sisters. Accordingly, when Namibia gained its independence some Namibians were attached to Botswana Government Departments for work experience and the two countries continued to co-operate.

Most humans have had boundaries of some sort since time began, but in Africa there had been no point whatsoever in defending a boundary with the lives of human beings, until gold and diamonds were staked out by the colonial powers.

Throughout the years of Namibia's occupation by South Africa, Botswana had been a strong advocate of Namibia's self-determination. It was Botswana that provided a refuge and succour to those fleeing persecution in the territory and Botswana had borne the brunt of South Africa's brutality against South West Africa, so Botswana was vilified as a bad and unco-operative neighbour and therefore unworthy of western support. Military raids were launched against Botswana under the pretext of flushing out SWAPO guerrillas and one of the worst raids was the

attack on Gaborone that killed twelve people and destroyed several properties. Again on 19 May 1986 helicopters of the South African Air Force attacked the suburbs of Gaborone. They killed a schoolteacher, a footballer and injured several people. They also attacked the Botswana Defence Force Barracks and injured many soldiers. Similar raids were launched against Zambia and Zimbabwe on the same day. As a result of the raids, the Commonwealth Eminent Persons' Group had to cut short its mission to South Africa that was intended to facilitate dialogue amongst the South African antagonists.⁹

It is a sad commentary that, today, Botswana and Namibia find themselves at loggerheads over a boundary dispute inherited from the days of apartheid South Africa, which was the *de facto* power in Namibia until 21 March 1990. It is not beyond the capacity of apartheid South Africa, that when anticipating its own demise, it should decide to bequeath its own legacy of instability to haunt independent African countries long after it had been eradicated as an unworkable and unsustainable system of government.¹⁰

Presidents Nujoma and Masire recognised the 'necessity of settling by peaceful means and within a strictly African framework, all disputes between African States'. This could be carried out under the principles of the Organisation of African Unity, 1964. However, Namibia argued vehemently that Botswana's occupation of Kasikili / Sedudu was contrary to the OAU policies of 1964 under Resolution AGH / RES 16(1), which provides that, 'All Member States of the OAU pledge themselves *inter alia* to respect the frontiers existing on their achievement of national independence'.¹¹

Furthermore, that Botswana had violated the UN Charter, Article 2(4) that 'prohibits the use of force against the territorial integrity of another state'.

⁹ Counter Memorial of the Republic of Botswana, Vol. I, p. 47.

¹⁰ Counter-Memorial of the Republic of Botswana, Vol. I, p. 52.

¹¹ The principle of *uti possidetis juris*: a continuity of boundaries on the succession of a state.

Botswana was dismissive of Namibia's legal whinging.

In the early sixties, The Assembly of Heads of State and Government at its First Ordinary Session, held in Cairo, from the 17 – 21 July 1964, solemnly declared that all Member States pledged themselves to respect the frontiers existing on their achievement of national independence. The African Heads of State had recognised that the border problems would constitute 'a grave and permanent factor of dissension'. In another hundred years, borders were going to be the anticipated flash points according to the economic situation of the bigger states that might claim the smaller states. Borders were going to be contentious within the new states and their neighbours.¹² Therefore, all Member States had to 'respect the sovereignty and territorial integrity of each State and its inalienable right to independent existence'.

9.2 Three Presidents in a Boat

Thus President Sir Ketumile Masire, President Robert Mugabe and President Sam Nujoma were joined by their heads of Special Branch, the Senior Private Secretaries to the Presidents, their Special advisers, the local Chiefs of the maSubia, businessmen and presidential hangers-on. Some local celebrities from the three states also came along to be seen as supporting their president. Each presidential delegation was enormous.

As it was Sunday, the local children and men and women in their best church clothes came to the defence of their President and to cheer. Some brave backpackers from the Victoria Falls in spite of dire warnings from their governments to avoid African trouble spots thronged Kasane in Botswana to see the three presidents. From the Victoria Falls and Cape Cross in Namibia, organised coach loads of tourists from many countries were deposited in Kasane. Some were wearing designer sunglasses and shorts and their legs were very white. There were several trekker caravans from South Africa.

¹² *Burkina Faso v Mali; Eritrea v Ethiopia; Nigeria v Cameroon; Botswana v Namibia; Benin v Niger.*

The maSubia of the Caprivi and the baSubia of Botswana came in full force. This crowd with black and brown legs, were the same cultural ethnic group since time began; they had inter-married as well as shared years of pain and happiness with each other until they were separated by colonial boundaries and political problems.

As the black concourse knows, Sam Nujoma was the fearless leader of SWAPO who became President of Namibia in 1990. His people affectionately christened him 'Comrade Sam'. The President of Botswana had been Knighted Sir Quete Ketumile Joni Masire, and he too is tenderly known as Sir K: 'Sacky'. Mugabe is called Comrade President. Their local press and broadcasting corporations called them President, but the people called them Comrade Sam, Sacky and Comrade President.

Accordingly, when Sacky, Comrade Sam and Comrade President appeared there was thunderous applause for them. The people did not blame Comrade Sam and Sacky for the Kasikili / Sedudu quarrel - why should they? The Presidents did not create the territorial boundaries. They knew however, that if the negotiations should fail, the next option was war by the Batswana and both sides would kill off each other's young and virile male population.

The three presidents and the delegations would do a physical inspection of 'the area of Kasikili / Sedudu with a view to obtaining first-hand information on the boundary dispute'. Comrade Sam, Sacky, and President Mugabe, and the special delegation of advisers took a large boat from the Game Lodge for an inspection of the Kasikili / Sedudu Island. As a precaution they were also accompanied a large support boat, numerous rubber boats and *mokoro*. The hippos were well behaved, and kept their distance from the three presidents in the boat and from their flotilla.

The presidents' boat followed the arm of the river that flows around the Island to the west and north and some sections of the river were very rough. At the far end of the Namibia bank, the elegant *Zambezi Queen* was anchored, and on the Botswana side the large *Mosi Tunya*, the property of the Chobe Game Lodge, was moored. The flotilla passed Kabuta village on the confluence of the Chobe and the Kasikili rivers.

Kabuta is the crossing stage to Kasikili and the locals came out to wave to their distinguished riverine guests. Usually, people in *mokoro* from Botswana stopped at Kabuta on their way inland for various family gatherings with their maSubia relatives.

When the presidential party finished circling the disputed Kasikili / Sedudu Island, they had a very good lunch of Zambezi bream. They agreed that the boundary dispute should be resolved peacefully, it was a storm in a teacup. The Namibia and Botswana delegations examined maps, charts, plans, and diagrams relating to the Chobe, and the Anglo-German Agreement of 1890.

Botswana and Namibia placed their map evidence of title before President Mugabe. The presidents and their advisers knew that the Treaty draftsmen describing the British and German sphere of influence had no idea of the configuration of the Chobe River. Their early cartographers had relied on the accounts of travellers, traders, missionaries and explorers. Anderson, (1861) Bradshaw (1881) and Livingstone, (1857) had all agreed in print and lectures that the Chobe river existed. They had identified the Chobe and Kasikili Island, but there were no reliable details of the bifurcation. No one had navigated the length of the Chobe either for commercial purposes or even as a boundary.

The eminent presidents and their delegations re-read the English and German versions of the disputed Treaty of 1 July 1890 that determined the British and German sphere of influence in present-day Botswana and Namibia several times. The Treaty was undersigned by:

- Sir Edward Baldwin Malet, Her Britannic Majesty's Ambassador Extraordinary and Plenipotentiary;
- Sir Henry Percy Anderson, Chief of the African Department of Her Majesty's Foreign Office;
- The Chancellor of the German Empire, General Leo von Caprivi;
- The Privy Councillor in the German Foreign Office, Dr Krauel.

have, after discussion of various questions affecting the Colonial interests of Germany and Great Britain, come to the following Agreement on behalf of their respective Governments:

Article I: ...

Article II: ...

Article III:

In South-West Africa the sphere in which the exercise of influence is reserved to Germany is bounded:

1. To the south by a line commencing at the mouth of the Orange River, and ascending the north bank of that river to the point of its intersection by the 20th degree of east longitude.
2. To the east by a line commencing at the above-named point, and following the 20th degree of east longitude to the point of its intersection by the 22nd parallel of south latitude, it runs eastward along that parallel to the point of its intersection by the 21st degree of east longitude; thence it follows that degree northward to the point of its intersection by the 18th parallel of south latitude; it runs eastward along that parallel till it reaches the River Chobe; and descends the centre of the main channel of that river to its junction with the Zambesi, where it terminates.

It is understood that under this arrangement Germany shall have free access from her Protectorate to the Zambesi by a strip of territory which shall at no point be less than 20 English miles in width.

The sphere in which the exercise of influence is reserved to Great Britain is bounded to the west and north-west by the above-mentioned line. It includes Lake Ngami.

The course of the above boundary is traced in general accordance with a Map officially prepared for the British Government in 1889

Artikel III:

In Südwestafrika wird das Gebiet, welches Deutschland zur Geltendmachung seines Einflusses vorbehalten wird begrenzt:

1. *Im Süden durch eine Linie, welche an der Mündung des Orange-Flusses beginnt und an dem Nordufer des Flusses bis zu dem Punkte hinaufgeht, wo derselbe vom 20 Grad östlicher Länge getroffen wird.*
2. *Im Osten durch eine Linie, welche von dem vorher genannten Punkte ausgeht und dem 20 Grad östlicher Länge bis zu seinem Schnittpunkte mit dem 22 Grad südlicher Breite folgt: die Linie läuft sodann diesem Breitengrade nach Osten entlang bis zu dem Punkte wo er von dem 21 Grad östlicher Länge getroffen wird, sic führt darauf in nördlicher Richtung den genannten Längengrad bis zu seinem Zusammentreffen mit dem 18 Grad südlicher Breite hinauf, läuft dann östlicher Richtung diesem Breitengrade entlang, bis er den Tschobe-Fluss erreicht und setzt sich dann im Thalweg des Hauptlaufes dieses Flusses bis zu dessen Mündung in den Zambese fort, wo sie ihr Ende findet.*

Es ist Einverständniss darüber vorhanden, dass Deutschland durch diese Bestimmung von seinem Schutzgebiete aus freien Zugang zum Zambesemittels eines Landstreifens erhalten soll, welcher an keiner Stelle weniger als 20 englische Meilen breit ist.

Das Grossbritannien zur Geltendmachung seines Einflusses vorbehaltene Gebiet wird im Westen und Nordwesten durch die vorher bezeichnete Linie begrenzt. Der Ngami See ist in dasselbe eingeschlossen.

Der Lauf der vorgedachten Grenze ist im Allgemeinen nach Massgabe einer Karte wiedergegeben, welche im Jahre 1889 amtlich für die britische Regierung angefertigt wurde.

The distinguished delegates could not find anywhere in the treaty where the boundary line between German and British territory was established. The treaty firmly stated that the German sphere of influence was 'the centre of the main channel of the Chobe River', not the legal

status of Kasikili / Sedudu. The treaty was about German sphere of influence not about territorial boundary of Bechuanaland.

Then the argument turned to what is the centre of the main channel in the treaty? The German version reads, '*Thalweg des Hauptlaufes dieses Flusses*'. What did the original German and British negotiators of the 1890 treaty mean by Article III(2)? The learned advisers had different interpretations.

Namibia claimed that it had a better right to possess Kasikili according to the rules that existed when the boundary was demarcated. The original idea of Chancellor von Bismarck and his Advisers in 1889 was that from the Zipfel, Germany would have access to her East Afrika territory and the Indian Ocean. Thus, the main channel was in the south of Kasikili. Accordingly, the '*Thalweg*' or main channel should be determined as it was in the 1880s and the 1890 Treaty when the strip was carved out under the Anglo-German Agreement.

Botswana would have none of that. This time round, Botswana's Special Advisers did not dwell on the interpretation of 1890 Treaty, but explained the modern development of the occupation of Sedudu Island. Some honourable South African businessmen, who had constructed a few delightful tourist chalets along the Namibian bank of the Zambezi opposite Kasikili / Sedudu Island, had also planned to build a couple of tourists chalets on Sedudu Island. How best could the fragile flora and fauna of Sedudu Island be protected? Sedudu Island is not Namibian territory and its biodiversity should be protected from tourist chalets. The Sedudu Island is an integral part of the movement of wild animals from the Chobe National Park and the Zambezi.

According to Namibia, the ancient maSubia arrived first on the Kasikili Island and their ancient title was not negotiable. Even Captain Eason of the Bechuanaland Protectorate Police described in his expedition up the Liyanti or Chobe river that the 'natives living at Kasika in German territory are at present growing crops on it'.¹³ The baSubia of Bechuanaland had neither lived nor planted anything on Kasikili Island.

¹³ Capt. Eason's Report, dated 5 August 1912 filed in the Archives in Gaborone, p. 3. Part II.

and had not used the South River channels. What title did Bechuanaland have before the present occupation in 1991, the maSubia of Namibia asked? If the baSubia of Botswana had any title after 1890 then it was lost, by atrophy of disuse, for Bechuanaland had acquiesced to the maSubia using the Island since 1890. Thus, Namibia had sovereignty by prescription, acquiescence and recognition over Kasikili / Sedudu Island.

In order to help with the interpretation of the Anglo-German Treaty of 1890, Namibia was instructed to make a presentation. Namibia adduced old German and English maps as corroborative evidence of the occupation of Kasikili / Sedudu. The occupation was well known. Namibia's contention was that the southern channel of the Chobe River around Kasikili Island is the Anglo-German boundary.

Namibia presented a chronological survey of the maps of the area:

- 1) German maps, Franz Seiner's maps
- 2) Maps produced by the German Imperial Residents Kurt Streitwolf and von Frankenberg
- 3) British official maps
- 4) South African official maps and
- 5) Botswana official maps
- 6) The United Nations maps

The presidential trio and their advisers inspected the maps to determine if they were of probative value and whether the northern or the southern channel was or contained the main channel in 1890. If the northern channel is the main channel, then Sedudu belongs to Botswana, but if the southern channel is the main channel, then Kasikili is part of Namibia. Where the deepest sounding of the channel is, determines the boundary and ownership of the Island. The maps did not indicate anything to the trio.

Namibia's presentation of Seiner's map, *Karte des Gebiets zwischen Okavango und Sambesi (Caprivi Zipfel)*, was the earliest published map that appeared in *Mitteilungen aus den Deutschen Schutzgebieten, Band XXII* in 1909, the '*Okavango und Sambesi*'. Franz Seiner was an Austrian and an expert on German colonies in Afrika. He had carried out a survey of German Barotseland in 1905 - 1906, even before Captain

Kurt Streitwolf was appointed to administer the Zipfel. Seiner's map was widely used by German administrators in South-West Africa and in Berlin. The British in Bechuanaland had also consulted it.

The cartographer's map on display indicated the boundary by a fine solid red line backed on the interior by fine red hatching, 'the hatching clearly covers Kasikili Island', placing it unequivocally in German South West Africa. On the map, Kasikili was named Sulumbu Island, after the Headman. Thus, 'Kassikiri' was strictly within German South West Africa.¹⁴

Then there was the map made by the Imperial German Residentur Kurt Streitwolf when he surveyed the territory in 1909. Streitwolf had visited Kasikili several times and had used the local maSubia names on the German side of the Island. He drew two maps of the district that were attached to his book.¹⁵ He was the local administrator who exercised state authority over Kasikili. Streitwolf depicted Kasikili within the German bank of the river Chobe

Hauptmann Viktor von Frankenberg, the last Imperial Resident also produced a map enclosing 'Kassikiri' within the territory of Caprivi Zipfel. He accepted that Kasikili Island was within his jurisdiction: accordingly, his map did not bother to show any boundary line drawn in the Chobe River. But Kasika village was identified as 'Schickamatondo kraal'.

Captain Eason relied on Streitwolf's map during his investigation of the Chobe. After the First World War the South African government copied Streitwolf's map in their first attempt to map the Caprivi Zipfel. Streitwolf's map and Frankenberg's maps were created a couple of years after the 1890 Treaty by men who knew and administered the territory. According to the eminent Schutztruppe officers, the southern channel was the treaty boundary.

These specific maps designed by the imperial residents and distinguished officers, Streitwolf and von Frankenberg surfaced again

¹⁴ Memorial of the Republic of Namibia. Vol. I Paragraph 293, Fig.10.

¹⁵ K. Streitwolf (1911) *Der Caprivizipfel*.

when Hitler became Chancellor in 1933. Hitler had declared that his new Germany would last a thousand years, and that The Treaty of Versailles had robbed Germany of her African colonies. Hitler demanded that Germany's colonial territories should be returned and that the Treaty of Versailles should be thrown into the scrap heap of history. Versailles was extinct.

Accordingly, Hitler exerted pressure to repossess her colonial territories especially her German South West Africa colony stolen by the Supreme Council of Allied and Associated States in 1919. He added that Germany should not forget what blind hate had stolen from her. The thousands of Germans who had settled themselves and their families in South West Africa and had no wish to return to Deutschland, clamoured for the return of German South West Africa. The Germans in the homeland argued that Germany 'required colonies in order to have territory where at least a part of her surplus population may settle' once again:

The most priceless possession on earth is our own people, long live our people. Germany is known to keep herds of tame exiles browsing on foreign pastures; and the mere counting of so much head of cattle could always create (an) ... international quarrel.¹⁶ The herds of tame exiles in GSWA were frighteningly vociferous.

German Officers were still smarting from the humiliation of Versailles, and Hitler had noted in *Mein Kampf*:

let us make up our minds that we shall never win back the lost territory by solemn invocation of the Lord, or by pious hopes based on the League of Nations, but only by force of arms ... for suppressed countries are not won back to the bosom of the common Reich by flaming protests, but by the stroke of a mighty sword ... To forge this sword is the task of the domestic policy of a nation.¹⁷

¹⁶ G. M. Cockram (1976:166).

¹⁷ G. M. Cockram (1976:173).

On 13 September 1937 Hitler declared that: 'we have a moral right to the colonies which belonged to us before the war'. Germany pressed her claims for the return of her African colonies. Whether or not this was to appease the Germans, the British War Office produced a map published in 1933; this showed Kasikili Island to be part of the Caprivi Zipfel. The name Sedudu Island was not on the map:

Although it was compiled from existing sources, it was a new map, and the detail for the Chobe river area was based on aerial photographs taken in 1925 by the Kalahari Reconnaissance, one of the first major aerial photographic efforts in southern Africa ... Thus, that map was in general use in Bechuanaland until 1965 ... only a year before Botswana independence.¹⁸

From the point of view of imperial defence, South Africa and Great Britain would not knowingly have interposed a powerful German foothold between the Union of South Africa and East Africa; 'it would surely be running risks with Italy on the other point of Kenya. ...'

However, during the Second World War after the battle of France, the Germans humiliated the French by a triumphal parade through the historic route of the ancient city centre of Paris. The German General Staff hauled out Kurt Streitwolf's map for *Planheft Afrika* for their African territorial claims, but it was too early, as Germany lost the Second World War. The Versailles Treaty was not after all thrown on the scrapheap of history. And that was the end of the German territorial claim to German South West Afrika.

Had Germany won the Second World War, Article III(2) of the Anglo-German Agreement of 1890 provided that, 'The course of the above boundary is traced in general accordance with a map officially prepared for the British Government in 1889'.

It is understood that under this arrangement Germany shall have free access from her Protectorate to the Zambesi by a

¹⁸ Memorial of the Republic of Namibia. Vol. I, p. 125.

strip of territory which shall at no point be less than 20 English miles in width ...

The intention of the German draftspeople had been to get to the Zambezi from the shortest distance, which was the southern channel and not through the long bifurcation of the northern channel. The Agreement of 1 July 1890 'contains no specific rules on the boundary of the German Zambesi'. '*Das Abkommen vom 1 Juli 1890 enthält keine genauen Bestimmungen über die Grenze des deutschen Zambese-Gebietes*'. As far as German administrators of the Caprivi were concerned, the meaning of 'main channel' in Article III(2) is the southern channel.

It was the British that produced the 1889 Map referred to in Article III of the 1890 Treaty, and reproduced by Hertslet in the Map of Africa by Treaty. This was the British War Office map of the Protectorate, 1933, used in Bechuanaland until a year before independence. 'The official maps of the Bechuanaland Protectorate, used for all government purposes as well as by the general public, clearly exclude Kasikili Island from the territory of the Protectorate and assign it to Namibia'. The maps show a boundary to the south of the Chobe. Sketch maps of Bechuanaland protectorate, of 1912, 1913, 1914, all show a boundary south of the Chobe river.

In a letter from the Foreign Office to the Colonial Office:

Sir E. Grey considers that the adoption by the German Government of this line of argument indicates that they do not appreciate the fact that the topographical information at the disposal of Sir P. Anderson and Dr Krauel, the negotiators of the Agreement was inaccurate. As Mr Harcourt is aware, Andara was believed in 1890 to lie considerably more than twenty miles north of latitude 18° S. but it appears from a despatch from Sir P. Anderson, enclosed in Sir. E. Malet's despatch no. 77, Africa, of 1890⁺ (which is no doubt in the possession of your Department) that as one map brought the Portuguese sphere south of that latitude, Dr Krauel suggested the insertion of a clause assuring to Germany access to the Zambezi by a strip not

less than twenty miles in breadth. According to the map used by the Commissioners at the time, which is preserved in this Department, the provision actually embodied in the Agreement was more favourable to Germany than one merely giving Germany a strip twenty miles broad.

Sir E. Grey would be glad to know whether, in view of the strength of the position of His Majesty's Government in this matter, Mr Harcourt considers that the question of the proper interpretation of the Agreement should be referred to arbitration.¹⁹

There were also South African maps as explained earlier. South Africa had exercised military control over South West Africa, and had produced maps for routine administration immediately after the First World War. The early map followed Streitwolf's copy, but maps produced later illustrated the Island of Kasikili without naming it. In 1945, the South Africa Defence Force Ordnance Survey produced a map, and the boundary in the map followed the southern channel, thus including Kasikili Island in South West Africa. Bechuanaland had not objected protested or expressed reservations with South Africa for placing Kasikili in South West Africa territory. These maps were consistent with German maps and showed the boundary between South West Africa and Bechuanaland running in the southern channel of Kasikili Island.

Captain Eason in his report also noted that 'it was not possible to ascertain whether a particularly heavy flood changed the course of the river between 1890 and 1912', that floods had occurred in 1899 and in June and July of 1909. River channels can change. 'If the main channel of the river was ever situated to the south of the Island, it is probable that erosion in the Sidudu Valley has caused the partial silting up of the southern channel'.

Namibia then produced many British maps that were valid in Bechuanaland Protectorate until 1965. Only maps produced by Botswana in 1975 after its independence in September 1966 showed for the first

time the riverine boundary of west and north of Sedudu Island eighty-five years after the Anglo-German Treaty.

The United Nations also terminated the mandate over South West Africa in 1966 and assumed *de jure* government of Namibia through a newly created UN Council for Namibia of which Botswana was a member.²⁰ Several maps were produced but they were far too small to show Kasikili Island. But a 1985 large format map showed Kasikili Island as part of Namibia ... the territory is shown by hypsometric tinting that clearly covers Kasikili Island. 'The most official maps produced and used by Germany, Great Britain, South Africa and the United Nations were all large enough in scale to show Kasikili Island the boundary around it ... constitute evidence of an unbroken sequence ... (with the exception of Botswana after 1974) showing the boundary in the southern channel of the Chobe and placing Kasikili Island in Namibia'.²¹ Namibia thus concluded its map presentation.

The Batswana commenced their presentation in agreement that they had occupied Sedudu. The occupation however, did not entail the levying of game or bird licences on the riverine people, or licensing their *mokoro*, building of schools, hospitals, roads, post office, nothing: simply occupation of the Island by the troops. The Island was now reserved for the Botswana Defence Force, and the protection of the flora and fauna. The mainland of Botswana and the river islands were full of what the Colonial Proclamation described as royal game or protected animals: cheetah, Chobe bushbuck, Defassa waterbuck, eland, elephant, giraffe, hippopotamus, *klipspringer*, *oribi*, *puku*, *rhebok*, rhinoceros, roan antelope and sable antelope. The animals wished to acquire more territory, but not the people of Botswana.

Botswana was thoroughly unimpressed with Namibia's boring map evidence that were useless without riverine topography. Maps could only

¹⁹ Letter, Foreign Office to Colonial Office, 21 December 1910. (PRO. CO 879 / 102 29101. No. 139. Memorial of the Republic of Namibia, Vol. IV, Annex 43, p. 169.

²⁰ Official Records of the General Assembly, Fifth Special Session, Supplement No. 1, document A / 6657. G.A. Res. 2248(S-V), 19 May 1967.

²¹ Counter-Memorial of the Republic of Namibia Vol.I, p. 81.

provide meagre assistance and this was the view that was cautiously adopted in the Frontier Dispute Burkina Faso / Mali case (1986):

Whether in frontier delimitations or in international territorial conflicts, maps merely constitute information which varies in accuracy from case to case; of themselves, and by virtue solely of their existence, they cannot constitute a territorial title, that is a document endowed by international law with intrinsic legal force for the purpose of establishing territorial rights.

Botswana argued that there was a danger of relying too much on map evidence, that the issue to be determined should be the meaning of the phrase 'the main channel' of the river Chobe in Article III(2) of the Anglo-German Agreement 1890, translated as the '*Thalweg*' '... it runs eastward along that parallel till it reaches the river Chobe, and descends the centre of the main channel of that river ...'

The main channel as far as Botswana was concerned was the navigable northern and western channel of the Chobe around Sedudu Island, and that this northern channel was the main channel when the treaty was signed in 1890.

No matter, Botswana too had thirty-seven historical maps ready for presentation to the presidential trio and their advisers. The maps were sorted into six categories. They could match Namibia's map presentation, map for map, but they would prefer to rely only on Article III(2) of the Agreement. Which of the two channels enclosing Sedudu Island is the main channel? No line was drawn in water to demarcate the boundary.

- 1) Maps contemporary with the Anglo-German Agreement
- 2) Maps published by the German colonial administration
- 3) British official maps
- 4) South African official maps published in 1949 or later
- 5) Botswana official maps
- 6) Third State maps

Botswana decided to make short shrift of the 1889 British War Office Map prepared by the Intelligence Division used in The Anglo-German Agreement. 'Its scale ... was far too small to depict any relevant

information concerning Kasikili / Sedudu Island and its surrounding channels, or to locate the boundary midstream of the Chobe river'. On the map, the boundary along the Chobe is shown by means of a broad red band. The map thus provides no evidence whatsoever of the precise position of the main channel of the Chobe either in the vicinity of Kasikili / Sedudu or elsewhere'.²²

Furthermore, asserted Botswana, the 1889 Map was not part of the 1890 Agreement. The 1889 Map 'was not annexed to the Anglo-German Treaty of 1 July 1890, and does not form an integral part of it'.²³ The Chobe river on the 1889 Map was lifted from Dr Bradshaw's map of 1881 prepared for the Royal Geographical Society. The map showed geographical features of that part of Africa, and the Chobe river, obviously, but no boundary. The map had absolutely no significance for the Kasikili / Sedudu dispute.

In the 'improved version of serial 4', the War Office Map of 1891, which Rushworth states was 'the map ... thought to be the Treaty map,' the boundary along the Chobe was broad red hatchings, spreading a mile or so in width along both north and south banks of the Chobe river. It did not show the 'main channel of the Chobe'. The map should be dismissed out of hand, asserted Botswana.

Again, the Map of 'Matibililand' and Adjoining Territories of 1889 did not relate to the Anglo-German Agreement. The channels were not surveyed before the 1890 Agreement.

In the *Kriegskarte von Deutsch-Sudwestafrika* 1904 map, the southern channel is barely visible, and 'Kasikili / Sedudu indicated as Solumbu's Island'.

Botswana reminded Namibia that Seiner was not a German official, and Seiner did not visit the 'Chobe area and used Bradshaw's maps' as he acknowledged.

Bradshaw (1881:256) had claimed that he drew this map from memory and also that he did not visit the northern channel of the Chobe at Kasikili

²² Memorial of the Republic of Botswana. Vol. p. 116.

²³ Botswana Counter Memorial. Vol. I p. 221.

/ Sedudu Island. Accordingly he depicted the route of the northern channel with a pecked line. Here was Dr Benjamin F. Bradshaw throwing out Namibia's map evidence:

The accompanying map of the Chobe river is taken for about 40 miles up from its mouth and drawn from memory, as I had no instruments with me, and went into that part of the country more with the intention of hunting and obtaining natural history specimens, than making geographical explorations, but having travelled more or less for the last six years either along the bank of the river or in a boat, its peculiar course naturally made a very great impression upon me, more especially as I have been living at nine different places along its course, for periods varying from two weeks to more than four months. The portions of the river not coloured I have not visited, but I think the supposed course marked to be about the correct one.

According to Botswana, this did not constitute proof that it was expert authoritative map evidence. The scale of the map in Schultz and Hammar's route between Chobe and Okavango Rivers was too small to be of value. It had no role as map evidence.

As for the maps published by Schutztruppe Kurt Streitwolf and Viktor von Frankenberg, the German imperial residents, they would claim 'Kassikiri,' as German territory, wouldn't they? Even though their maps show the course of the river, and the northern channel but no island and no boundary marked on their maps. Streitwolf reported that after his arrival in the Caprivi on 25 January 1909, he travelled by boat down the Chobe River in January 1909 and made no mention of an island. How could such a map be evidence of the Resident's jurisdiction?

As for the British and South Africa maps, continued Botswana, the maps were thoroughly unreliable as the boundaries contradicted each other, and the Island is not visible. The British War Office Map of Bechuanaland Protectorate, 1933 showed:

the boundary as an 'intercolonial' not as an 'international' boundary. Furthermore, the map is a compiled map produced

by technical experts from previous maps in the absence of reference to legal territorial questions. The fact that the entire alignment of the boundary along the Chobe is indicated south of the river establishes that the mapmaker had no interest in a precise representation of a boundary following the main channel of the river ...²⁴

Namibia could not let Botswana go unchallenged. 'Whether "intercolonial" or "international" the boundary marked the line between two territories under different sovereignties. In the case concerning the Frontier Dispute Burkina Faso / Mali, the Court held that under the principle of *uti possidetis*, intercolonial and even intracolony administrative boundaries are to be recognised as the international boundary between successor independent states.'²⁵

Botswana submitted that the maps relied on by Namibia were not relevant to the issue, quoting Judge Fitzmaurice in *The Temple of Preah Vihear* that 'a mere published sheet or atlas page would, in itself, have no binding character for the parties'.

Botswana explained that the boundary dispute between brothers would never have arisen if it had not been for the shooting incident between the Botswana Defence Force and South Africa Defence Force in October 1984. South Africa had protested that ANC activists attacking South Africa were using Botswana as a springboard. Botswana had always resisted pressure from South Africa to hand over ANC and SWAPO guerrillas. Why should they?

However, on 25 October 1984, the Botswana Defence Force opened fire on the South Africa Defence Force patrol boat that Botswana claimed was on their side of the Chobe. Three South African soldiers were wounded. Although the SADF were 'young, hot-headed inexperienced men' they had not violated Botswana's territorial integrity when they were shot at.

²⁴ Memorial of the Republic of Botswana. Vol. I, p. 120.

²⁵ Counter-Memorial of the Republic of Namibia. Vol. I, p. 71.

In order to prevent further accidental shooting of soldiers, a meeting was quickly convened on 30 October between the commanders of the two Defence Forces at the boundary where the shooting occurred.

During the meeting it was shown that on the map used by SADF, the sector was the territory of South West Africa. The map showed the southern channel of the Chobe as the boundary of Botswana. Whereas the map produced by Botswana showed that the main, northwest channel of the Chobe was part of Botswana's territory. Brig. Khama of Botswana Defence Forces and the SWA Local Commander of Sector 70 agreed that the matter should be referred to the politicians to sort out the boundary.

Meanwhile, 'to prevent a repetition of the incident, it was resolved ... that the BDF would patrol south of Sidudu, while the SADF would patrol to the north of it. This interim measure will only apply until such time as high level discussions could take place in order to resolve the matter'.²⁶

However, Botswana refused to negotiate with South Africa because South Africa's *de jure* authority over SWA had ended in 1966. The International Court of Justice had transferred South Africa's authority over SWA to the UN but South Africa would not let go, declining to relinquish control over SWA.

At the OAU Summit at Addis Ababa on 12 November 1984, Botswana's Minister for External Affairs met Comrade Sam, who was the SWAPO President and they discussed the boundary. Comrade Sam explained that as a Liberation Movement, SWAPO did not have jurisdiction to negotiate the border dispute. Botswana then had to consult with the UN Council for Namibia and it was agreed that the UN should be briefed on the boundary dispute.

A meeting was held between Botswana and the Republic of South Africa in Pretoria on 19 December 1984, to discuss the differences in the interpretation of the Botswana / Caprivi boundary in the Chobe river. It was agreed that a joint survey should be undertaken to determine whether the main channel of the Chobe river is located to the north or to the south of Kasikili / Sedudu Island. The Joint Botswana / South Africa Team of

²⁶ Memorial of the Republic of Namibia. Vol. IV, Annex 84, p. 329.

Experts 'were never asked to demarcate an international boundary but "to determine whether the main channel of the Chobe River is located to the north or south of the Sidudu Island ..." The joint team confirmed that the main channel is located to the north of the Island'.²⁷

Namibia then argued that according to the letter from the South Africa Director General of Foreign Affairs, 27 November 1984 which states 'the interim arrangement that the BDF patrol south of Sidudu and the SADF north of it could lead to the argument that Botswana's sovereignty over Sidudu was confirmed through customary law:

It is therefore requested that you immediately liaise with the Botswana Government through diplomatic channels in order to:

- a) Confirm that the border lies south of Sidudu
- b) Clarify any other differences in interpretation between the RSA and Botswana regarding the Caprivi border.
- c) Clearly indicate to the Botswana Government that the SADF would not hesitate to retaliate aggressively with counter-actions against actions such as those of the BDF on 25 October 1984'.²⁸

Furthermore, in response to the Joint Survey, the Foreign Ministry of South Africa had noted:

The Joint survey you refer to in your letter ... did come to certain conclusions, but according to legal opinion in South Africa at that time, did not prove conclusively that Sidudu Island belongs to Botswana. The South African authorities have therefore suggested to Botswana in a telex dated 17 November 1986 that the matter be taken up with the Government of an independent Namibia. This was not acceptable to Botswana as they considered the joint survey report to be conclusive and in fact expressed that 'no further discussion of the matter is necessary'.

²⁷ Memorial of the Republic of Botswana. Annex 54.

²⁸ Memorial of the Republic of Namibia. Vol. Annex 84, p. 330.

The matter has therefore not been resolved, as South Africa has never officially recognised Botswana's claim to Sidudu Island.²⁹

Botswana's conclusion to the presentation was that the central question to be determined should be the interpretation and application of the 'main channel' of the river Chobe?. All the available evidence indicated unequivocally that in 1890 the northern and western channel was the 'main channel' of the Chobe.

Both parties knew that colonial cartographers were unreliable expert witnesses as to the original intentions of the colonising masters. What were the sources of information used by the early cartographers? The draftspersons did not know the topographical features of the area or the different ethnic groups of the people demarcated within the new boundaries of the treaty. McIlwaine (1997) noted that Germany, France and the other colonial powers also had their own mapping agents. The exploration and mapping of Africa was carried out by various military agencies, by the Admiralty and the Royal Geographical Society that had been founded in 1830.

The three presidents in a boat were at a loss what to do. Since Botswana and Namibia could not agree on the significance of the colonial maps and what was the main channel of the Chobe and the boundary of the two states, President Mugabe resolved that a Joint Team of six technical experts should investigate the boundary dispute. There should be three experts from Botswana and three from Namibia to determine the boundary according to the treaty; that the boundary issue between Botswana and Namibia should be resolved peacefully. Furthermore:

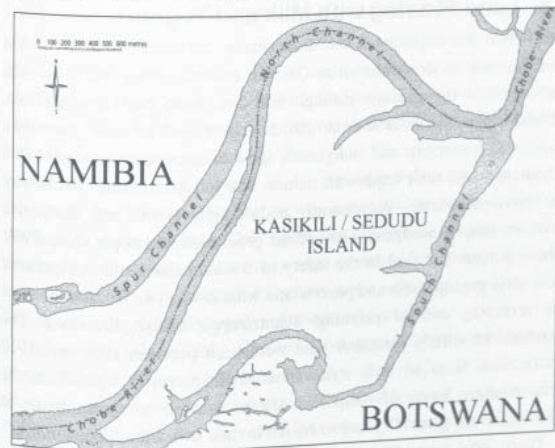
existing social interaction between the people of Namibia and Botswana should continue; the economic activities such as fishing shall continue on the understanding that fishing nets should not be laid across the river and navigation should remain unimpeded including free movement of tourists.

²⁹ Letter, Foreign Ministry of South Africa to Foreign Ministry of Namibia, Annex 88, p. 336.

The President of Botswana and the President of Namibia should reduce the tension between their two countries. Military presence on the Island should be lessened except for the purpose of anti-poaching activities. The finding of the Joint Experts regarding the boundary shall be final and binding on both states. These resolutions have become known as the Kasane Communiqué.

Comrade Sam thanked Sacky and the people of Botswana for their generous hospitality.

The moment that the crowd had been waiting for finally arrived when the three presidents disembarked together on Botswana territory. When the presidents put in their farewell appearance, and from the trio's faces, the crowd knew that Sacky and Comrade Sam had not reached a final agreement and that war was imminent.



Map 4: Kasikili / Sedudu Island.

Rumours had been circulating all day that the Botswana Defence Force had injured three Namibians. Another rumour flying around was that a young man had died in machine gun fire that came from the Botswana patrol boat in the Kasikili / Sedudu area. War would be declared. But the

customary law authorities of the maSubia of Namibia and the baSubia of northern Botswana have had centuries of filial ties that would deter them from slaughtering each other for the benefit of the young inexperienced political educated elite. They hoped it would not come to war. The maSubia and baSubia of the Chobe have no passports and have never recognised any state boundaries. However, if war were declared they would vote with their *mokoro*. The venerable editors from the quadripoint, Botswana, Namibia, Zambia and Zimbabwe had sent out their presidential pack to Kasane, and the reporters were already on their mobile phones transmitting threats of the outbreak of war to their capitals.

9.3 Land Flowing with Milk and Yoghurt

Meanwhile, the majority of the descendants of the ovaHerero who had been resident in Botswana since German colonial times and those who had survived the passage through hell fire were becoming agitated. Although they were Botswana citizens, they had retained their own traditional leadership and indigenous laws of marriage, succession and inheritance, and their Otjiherero names. The old grandmothers still wore the missionary-style voluminous ankle-length gown and distinctive cowhorn-shaped headgear. The second generation of people from SWA, whose parents had fled to the safety of Bechuanaland still remembered from their grandparents and parents and what it was like for them to be at the receiving end of pursuing Schutztruppe hellish firepower. The hundreds of elderly survivors who were born between 1906 and 1910 spoke with tears in their eyes about their parents' flight from the Schutztruppe. Some of them had always wanted to return home to Namibia to die gracefully and be buried in their own tribal homeland.³⁰

There were thousands of ovaHerero in remote areas of Ngamiland in Ghanzi district, as well as in urban areas in Mahalapye, Lehututu, Kukunzi, Kanye, Tshabong, Francistown and Gaborone. The rattling of

AK47s between Namibia Defence Force and Botswana Defence Force was distressing to some of the older ovaHerero traditional leaders in their eighties. The impudent local youths were becoming aggressive and taunted and tormented the old traditionalists. They could not understand why the ovaHerero did not return to Namibia when the UN chartered flights and airlifted Namibian exiles back to Windhoek Mpacha aerodrome in 1989 and 1990.

According to the last census, it was estimated that over 40,000 people of SWA origin were currently living in Botswana. Some representatives of the Otjiherero speaking peoples approached the Botswana government with a view to returning home. 'History is there, calling our people back. We are returning to our relatives,' explained Kamuzari, chair of the Herero Repatriation Committee.³¹ We must never forget history.

According to the Botswana Government, 'Our policy is that anyone who wants to go is free to go'. However, a very simple caveat was attached to this policy, that whosoever wants to leave is free to go. 'Those who want to go will first have to complete and sign renunciation forms, which will then be reviewed. After approval, the applicants will take an oath of renunciation of citizenship.'³²

The ovaHerero who agreed to be repatriated 'are mostly second generation descendants of Hereros who have held onto the traditional practices of their parents'. They were not crossing back into Namibia after eighty-nine years, because they were in search of a free paradise of a better life. No, they wanted to return home. Home. Botswana was becoming an oppressively terrifying homeland for them.

The employable, highly-educated professionals, the children and grandchildren of the ovaHerero had not the slightest intention of migrating or applying for repatriation. They had become integrated into the country of their birth. They were Batswana. 'The young professionals

³⁰ Madam Kalamasa Kandji (1901 - 2001) who had survived the desert crossing in 1904 into Bechuanaland died a few days before my arrival in Gam to conduct interviews.

³¹ *Kuifwano*, November 1992, Vol. 30, No. 11, p. 9.

³² *Kuifwano*, (1992:9).

these days don't want to be recognised as Herero. They want to be known as Batswana', was the verdict of the traditional oldies. But if it came to mobilisation for war between Batswana and Namibians would they be willing to fight and kill Namibians? That would be a rational decision that they would have to make if war was declared.

Many elderly ovaHerero and unemployed registered for repatriation. They renounced their citizenship and were allowed to take all their cattle as long as the animals were free from lung disease. They were also permitted to take Pula 175,000 and all their personal effects. Their houses, whatever they were worth, were left behind. They had never had need of passports.

The government of Namibia also agreed that, 'once the returnees get inside Namibia, transport will be provided for them, except for their cattle. They would receive some basic assistance for food and shelter until they were fully settled. After one year the government would scale back this assistance'.³³

On 28 April 1993, elderly ovaHerero women and their grandchildren were the first group of volunteer returnees to the Promised Land flowing with milk and yoghurt. There were 2,043 young children and 967 women; ten women were aged over eighty, and fifty-one were between seventy and eighty years old.³⁴ Most of the children living with their grandparents were the children of non-migrating professionals. As most of the children were under age, they were not registered.

The Botswana government provided the women and children with buses to the border, from where the Namibia government collected them in trucks and deposited them in the resettlement camp of Gam. The women and children would survive in tents until the menfolk arrived to build the huts. The men were taking responsibility for the cattle and they were scheduled to accompany the cattle on the long trek into Namibia.³⁵

³³ Katlwano, (1992:8).

³⁴ M. van Uytvanck (1993:8).

³⁵ In 1994 only thirty-eight men trotted accompanied 526 cattle. In 1995, fifty-two men accompanied 1,027 cattle. In 1996, only 2,931 cattle were permitted to be taken across into Namibia by one hundred and four men.

The Namibia government was worried that importation of hundreds of thousands of cattle into Namibia would make an unprecedented demand on the grazing land and might also introduce cattle disease.³⁶ Accordingly, the animals of the returnees would be held in quarantine for several weeks before they would be released to graze in the special fenced off veterinary corridor separating Gam from the rest of Namibia.

There were about 80 San and 120 Herero who were the original inhabitants of Gam when the mass of returnees arrived.³⁷ As the returnees were not very young, there was a crisis of an ageing population. In the resettlement camp of Gam without basic amenities, there were between 3,000 and 4,000 people. As there were several children of school age, the only Primary school operated a shift system, 6.00 a.m – 12 noon; 12 noon – 5.00 p.m. to give every child a chance to acquire a basic education. From Gam Primary, the children moved to the Junior Secondary School at Tsumkwe, and for Grade 10, 11 & 12; they could transfer to Grootfontein or Oshakati.

The old men and women did not regret their return journey home to the land of milk and yoghurt. But their lives would have been richer if their cattle had not developed lung disease. As pastoralists, they have always been self-reliant. They did not blame the Botswana or Namibia government for their deprivations, but colonial history was at fault.

9.4 The Kasane Communiqué

On Tuesday 23 December 1992, Botswana and Namibia ratified 'The Memorandum of Understanding regarding the Kasane Communiqué'. In spite of the 'Memorandum of Understanding', Botswana's troops were still stationed on Kasikili / Sedudu Island and the Botswana flag was flying high near the observation tower. Namibia objected to Botswana's flag and the retention of the troops on Kasikili Island. Namibia wrote a long letter:

³⁶ Two or three years later over 35,000 cattle were slaughtered because of lung disease.

³⁷ M. van Uytvanck (1993:8).

It is the position of my Government that consistent with international practice it is not acceptable to the Government of the Republic of Namibia that your Government should have taken in 1991 the unilateral action of hoisting and keeping hoisted the national flag of the Republic of Botswana on the disputed island. It is also unacceptable that your Government has kept posted on the disputed island a contingent of troops of the Botswana Defence Force since 1991.

Unfortunately, it is apparent that no action has been taken by your Government to accede to the Namibian Government's legitimate requests, which are in consonance with international law regarding the peaceful settlement of disputes, to remove from the disputed island the national flag of the Republic of Botswana and the contingent of troops of the Botswana Defence Force.³⁸

Botswana ignored Namibia's request. Because the central question is the interpretation and application of the words 'main channel' of the river Chobe. The words involve a reference to a question of fact, and in so far as may be necessary, a question of scientific fact. Botswana did not move.

Following the Kasane Communiqué, according to the meeting of the three presidents in a boat, The Joint Team of Technical Experts was appointed. There were three experts from each state. The leaders of the Joint Team of Technical Experts were not hydrologists, geologists, hydrogeomorphologists but eminent International lawyers.³⁹

The Memorandum of Understanding provides:

- Article 1. Definitions
- Article 2. Establishment of Joint Team of Technical Experts
- Article 3. Composition of Team of Technical experts
- Article 4. Commencement of work of the Team
- Article 5. Agenda

³⁸ Memorial of the Republic of Namibia, Vol. IV, Annex 90.

³⁹ For Botswana: Professor Ian Brownlie, CBE, QC. For Namibia: Dr Albert Kawana.

- Article 6. Venue of meetings
- Article 7 that is relevant to this analysis provides that:
 - 1) In the execution of its functions, the Team shall have authority to
 - a) examine the Anglo-German Agreement of 1890 and the Anglo-German-Portuguese Treaty of 1892 defining the boundary between Botswana and Namibia around Kasikili / Sedudu Island and any relevant maps and / or other materials relating to the boundary between Botswana and Namibia around Kasikili / Sedudu Island to determine where the boundary lies in terms of the said Treaties;
 - b) examine, evaluate and compile any documentary evidence relied on by experts from each side, each document properly indexed and certified by the party producing it and acknowledged by the other party;
 - c) examine, evaluate and compile detailed joint surveys made, including plans, graphs and statistics and provide any explanatory notes, clearly demonstrating the results of the said joint surveys;
 - d) do, perform or carry out any act or function necessary and relevant for the determination of the boundary between Botswana and Namibia around Kasikili / Sedudu Island, taking into account, and subject to, the provisions of the Treaties referred to in (a) above;
 - e) secure and examine any relevant documents, charts, maps, plans and diagrams produced before and after 1890 relating to the said boundary;
 - f) hear, without prejudice to the 1890 and 1892 Treaties, any oral evidence from any competent

person in Botswana and Namibia or from any other country which the Team may consider necessary to enable it to arrive at a decision on the Kasikili / Sedudu Island dispute;

- g) request, jointly or severally, historical documents from the archives of Botswana, Namibia or any other country;
- h) Physically inspect the area of Kasikili / Sedudu Island with a view to obtaining first-hand information on the boundary in dispute; and
- i) submit to Their Excellencies, Presidents Sir Ketumile Masire, S. Nujoma and R. G. Mugabe of the Republics of Botswana, Namibia and Zimbabwe respectively, the finding of their investigations in the form of a report incorporating the conclusions and justifications for those findings and / or any recommendations, including all documentation referred to in paragraphs (b) and (c) above and any other matter or material considered essential by the Team.⁴⁰

The Joint Team had several rounds of meetings. They produced and examined collections of documentary evidence under Article 7(1)(b)(c) of the Memorandum of Understanding. The Joint Team produced an index of documentary evidence. But Botswana trawled through several German documents in the Imperial German Embassy in London and found where Sir Percy Anderson, Head of department of Africa and Chief British negotiator of the 1890 Treaty specified the proposed line of demarcation to Dr Friedrich Krauel, *Geheimer Legationsrath* and Chief German negotiator 1890 Treaty. That 'the line is to run from the 22nd parallel of south latitude in an eastward direction to the 22nd degree of east

⁴⁰ The Joint Team established that the Anglo-German-Portuguese Treaty of 1892 (referred to above) did not exist.

longitude ... thence eastward *along the course of the River Chobe* to its junction with the Zambesi'.⁴¹

Namibia too produced documentary evidence and letters from the Colonial and Foreign Offices. In a letter from the Colonial Office to the Foreign Office, it reads: 'This Island appears to be the "Swampy Island" shown to the north of what is marked as the "main channel" of the Chobe in the Director of Military Operations' map, dated April, 1909. It would, accordingly, seem to be difficult to maintain that the Island should be regarded as falling inside the Batawana Reserve'.⁴²

Botswana produced the 'sketch map of the Bechuanaland Protectorate to illustrate Military Report produced by the British Authorities in 1906'. Namibia also produced a map of 'Matabililand' and the adjoining territories by the Intelligence Division of the War Office in 1889.

The Joint Team examined and evaluated exhaustively the documents that were within the scope of the Treaty to unravel the boundary, but as the Team did not agree on the relevance of certain of the documents, they did not produce a compilation.

However, in accordance with Article 7(1)(e) of the Memorandum of Understanding, the Joint Team was provided with a considerable quantity of historical documents from archives in Botswana and Namibia, Berlin and London, which the Team attached to the various Written Submissions as Annexes.⁴³ During their extensive deliberations, the Joint Team was unable to agree on the substantive issues.

On 4 October 1993, the Joint Team made a physical inspection of Kasikili / Sedudu Island by boat, but the team decided not to invoke its powers in respect of the hydrological study.

⁴¹ *Akten der Kaiserlich Deutschen Botschaft in London betreffend Geheimakten*. Vol. I, January 1890 - 31 May 1890, Paragraph 2.

⁴² Letter, Colonial Office to Foreign Office, 1 September 1910. (PRO. CO 879 / 104 29101, No. 103, Public Record Office, Annex 42, Memorial of the Republic of Namibia, Vol. IV, Annex 42, p. 167.

⁴³ Botswana Memorial: Vol. II, Annexes 1-12, Vol. III, Annexes 13-62, Namibia Memorial Vol. IV 3-90, Vol. V, Annexes 91-144.

9.5 Kasikili / Sedudu and Collective Memory

According to Article 7(1)(f) of the Memorandum of Understanding, it is provided that, the Joint Team shall have authority:

to hear, without prejudice to the 1890 and 1892 Treaties, any oral evidence from any competent person in Botswana and Namibia or from any other country which the Team may consider necessary to enable it to arrive at a decision on the Kasikili / Sedudu Island dispute.

This was the opportunity for the Subia of Botswana and Namibia to have their 'one day in court' and help the Joint Team of Technical Experts with the analysis of the historical records of Kasikili / Sedudu. The historical traditional past cannot be separated from the independent present.

The indigenes made their statement in siSubia and it was interpreted simultaneously into English. Sometimes the interpreter missed the nuances and non-verbal leads accompanying the tone of voice of the witness. The JTTE questioned the witnesses in English and this was simultaneously interpreted into siSubia. After the interpretation, it was sometimes obvious that the Subia witness had not understood the question and had not the slightest idea what the question was about from the answer proffered.

Botswana was against oral evidence and was relying on the provision of Article III(2) of the 1890 Treaty. Botswana's argument against taking oral evidence from the traditional leaders of Namibia and Botswana — 'a bunch of old cutlasses' — was a model of legal scalpel precision. Botswana's argument was based on Article III(2) of the Anglo-German Agreement, 1890 that referred to the northern and western channel of the River Chobe. What do you expect the old cutlasses to tell the Team about the "centre of the main channel" of the Chobe? The text is clear and unambiguous. In the German translation, '*Thalweg*' means the median line of the channel in the vicinity of Kasikili / Sedudu Island. This constitutes 'the main channel' of the Chobe river, the middle, the deepest or most navigable channel of the Chobe. Botswana is the nearside owner

of the northern channel of the Kasikili / Sedudu Island, and that was the essence of it in the legal context.

In the spirit of co-operation, the Botswana Team eventually agreed that oral evidence could be taken, but it did not see the relevance of witness evidence when the Treaty is very clear: 'The centre of the main channel of the river Chobe', that is what it was about. If oral evidence was for the determination of the intentions of Britain and Germany, the contracting parties of the 1890 Treaty they would have told us the meaning of the words: 'the centre of the main channel of the river'. The 1890 Treaty should be properly interpreted as it stands. Accordingly, oral evidence was legally irrelevant for the purpose of determining the Anglo-German Treaty of 1890.

However, Botswana called a total of twelve witnesses to give evidence before the Joint Team.⁴⁴ In addition to the oral evidence, the following witnesses presented evidence by affidavits to the Joint Team. Dominic Diau (dated 6 October 1997), Brian Egner (dated 19 September 1997), Peter Gordon Hepbuirn (dated 6 August 1997), Timothy Neville Liversedge (dated 30 October 1997) and Michael Slogrove (dated 8 July 1997) Botswelsetse Kingsley Sebele (dated 14 August 1998) Michael Slogrove (dated 24 August 1998) and Simon Adolph Hirschfield (dated 25 August 1998). Their statements were confined to the best of their knowledge of what took place between (1977 – 1979), (1959 – 1962); (1962 – 1970), (1969 – 1970) and (1972 – 1978) and between October 1971 and April 1975; (1972 – 1978) and (1971 – 1995).

Botswana's witnesses were mostly men in their seventies who presented their evidence. The witnesses 'knew Sedudu to be an Island within Botswana'. While they were young and working, there were no indications that Sedudu Island was part of the territory of Namibia. When cattle were being trekked from Maun to Kazungula they had grazed on the Island while the trekkers rested for a day or two before continuing the journey to Kazungula. The witnesses further testified to the presence of

⁴⁴ Counter-Memorial of Botswana. Vol. I, para. 494 (c).

people referred to as Matoka on the Island. The witnesses had grazed cattle on one side whilst Matoka people had ploughed on the other.

From these affidavits, Botswana declared that Kasikili / Sedudu Island was considered part of the Chobe National Park. Some of the witnesses had patrolled the Island to guard against poachers, and the Namibian authorities or their predecessors in title had never challenged them. The sum total of the testimony of the witnesses was that Kasikili / Sedudu Island had been used at one time or other by people on the Botswana side of the border for ploughing and grazing.

Even if at some time before 1937 the Island was used for subsistence cultivation by a number of Caprivi tribesmen, there had been no actual occupation by the tribesmen, argued the Botswana Component of the JTTE. Occupation was impossible because the Island was always flooded between March and May. However, continued Botswana, whatever agricultural activities the Namibian tribesmen might have carried out on the Island at one stage or another, such activities could not be held to have been title generating. They were carried out by individual subsistence farmers and not by the state.⁴⁵ The Namibians did not cultivate the Island. Some white Namibian entrepreneurs proposed the construction of a tourist centre on the Island, and that had no relation whatsoever to do with cultivation.⁴⁶ Botswana was most indignant:

It is indeed a paradox that the country whose title to the whole of the Caprivi Strip derives solely from a colonial arrangement, made without regard to tribal lands, between Great Britain and Germany to grant the latter a twenty mile wide strip of territory to afford it access to the Zambezi River, should now seek to buttress its demarcation by invoking alleged historic use of one small island by local people whose lands spanned both sides of the river.⁴⁷

⁴⁵ Botswana Counter-Memorial. Vol. I, p. 205.

⁴⁶ Counter-Memorial of the Republic of Botswana. Vol. I, p. 30.

⁴⁷ Counter-Memorial of the Republic of Botswana. Vol. I, p. 68.

Namibia called 60 witnesses. The witnesses were maSubia men and women aged over seventy years, and seventeen of them were over eighty. The witnesses were composed of farmers, fishermen, councillors, important members of the local community and the eighty year-old Chief Moraliswani, the *Munitenge* of the maSubia of Namibia. Since many of the witnesses also recounted what they heard from their parents and grandparents, their collective memories stretched back to pre-colonial 1652.

Between 28 September 1993 and 21 August 1994, The Joint Team of Technical Experts had six rounds of meetings in Windhoek, Gaborone, Kasane and Katima Mulilo sifting through oral evidence. During one of the proceedings, news reached the witnesses and the JTTE that armed Botswana Defence Force soldiers had entered Ngoma to claim Ngwanso village in Namibia as a Botswana village. This was a violation of ethnic sovereignty. The maSubia witnesses, who already felt that they were the ones on trial for Kasikili / Sedudu, were terrified for their womenfolk and children in the south, and wished to return to their villages. The Namibian component of the Joint Team of Technical Experts felt that the distraught men and the BDF incursion might influence the rest of the proceedings and decided to prorogue the session. But Namibia was mauled by the lions of the Botswana Joint Team:

We are here to listen to proceedings in which it is Namibian witnesses who are being heard and we are co-operating in an agreed procedure under the Memorandum of Understanding and we cannot see that there's any reason to stop the proceedings nor understand why that should be so.

The Botswana lions did not understand the role of culture in the evaluation of witness evidence. A Subia village was under siege, reprisals from the BDF, and witnesses were expected to be still and composed and decode questions that had no relevance to the present? Some witnesses were unwilling to continue and walked out. The JTTE declared the session closed.

When hearing of evidence was resumed on 30 July 1994 at Ngwezi Legislative Hall, Katima Mulilo, Namibia decided to call its star witness.

the Honourable Chief Munitenge Moraliswani whose palace is at Bukalo. He was 80 years old.

Namibia:

Thank you very much. On behalf of the Joint Team I would like to welcome the Honourable Chief Munitenge J. Moraliswani, the chief of the maSubia people who are residing in this part of the country, the region of Caprivi and as I said it's our last witness to be called by one of the Contracting Parties to the Memorandum of Understanding, that is the Republic of Namibia or the Government of Namibia. I'm very pleased to note that the Chief, the Honourable chief has accepted our invitation to appear before us as one of the witnesses and I'm sure the Honourable Chief knows the background to the Kasikili Island issue. I'm saying so because I recall during 1992 he was part of the Presidential delegation led by His Excellency, the President of the Republic of Namibia, Dr Sam Nujoma, to Kasane where the issue was discussed with his counterpart His Excellency, Sir Ketumile Masire, the President of the Republic of Botswana and in that meeting also there was another Head of State, His Excellency, Robert Mugabe, the President of the Republic of Zimbabwe. It was resolved as per the Kasane Communiqué issued on 12 May 1992 that the Kasikili issue must be resolved amicably between the two countries. It must be resolved in the spirit of brotherhood and that was the expressed wish of Their Excellencies. As a result of the Kasane Communiqué, as he can recall, the Joint Team was established which is seated here today. It was mandated to summon witnesses and one of those witnesses is the Honourable Chief today. The purpose of summoning him is for him to tell us, to tell the Joint Team, the oral history of the Kasikili Island so that he contributes to our assignment as given to us by Their Excellencies. We need to know the history of the Kasikili

Island. We need as much information as possible from the Honourable Chief. We want to know whether what he is going to tell us today is something which he himself, experienced or he was told either by friends or relatives. At the end of the oral presentation of the Kasikili Island history, the Joint Team that is the Botswana Component and the Namibian Component will put component questions to the Honourable Chief. We kindly request the Honourable Chief to co-operate with us and we have no doubt he's going to co-operate with us as the senior citizen, one of the leaders of this country and we also request him to speak loudly for the benefit of our colleague, the Botswana interpreter, as well as for the benefit of the members of the Joint Team. The Honourable Chief has the floor to start.

Honourable Chief:

I'm asking: Does that interpreter understand Subia?

Botswana Interpreter:

A bit.

The Honourable Chief was not amused:

A person, who can understand a bit, do you think he can interpret very well or that those people he interprets for can understand or hear what he is interpreting to them?

First, the *Munitenge* was justified to query the competence of the baSubia interpreter, as he expected his contribution to be interpreted to a forensic standard. This was not a documentary translation where the translator has all the time in the world to translate and consult language dictionaries for an accurate meaning of a word. Correct interpreting would tell the world about the Subia. It is not an endangered language because it is still spoken by thousands of people. It has acquired a growing vocabulary from siLozi and English.

The Honourable Chief was assured that the Namibian maSubia interpreter would interpret instead of the moTswana baSubia. However, the Namibian maSubia co-Chairman would intervene with complete neutrality and accuracy when necessary.

Honourable Chief:

I understand you understand Subia very well. I thank the delegation from Botswana and the delegation from Namibia that you come and meet today. I thank you very much, that I will give the history of Kasikili Island. That Island of Kasikili, as this is known that is Itenge, the Island of Kasikili first was known as the Silumbu's Island. Before that there grew a tree that the Subia called that tree a Sikili tree. Why the island was named after the *nduna* Silumbyu or called Silumbu's Island, it because Silumbyu was the *nduna* who was staying there. He was an *nduna* to Chief Liswaniyana. When I came to learn the country, or the places where the Bekuhane stay, all those names which are on that vicinity. I don't think there's any name from the Maruwa side. We have got Kazungula; it's the first one there. Second we have got Kasane. From there we have got Kasikili which we are talking now. From there we come to Ngoma. There is also an island a small island which we call in Subia, it's Inqwite and the name is Kanywamenzi and that place which is known as Kanywamenzi it belongs to Bekuhane in Botswana.

From there, next to the bridge there, there's a place in Subia called Idadangale, a flood area also and that place Idadangale belongs to the Bekuhane here in Caprivi. From there we go to a place called Isuma and there are people, I mean Bekuhane of Liswani are staying on that place and those Bekuhane are no different from my tribe, we are just one tribe, one grandfather. From there we go to Mabele; from Mabele we go to Zibozu; from Zibozu we go to Kavimba; from Kavimba we go to Kachiwe; from Kachiwe we go to Chihongwani; from Chihongwani we go to Palakalungu; from there we go to Ibubwe. All those names I've mentioned here and hear if there's one from Maruwa side, he must state or say that place we used to call it like this from our grandfather.

From where I know the country of my grandfather, it started from Nata where the Bangwato are found, the Khama family. From there I still share my boundary right up in Zambia there with Paramount Chief Ilute. From there my great-grandfather was having a boundary with Libebe at Kaungamashi, that is the chief of the Mbukushu. From there my great-grandfather still had a boundary with Machabaamambusa. All those boundaries are not known or are not functioning now because they colonised us when they came. When the colonisers came they left those boundaries and then created their boundaries. They said Chobe river would be a boundary with Khama. They didn't ask us, the way you are asking us now, but they did on their own because the black people were defeated so they accepted everything they were given or told. Because first when a black man saw a white man he thought the white man was God. Everything he tells you, you do it. All these boundaries, which I have mentioned here, the colonisers destroyed them. They are no more working now. Now you heard me say from Nata we went to Patamatenga, from Patamatenga to Isuma, all those names there's no name from the Maruwa side. All those names are names from the Bekuhane and Patamatenga, those who wrote it they made a mistake because there is an *impanda*, that means it is food which people are carrying on their way.

Namibia rectifying interpretation:

Food you carry when you have a long journey.

Interpreter:

Yes, it means food that you carry when you have a long journey.

Honourable Chief:

There at Patamatenga everybody, all their food got finished except Mr Matengu's food was left and then they ate Mr Matengu's food at Patamatenga and then it's where that

name came, Patamatenga. At Isuma there's a tree and in siSubia we call it *lusuma*. In siLozi it's *muchenje*, it's that tree has grown up there that's people of Serowe and Liswani.

Namibia clarifying interpretation:

Not the people of Serowe, the Baruwa, and the Khama.

Interpreter:

Yes, the Baruwa and Liswani.

Honourable Chief:

Now today I've found that I'm having a headache in talking about Kasikili of Liswani. It's a thing which surprises me. I think this is the matter of the politicians are the ones who can do such a thing. I don't think the Maruwa could have done that type of a thing. I'll finish by saying that when we were integrated into the Union of South Africa, that was in 1929, I was a man that I could go and hunt and kill an animal and now I don't know why those people in Botswana, they forget how we are with them, I don't know. What I know is that all the Chobe District belongs to the Bekuhane of Liswani. If there's any Maruwa who came and stayed there, maybe he just came and stayed there this time when he came to work on that place. Or to follow the laws and regulations of the country, that the country is independent. They can say anything in that country. I'm asking the Botswana Government and the Namibian Government on this issue of Kasikili, I'm asking them to solve this matter as brothers and sisters. If there should be any war then I think the Bekuhane in the Chobe District and the Bekuhane here in Namibia; those are the people who are going to die. For someone who goes and instigates the war, it's a thing which pains me because Botswana got its independence from the English people and Namibia also got a struggle like that during the time of the Boers and they also got their independence. Now that Namibia is independent

and Botswana is independent why don't we go back to the old days like we were living before the white people came?

I think this is the issue of politicians. If it will be an issue of traditional leaders, that we meet and discuss then maybe I could ask them some questions which they could answer me, but you, who are seated there, if I ask you questions now you are not going to answer them and if you ask me questions, you'll ask me questions which I will not understand. That person, who says that in 1992 I was in Botswana, it's true. I asked President Sam Nujoma to go with him there in Botswana and any person who's complaining and then I ask that he should come with Masire, the President of Botswana and then Masire came. He came alone; he didn't come with any chief.

Namibia intervenes for amplification:

The Honourable Chief says he requested His Excellency, the President of the Republic of Namibia, Dr Sam Nujoma, to be part of his delegation and he also put a request or expressed a wish that His Excellency, the President of the Republic of Botswana Sir Ketumile Masire, must come with the local chief on the other side and I suppose he's referring to Nkonkweni, so these two traditional leaders can tell Their Excellencies the proper history of that area. But unfortunately the other chief from the Botswana side did not form part of the delegation.

Honourable Chief:

In short I hope that you ask me some questions about what I have said, but what I'm telling is this. Don't ask me any questions about what I've said, but you must ask me your question, which you are coming with. In short that's all.

Namibia:

Thank you very much. Now, as I said, there will be a Joint Team question. I hand over to my colleague for Joint Team questions.

Joint Team:

Was the Kasikili Island known by another name before?

Honourable Chief:

It was known as Silumbu's Island.

Joint Team:

Why was the name changed?

Honourable Chief:

Why the name changed, it's because of a tree, which grew up there. That tree is a Musikili tree. It's the same way Kasane is being called. That name comes from a tree, which is called Musane.

Joint Team:

Is the Honourable Chief speaking from his own knowledge or on the basis of what others have told him?

Honourable Chief:

What I will say is that starting from 1916, 1917, 1918, 1919, 1920 those are the things I saw with my own eyes and then from there, others might be that they happened when I was not born and those things I got them from my great-grandfather and grandfather.

Namibia intervening to correct interpretation:

And father.

Interpreter:

Yes.

Joint Team:

Does the Honourable Chief know of anyone who owned land on Kasikili?

Honourable Chief:

I know them, why can I forget them because I was also ploughing there.

Namibia:

Thank you very much. I now hand over to our Botswana colleagues for component questions.

Botswana:

As the Chief has mentioned about the information, which he heard, and the information, which he has, the information that we will probably be looking for will be the information after determination of the boundary between the British and the Germans?

Namibia, intervening for clarification:

No, it's wrong. We want to know the history or the account from the date of the determination of the boundary, from the date of the determination of the boundary between the English and the Germans, from that period on. That is the period we are interested in. We want information from that period on.

Honourable Chief:

That time when the British and the Germans, they sat and they decided that they should make some boundaries between Botswana and this Caprivi and those things were solved or were seen by my brother.

Namibia intervening:

Not brother, grandfather and my father.

Honourable Chief:

By my grandfather and my father and they left those things to me and those are the things, which are written now.

Botswana:

When he told us about what he knows he mentioned that the boundary was the Chobe. Can he clarify to us what could be the Chobe on the Kasikili Island?

Honourable Chief:

You say that the boundary which was made by the whites is Chobe and now you want to know (indistinct) between Chobe and Kasikili, is the question you are asking now? You know there's Chobe on the other side there and then there's that river goes on. When it goes when it makes a tributary called Chamalangwe and then that tributary goes on and then forward there they meet again with Chobe and then at the

back here, where that tributary breaks and goes, there is Kasikili Island.

Botswana:

As he was part of the Royal family, does he know whether there were some people who were ploughing on the Kasikili from the Botswana side?

Honourable Chief:

There was no one ploughing there unless those people who were working at Kasane, then he come and ask land from his family who are ploughing there and then they give him a place to plough.

Botswana:

Does the Honourable Chief remember if at any one point Chief Liswaninyana had some discussions with the DC on land issues?

Honourable Chief:

As I've earlier stated that we were of the hands of the British in 1921. Before that

Namibia intervening:

No, up to 1929

Honourable Chief:

Up to 1929 then the British were ruling Botswana and Namibia, so those people could meet and talk because one person ruled them.

Botswana:

As far as he remembers, we had a very grey area of the chieftainship arrangements since Chikamatondo. Can he elaborate to us who became the Chief of Kasikili before Liswaninyana and after Liswaninyana?

Honourable Chief:

As you know there was Chief Liswani. Chief Liswani was killed by the Makololo and then those Makololo of (indistinct) those were the people now who took the whole area. That time the Barotseland chief was the one who was

ruling here, this Caprivi and then there came Chief Sipopa. He also took the chieftainship and started ruling the Caprivi that time it was called Munitenge, Itenge. From when Chief Sipopa died there came Chief Liwanika and then he ruled Barotseland and this Caprivi. Somewhere there back where we don't know, the Germans and the English agreed and they started ruling this country.

Namibia intervening:

The Germans and the English agreed to demarcate the boundary and this area was given to the Germans. From there the Germans asked where is the Chief of the Bekuhane? And the Bekuhane said that their chief was killed. By the Sibitwani. When Sipopa took the country.

Namibia intervening:

Chieftainship. When he took the chieftainship.

Honourable Chief:

Chieftainship, he ruled us here and the Barotseland people. From there the Germans asked where's the Royal family, I want the Royal family to come and take the Chieftainship. From there, when those people heard that the Germans always kill people all the Royal family were hidden somewhere in Zambia and then there was Chief Liswaninyana who was ruling there at Kasikili, we are talking about now, he was in Zambia. It's where they gave him his Chieftainship and then they said we want that Chief Liswaninyana to come and take the Chieftainship here. When he came the Germans found that he was still a young man, that time he was having one child called Mpambo and then they said you must look, seek for anyone who is old enough, not even from the Royal family, who will just hold the Chieftainship temporarily, or guide the young man until that time he grows up, that he can take the Chieftainship. From there the Bekuhane took Chikamatondo that he's the one who is going to be on behalf of Liswaninyana. That's

how Chikamatondo took the Chieftainship. Now when Liswaninyana grew up, then the Chieftainship returned to the Liswani family. When Liswaninyana died the young brother of Liswaninyana called Sinvula Maiba, my father, took the Chieftainship. From there, when my father died then the Bekuhane took me and they gave me the Chieftainship. That was in 1965 that was in October and then that time I took the Chieftainship.

Botswana:

Would the Honourable Chief tell us where his father Sinvula Maiba had his headquarters?

Honourable Chief:

At Kabbe.

Botswana:

Can he tell us please where Chikamatondo, when he was Regent, had his headquarters?

Honourable Chief:

His headquarters was at Schuckmannsburg. They told him that he must leave his common village there, he must come to Schuckmannsburg.

Botswana:

Would the Honourable Chief please tell us where Liswaninyana had his headquarters?

Honourable Chief:

That is Kasika Kasikili.

Botswana:

Could he please tell us where the chiefs in the line are buried, where they were buried?

Honourable Chief:

Do you ask me to give you history starting from the chiefs of the Bekuhane coming to the present time?

Botswana:

No, the Honourable Chief would help if he could tell us quite literally in which place, in which village his father was buried, Sinvula Maiba?

Honourable Chief:

At Mahundu, that was his common village.

Botswana:

And where was Chief Liswaninyana buried please?

Honourable Chief:

He was buried at Kasika.

Botswana:

Could he please tell us how old the village of Kasika is? How many rulers back does Kasika go, how old is the village?

Honourable Chief:

That village, when I was born I found that there was Kasika.

Botswana:

Right, thank you. Could he help us with the date when people stopped ploughing on Kasikili Island?

Honourable Chief:

That was in 1937 when a lot of elephants were now entering Caprivi and then when people were ploughing it was found that those elephants were destroying their fields, it's when they decided to move and come on the other side here in Caprivi

Botswana:

And could he help us by telling us whether that occurred before Chief Liswaninyana died or just afterwards?

Honourable Chief:

People moved out from Kasikili Island when Liswaninyana died, after he died.

Botswana:

Thank you Mr Chairman. I thank the Honourable Chief for his co-operation

Namibia:

Thank you very much. The Namibian Component would like to ask the following questions.

Namibia:

We would like to know from the Honourable Chief whether the Botswana Authorities, after the demarcation of the boundary by the whites which he referred to, when the people were ploughing in Kasikili Island whether the British Authorities who were the colonial power in Botswana at that time, whether they approached the people who were ploughing in Kasikili Island to say according to the new boundary agreed between themselves and the Germans, that Kasikili Island is now part of Botswana, they should vacate. Was there such an incident, to the best knowledge of the Honourable Chief?

Honourable Chief:

The DC, what could he do because he's not a dreamer, a daydreamer.

Namibia:

No further questions from the Namibian Component.

Botswana:

The Botswana Component has one further question. Could the Honourable Chief, from his knowledge of the region, tell us in which years there were very big floods?

Namibia intervening for clarification:

How many years, not in which year but were there some years when there were big floods? I think that's the question. Not only one year but also if he remembers certain periods where there were bigger floods compared to the average floods?

Honourable Chief:

Starting from 1948 there was a big flood and 1950 there was also a big flood and 1958 there was also a big flood and 1988 there was also a big flood.

Botswana:

Thank you Mr Chairman.

Namibia:

Thank you. Once again on behalf of the Joint Team I would like to thank the Honourable Chief for agreeing to come and give oral evidence. We appreciate his co-operation. We wish him a safe journey back home, we thank him.

Honourable Chief:

I thank you too. Both, the two delegations, I'm handing over these pamphlets to you. These pamphlets are containing a history of Kasikili so I give you that when you are going to meet again for another round of this issue I will not be there. So these papers are going to represent me.⁴⁸

Namibia:

With the concurrence of the Co-Chairman, being the last witness, the oral recording so to speak has come to an end. What is remaining now is to go through the transcripts after lunch, if at all we are going to find some food and after that we wind up and we meet in Windhoek as agreed, in August. Thank you very much.

Botswana:

Fine, thank you Mr Chairman.⁴⁹

The *Munitenge* of the maSubia knew what he was talking about. The Caprivians were the men, women and children who lived through the occupation of the South West African Police Counter-insurgency Koevoet, camped at Alpha and Omega. The South African soldiers, the elite killing machines of the Force launched their attacks against SWAPO and the frontline states of Angola, Botswana, Zambia and Zimbabwe from the Caprivi and the Plaaslike Bevolking and the natives were treated worse than the Caprivi snakes. The women and children suffered and were the worst hit.

⁴⁸ The pamphlet: *History of Kasikili Island* was signed by the *Munitenge* J. M. Moraliwani 11; the *Ngambela* R. N. Sinvula; and the *Natamoyo* S. Ntooda. The *Munitenge* was established in 1652.

⁴⁹ Transcript. Memorial of the Republic of Namibia. Vol. III. Annex 2. pp. 194-211.

The *Munitenge* had a premonition of war that might lead to the secession of Caprivi Strip. The Joint Team had not asked to take oral evidence from the *khuta ye tuna* regarding the origin of the Kasikili / Sedudu dispute. The Joint Team would have been told that it was as a result of the blockade of the northern channel by the patrol boats of the Botswana Defence Force. Thus, the Caprivians were deprived of the use of the northern channel; accordingly, they were cut off from the southern channel. How could they use the southern channel? They were thereby disallowed the use of the Chobe river that had served the maSubia for generations. Was that the state of affairs that the Germans and the British had anticipated in 1890 when they drew up the Treaty the *Munitenge* asked? This was incompatible with Subia customary riverine law where the riparian tribes shared the use of river resources. When the colonial powers, Britain and Germany entered into this infamous 1890 Treaty, there was a total lack of consultation with the natives when they transferred the territories to each other. The community values of riparian tribes were not taken into consideration. Botswana should interpret the Treaty as from the era when it was made, and not as of today when it has to be interpreted.

Botswana was very critical of the witnesses produced by Namibia. Botswana maintained that there was no attempt to separate spent witnesses from witnesses waiting to give evidence. Thus there was an opportunity for collusion between the witnesses. Collusion was easily ascertained by the uniformity of the witnesses' evidence. The uniformity collapsed when Botswana subjected the witnesses to cross-examination a few minutes after the examination-in-chief.⁵⁰ Botswana was scathing. They asserted that the Namibian witnesses were confrontational. They assigned sovereignty over the Island to Namibia without having thought over it carefully. Namibian witnesses always 'pleaded lack of education whenever they were pressed to be more specific in terms of time frames'. Whereas the Batswana were rational, clear and calm and they did not

⁵⁰ Counter-Memorial of the Republic of Botswana, Vol. I, p. 206.

attribute sovereignty either to Botswana or Namibia.⁵¹ Although the Namibian witnesses said that most maSubia were born and died on the Island, there were no burial sites on the Sedudu Island. Botswana argued that the available scientific evidence indicates 'absence of conditions permitting appropriate burials'. Furthermore, during 'coring on the island, no evidence of settlements or cultivation in the form of artefacts charcoal or bones of animals, was found'.

Botswana enclosed an Affidavit from the District Commissioner at Kasane who swore that there were no disputes or administrative difficulties with regard to Kasikili / Sedudu Island. There was no protest either from anybody whether from within or outside Botswana against the inclusion of the Island within the boundaries of the Game Reserve. A professional hunter also observed that the hippo population in the river around Sedudu Island has always used the Southern Channel, which has always been shallow, thus enabling the hippo to sleep and rest in the water. The buffalo population has also taken to crossing the Southern channel with ease onto Sedudu Island to feed during the winter months. The Game wardens at Kasane were told by the senior game warden that Sedudu was an integral part of the Chobe National Park accordingly, the Island formed part of the Chobe Game Reserve.⁵²

None of the witnesses presented by Namibia was able to shed any light on the question of the period when the inhabitants of Namibia started using the Island for subsistence agriculture. Botswana argued that according to the Honourable Chief, cultivation stopped in 1937, but Namibian witnesses had given different dates relating to the use of the Island. However, Botswana accepted 1958 as the latest date that cultivation ceased, and when in 1960 the Island became part of the Chobe Game Reserve, there was not a murmur of protest from South Africa.

Namibia was incensed that the oral evidence was derisively dismissed as from 'agriculturists'. The riverine Subia of Botswana and Namibia have a complex and profound almost spiritual relationship with their

⁵¹ Counter-Memorial of the Republic of Botswana, Vol. I, p. 210.

⁵² Counter Memorial of the Republic of Botswana, Vol. III, Annex 47-51.

Chobe river and the creatures that dwell in it. The maSubia did not deserve such caustic treatment. Namibia considered the oral evidence to have been extremely useful and necessary for the resolution of the dispute. Botswana should not whinge about Namibian witnesses as the Joint Team had agreed on the format of the questions and both sides of the Joint Team had questioned the witnesses. The agreed formatted questions were - Was Kasikili Island known by another name before? Is the witness speaking from her or his own knowledge, or on the basis of what others have told her? Does the witness know of anyone who owned land on Kasikili Island?⁵³

The Namibian witnesses were competent and their testimony had several references to the reigning chiefs who lived on and off in Kasikili in accordance with the official record of the first half of the 20th century. The witnesses were interested in only one issue, the legal ownership of Kasikili Island under Subia customary riverine law, and not the determination of the boundary between the maSubia and the baSubia. All the witnesses agreed that no one from the south bank of the Chobe used the Island for any purposes whatsoever. There was not enough space for farming, grain storage and grazing herds of cattle for everybody. A witness recalled that 'there was a man called Susman ... after buying cattle he asked for a place where his cattle can graze and he was given a place ... where there's a bit of water and grass, that his cattle can graze there'.

Kahundu Liswani was specific:

Susman used to graze his cattle at a place called Imbuwa, it's a grazing area and there, he didn't bring or graze his cattle on the Kasikili Island because that is a field area ... after grazing his cattle in Imbuwa area then they would go to Impalila, from Impalila there they cross, going to Zambia.⁵⁴

⁵³ Memorial of the Republic of Namibia. Vol. I p. 73, footnote, 43.

⁵⁴ Memorial of the Republic of Namibia Vol. III, Annex 2, p. 6.

Apart from Susman, there was no evidence that the Batswana used or occupied Kasikili Island, perhaps as a halfway rest ground through and from the mainland. The baSubia have never ploughed on Kasikili.

As the Secretary to the Prime Minister and External Affairs wrote, 'it is clear that Caprivi tribesmen have made use of the island for a considerable number of years and that their right to do so has at no time been disputed either by Bechuanaland Tribesmen or the Bechuanaland authorities.'⁵⁵

After the *Munitenge's* presentation the Subia began streaming across the Chobe in both directions. War was imminent. They knew that the constitutions of Namibia and Botswana like other African constitutions have stripped the traditional leaders of all their ancient authority. The once powerful traditional chiefs were no longer the jewels in the crown of modern African constitutions.

9.6 The Impartial Reports

In 1911, Captain Harry Vernon Eason of the Bechuanaland Protectorate Police at Kasane was commissioned to carry out a reconnaissance of the:

River Chobe or Linyante River, with a view to determining which can be legitimately claimed as the 'main channel'. There is no difficulty, I take it, so far as the neighbourhood of Kazungula is concerned, but it will be no easy matter to decide further ...⁵⁶

As there was no boundary dispute in 1911, Captain Eason's exploration was not focused on any of the numerous Islands, such as Musungi, Kakumba, Kissikiri, Kannabenza, and several small rocky islands. According to Trollope (1940:4):

In 1909 the High Commissioner reported that the advent of German officials to the Strip had caused some concern to the

⁵⁵ NAN, NI / 15 / 3-4ECZ-Botswana-Kasikili Island.

⁵⁶ Memorial of the Republic of Botswana. Vol. III, Annex 17. Delimitations of boundaries of Caprivi Zipfel. Botswana National Archives.

Batswana and that he deemed it desirable that the southern boundary should no longer remain indeterminate. His Majesty's Government, acting on this report, proposed to Germany that steps should be taken for a delimitation of boundaries. The German Government replied that before agreeing to this course they wished to be advised of the interpretation His Majesty's Government placed on the ambiguity in the 1890 Agreement already referred to. Notes were exchanged which merely reiterated opposing views and Germany eventually suggested arbitration to which Britain agreed.

The hastily suggested arbitration was in compliance with Article VI of the Anglo-German Treaty that all lines of demarcation 'shall be subject to rectification by agreement between the two Powers in accordance with local requirements'.

However, in the Eason Report dated 5 August 1912, Captain Eason noted that with respect to Kissikiri Island two miles above the rapids:

Here I consider that undoubtedly the North should be claimed as the main channel. At the western end of the island the North Channel at this period of the year is over one hundred feet wide and eight feet deep, the South channel about forty feet wide and four feet deep. The South channel is merely a backwater, what current there is goes round the North. The natives living at Kasika in German territory are at present growing crops on it.⁵⁷

Captain Eason had the honour to attach various maps to his Report, which was sent to the Secretary of State on 23 September 1912.

Thus, Namibia asserted that the Eason Report confirmed the occupation of the Island by the maSubia. The Report was commissioned barely twenty years after the 1890 Treaty. This was an indisputable customary law fact. What conclusions would the maSubia draw from this, if they had any say in the matter? The findings of the Eason Report were

not communicated to Germany. The British Government sat on the Report and did nothing. They neither appointed any arbitrators or commissioners, nor did they act on the conclusion of Eason's Report for rectification since the natives 'are at present growing crops on it'. Even though the Caprivi Strip was then occupied by Hauptmann Streitwolf, and was administered during the First World War by Great Britain on behalf of South Africa; Britain did nothing about rectification in accordance with local requirements.

Botswana disagreed with Namibia's contentions. There were too many flaws in Namibia's interpretation of the Eason Report. The silence regarding natives growing crops on the Island was not a 'presumption of acquiescence' and recognition. There was no occupation by Streitwolf, Kaufmann and von Frankenberg, their activities were not reported. In short, there had been no exercise of state authority in Sedudu Island. Furthermore, Captain Eason considered that the northern channel should be claimed as the main channel. Botswana argued that Namibia could not rely on the Eason Report to claim that Kasikili belonged to Namibia by prescription and acquiescence, even though the Report was commissioned at the highest level in London.

The Trollope-Dickinson Report as corroborative evidence of the activities of the parties to the 1890 Treaty was also examined. The issue of the Island was raised in 1947 when Mr William Ker of the Zambesi Transport and Trading Company obtained permission from Major L. F. W. Trollope, Magistrate in Eastern Caprivi Strip, to transport timber by barges from his Sawmill in Serondella to Katombora down the northern channel of the Chobe river to the Zambezi. The southern channel was not navigable, although it was the international boundary. Mr Ker also informed Mr N. V. Redman, Assistant District Commissioner in Maun, in Bechuanaland because, as he was advised, the northern channel was in the Caprivi Zipfel.

Redman wrote to Trollope. Trollope replied, and several letters later, and half a century after the 1890 Treaty, they agreed to differ on the legal

⁵⁷ Capt. H. V. Eason, Report on the main channel of the Linyanti (or Chobe) river, 5 August 1912

aspect regarding Kasikili Island and the concomitant question of the Northern Waterway:

May I say that this 'gentlemen's agreement' could only purport to affect arrangements as between our two Administrations I have my gravest doubts as to the wisdom of making the ambit larger for that would bring in all sorts of extraneous questions of international law and such like imponderables which I think we might usefully leave for consideration when we come to that bridge. Trollope I suggest, in this connection, that I and your Assistant at Kasane should hold a joint informal investigation thereafter submitting reports (joint if we are able to reach unanimity) to our respective administrations in order to resolve the matter finally and officially.⁵⁸

In a Joint Report dated 19 January 1948, they noted:

1. We have not had the opportunity of examining an authenticated copy of the agreement between Great Britain and Germany signed at Berlin on the 1st July 1890, but we understand that by Article III of that Agreement, the boundary between the Eastern Caprivi Zipfel and the Bechuanaland Protectorate (insofar as it affects the matter which is dealt with in this Report) 'descends the centre of the main channel of that (i.e. the Chobe) River ...'
2. We attach hereto a sketch map (not drawn to scale) of the Kasikili Island in the Chobe river and the waterways relative thereto
3. We find after separate examination of the terrain and the examination of an aerial photograph that the 'main channel' does not follow the waterway, which is usually

PRO. Co 417 / 513 . Memorial of the Republic of Namibia. Vol. IV, Annex 47, p. 173-175.

⁵⁸ Letter from L. F. W. Trollope to V. E. Dickson, 3 January 1948. NAN, NI / 15 / 3-4 ECZ-Botswana-Kasikili Island). Annex 59. Memorial of the Republic of Namibia. Vol. IV.

- shown on maps as the boundary between the two Territories.
4. We express the opinion that the 'main Channel' lies in the waterway which would include the island in question in the Bechuanaland Protectorate.
 5. On the other hand we are satisfied, after enquiry that since at least 1907, use has been made of the Island by Eastern Caprivi Zipfel tribesmen and that position still continues.
 6. We know of no evidence of the Island having been made use of, or claimed, by Bechuanaland Tribesmen or Authorities or of any objection to the use thereof by Caprivi Tribes being made.
 7. We record, however, the fact that the country on the Bechuanaland side of the boundary is for all practical purposes not tribally occupied by Africans.⁵⁹

In a letter from Trollope to Dickinson, District Commissioner for Bechuanaland Protectorate in Kasane, he wrote:

In regard to the larger question raised by you (i.e. as to whether the stretch of water in question is actually within the Eastern Caprivi Zipfel, or whether it in fact forms the boundary), I freely admit that the matter is not without difficulty. I further agree that it is a matter affecting our two administrations and is not merely a matter between this office and Mr Ker.

Might I therefore say that the position as at the moment, allowing the full use of the Island to your tribesmen, for grazing and cultivation and our undisputed use of the Northern Waterway, under the international laws governing the Waterways forming the common boundaries of two

⁵⁹ Boundary between the Bechuanaland Protectorate and the Eastern Caprivi Zipfel: Kasikili Island. 19 January 1948. Memorial of the Republic of Namibia. Vol. IV, Annex 60, p. 264.

states, would appear entirely satisfactory, to the B. P. Government, and I trust also to yours. Dickinson,⁶⁰

Accordingly, Namibia argued that Botswana had not made any claim to the Island by use and occupation, and that Kasikili belonged to Namibia by prescription.⁶¹ Namibia applied the doctrine of prescription to the Island of Kasikili and not to the river boundary. Title to the Island would then determine the boundary:

The acquisition of sovereignty over a territory through continuous and undisturbed exercise of sovereignty over it during such a period as is necessary to create under the influence of historical development the general conviction that the present condition of things is in conformity with international order.⁶²

Thus, according to Namibia, the Island of Kasikili belonged to them and had satisfied the four conditions in order to take possession under prescriptive title:

- 1) The possession of the prescribing state must be exercised *à titre de souverain*
- 2) The possession must be peaceful and uninterrupted
- 3) The possession must be public
- 4) The possession must endure for a certain length of time.⁶³

Namibia then cited Oppenheim's International Law as an example of the doctrine of prescription:

When an incorrectly drawn boundary line, which wrongly allots to one of the states concerned a tract of territory, has for a long time been regarded as correct, the conviction will

⁶⁰ V. E. Dickson succeeded Noel Redman as District Commissioner for Bechuanaland Protectorate in Kasane.

⁶¹ Acquisitive prescription or *usucapio*, the use, possession and peaceful exercise of authority over the land for a long time. By *usucapio*, the possession acquired in good faith becomes title. The original owner is presumed by sheer passivity to have renounced its title.

⁶² Memorial of the Republic of Namibia. Vol. I, p. 66.

⁶³ Memorial of the Republic of Namibia. Vol. I, p. 68.

prevail that the present condition of things is in conformity with international order, even if afterwards the wronged state raises a protest and demands that the boundary line should be redrawn.⁶⁴

The maSubia tribesmen and women had used the Island since time began and there had been no protest from Bechuanaland:

The Union Government is anxious to preserve the rights of the Caprivi Zipfel tribesmen on the Island and it is understood that the Bechuanaland authorities desire the use of the Northern channel for navigation purposes. As there would appear to be no conflict of interests it should be possible to come to an arrangement, which is mutually satisfactory.⁶⁵

That prescriptive title is relevant even in international law.

Namibia's argument therefore, is that lack of protest from Bechuanaland Protectorate since 1890 signifies acquiescence. One would reasonably have expected that Botswana would have lodged protests before the competent South African mandatory authority either before or after independence. Botswana was comatose for nearly two decades after independence on 30 September 1966. Botswana was dormant: silent. No objection whatsoever was raised about Caprivi tribesmen or the Island. According to MacGibbon (1954:143) acquiescence thus takes the form of silence or absence of protest in circumstances, which generally call for a positive reaction signifying an objection. Neither did the British in Bechuanaland raise with the Germans (1890 - 1915) the issue of the boundary where Kasikili is located. The only knee-jerk reaction was in a letter dated 18 August 1908, from the Foreign Office to Colonial Office noted:

⁶⁴ R. Jennings & A. Watts (1992:707).

⁶⁵ Memorial of the Republic of Namibia. Vol. IV, Annex 63, p. 280. Letter of the Secretary to the Prime Minister, South Africa, to the Administrative Secretary to the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland, Pretoria, 14 October 1948. (NAN, NJ/15/3-4 ECZ-Botswana-Kasikili Island).

It was suggested that the strip of German territory running to the Zambezi River should be ceded to Great Britain in exchange for a strip of territory on the Western border of the Bechuanaland Protectorate.

You will observe that the Imperial Government are of opinion that this part of the Bechuanaland protectorate in no way represents a value equivalent to that of the district which, in accordance with the Agreement of July 1st 1890, Germany is entitled to claim ...

I may add that Herr von Lindequist called at this Embassy this morning with regard to other matters, and mentioned in the course of conversation that the Colonial Department were not opposed in principle to an exchange, but that the territory offered was waterless and of no use to them.⁶⁶

Germany lost the war, and the issue of the Caprivi Strip was not put before the Allied negotiators of The Treaty of Versailles.

Botswana denies the existence of prescription, as Namibia's grounds are not valid for the application of the doctrine. The Anglo-German Treaty binds Namibia. The northern and western channel of the Chobe in the vicinity of Kasikili / Sedudu Island constitutes the 'main channel' of the river Chobe. The reliable elements of prescription such as,

- 1) The continuous and public exercise of State authority over the area concerned for a sufficient period of time.
- 2) The existence on the part of the State exercising authority of a genuine belief that it has title (the possession must be *à titre de souverain*).

Namibia's reliance on a prescriptive title presupposes that its lawfulness was based on the Agreement of 1890, thus tribesmen's possession could not be *à titre de souverain* in terms of the 1890 Agreement.

Botswana would not accept Namibia's evidence of prescriptive title, because:

⁶⁶ PRO. CO 879 / 98, No. 123. Annex 34. Memorial of the Republic of Namibia. Vol. IV, p. 148.

the working assumption is precisely the existence of a *title of Botswana* (or its predecessor) which allegedly is displaced by the operation of prescription. The prescription argument must assume that the original (treaty-based) title of Botswana has been displaced by a process having no connection with the 1890 Agreement. 'Subsequent practice' cannot claim its status if the material adduced is *ab initio* antithetical to the concept of 'subsequent practice'.⁶⁷

Thus, the condition for Namibia to argue for prescription in the case of a river boundary, has not been fulfilled. Article III(2) of the Anglo-German Agreement 1890 is very clear. The existence of the Treaty excludes prescription because it is a boundary created by Treaty. The acts of the maSubia cannot generate title unless those acts are subsequently ratified by the State. The maSubia chiefs were not agents of the State and they had no authority 'to engage in title-generating activities'. Any activity that they carried out on the Island could not create title in favour of Germany or its successors. 'Ownership or use of land for private or chiefly purposes has at no stage involved a change of sovereignty'. Botswana was relentless, that no prescription were not fulfilled. In the period 1890 to 1985, the conditions for prescription were not fulfilled. In short, there is no evidence that Namibia or its predecessors exercised state authority in respect of Kasikili / Sedudu. In 1960, Sedudu Island was a part of the Chobe Game Reserve that became Chobe National Park.⁶⁸ Its northern boundary follows the international boundary of the Bechuanaland Protectorate, and includes Sedudu Island. All the Acts included Sedudu as Botswana territory, and the Game Wardens testified by submitting Affidavits. As a consequence of the establishment of the Chobe National Park, cultivation was prohibited on the Island. And Namibia did not protest when maSubia were prohibited from cultivating on the Island.

⁶⁷ Counter-Memorial of the Republic of Botswana. Vol. I, p. 55.

⁶⁸ High Commissioner's Notice No. 65 of 1960: Establishment of the Chobe Game Reserve. Legislation of Bechuanaland Protectorate. The Fauna Conservation Proclamation, 1961 National Parks Act, 1967. The Chobe National Park (Amendment of Boundary) Order 1960.

Botswana agreed that sometimes the maSubia from the Eastern Caprivi used the Island for farming, but so did the baSubia in Bechuanaland on the other side of the Chobe. Botswana argued that there was no permanent village on the Island. Moreover, 'the acts of private persons cannot generate title unless those acts are subsequently ratified by the State'. Botswana argued that the maSubia chiefs did not have authority to engage in title-generating activities for the benefit of Germany or its successors.

This brought the JTTE to the incident where the Botswana Patrol boat fired at the South Africa Defence Force in the Chobe river. Both Governments agreed to carry out a joint survey of the boundary of Kasikili / Sedudu to determine whether the main channel of the Chobe is located to the north or the south of Sidudu / Kasikili. The Joint Survey Report of 5 July 1985 included the German Von Frankenberg map of 1912, a British map of 1933 and a Botswana map of 1975 and the South African military map. The conclusion of the Report confirmed that the 'main channel' of the Chobe is to the north of Kasikili / Sedudu Island.

Notwithstanding the maps, Namibia's contention is that according to legal opinion in South Africa at that time, the Survey Report did not prove conclusively that Sidudu Island belongs to Botswana:

The South African authorities have therefore suggested to Botswana in a telex dated 17 November 1986 that the matter be taken up with the Government of an independent Namibia. This was not acceptable to Botswana as they considered the joint survey's report to be conclusive and in fact expressed the opinion that 'no further discussion of the matter is necessary'.

The matter has therefore not been resolved, as South Africa has never officially recognised Botswana's claim to Sidudu Island.⁶⁹

Namibia pointed out correctly that according to the letter from the Chief Director of Surveys and Mapping, Gaborone, that 'the original

published copy of it (German Map 1909) included with the Report clearly shows the Island to be included in the Caprivi. Also that the British War Office published map of 1933 shows the Island to be part of the Caprivi.⁷⁰ Furthermore, Namibia argues that South Africa could not have agreed to such a finding for South West Africa / Namibia since their mandatory power had been terminated by Resolution 2145 (XXI) of 1966, approved by the Security Council Resolution 276 (1970). Any purported agreement by South Africa would have been invalid.

Botswana insisted that on the question of fact, the main channel is to the north and west of Kasikili / Sedudu Island. The central question is the interpretation and application of Article III(2) the 'main channel' of the Chobe.

9.7 The Harare Communiqué

The summit meeting of the Heads of State of Botswana, Namibia and Zimbabwe was convened in Harare, capital of Zimbabwe on Wednesday, 15 February 1995. Comrade President Mugabe, Comrade Sam and Sacky were in Harare to hear the final report of the Joint Team of Technical Experts regarding the boundary dispute between Botswana and Namibia around Kasikili / Sedudu Island.

A delirious crowd of young men and women dressed in the international uniform of jeans and T-shirts, and a small reverential crowd of adults uplifted by the presence of the media were there to hear the findings of the JTTE and the last of Kasikili / Sedudu Island.

The JTTE with deepest regret, reported to the Heads of State that after extensive deliberations the:

Joint Team was unable to agree on issues of substance. With regret the Joint Team has to report to Your Excellencies that it was unable to make a finding determining the boundary between Botswana and Namibia in the area of Kasikili /

⁶⁹ Memorial of Namibia, Vol. IV, Annex 88, p. 336.

⁷⁰ Memorial of Botswana, Vol. III, Annex 48, p. 386.

Sedudu Island in accordance with the provisions of the Memorandum of Understanding.

The Joint Team was unable to determine the boundary in agreement with the terms used in the 1890 Anglo-German Treaty.

Although the Joint Team was unable to make a finding, it would nevertheless like to recommend recourse to the peaceful settlement of the dispute on the basis of the applicable rules and principles of international law.⁷¹

The dispute should be referred to international arbitration. Was that the answer the Presidents expected? With respect, the presidential failure to take into account that the function of the Joint Team had proved too extensive and that the JTTE should have been restricted to the rectification of the 1890 Treaty. The Joint Team should have been technical experts instead of eminent international lawyers. The Botswana Joint Team of Technical Experts was led by a distinguished Oxford Professor of international law. And the Namibia team by the extraordinarily bright international law Permanent Secretary at the Ministry of Justice, Windhoek. What do you expect? They would recommend international arbitration, wouldn't they?

The decision of the Joint Team was not what the Presidents had hoped for; they had not anticipated a recommendation of 'applicable rules and principles of international law'. The Joint Team had not reached any agreement as to the status of Kasikili / Sedudu Island dispute and the intermittent presence of the maSubia on the Island for at least three hundred years. That was the dispute and not the boundary about which north or south channel established the 'main channel'. The status of the Island would have met the local requirements in the much neglected Article VI of the Anglo-German Treaty that the two states needed; and would have determined the territorial sovereignty of Kasikili Sedudu once and for all. The Presidents had expected a decision in favour of Namibia, which was in accordance with the reality of what the maSubia

⁷¹ Memorial Botswana. Vol. III. Annex 58, p. 462.

and baSubia were doing on the Island. Maps, reports, scientific evidence of hydrology and geomorphology of the channels should have resolved the dispute in Namibia's favour.

It became quite clear to Comrade Sam and Sacky that the Kasikili / Sedudu Island dispute was going to cost their taxpayers a great deal of money. The Joint Team had transformed a simple determination of the Kasikili / Sedudu Island dispute into a permanent legal slanging match of applicable rules and principles of international law on territorial problems.

Botswana and Namibia believed in peaceful negotiations and after the Heads of State had deliberated on the findings of the report, they accepted the recommendation. However, they agreed further that the matter should be referred to the International Court of Justice for determination, under 'the general principles of law recognised by civilised nations'.

The Presidents of Botswana and Namibia reiterated the Kasane Communiqué of 24 May 1992 that:

- (a) ...
- (b) ...
- (c) existing social interaction between the people of Namibia and Botswana should continue;
- (d) the economic activities such as fishing shall continue on the understanding that fishing nets should not be laid across the river;
- (e) navigation should remain unimpeded including free movement of tourists.

The presidential media pack was already on their mobile / cell phones to their capitals. As far as they were concerned, the Joint Team had squandered the hope placed on them by the Presidents, the traditional authorities and their tribesmen and women. They had agreed to submit to the jurisdiction and judgment of a foreign court of the former colonial masters who devised the 1890 Anglo-German Treaty. Did anyone ask the maSubia and baSubia whether they would recognise the foreign judgment? Why should they accept it? Rectification could have taken place between the two states.

The Joint Team had failed to reach a common agreement to determine who owns Kasikili / Sedudu Island in accordance with the facts on the ground revealed before them, but the JTTE wished to rely on the interpretation of the Anglo-German Treaty of 1890. If nothing else was achieved, at least they had prevented the Batswana and the Namibians from a disastrous war. African tribal killing sprees have inbuilt capacities to drag on for years while heritage village monuments are reduced to rubble, antiquities looted, and streams of refugees flee for their lives.

Comrade Sam and Sacky thanked President Mugabe, the Joint Team, and the people of Zimbabwe for their hospitality and the excellent arrangements they had made for the summit. They agreed to resolve the dispute peacefully according to the principles of the Charter of the United Nations and the Charter of the Organisation of African Unity. The judgment of the ICJ would be final and binding.

Botswana and Namibia filed a joint letter on 29 May 1996 to the Registrar of the International Court of Justice, The Hague, agreeing to submit the dispute for a final settlement. The two parties also sent the original text of the Special Agreement between them to the UN.⁷²

⁷² Article 40 (1-3) Statute of the International Court of Justice.

Chapter

10

The Hague

The Kasikili / Sedudu Island, Namibia v Botswana dispute appalled many Africans. Both states have a very small population of about 1.7 million each, and the majority of the citizens of both states are well educated. Namibia and Botswana are extraordinarily rich from earnings in commercial diamonds and other significant minerals that bring in high foreign exchange earnings. The two states are also politically stable.

Educated Africans felt revulsion about the Kasikili / Sedudu Island dispute for three reasons. First, Europe had dismantled its border controls, as borders were the chief obstacles to the free movement of their people, their capital, their judgments and their services; whereas, African states are now reinforcing and reaffirming with brutality the former colonial boundaries.

Secondly, by ethnic population analysis, Kasikili / Sedudu Island naturally belonged to the maSubia. Kasikili Island was very important to the ancient maSubia who had a penchant for migrating to the fertile islands in the northern channel of the Chobe river and the Zambezi that were nearer to their side of the river bank. However, during the struggle for the liberation of South West Africa from South African apartheid rule, the Island was left unoccupied for several years.

The English and German lawyers who drafted the Anglo-German Treaty, 1890 did not claim to know either the topography of northern

Ngamiland or that there was a bifurcation in the River Chobe. 'Certainly,' Lord Salisbury pointed out robustly:

the enthusiasm which has been evoked for this desolate corner of Africa has surprised me more than anything else in this controversy. We have had a fierce conflict over the possession of a lake whose name I am afraid I cannot pronounce correctly — I think it is Lake Ngami — our only difficulty being that we do not know where it is. We cannot determine its position within 100 miles, certainly not within 60 miles, and there are great doubts whether it is a lake at all, or only a bed of rushes. I am very anxious that full scope should be given to the enterprise of men who have undertaken concessions in that country from a well-affected chief Moremi; and I think that the whole country of Moremi has been retained within the British sphere. But when I hear the language that is used, the hopes that are entertained, and the extraordinary reasoning as to the future which is based upon them I cannot help thinking of similar language and similar dreams entertained by our ancestors some 300 years ago connected with the well-known projects for reaching the land of el Dorado.¹

Kasikili Island was not within Moremi's country, and Kasikili Island had no intrinsic strategic value to the colonial powers. However, the drafters agreed in Article VI of the 1890 Anglo-German Treaty to rectification of the Treaty in Africa according to the local requirements and the topography:

All the lines of demarcation traced in Articles I to IV shall be subject to rectification by agreement between the two Powers, in accordance with local requirements.

It is especially understood that, as regards the boundaries traced in Article IV, Commissioners shall meet with the least possible delay for the object of such rectification

The intention of the British and German drafters had been included in Article VI with the proviso that Article III should be subject to rectification in Africa in accordance with local requirements. For example, the local requirements that the parties needed to rectify were the significant error on the ground as shown by the activities of the *maSubia* tribesmen in the Kasikili Island. Otherwise, what was the meaning of local requirements in Article VI if not the bifurcation of the Chobe River and the intermittent activities of the tribesmen?

Thirdly, an estimated £17m – £18m (seventeen to eighteen million pounds sterling) was jointly spent on the dispute by both state parties: international legal fees, travel, hotels, *per diems* and the time and talent devoted by several government officials to the Kasikili / Sedudu Island case instead of to their domestic work.² The estimated amount of seventeen to eighteen million pounds, most Africans contended, ate up their primary schools, secondary schools and university budgets. Alternatively, they argued that the money spent on Kasikili / Sedudu litigation could have built a San / Basarwa University to be shared by the indigenous people of both states.

Should not the former colonial powers, Germany and Britain, responsible for creating the indeterminate territorial boundary pay for the cost of the litigation? Indeed, the two enormously rich ex-colonial powers agreed with the Africans' contention, but they argued that Botswana and Namibia are two independent states, and they chose to litigate. Why should Britain and Germany pay for their litigation? There was nothing in it for them?

Accordingly, the taxpayers of Botswana and Namibia bore the financial burden of the Kasikili / Sedudu litigation, because they were relieved that their energetic armed young men were not obliged to go to war over a half-submerged Island in the Chobe River. They knew that African-armed conflicts were nasty, brutal and lasted for eternity. African

¹ Speech of Lord Salisbury, House of Lords, 10 July 1890. PRO. 2HC 2 / 308. Memorial of the Republic of Namibia. Vol. IV. Annex 31, p. 137.

² See Appendix Nos. 2 & 3 for State Party representatives.

war was voracious. Thousands of civilian women, children, the elderly and disabled were killed and injured, simply because they were in the wrong villages at the wrong time. Furthermore, the landmines maimed hoe-agriculture men, women and their children. Since horses and donkeys - the poor's only means of transport - were usually commandeered by the warring factions, some villagers abandoned their farms and fled for their lives into neighbouring states and became poverty-stricken refugees. The children, who were exposed to endless blasts of artillery, as adults suffered irreparable hearing damage. The ecological consequence of war was also a crime against animals. There was a decline in the density of non-migratory wildlife and damage to the environment. For a long time, the malodorous air around villages before they become deserted smelt of decayed human flesh and burnt hair of animals.

A war between Botswana and Namibia over Kasikili / Sedudu Island would have cost several times more than the estimated cost of seventeen to eighteen million pounds; it was far better for Kasikili / Sedudu Island to swallow the education budget and keep out the voracious war.

As far as the maSubia were concerned, the 1890 Treaty was not a demarcation 'of frontier along the head of the waters of all the affluents of the Chobe and the Zambezi, over an impracticable country.' From their standpoint, they could not understand how Kasikili could become a boundary dispute, and why it was conceded as a boundary dispute. The *Munitenge* and the elders could recall that the treaty was more about the 'spheres of influence' of the colonial powers north of Bechuanaland that was articulated in Article VII:

The two powers engage that neither will interfere with any sphere of influence assigned to the other by Articles I - IV. One Power will not in the sphere of the other make acquisitions, conclude Treaties, accept sovereign rights or Protectorates, nor hinder the extension of influence of the other.

It is understood that no Companies or individuals subject to one Power can exercise sovereign rights in a sphere assigned to the other, except with the assent of the latter.

In a memorandum dated 28 June 1890, from Sir Percy Anderson in the Foreign Office, London, to Sir Edward Malet, British Ambassador in Berlin, Anderson pointed out:

that in the future British and German subjects will not be content with operating, each in their own sphere, in a spirit of reciprocal exclusiveness; but they will take advantage of the improved situation in which constant friction of interests, with the consequent acrimonious discussions, should disappear, to join hands in developing the commerce of Central Africa, in civilising the natives and protecting Europeans ...³

One of the fundamental freedoms of the European Community is the free movement of the citizens, and the abolition of borders. Germany and France were the first to make this symbolic gesture by relaxing checks at their common border. Then, on 14 June 1985 France, the Federal Republic of Germany, Belgium, the Netherlands and Luxembourg ratified the Schengen Convention that abolished checks at all their borders. The five Schengen Convention Member States then invited Austria, Finland and Sweden to join in the elimination of border controls, thus permitting the free movement of their people, their services and the flow of capital. The fear that without internal boundaries a horde of foreign nationals from poor EC States would gravitate to high income States has not materialised. Most well-established human beings, rich or poor, do not usually like to abandon their family and friends and up-root themselves from their villages or urban homes and become economic refugees, except, perhaps they are forced to do so by political upheavals and fear of persecution.

If Botswana and Namibia were worried about cross-border security and the influx of the gendered poor, they could have co-operated over border policing, through the Batnampol: the Botswana, Namibian Police. This would have involved their respective police officers, customs, and officers from the Ministry of Home Affairs and the Ministry of Justice.

³ PRO, FO 881 / 6146, enclosure 1 in No. 150, *Namibia* Vol. IV, Annex 30, p. 130.

Batnampol could have been used in combating drug trafficking, diamond smuggling, poaching, and refugees as well as exchanging information about Euro-paedophiles who interfered with children of either sex.

On the other hand, the quadripoint states could have set up a Quadripol for operational co-operation at Kazungula. Before the 1880s purported colonial boundary demarcation, most borders between the ethnic groups were porous, for the natives had never heard of passports and had no need of documents to travel. The people who wanted to leave their community simply moved out into another community and hoped that they would survive.

The case concerning Kasikili / Sedudu had now reached The Hague. The natives of German South West Africa and the natives of British Bechuanaland were not parties to the Anglo-German Agreement of 1890. Furthermore, Namibia and Botswana were not parties to the Vienna Convention on the Law of Treaties, 1969. But, the International Court of Justice applied the 1969 Vienna Convention retrospectively to the interpretation of the 1890 Anglo-German Agreement, because Botswana and Namibia had agreed that the rules should be applied. Or was the agreement to apply the Vienna Convention drafted exclusively by Botswana without Namibia's input?

There was much head shaking by lawyers of African customary law who were concerned for the values of village communities and are familiar with the issues in the Kasikili / Sedudu case. They had several objections. Why should the state parties, Botswana or Namibia or exclusively Botswana, determine in advance what rules the Court should apply to the dispute about an ancient 1890 Treaty dating from the early colonial period to the end of colonial history? This has precluded interpretation of the Treaty in favour of Namibia's tribesmen occupying and using Kasikili / Sedudu Island. It is the function of the Court to decide. Greig (2001:113) noted the principle of intertemporality, that the Court made its position abundantly clear in the Nicaragua case:

The Court notes that there is in fact evidence ... of a considerable degree of agreement between the Parties as to the content of the customary international law relating to the

non-use of force and non-intervention. This concurrence of their views does not however dispense the Court from having itself to ascertain what rules of customary international law are applicable. The mere fact that States declare their recognition of certain rules is not sufficient for the Court to consider these as being part of customary international law, and as applicable as such to those States. Bound as it is by Article 38 of its Statute to apply, *inter alia*, international custom 'as evidence of a general practice accepted as law' the Court may not disregard the essential role played by general practice. Where two States agree to incorporate a particular rule in a treaty, their agreement suffices to make that rule a legal one binding upon them; but in the field of customary international law, the shared view of the Parties as to the content of what they regard as the rule is not enough. The Court must satisfy itself that the existence of the rule in the *opinio juris* of States is confirmed by practice.

In the dissenting opinion of Judge Weeramantry, he stressed that: We are not here interpreting or applying a legal concept, in which case intertemporal principles might, in certain cases, attract the meaning that concept bears at the time of interpretation ... This principle of contemporaneity is one of the important principles of treaty interpretation, and is not, I think, given its proper effect by taking into account, as the Court has done, the attitude of the Parties more than 50 years later, when political and other circumstances may well have necessitated a change of administrative policy from that which had been evidenced for the half century immediately following the Treaty.⁴

Since Namibia and Botswana were not state parties to the Agreement, why did the Court not interpret the 1890 Anglo-German Treaty as it

⁴ Judgment. Dissenting Opinion of Vice-President Weeramantry, para 29 p. 8.

stood? In the separate opinion of Judge Shigeru Oda paragraph 4 he noted that:

It appears to me that the Judgment places excessive reliance upon the Vienna Convention on the Law of Treaties for the purpose of the Court's interpretation of the 1890 Anglo-German Treaty. The Parties to this case certainly agreed that the Court should be asked to determine the boundary on the basis of the 1890 Treaty — and it should again be pointed out quite categorically that Botswana and Namibia are not parties to that Treaty — but the Court has not been asked to interpret the 1890 Treaty itself. The Judgment quotes Article 31 (General rule of interpretation) of the 1969 Vienna Convention on the Law of Treaties almost in its entirety. Reference is made in the Judgment to this provision of the Vienna Convention at least eleven times. Although I am fully aware that the Vienna Convention reflects customary international law, it should, however, be noted, as the Judgment correctly points out in its paragraph 18, that this Convention 'applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States' (Art.4). In fact, the Convention came into force in 1980. This case does not appear to me to be one related to the application of the Vienna Convention.

Other members of the Court also commented on this aspect of intertemporality. In the Declaration of Judge Higgins, para 3:

The Court is indeed, for this particular task, entitled to look at all the criteria the Parties have suggested as relevant. This is not to discover a mythical 'ordinary meaning' within the Treaty, but rather because the general terminology chosen long ago falls to be decided today. To use contemporary knowledge and scientific data to assist in fulfilling that task is not at all inconsistent with the intertemporal rule in the Island of Palmas Award, which was concerned with the legal rules applicable to title to territory and not with

identification, through the legal technique of evaluating evidence, of a chosen term.

But a modernist interpretive framework of the Vienna Convention was applied to the Kasikili / Sedudu case. Perhaps, that was why the Court found itself in the first *dispositif* deciding that 'the boundary between Botswana and Namibia follows the line of "deepest soundings" in the northern channel of the Chobe River around Kasikili / Sedudu Island. If the 19th century negotiators wanted the line of "deepest soundings" as "the main channel" they would have said so'. The 1890 Anglo-German Treaty delimited the 'boundary of the German sphere of influence' not the territorial boundary interpreted by the Vienna Convention as 'the general principles of law recognised by civilised nations'.⁵

The former colonial powers, Britain and Germany who had ratified the Treaty, disagreed one hundred and nine years later. Britain found in favour of Botswana, and Germany dissented from *dispositif* 1 and 2 of the Court's judgment and found in favour of Namibia. With all due respect, many learned Africans were unconvinced by the several simple questions left unanswered by the ICJ in the Kasikili / Sedudu Island case.

Why did the Court not go to Africa on an inspection tour of the Kasikili / Sedudu Island? Although it is a Court of law to determine an 1890 Treaty, it is also an International Court of Justice of the twenty-first century that could rely on modern air transportation. Should not the State Parties have invited members of the Court to visit the Island? But they chose not to do so.

Then, members of the Court should have invited themselves to Africa to see Kasikili / Sedudu, Island but they too chose not to visit the Island. In order to be impartial to Botswana and to Namibia, the Court could have gone by air to Zimbabwe's Victoria Falls. Then taken a luxury air-conditioned coach to Kasane and done a physical inspection of Kasikili / Sedudu Island with independent experts on hydrology to enable them to identify the configuration of the channels and see how the tribesmen used the Chobe. It would also have enabled the Court and its scientific experts

⁵ Article 38(1)(c) Statute of the International Court of Justice.

to carry out its own independent analysis of the main channel without being overwhelmed by the 'Thalweg doctrine' and the contradictory scientific evidence of the various experts. Any Subia schoolboy or girl could have told members of the Court that when the Zambezi was in full spate, southern Caprivi was a large lake; for the children travelled to school by canoes and there was nothing like the northern or southern channel of the Kasikili. The Zambezi and the Chobe flooded places as far as Kabulabula and Kabala, but sometimes the Chobe was muddy dry. The circumstances of the making of the treaty and the main purpose of the treaty was to allow Germany river access to the Zambezi. If Britain controlled the northern channel, then Germany could not have had access to the Chobe.

The Court could also have seen the historical evidence of the territorial claims of the maSubia under African customary law prevailing at the time of the treaty, rather than be dragooned by Botswana into a literal interpretation of Article III(2) of the 1890 Treaty, and reliance on map evidence, and flow measurement.

The Court could have spent a night in Chobe Lodge and another night in the luxury of the *Zambezi Queen*, then return to the Victoria Falls, and The Hague. Perhaps, the legal status of Kasikili / Sedudu might have been determined differently. Their judgment would then have satisfied most Africans who would soon be plagued by further boundary disputes when a state became more economically and militarily powerful than its neighbours. What difference would an inspection *in situ* by the Court have made to the outcome of the case? Modern Germany and modern Britain would have agreed as to the ownership of the Island.

Like the British and German negotiators of the Treaty of 1 July 1890, who did not step out of the Colonial Office in London and Berlin, the Court determined the Kasikili / Sedudu boundary dispute from oral and written pleadings, sitting in The Hague. The Court would not budge from the comfort of The Hague into the heart of darkest Africa. They relied on the interpretation of the 1969 Vienna Convention on the Law of Treaties.

10.1 The Case Concerning Kasikili / Sedudu Island

Botswana and Namibia asked the International Court of Justice to determine:

- (a) The boundary around Kasikili / Sedudu Island
- (b) The legal status of the Island

The Court consisted of:

- 1) The President, (USA) Judge Stephen M. Schwebel
- 2) The Vice-President, (Sri Lanka) Judge Christopher G. Weeramantry
- 3) (Algeria) Judge Mohammed Bedjaoui
- 4) (Brazil) Judge Francisco Rezek
- 5) (China) Judge Jiuyong Shi
- 6) (France) Judge Gilbert Guillaume
- 7) (Germany) Judge Carl-August Fleischhauer
- 8) (Hungary) Judge Geza Herczegh
- 9) (Japan) Judge Shigeru Oda
- 10) (Madagascar) Judge Raymond Ranjeva
- 11) (Netherlands) Judge Pieter H. Kooijmans
- 12) (Russian Federation) Judge Vladlen S. Vereschchetin
- 13) (Sierra Leone) Judge Abdul G. Koroma
- 14) (United Kingdom) Judge Rosalyn Higgins
- 15) (Venezuela) Judge Gonzalo Parra-Aranguren

Registrar: Señor Eduardo Valencia-Ospina

In accordance with Article 31(3) of the Statute of the International Court of Justice, which provides that, 'If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article'.

But Botswana and Namibia for reasons best known to them chose not to exercise the option. Since Botswana and Namibia did not choose a judge from their own nationality, in accordance with Article 31(2)(3) why, asked lawyers of African customary law did the British judge and the German judge not stand down from the proceedings? There would have been thirteen judges still left on the Bench.

Having submitted the written pleadings, the Agents, Counsels and Advocates for both parties were ready for the oral hearings in public.⁶ The proceedings in the Court would be conducted in English and the judgment would also be delivered in English.

Each party showed a video-cassette to the Bench. Both state parties who were very well represented made their case with clarity and national passion. The oral arguments and expert replies were conducted for Botswana by Mr Batshani Tafa, Mr Molosiwa Selepeng, Prof Ian Brownlie, Lady Hazel Fox, Dr Stefan Talmon, Prof F. T. K. Sefe, and Mr Isaac Muzila.

And Namibia's line up was Dr Albert Kawana, Prof Abram Chayes, Prof Dr Jost Delbrück, Prof W. J. R. Alexander, Dr Lazarus Hangula, Prof Dr Julio Faundex, Colonel Dennis Rushworth and Mr Jean-Pierre Cot.

Botswana from the Memorial, the Counter-Memorial and the Reply said:

May it please the Court:

- 1) To adjudge and declare that:
 - a) The northern and western channel of the Chobe River in the vicinity of Kasikili / Sedudu Island constitutes the 'main channel' of the Chobe River in accordance with the provision of Article III(2) of the Anglo-German Agreement of 1890, and that
 - b) Consequently, sovereignty in respect of Kasikili / Sedudu Island inheres exclusively in the Republic of Botswana and further
- 2) to determine the boundary around Kasikili / Sedudu Island on the basis of the *Thalweg* in the northern and western channel of the Chobe River.

In the Memorial, Counter-Memorial and the written pleadings, Namibia made the following submissions to the Court:

⁶ Memorials were submitted to the Registrar by 28 February 1997 by each State. Time limit for the submission of Counter-Memorial by the Parties was 28 November 1997. Replies, Annexes and certified copies of documents was 27 November 1998.

May it please the Court, rejecting all claims and submissions to the contrary, to adjudge and declare:

- 1) The channel that lies to the south of Kasikili / Sedudu Island is the main channel of the Chobe River.
- 2) The channel that lies to the north of Kasikili / Sedudu Island is not the main channel of the Chobe River
- 3) Namibia and its predecessors have occupied and used Kasikili Island and exercised sovereign jurisdiction over it, with the knowledge and acquiescence of Botswana and its predecessors since at least 1890
- 4) The boundary between Namibia and Botswana around Kasikili / Sedudu Island lies in the centre of the southern channel of the Chobe River.
- 5) The legal status of Kasikili / Sedudu Island is that it is a part of the territory under the sovereignty of Namibia.

The Court listened; for according to Article I of the Botswana and Namibia Special Agreement,⁷ 'The Court is asked to determine, on the basis of the Anglo-German Treaty of 1 July 1890 and the rules and principles of international law, the boundary between Namibia and Botswana around Kasikili / Sedudu Island and the legal status of the Island'.

Furthermore, the state parties had agreed to interpret the provisions of the 1890 Treaty by applying the rules of interpretation of Article 31 of the Vienna Convention on the Law of Treaties, 1969. This provides that:

- 1) A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
- 2) The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

⁷ Special Agreement between Botswana and Namibia signed in Gaborone on 15 February 1996 and came into force on 15 May 1996, date on which the instruments were ratified.

- a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
- b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

No matter that Article 4 of the Vienna Convention, 1969 provides that:

Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

Under the juridical microscope of Article 31 of the Vienna Convention, the Court examined the provisions of Article III of the Anglo-German Agreement of 1890.

Article III of the Treaty reads:

In Southwest Africa the sphere in which the exercise of influence is reserved to Germany is bounded:

- 1) To the south by a line commencing at the mouth of the Orange river, and ascending the north bank of that river to the point of its intersection by the 20th degree of east longitude.
- 2) To the East by a line commencing at the above-named point, and following the 20th degree of east longitude to the point of its intersection by the 22nd parallel of south latitude; it runs eastward along that parallel to the point of its intersection by the 21st degree of east longitude; thence it follows that degree northward to the point of its intersection by the 18th parallel of south latitude; it runs eastward along the parallel till it reaches the river Chobe, and descends the centre of the main channel of that river to its junction with the Zambesi, where it

terminates. (German text: *Tschobe-Fluss erreicht und setzt dann im Thalweg des Hauptlaufes dieses Flusses bis zu dessen Mündung in den Zambese fort, wo sie ihr Ende findet.*)

It is understood that under this arrangement Germany shall have free access from her Protectorate to the Zambesi by a strip of territory which shall at no point be less than 20 English miles in width.

The sphere in which the exercise of influence is reserved to Great Britain is bounded to the west and northwest by the above-mentioned line. It includes Lake Ngami.

The course of the above boundary is traced in general accordance with a map officially prepared for the British Government in 1889.

Does Article 31 of the Vienna Convention reflect the law of 1890? Greig (2001:122) argues that:

the International Court's judgment avoided this issue by concentrating upon the parties' (Britain's and South Africa's) later failure to agree and disregarded both the earlier practice and the principle contained in Article 32 of the Vienna Convention ... The existence of an agreement or understanding (the latter presumably being less probative than the former) depends upon the circumstances surrounding the conduct in question. But if the threshold of an agreement or an understanding is not reached, can the conduct simply be ignored?

Botswana then argued its own interpretation of the meaning of the 'main channel' which could be identified:

In a bifurcated stretch of river, such as the Chobe River in the vicinity of Kasikili / Sedudu Island, both channels will have their respective *Thalweg*. However, the *Thalweg* of the main channel will be at a lower elevation than the *Thalweg* of the other channel. Only the *Thalweg* of the main channel can be logically connected to the *Thalweg* of the channel

upstream of the point of bifurcation and downstream of the point of reunion.⁸

Namibia's contention was that the Court should first identify the "main channel" of the Chobe, then determine the centre of the channel:

The main channel must be found first; the centre can necessarily only be found afterward. This point is equally pertinent to the German translation of the formula ... in *Thalweg des Hauptlaufes* ... In the same way as with the English text, the search must first be for the *Hauptlauf* and for the *Thalweg* only after the *Hauptlauf* has been found. The *Hauptlauf* cannot be identified by first seeking to find the *Thalweg*.⁹

The Court accepted Namibia's position of their dual tasks, of the identification of the:

'main channel' and the definition of the 'centre' of that channel. 'In the Court's opinion, the real dispute between the Parties concerns the location of the main channel where the boundary lies'. In Botswana's view, it is to be found 'on the basis of the *Thalwegs* in the northern and western channel of the Chobe', whereas in Namibia's view, it 'lies in the centre (that is to say *Thalwegs*) of the southern channel of the Chobe River'.

The Court then proceeded to determine the ordinary meaning of the 'main channel' in international law and practice.

A profound examination of the criteria was conducted under Article 33(3) of the Vienna Convention. 'the terms of the treaty are presumed to have the same meaning in each authentic text'.

Accordingly, the word '*Thalweg*' could mean 'the most suitable channel for navigation' on the river, the line 'determined by the line of deepest soundings' or 'the median line of the main channel followed by boatmen travelling downstream'. '*Thalweg des Hauptlaufes*' is a word-

⁸ Judgment, Case concerning Kasikili / Sedudu, para. 22, p. 18.

⁹ Judgment, Case Concerning Kasikili / Sedudu, para 23, p. 19.

for-word translation and a synonymous rendition of the 'centre of the main channel'. After several explanations the Court accepted, 'centre of the main channel'.¹⁰

Therefore, in Botswana's opinion, the *Thalwegs* are in 'the northern and western channel of the Chobe'. Not so, argued Namibia, the *Thalweg* lies in the 'centre of the southern channel of the Chobe River'.

The Court then had to examine cautiously the meaning of 'main channel' in international law and practice. The Parties at least were agreed on one issue that the hydrology of the Chobe in the vicinity of Kasikili / Sedudu has not changed since 1890 when the Treaty was signed. But they had their own criteria for identification of the 'main channel'.

For Botswana, the criteria are:

- | | |
|-------------------|--|
| channel capacity: | this is determined by the width and depth of the channel and in the discharge equation it is represented by a cross-sectional area. From the cross-section survey and the analysis of satellite imagery, it is clear that the northern channel is deeper than the southern channel ... |
| flow velocity: | this is a function of bed slope, hydraulic radius and roughness coefficient ... The northern channel has a steeper bed slope: both of its banks are smooth (compared to the southern channel) therefore velocity will be higher in that channel. |
| volume of flow: | this is computed as the product of channel capacity (cross-section area) |

¹⁰ *Annuaire de L'Institut de droit international*, (1887 - 1888), p. 182.

and mean velocity through the cross-section.¹¹

Namibia stated that:

Various criteria may be employed; these include width, depth, velocity, discharge, and sediment transport capacity. Since discharge is the product of width, mean depth and mean velocity, and is a determinant of transport capacity, it is the most straightforward and general criterion. Therefore, the main channel is the one 'that carries the largest proportion of the annual flow of the river'. Namibia also argued, that the channel that is 'most used for river traffic' should be identified.

The Court could not rely on a single criterion to identify the 'main channel' of the Chobe. According to the *Dictionnaire français de hydrologie* (1986:66) the main channel is 'the widest, deepest channel, in particular the one which carried the greatest flow of water'. The Court then examined the criterion of depth. As it had no independent expert of its own, the Court had to rely on the conflicting expert opinions of Botswana and Namibia.

According to the hydrologists retained by Botswana, the mean depth of the northern channel 'is 5.70 metres; and the mean depth of the southern channel is 3.57 metres'.

Namibia's expert accepted that the northern channel had the greater mean depth, but that is not very important for determining the main channel. Namibia maintained that the difference between the shallowest points in the northern and southern channels was minute – 'the minimum *Thalweg* depths of the two channels within the bifurcation zone were not determined'. Namibia produced photographs showing a herd of elephants crossing the two channels of the Chobe, but did not produce depth figures to illustrate that the mean depth of the southern channel was higher than the northern channel.

¹¹ Judgment, para. 29, p. 21.

The Court concluded as regards mean depth that the northern channel was deeper than the southern channel. The Court then considered the criterion of width. They examined aerial photographs taken in 1925, 1943, 1947, 1962, 1972, 1981 and 1985. The photographs showed that the northern channel was wider than the southern channel. The satellite pictures taken in March 1995 and June 1996 in the dry and rainy seasons also showed the northern channel as being wider than the southern channel. The Court examined the Eason Report of August 1912, which described the northern channel as being twice the width of the southern channel.

The Court was not persuaded by Namibia's argument and accepted that the northern channel is indeed wider than the southern channel.

Botswana and Namibia also agreed that the volume of water carried was important to determine the 'main channel'. Botswana submitted that:

the northern channel conveyed about twice as much flow as the southern channel. The mean discharge at Site II in the northern channel was 78.865m³/s compared to 41.823m³/s at Site I in the southern channel. ... Notice that the ratio of roughly 1:2 between the mean discharges of the southern and northern channels also applied to the median and maximum discharges.

Namibia disputed the gauging points as well as the accuracy of the figures produced by Botswana. Namibia produced its own figures for the volume of flow during the period from 30 April – 2 May 1998. It contended that:

The southern channel carried not only the major portion, but substantially all of the flow of the River in the vicinity of Kasikili Island, while the northern channel had almost no longitudinal flow and was little more than a relic channel of the Zambezi floodplain.

In the main channel to the south of the Island, the flow was 247m³/s, i.e., almost 60% of the total. In the northern channel it was 188m³/s.

The Court was not convinced by Namibia's argument, and turned to the navigability of watercourses. The navigability of a watercourse is a combination of its depth, its width and the volume of water it carries. These conditions can prevent large vessels carrying cargoes, but flat-bottomed vessels navigated easily. The navigability of the channels around Kasikili / Sedudu is therefore limited by their shallowness. This inclined the Court to the view that the 'main channel' was the channel that was navigable. In the Court's view, the northern channel met navigability.

10.2 The Court Examined the Documents

The Court considered the three on-site surveys carried out by various people:

- 1) Captain Eason Report of August 1912.
- 2) The joint report of 19 January 1948 by Trollope and Redman that contained the following conclusions: 'We express the opinion that the "main Channel" lies in the waterway which would include the island in question in the Bechuanaland Protectorate'
- 3) The Joint Report of 15 July 1985 by a team of experts from South Africa and Botswana concluded that: The main channel of the Chobe River now passes Sedudu / Kasikili Island to the west and to the north of it.

In about 1910, Britain and Germany considered arbitration of the area of the 18th parallel of south latitude that runs eastwards until it reaches the Chobe River. So on 14 January 1911, the British Secretary of State for the Colonies wrote to the High Commissioner for Bechuanaland Protectorate:

- 1) I have the honour to acknowledge the receipt of your dispatch, Confidential, No. 4, of the 30th of November relative to the boundaries of the Caprivi Zipfel, and to forward for your information, copies of correspondence with the Foreign Office on this subject from which you will observe that it is proposed to refer to arbitration the

question what is the proper construction of that part of Article III of the Anglo-German Agreement of 1890 which lays down the southern boundary of the territory.

- 2) I take this opportunity of observing that in the second clause of Article III of the Anglo-German Agreement of 1890 it is stated that the boundary 'descends the centre of the main channel of that river (i.e., the River Chobe) to its junction with the Zambesi'. As, in this section of its course, the River Chobe divides into more than one channel which afterwards reunite, the question as to which is the main channel will require consideration. I have to request, with reference to the enclosure to Lord Selborne's despatch, Confidential (2), of the 11th of April, 1910 that I may receive all available information from local sources in support of the view that the north channel is the main channel. Such information should be accompanied by a map and, if possible, by measurements of the streams, and should be in a form which can, if necessary, be laid before the arbitrator as part of the case of His Majesty's Government.

L. Harcourt¹²

Accordingly, Captain Harry V. Eason travelled to the Chobe area and wrote his 'Report on the main channel of the Linyanti (or Chobe) river', 5 August 1912.¹³ From the Eason Report, Botswana claimed that it represented evidence of subsequent practice of the 1890 Treaty. Namibia disagreed, and the Court agreed with Namibia that the Eason Report 'cannot be regarded as representing subsequent practice in the application of the treaty' of 1890 within the meaning of Article 31(3)(b) of the Vienna Convention on the Law of Treaties.

Botswana and Namibia relied on the Trollope-Redman Report and the diplomatic letters between the respective administrators. According to

¹² Botswana Annex, 16, p. 251, no. 4.

¹³ PRO, CO 417 / 513.

Botswana the correspondence illustrates that the boundary around Kasikili / Sedudu follows the northern channel. Whereas, Namibia claims that on the basis of the documents Kasikili / Sedudu forms part of the Caprivi Strip.

Trollope-Redman forwarded their Joint Report entitled 'Boundary between the Bechuanaland Protectorate and the Eastern Caprivi Zipfel: Kasikili Island', to their respective administrations. After explaining Article III(2) of the Anglo-German Agreement of 1890, the maps of Kasikili Island, which were not drawn to scale, were attached.

On 21 January 1948, Major Trollope forwarded their Joint Report with a covering letter to the Secretary for Native Affairs in Pretoria.¹⁴ Among other things he pointed out that a right to that land has been acquired by prescription. Pointers in this direction are:

- 1) That this is the first time any claim has been made to the Island by the Protectorate Administration although there has apparently since 1915 or thereabouts, been either a District Commissioner's Office or a Police Post within a mile or two of the Island who could not fail to have been aware that the Island was being used by the Caprivi tribesmen, and
- 2) That even during the period 1915 – 1929 when the Caprivi was administered by the Bechuanaland Administration on behalf of the Union Government, this position continued and no objection was raised to cultivation of the island by Caprivi tribesmen.
- 3) That available maps, although not very clear, show the boundary as the waterway which we have found not to be the "main channel" of the river.
- 4) ...
- 5) ...
- 6) On the other hand, the terms of the Treaty are very definitive and, as I have already pointed out, favour the

Bechuanaland contention. It is not without point, however, that we are — by occupation — in the position of the possessor and the onus would appear to lie on the protectorate to prove their case in order to disturb our possession.

- 7) ...
- 8) ...
- 9) ...
- 10) The Bechuanaland authorities are anxious to have the northern channel recognised as the boundary because that stretch of water is navigable and gives access to the higher reaches of the Chobe — which is not the case in respect of southern channel.

Inter alia he stated, (ii) to conclude a formal agreement with the Protectorate that Caprivi tribesmen may continue to make use of the island for cultivation, fishing of its backwaters, hunting, collection of grass and reeds, temporary residence during dry spells, and depasturing of cattle.

11) ...

He concluded by adding:

- 12) ... I feel I would be failing in my duty to the tribesmen were I to recommend an alternative ... in view of their long and undisturbed use of the island.

Mr Redman too dispatched the Joint Report to the Government Secretary in Mafeking with a covering letter dated 26 January 1948. He pointed out *inter alia* that the southern channel was not navigable by Mr Ker's barges when the river was not in flood and that it was even difficult for small craft to navigate it; that the map, which showed the boundary to follow the southern channel, was ... inaccurate and had probably been drawn by someone who had not examined the river to determine the main channel.

¹⁴ Letter L. Trollope to the Secretary of Native Affairs. National Archives of Namibia. NI / 15 / 3.4 ECZ-Botswana-Kasikili Island.

There were then a series of exchanges of letters between the Secretary to the Prime Minister, South Africa and the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland in Pretoria.¹⁵

In one letter the Secretary wrote:

... there is evidence that the Island has been cultivated by Caprivi Tribesmen since at least 1907 and that their right to the occupation of the Island has at no time been disputed.

The Union Government is anxious to preserve the rights of the Caprivi Zipfel tribesmen on the Island and it is understood that the Bechuanaland authorities desire the use of the Northern channel for navigation purposes. As there would appear to be no conflict of interests it should be possible to come to an arrangement which is mutually satisfactory. Your views in the matter would be appreciated.

On 4 November there was a reply, but not exactly what the Union Government had anticipated:

... tribesmen of the Caprivi Zipfel should be allowed to cultivate land on Kasikili Island, if they wish to do so, under an annual renewable permit ...

On 14 February 1949 the Secretary to the Prime Minister and for External Affairs, sent a dispatch to the Chief Secretary to the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland:

While noting that your Administration is prepared to authorise Caprivi Zipfel tribesmen to cultivate land on Kasikili Island on an annual renewable permit, I am to state that this is not what the Union Government had in mind. From the available information it is clear that Caprivi tribesmen have made use of the island for a considerable number of years and that their right to do so has at no time been disputed either by Bechuanaland tribesmen or the Bechuanaland authorities.

¹⁵ National Archives of Namibia, N1 / 15 / 3-4ECZ-Botswana-Kasikili Island.

It was further understood that the interests of the Bechuanaland authorities centred in the use of the Northern Channel of the Chobe for navigation purposes.

My object in writing to you was therefore to ascertain whether agreement could not be reached on the basis of your administration recognising the Union's claim to Kasikili Island subject to it issuing a general permit for the use of the Northern waterway for navigation purposes

On 20 October 1949, the Commonwealth Relations Office wrote a very long letter to the High Commissioner for Basutoland, Bechuanaland Protectorate and Swaziland, considering the proposal for a slight adjustment of the northern boundary of the Bechuanaland Protectorate:

... we agree that this very slight alteration is of no intrinsic importance in itself and seems in substance unobjectionable. There are, however, certain legal and political complications, which it seems necessary to bring to your notice ...

- 1) First, there is the international aspect ... Under Article 7 of the Mandate no modification could be made without the consent of the Council of the League of Nations. In so far as the mandate is still operative, this might be interpreted as referring to some organ of the United Nations or as making any adjustment impossible. No doubt it is unlikely that anyone would raise any objection in the United Nations, especially as the proposal is to add to the territory and not in any way to reduce its area, but the possibility cannot be entirely ignored.
- 2) Secondly, it is necessary to consider the effect of the adjustment from the point of view of Municipal Law. This is more difficult. The island is apparently inhabited and no doubt offences are sometimes committed and civil dispute might occur ... This matter being thus dependent on an agreement between the United Kingdom and Germany, at first sight there is no reason

why an adjustment, fully effective for the purposes of Municipal Law, should not be made by a further agreement between the United Kingdom and the Union of South Africa. Unfortunately, however, the International Law on the subject affects the Municipal Law, for the mandate creates a technical difficulty ...

The issue of an Order in Council involving a cession of territory, however small or nominal, to South West Africa is open to some objection since the publicity involved might arouse curiosity and subsequent criticism on the part of those who dislike the Union Government's refusal to place South West Africa under trusteeship.

On 10 May 1951, the High Commissioner dispatched a letter for Basutoland, Bechuanaland Protectorate and Swaziland to the Secretary to the Prime Minister, South Africa:¹⁶

The possibility of making a declaration on behalf of the Government of the Bechuanaland Protectorate to the effect that the Island is not claimed as lying within the boundaries of the Protectorate has been examined by the Legal Advisers to the Secretary of State for Commonwealth Relations. I am afraid that they have found this proposal to be beset by legal complications of an international nature, the solution of which would entail difficulties disproportionate to the importance of the matter at issue.

The Bechuanaland Protectorate Government might possibly wish to arrange for some land on the Island at some time to be cultivated by the few African public servants at Kasane. Apart from this minor matter, I venture to suggest that it is unlikely that any development in the foreseeable future will damage the interests of the Caprivi tribesmen who have in the past used the Island. It should, I think, be possible to adjust by administrative action any difficulty arising in

¹⁶ National Archives of Namibia, N1 / 153-4 ECZ-Botswana-Kasikili Island.

connection with the Island and the adjacent waterway without an alteration of the existing legal position ... and it is assumed that the free use of the main channel of the Chobe, to the north of the Island, would continue to be assured under the international rules governing waterways that form the common boundary of two states.

Meanwhile Mr Redman had left and was succeeded by Mr V. Dickinson as the District Commissioner in Kasane, Bechuanaland. On 5 July 1951 he wrote to Major Trollope:¹⁷

Might I therefore say that the position as at the moment, allowing the full use of the Island to your tribesmen, for grazing and cultivation and our undisputed use of the Northern Waterway, under the international laws, governing the Waterways forming the common boundaries of two states, would appear entirely satisfactory, to the B.P. Government, and I trust also to yours.

In his reply dated 4 August 1951 Major Trollope wrote:¹⁸

I quite agree that the 'stink' is quite disproportionate to the importance of the matter at issue.

Once it was raised, of course, it was impossible for us to do otherwise than assert the validity of the rights which we had *de facto* exercised from immemorial time.

I am all with you, therefore, in thinking that we should let the whole matter lapse into the decent obscurity from which it should never have been allowed to emerge.

As he did not agree with Dickinson's language, he added:

I find it, however, somewhat embarrassing to agree formally that we should be 'allowed' the use of the Island and should recognise the 'undisputed use of the Northern Waterway under the international laws governing the waterways forming the common boundary of two states'. Such an

¹⁷ National Archives of Namibia, N1 / 153-4 ECZ-Botswana-Kasikili Island

¹⁸ National Archives of Namibia, N1 / 15 / 3-4 ECZ-Botswana-Kasikili Island

agreement might quite possibly be arguably used in support of a submission that we occupy by licence and permission — which we do not, of course, admit.

I feel though that we both desire the same end and in that spirit I suggest, in place of that outlined in your letter, the following formula: -

- (a) That we agree to differ on the legal aspect regarding Kasikili Island, and the concomitant question of the Northern Waterway
- (b) That the administrative arrangements which we hereafter make are entirely without prejudice to the rights of the Protectorate and the Strip to pursue the legal question mentioned in (a) should it at any time seem desirable to do so and will not be used as an argument that either territory has made any admissions or abandoned any claims; and
- (c) That, having regard to the foregoing, the position revert to what it was *de facto* before the whole question was made an issue in 1947 — i.e. that Kasikili Island continue to be used by Caprivi tribesmen and that the Northern Waterway continue to be used as a 'free for all' thoroughfare.

Major Trollope clarified what he meant:

May I say that this 'gentlemen's agreement' could only purport to affect arrangements as between our two administrations? I have my gravest doubts as to the wisdom of making the ambit larger for that would bring in all sorts of extraneous questions of international law and such like imponderables which I think we might usefully leave for consideration when we come to that bridge.

In Mr Dickinson's reply of 11 August 1951, he noted that, 'Your paragraph 7 outlining as it does, "the most reasonable solution" and he agreed entirely with your 7 a, b, and c'. And added:

One point, however, I would like clear and that is in regard to the possibility of the B.P local natives who might wish to plough on the island. A paragraph (d) that nothing in the previous three sections should be read as preventing the B.P Tribesmen using the Island for ploughing purposes.

Major Trollope sent back a blunt reply:

Thank you for your letter of the 11th August 1951. I'm afraid that the point you raise rather throws a spanner in the works.

I appreciate the position as that we both wished to restore the factual position to what it was before Ker raised the hornet's nest, and to leave the legal position 'in the air' to be freely raised in the future by either side should that become necessary or desirable.

Whatever the legal position (i.e. whether your tribesmen have any rights) is, the factual position is that not in all the years past — not in German times, nor when the Strip was administered by the B. P., nor in the S.W. African days nor during my administration (Union) — have B. P. tribesmen ever cultivated the Island or asserted a right to do so; while Caprivi tribesmen have always done so (see paras. five and six of the Joint Report of 19/1/1948 by Redman and myself). For me to agree therefore that there is nothing to prevent B. P. tribesmen from cultivating the Island does not seem to me to restore the Status quo.

Mr Dickinson replied on 3 September 1951.¹⁹

I must concede your point rather than allow the 'spanner' to 'bust' the works.

Your paragraphs (a), (b), & (c) will then meet the points in question. In other words we revert to the position as it was prior to this disturbance

¹⁹ V. Dickinson to L. Trollope. NAN, N1 / 15 / 3-4 ECZ-Botswana-Kasikili Island.

I feel I must make one point clear to you. Although accepting the position and being prepared to honour it, in any discussion or controversy on this Island in future, our Government will be adamant in its attitude that the Island is B.P. — and any attitude in regard to our 'Administrative Settlements' will of course be based on that fact.

Since I am now handing over to Mr McLaren — he will be dealing with the administrative side from now on.

Major Trollope then wrote to Mr McLaren on 13 September 1951:²⁰

- 1) ...
- 2) I really feel that the possibility of future 'discussion or controversy' regarding Kasikili is extremely remote. After all the present factual position, to which happily we now return, has existed for generations without any conflict — indeed, in my opinion, even the recent *contretemps* was unnecessary.
- 3) However, if circumstances again make it necessary for controversy to rear its head, the fact of Dickinson's caveat is now on record. Perhaps it would not be inappropriate were I likewise formally to record that in any future controversy over this Island, the Caprivi will be equally insistent on asserting the legality of the factual possession and use it has enjoyed for so many years.
- 4) ...
- 5) I propose now, if you agree, advising my Department that there is no necessity for pursuit of the matter at high levels as a suitable administrative arrangement, without any prejudice whatever to either side, has been concluded between my office and yours ...

P.S. It occurs to me that the most likely way in which, unwittingly and not designedly, the controversy might

be re-opened is by a B.P. tribesman 'trespassing' (as it would be regarded by us, although not legally by you) on Kasikili. I hereby undertake that should any such occasion arise I will not deal with the matter without prior reference to your office to ascertain whether you wish the large question raised. May I tentatively suggest that you advise your tribesmen to avoid any such action — unless, of course, it is deliberately done as an assertion of right to test the position.

There was a final letter from the Government Secretary, Mafeking to the District Commissioner, in Kasane, dated 20 November 1951:²¹

- 1) The Native Commissioner Eastern Caprivi Zipfel may therefore be informed that his recommendation is accepted.
- 2) It is understood that the only Africans in the Protectorate interested in the cultivation of the Island are Government employees living at Kasane and I am to say that they should be instructed that they will not be permitted to plough on the Island.

The Court referred to all the diplomatic documents and after very long analysis came to the conclusion that the above-mentioned events which occurred between 1947 – 1951, demonstrate the absence of agreement between South Africa and Bechuanaland with regard to the location of the boundary around Kasikili / Sedudu Island and the status of the Island.

The Court also examined the documents concerning the incident on 25 October 1984 when a South African patrol boat was shot at by Botswana Defence Force. This occurrence was recognised by Judge Oda as the beginning of the territorial dispute. The Court concluded that in 1984 – 1985 South African and Botswana had agreed on nothing more than the despatch of the joint team of experts. The Court cannot conclude that the two States agreed in some fashion or other to recognise themselves as legally bound by the results of the joint survey carried out in July 1985.

²⁰ NAN, N1 / 15 / 3-4 ECZ-Botswana-Kasikili Island.

²¹ Botswana National Archives.

The Court then considered the object and purpose of the Treaty and concluded that it was a Treaty delimiting the spheres of influence of Germany and Great Britain. It was not a boundary treaty even though Botswana and Namibia accepted it as such:

The two Powers engage that neither will interfere with any sphere of influence assigned to the other by Articles I to IV. One Power will not in the sphere of the other make acquisitions, conclude Treaties, accept sovereign rights or Protectorates, not hinder the extension of influence of the other.²²

The contracting Powers were protecting their spheres of influence as well as further penetration into the heart of Africa. The Court concluded that the German text is therefore a word-for-word translation of the British proposal and follows the English text ... the English text, like the German text, correctly and accurately expresses the will of the contracting parties.

The Court then examined Article 31(3)(b) Vienna Convention 1969 that reflects customary international law. This provides that "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation:

The Court concludes from all of the foregoing that the subsequent practice of the parties to the 1890 Treaty did not result in any 'agreement between the parties regarding the interpretation of the treaty or the application of its provisions', within the meaning of Article 31, paragraph 3 (a), of the 1969 Vienna Convention on the Law of Treaties, nor did it result in any 'practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation', within the meaning of subparagraph (b) of the same provision.

Judge Oda in his Separate Opinion recorded that:

I would rather suggest that the past practices – the geographical surveys and the correspondence between the authorities of the northern and southern bank – which were indicated sufficiently in the Judgment and of which I have also made an extensive analysis, are of themselves the most important and decisive element in assisting the Court to determine that the boundary between Botswana and Namibia is located in the northern channel and that Kasikili / Sedudu Island thus falls within the territory of Botswana.

Those events cannot therefore constitute "subsequent practice in the application of the treaty of 1890 which establishes the agreement of the parties regarding its interpretation," 1969 Vienna Convention on the Law of Treaties, Article 31(3)(b)

A fortiori, they cannot have given rise to an "agreement between the parties regarding the interpretation of the treaty or the application of its provisions" in Art. 31(3)(a).

The Court finds that these facts, while not constituting subsequent practice by the parties in the interpretation of the 1890 Treaty, nevertheless support the conclusions which it has reached by interpreting Article III, paragraph 2, of the 1890 Treaty in accordance with the ordinary meaning to be given to its terms.

The three on-site surveys concluded that the main channel of the River Chobe was the northern channel. Relying on the interpretation of the "*Hauptlauf dieses Flusses*" as the main channel of that river, navigability, flow and velocity, the Court agreed that the main channel was the northern channel.

But that does not constitute subsequent practice in the sense of Article 31(3), though the Court refers to them as giving support to its own conclusion on the northern channel of the Chobe around Kasikili / Sedudu Island.

In the Declaration of the British Judge regarding the interpretation of the 'main channel', Judge Higgins noted:
the Court states that it is interpreting words in a treaty to give them their ordinary meaning; and that this is what it is

²² Para 43, p. 29.

doing in determining the meaning of 'main channel' by 'reference to the most commonly used criteria in international law'. I find this somewhat fanciful. In my view, although there are commonly used international law criteria for understanding, e.g., the term '*Thalweg*', the same is not true for the term 'main channel'. And it seems that no 'ordinary meaning' of this term exists, either in international law or in hydrology, which allows the Court to suppose that it is engaging in such an exercise. The analysis on which the Court has embarked is in reality far from an interpretation of words by reference to their 'ordinary meaning'.²³

The interpretation of Article III(2) by the dissenting judges was more persuasive.

Judge Fleischhauer, the German judge, was unconvinced by the Court's interpretation of the term, the 'main channel of that river' '*Hauptlauf dieses Flusses*' in Article III(2) of the 1890 Treaty, as meaning the northern rather than the southern channel of the Chobe around Kasikili / Sedudu Island:

The Judgment lays much weight on the ordinary meaning of the term 'main channel of that river' / '*Hauptlauf dieses Flusses*'. In order to define that meaning the Court bases itself on 'the most commonly used criteria in international law and practice, to which the Parties have referred' ... the Court repeatedly refers to the findings of Captain Eason in 1912, Messers Trollope and Redman in 1948, and the Joint Survey of 1985, all of which are to the effect that, at Kasikili / Sedudu Island, the northern channel of the Chobe has to be regarded as the 'main channel of that river' / '*Hauptlauf dieses Flusses*'.

In making this statement however, the Court does not take account of the fact that neither Eason nor Trollope and Redman were hydrological experts and that the Court has

²³ Judgment, Declaration para. 1.

not been informed of the basis on which they reached their conclusions; moreover, the report on the Joint Survey, according to South Africa, did not prove conclusively that the Island belongs to Botswana.

... the Judgment is not fully consonant with the system of interpretation provided for by the *Vienna Convention*. It discusses only certain aspects of the object and purpose of the 1890 Treaty and does not deal at all with the context in which the term 'main channel of that river' / '*Hauptlauf dieses Flusses*' is used in that Treaty. An interpretation of the term 'main channel of that river' / '*Hauptlauf dieses Flusses*' which properly takes into account the object and purpose of the Treaty and the context in which this term is used in Article III(2), leads to a result that is different from the one reached by the Court in its Judgment.²⁴

Judge Fleischhauer observed that the 1890 Treaty is a bilateral treaty, thus the object and purpose of the Treaty follows clearly from its text. The object of the 1890 Treaty was the spheres of influence of the two contracting parties in Africa, and the purpose was their agreed delimitation (Art. I – IV) of the Treaty) in order to secure the respect by each of the parties of the sphere of the order (Art.VII). He further explained that the Treaty should not be regarded as a boundary treaty in the technical sense; the Treaty was meant to keep the political relations between the two contracting states undisturbed by rivalry in Africa.

The object and purpose of the 1890 treaty was that Germany requested free access from her Protectorate to the Zambezi.

The access by water was through the River Chobe, the southern part of the Strip. The sphere of influence of Britain and Germany was the 'centre of the main channel of that river' / '*Thalweg des Hauptlaufes dieses Flusses*' to its junction with the Zambezi where it terminates. Art. III(2) 1890 Treaty. Therefore, according to the Treaty both states had equal access to the Zambezi by the river Chobe, which they thought was

²⁴ Judgment, Dissenting Opinion, para 4, p. 2.

navigable, 'but the Court does not consider that navigation was the sole objective of the provisions of Article III(2) of the Treaty'. The contracting Parties simply sought 'for themselves freedom of navigation on the river and to delimit as precisely as possible their respective spheres of influence'.

The German Judge examined thoroughly the implications for the interpretation of the Treaty of *Hauptlauf dieses Flusses*:

In the circumstances of the present case, the interpretation of the term 'main channel' / *Hauptlauf dieses Flusses* based on the mistaken expectation of large-scale navigational usability of the Chobe cannot be held against Namibia because that would mean that Namibia alone would be burdened with the consequences of the error. The flatboat navigation connected to the tourist activities that have evolved on and around Kasikili / Sedudu is concentrated in the southern channel. Interpretation of the term 'the main channel of that river' / *Hauptlauf dieses Flusses* in favour of the northern channel would deprive Namibia from having an equitable share in the only navigational use of the Chobe there is to share. That would run directly counter to the intention of the parties to split the river evenly. Therefore the interpretation of the term 'main channel of that river' / *Hauptlauf dieses Flusses* in favour of the northern channel would not be compatible with the principle of good faith which, according to Article 31, (1) of the Vienna Convention, governs all treaty interpretation. Interpretation of the term 'main channel of that river' / *Hauptlauf dieses Flusses* in favour of the southern channel, however, would correspond to what the parties wanted to achieve regarding the River Chobe. It would be a good faith interpretation of the term because it would split evenly between the Parties the only channel that is of some navigational interest.

10.3 Prescription, Namibia's Alternative Claim

If the Court had visited Kasikili / Sedudu Island it might have assisted the judges in determining the Namibia's case for prescription. Kasikili had been under the authority of the maSubia since time immemorial.

Namibia maintained that prescription is relevant in three distinct ways. In the first place, it corroborates the interpretation of the Treaty ... Second, it gives rise to a second and entirely independent basis for Namibia's claim under the doctrines concerning acquisition of territory by prescription, acquiescence and recognition. Finally, the conduct of the parties shows that Namibia was in possession of the Island at the time of termination of colonial rule, a fact that is pertinent to the application of the principle of *uti possidetis*. The practice relied on by Namibia were 'the control and use of Kasikili Island by the maSubia of Caprivi, the exercise of jurisdiction over the Island by the Namibian governing authorities, and the silence by Botswana and its predecessors persisting for almost a century with full knowledge of the facts'.

Namibia argued that:

by virtue of continuous and exclusive occupation and use of Kasikili Island and exercise of sovereign jurisdiction over it from the beginning of the century, with full knowledge, acceptance and acquiescence by the governing authorities in Bechuanaland and Botswana, Namibia has prescriptive title to the Island

Botswana maintained that the Court could not take into consideration Namibia's arguments relating to prescription and acquiescence, as these were not included in the scope of the question submitted to it under the terms of the Special Agreement. According to Botswana, the purpose of that Agreement was to obtain from the Court determination of the boundary solely on the basis of the 1890 Treaty; invoking prescription would therefore involve adopting a totally different basis for determining the boundary. Botswana added that:

the alleged evidence of prescriptive title cannot be accepted as 'subsequent practice' because in such a hypothesis the working assumption is precisely the existence of a title of

Botswana (or its predecessor) which allegedly is displaced by the operation of prescription.

Namibia did not agree. The wording of the Special Agreement was clear and required, 'The Court to consider any evidence or submissions of the parties grounded in general rules and principles of international law equally with submissions based on the 1890 Treaty'. Furthermore, Namibia supported its prescriptive title by reiterating the presence on Kasikili Island of the *maSubia* 'from the beginning of the colonial period at least, and probably a good deal further back than that':

Colonial records of German, British and South African authorities and the testimony of members of the *Masubia* community in the *Kasika* district before the JTTE in 1994 conclusively show that the *Masubia* people of Eastern Caprivi have occupied and used Kasikili Island since time immemorial.

In order to establish sovereignty by operation of prescription, acquiescence and recognition, by more than the use of the disputed territory by individuals, Namibia explained that:

Namibia's predecessors exercised continuous authority and jurisdiction over Kasikili Island. From 1909 until the termination of the Mandate in 1966, German, Bechuanaland and South African officials consistently governed the Eastern Caprivi through *Masubia* chiefs, whose jurisdiction extended to Kasikili Island. After termination of the Mandate, South Africa, under pressure from the liberation struggle, increasingly exerted direct power in the area until Namibia's independence on 21 March 1990.

Namibia explained that this exercise of authority over Kasikili by its predecessors was implemented:

for the most part ... through the modality of 'indirect rule,' using the chiefs and political institutions of the *Masubia* to carry out the directives of the ruling power under the control and supervision of officials of that power.

although indirect rule was manifested in a variety of ways, its essence was that the acts of administration of the colonial authorities and those of the traditional authorities were acts of a single entity: the colonial government.

The circumstance 'prevailed without any objection, reservation or protest from Botswana or its predecessors in interest for almost a century until 1984, when Botswana first made formal claim to the Island in private meetings with the South African government'.

Botswana did not agree with the interpretation of the 1984 incidence. The situation had nothing to do with South Africa exercising jurisdiction over Kasikili, but it was an anti-guerrilla operation and that could not be asserted as prescription in international law.

The Court agreed that the Special Agreement did not preclude it from examining Namibia's arguments relating to prescription. Since Botswana and Namibia agreed that acquisitive prescription was recognised in international law, and they also agreed on the conditions when title may be acquired by prescription. However, their views of how it could be acquired differed in the case of *Kasikili / Sedudu*. Namibia based its argument on 'indirect rule' of the Chiefs to exercise title-generating authority, Botswana saw it as private individual farming activity without any meaning in international law.

In the Court's view, after exhaustive examination, Namibia had not established with the necessary degree of precision and certainty that acts of State authority capable of providing alternative justification for prescriptive title in accordance with the conditions set out by Namibia, were carried out by its predecessors or by itself with regard to *Kasikili / Sedudu* Island.

It had not been established that the members of this tribe occupied the Island *à titre de souverain*, i.e. that they were exercising functions of State authority there on behalf of those authorities.

Since the Court had not accepted Namibia's argument on prescription, it follows for this reason that Kasikili / Sedudu Island formed part of the territory of Botswana.²⁵

The split between the Majority and Dissenting Opinion in this case 'lay in their differing views as to whether "proper representatives" had been involved in the conduct attributed by Namibia to the parties'. Even in the Separate Opinion of Judge Kooijmans, he observed that:

Namibia's claim that it has title to Kasikili / Sedudu Island not only on the basis of the 1890 Treaty, but also, in the alternative, on the basis of the doctrine of prescription, has been insufficiently established by Namibia and that this claim, therefore, cannot be accepted; ... in my opinion, however, this claim should have been declared inadmissible right away.

Judge Kooijmans stated his objection:

The inconsistency of Namibia's arguments in respect of its alternative claim is borne out by the fact that this non-Treaty based claim rests on virtually the same grounds which it has submitted for its Treaty-based claim that the parties by their subsequent conduct have confirmed their agreement regarding the interpretation of the 1890 Treaty.²⁶

Judge Rezek of Brazil was very clear in his Dissenting Opinion, with all due respect, from the majority of the Court:

The Masubia were 'private persons' according to the judgment. Their allegiance did not, therefore, constitute sufficient title. It would perhaps have required the continued presence of agents of the German State to justify either acquisitive prescription or the idea of conduct serving to confirm a particular interpretation of the 1890 Treaty. I nevertheless incline to the view that private persons provide perfect evidence of a peaceful occupation, which deserves

²⁵ Judgment, para. 101.

²⁶ Judgment, Separate Opinion of Judge Kooijmans, paras: 4, 5, & 16.

the protection of the law. Private persons – not agents of the State – wrote the history of *uti possidetis* in much of the American continent, where they altered the course of frontiers, frequently in defiance of the claims of the colonial powers.

I would readily admit that occupation by private persons would have no such legitimacy if the community in question was there under the authority of the other power or, at the very least, if it lived side by side with agents of the other power. In this case, even the presence on Kasikili / Sedudu Island of private persons bearing allegiance to Great Britain has not been confirmed with a minimum degree of permanency.²⁷

Vice-President Weeramantry of Sri Lanka observed that:

Colonial governments depended heavily on chiefly authority at a local level, and the claims and movements of chieftains were not matters of indifference to them. What do we infer from this? This may not have been occupation by a sovereign government such as is necessary for the acquisition of title by adverse prescription, though it could come close to such an interpretation. However, it was an occupation of the land of which the administrations on both sides were not unaware. If this occupation was in disregard of the 1890 Treaty, one would have expected the Government of Botswana or its predecessors to lodge a protest, or at least to make it clear that the Masubia were there on sufferance. There is no evidence of any such action on Botswana's part.²⁸

According to Hauptmann Streitwolf on 4 May 1909 he installed Chikamatondo at Schuckmannsburg 'as the Masubia Chief, responsible to him for the governance of the area'. Kasikili Island was within his chiefly

²⁷ Ibid. Dissenting Opinion of Judge Rezek: paras 14 & 15.

²⁸ Ibid. Dissenting Opinion of Judge Weeramantry, para 36.

jurisdiction. For this reason, argued Namibia, the German rule of Eastern Caprivi was carried out through Chikamatondo and the Masubia *khuta ye tuna*.

Judge Fleishhauer agreed that acquisitive prescription does not play a role. But that:

The Court should have gone into the conditions under which title to territory may be acquired by prescription, far enough to state that South Africa could not have acquired title to the Island by prescription. South Africa, whose presence in the Caprivi Strip including the Island lasted longer than the presence there of Germany or Britain, prior to the termination of the Mandate by the General Assembly in 1966 exercised authority there not *à titre de souverain* but *à titre de mandataire*. As mandatory, South Africa certainly was vested by virtue of the Mandate instrument of 17 December 1920 ... with the full power of administration and legislation over the territory subject to the present Mandate as an integral portion of the Union of South Africa.

The Court also satisfied itself regarding map evidence, because according to Article III(2) of the 1890 Treaty 'the course of the above boundary is traced in general accordance with a Map officially prepared for the British Government in 1889'. There was no boundary line drawn on the map expressing the intentions of Germany and Great Britain, and it was not annexed to the 1890 Treaty.

Although the early maps of the region placed the boundary around Kasikili / Sedudu Island in the southern channel of the Chobe, none of them interpreted the 1890 Treaty. The Court considered all the maps and the views of officials such Trollope / Redman, and concluded that there cannot be any question of the authorities concerned having accepted the maps then available in a manner capable of constituting 'subsequent practice in the application of the 1890 Treaty'. Then the Court decided that in view of the absence of any map officially reflecting the intentions of the parties to the 1890 Treaty and of any express or tacit agreement between them or their successors concerning the validity of boundary

depicted in a map ... and in the light of the uncertainty and inconsistency of the cartographic material submitted to it, the Court considers itself unable to draw conclusions from the map evidence produced in this case.²⁹

Judge Rezek observed that the map evidence is copious, (Judge Oda counted as many as 52 and that no great weight should be given to any boundary depicted by such maps) but admittedly, continued Judge Rezek, is not totally consistent:

it is not just a matter of there being a numerical majority of maps on which the boundary at Kasikili / Sedudu is depicted as the southern channel; I was struck by the variety of sources and the temporal continuity displayed by these documents: the 1909 German map; the 1933 British map, the 1949 South African map, the United Nations map, published in 1985. The most impressive cartographic materials produced over that lengthy period date from the period of effective occupation of the Island and, in my view confirm Namibia's rights.³⁰

Judge Parra-Aranguren held his ground that the critical date is 1914, and all maps prepared afterwards are irrelevant to an interpretation of the 1890 Anglo-German Agreement. The aerial photographs and satellite images are also irrelevant because they were taken after 1914, the critical date as regards the subsequent practice of the parties for the purpose of interpreting the 1890 Treaty.

Vice-President Weeramantry recorded that the arithmetical preponderance of the cartographic evidence is not so important, but 'the cartographic evidence thus seems to me to be in favour of the Namibian position, and of the contemporaneous understanding of the Parties ...'.

Why was Botswana allowed to get away with relying on the literal interpretation of Article III(2) with total disregard of the cautionary qualification of Article VI that they would agree to rectify Articles I - IV

²⁹ Judgment, para. 87.

³⁰ Judgment, Judge Rezek, para 10. Also see Appendix 3 for list of Maps

of the 1890 Treaty? Thus, Botswana took advantage of lack of rectification by Britain and Germany to argue that 'the northern and western channel of the River Chobe in the vicinity of Kasikili / Sedudu Island constitutes "the main channel" of the Chobe River'. Rectification of land boundary matters had occurred in other parts of Africa South of the Sahara. For example:

Britain and France relating to the boundary between the Gold Coast and French Sudan (1904) by which villages situated in proximity to the frontier shall enjoy rights to the use of arable and pasture lands, springs and watering places on the other side of the border. Similar clauses were contained in agreements relating to the boundary between the Gold Coast and Ivory Coast (1905) and Southern Nigeria and Dahomey (1906).

Greig's (2001:138) reaction to the Kasikili / Sedudu Island case was that:

The Namibian arguments before the Court do not seem to have relied upon the contextual link — involving Article VI of the Treaty as a necessary adjunct to and qualification of Article III. Even under Article 31 of the Vienna Convention, it does not seem possible to ignore that link as a necessary element in interpreting Article III.

The Court that was designed to promote international peace reached a 21st century judgment that was well in advance of its time. The Court satisfied the Government of the Republic of Botswana and the Government of the Republic of Namibia, and their tribesmen and women. Justice was done and both parties returned to their homeland each with a prize and very happy.

- 1) By eleven votes to four.

Finds that the boundary between the Republic of Botswana and the Republic of Namibia follows the line of deepest soundings in the northern channel of the Chobe River around Kasikili / Sedudu Island

- 2) By eleven votes to four.

Finds that Kasikili / Sedudu Island forms part of the territory of the Republic of Botswana

- 3) Unanimously,

Finds that, in the channels around Kasikili / Sedudu Island, the nationals of, and vessels flying the flags of the Republic of Botswana and the Republic of Namibia shall enjoy equal national treatment.

The third determination in the *dispositif* was very important because those were the quintessential rights that the tribesmen and women wanted; the first and second elements of the *dispositif* were for cartographers. The unanimous decision had taken account of community values and economic realities of riparian ethnic groups, and would not cause rifts between Botswana and Namibian Subia as they still had equal access to the northern and southern channels of the Chobe River. As the Vice-President noted in paragraph 5 of his Dissenting Opinion: 'The Island is frequented, as far as one can gather from the pleadings, by a rich variety of wildlife. Elephant, hippopotamus, buffalo, *lechner*, rhinoceros, giraffe, eland, baboon, lion, zebra, leopard, and fish eagle either frequent the Island or visit it from time to time'.

Whether or not Kasikili / Sedudu Island was within the sovereignty of Namibia or Botswana a Joint Regulatory Regime would be set up for such matters as:

- a) protection of flora and fauna;
- b) right of access to the Island for citizens of both States;
- c) regulation of tourist traffic;
- d) river management and conservation;
- e) licensing of river craft;
- f) freedom of movement of wildlife to and from the Island;
- g) supervision by game wardens;
- h) permitted and prohibited activities on the Island;
- i) The adoption of a common set of principles for the protection of the natural resources of the area, including in particular the care and custody of wildlife.

In the event of a dispute regarding such administrative framework, the Court's assistance would always be available to the parties, if so desired.³¹

10.4 Concluding Remarks

The Kasikili / Sedudu Island case was a great political test of endurance for the young states of Namibia and Botswana. Both states had emerged successfully from the dispute, a very expensive success in not resorting to brutal, senseless war that would have lasted long and maimed and killed off their healthy, energetic and educated population.

Accordingly, it goes without saying that in the brave, new Africa of Vice-President Weeramantry's creation, the conservation of community values and the protection of the flora and fauna are very important. The four-legged animals have no need of a boundary. Although Kasikili / Sedudu Island was the sovereign territory of Botswana, Namibia and Botswana would share a joint international regime of the administration of the natural resources. Twenty-nine African states had ratified the African Convention on the Conservation of Nature and Natural Resources, 1968 long before Vice-President Weeramantry's declaration of conservation.

The *Munitenge* of the maSubia and the ovaHerero who had returned to Gam were delighted with the mammoth third *dispositif*, 'this is why it is worthwhile being a customary leader in the first place. It is worth being alive', said the *Munitenge*.³² His ancestors had protected and preserved the wild animals, fish life, vegetable and the environment for hundreds of years. The tribesmen could hear the elephants in the Kasikili / Sedudu Island trumpet their exhilarating approval for Judge Weeramantry.

³¹ Judgment 13 December 1999. Dissenting Opinion of Vice-President Weeramantry, para 114, p. 35.

³² *TcMntne* died 8 August 1996.

Appendices

Appendix 1 Declaration (English translation)

Kamaherero

It having been brought to my notice that certain persons have been spreading reports in the Cape Colony, and other parts of the world that I have asked the German Government to protect me from my enemies, I being unable to do the same, and that I have ceded my country to the German Government for the said protection,-

I, Kamaherero, Paramount Chief of Damaraland, by the especial desire of my people, do hereby solemnly and publicly declare to all nations of the world that I emphatically deny all such statements; that any documents concerning these statements held by any agents, purporting to be signed by me, and not countersigned by Mr Robert Lewis, my Special Commissioner for all Foreign Affairs, are false, illegal, and will not be recognised by me.

Further, certain Namaquas being at war with me I will not hold myself responsible for any loss of property or death, of Europeans living in my country occasioned by the fortune of war.

I, Kamaherero X (His mark)
Paramount Chief of Damaraland.

Witnesses of Signature:

William. Schoolmaster

J. Cain

C.T. Hammon

Okahandja, Damaraland. June 15th 1887.

Appendix 2 The Republic of Botswana

Represented by:

- 1) Mr Abednego Batshani Tafe, Advocate of the High Court and Court of Appeal of Botswana. Deputy Attorney General.
- 2) HE Mr S. C. George, Ambassador of the Republic of Botswana to the European Union, Brussels.
- 3) Mr Molosiwa L. Selepeng, Permanent Secretary for Political Affairs, Office of the President.

- 4) Prof Ian Brownlie, CBE, QC, FBA; Chichele Professor of Public International Law, University of Oxford. Member of the International Law Commission, Member of the English Bar, Member of the Institut de droit international
- 5) Lady Hazel Fox, QC; former Director of the British Institute of International and Comparative Law, Member of the English Bar, Associate Member of the Institut de droit international.
- 6) Dr Stefan Talmon, *Rechtsassessor*, D. Phil. (Oxon.) LL.M. Cantab., *Wissenschaftlicher Assistent* in the Law Faculty of the University of Tübingen, as Counsel and Advocate
- 7) Mr Timothy Daniel, Solicitor of the Supreme Court; Partner, D. J. Freeman (Solicitors) of the City of London.
- 8) Mr Alan Perry, Solicitor of the Supreme Court; Partner, D. J. Freeman (Solicitors) of the City of London.
- 9) Mr David Lerer, Solicitor of the Supreme Court; Assistant, D. J. Freeman (Solicitors) of the City of London.
- 10) Mr Christopher Hackford, Solicitor of the Supreme Court; Assistant, D. J. Freeman (Solicitors) of the City of London
- 11) Mr Robert Paydon, Solicitor of the Supreme Court; Assistant, D. J. Freeman (Solicitors) of the City of London.
- 12) Professor, F. T. K Sefe, Professor Hydrology, Department of Environmental Science, University of Botswana, Gaborone,
- 13) Mr Isaac Muzila, BSc. Civil Engineering, Principal Hydrological Engineer, Department of Water Affairs, Botswana.
- 14) Mr Alan Simpkins, F.R.C.S., Prof M.T.E.S. (SA) L.S. (Bots) Chief Surveyor and Deputy to Director, Department of Surveys and Mapping, Botswana.
- 15) Mr Scott. B. Edmonds, Director of Cartographic Operations, GeoSystems Global Corporation, Columbia, Maryland, USA.
- 16) Mr Robert C. Rizzutti, Senior Mapping Specialist, GeoSystems Global Corporation, Columbia, Maryland, USA.
- 17) Mr Justin E. Morrill, Senior Multimedia Designer, GeoSystems Global Corporation, Columbia, Maryland, USA.

- 18) Mr Bapasi Mpusu, Chief Press Officer, Department of Information and Broadcasting, Government of Botswana
- 19) Ms Coralie Ayad, D. J. Freeman (Solicitors) of the City of London
- 20) Ms Marilyn Beeson, D. J. Freeman (Solicitors) of the City of London
- 21) Ms Michelle Burgoine, D. J. Freeman (Solicitors) of the City of London

Appendix 3 Republic of Namibia

Represented by:

- 1) Dr Albert Kawana, Permanent Secretary, Ministry of Justice of Namibia
- 2) HE Dr Zedekia J. Ngavirue, Ambassador of the Republic of Namibia to the Netherlands.
- 3) Prof Abram Chayes, Felix Frankfurter Professor of Law Emeritus, Harvard Law School, USA.
- 4) Prof Sir Elihu Lauterpacht, CBE.; QC. Honorary Professor of International law, University of Cambridge, Member of the Institut de droit international.
- 5) Mr Jean-Pierre Cot, Professor Emeritus, Université de Paris 1 (Pantheon-Sorbonne), Member of the Paris and Brussels Bars, Vice-President of the European Parliament.
- 6) Prof Dr Jost Delbrück, Director of Walther-Schucking Institute of International law, University of Kiel
- 7) Prof Dr Julio Faundez, Professor of Law, University of Warwick, as Counsel and Advocate.
- 8) Prof W. J. R. Alexander, Emeritus Professor Hydrology, University of Pretoria
- 9) Prof Keith S. Richards, Department of Geography, University of Cambridge
- 10) Colonel Dennis Rushworth, Former Director of the Mapping and Charting Establishment, Ministry of Defence of the U.K.
- 11) Dr Lazarus Hangula, Director, Multidisciplinary Research Centre, University of Namibia, as Advocate

- 12) Dr Arnold M. Mtopa, Chief Legal Officer, Ministry of Justice of Namibia
- 13) Dr Collins Parker, Chief Legal Officer, Ministry of Justice of Namibia
- 14) Mr Edward Helgeson, Fellow, Lauterpacht Research Centre for International Law, University of Cambridge
- 15) Ms Tonya Putnam, Harvard Law School, as Counsel and Adviser
- 16) Mr Peter Clark, Former Chief Map Research Officer, Ministry of Defence, U.K.; as Technical Adviser,
- 17) Mr Samson, N. Muhapi, Special Assistant to the Permanent Secretary, Ministry of Justice of Namibia.
- 18) Ms Kyllikki M. Shaduka, Private Secretary, Ministry of Justice of Namibia
- 19) Ms Mercia G. Louw, Private Secretary, Ministry of Justice of Namibia, as Administrative staff,
- 20) Mr Peter Denk, Reporter
- 21) Mr Muyenga Muyenga, Reporter, as Information Adviser.

Appendix 4 List of relevant maps presented by Botswana

- 1) Central Africa: Sketch Map of the Chobe River by Dr Benjamin Bradshaw, 1880, 1:125,000.
- 2) Map of Matabililand and adjoining territories, compiled by the Intelligence Division, War Office, 1889, ID 776, 1:1584,000.
- 3) Map to illustrate Article III of the Anglo-German Agreement of 1 July 1890, approx. 1:3,500,000.
- 4) Kriegskarte von Deutsch-Sudwestafrika, 1904, (Andara Sheet), 1:800,000.
- 5) Kriegskarte von Deutsch-Sudwestafrika, 1904, (Linhanti Sheet), 1:800,000.
- 6) Sketch map of Bechuanaland Protectorate to illustrate military report 1906, 1:2,000,000.
- 7) Unpublished map of Capt. Streitwolf, May 1909, 1:200,000.

- 8) Karte des Caprivi Zipfels, Blatt 1, issued under the authority of von Frankenberg, German Imperial District Chief and Resident in the Eastern Caprivi, May 1912, 1:100,000.
- 9) Survey of the Linyanti River by Captain Eason, August 1912. Map No. 2. Linyanti River from Kazungula to Ngoma, 1:100,000.
- 10) Sketch maps of Bechuanaland Protectorate to accompany the Annual Reports:
 - a) 1911 – 1912 Botswana Atlas, map 8.
 - b) 1912 – 1913 Botswana Atlas, map 9.
 - c) 1913 – 1914 Botswana Atlas, map 10.
 - d) 1914 – 1915 Botswana Atlas, map 11
- 11) German S.W. Afrika Sheets 7 & 8, Caprivi Zipfel, topographical section of the Union Defence Forces, Pretoria, July 1915 approx. 1:4 pp. 000.
- 12) Sketch map of Ngamiland and Ghanzi by A. G. Stigand, 1922, 1:5000,000
- 13) Map of Bechuanaland protectorate, Geographical section, General Staff, War Office, 1933, No. 3915, 1:5000,000.
- 14) Union of South Africa, Katima Mulilo, 1949, 1:250,000.
- 15) Chobe concessions (Bechuanaland) Ltd., Approximate delineation of Concession areas, Silby and Horrell, Chartered Surveyors, Salisbury, 1953.
- 16) Bechuanaland Protectorate, Directorate of Overseas Survey, London, 1960, 1:1,000,000
- 17) Bechuanaland Print Laydown, Directorate of Overseas Surveys, 1964, Sheet 1725. 1:1725,000.
- 18) Bechuanaland, Directorate of Overseas Surveys, London, 1965, 1:500,000.
- 19) Sketch map accompanying the Surveyor-General's Opinion. 18 October 1965, approx. 1:125,000.
- 20) South West Africa, Katima Mulilo, Government Printer, Pretoria, 1967, 1:250,000.

- 21) Joint Operations Graphic-Ground Map, Sesheke, Zambia. SW Africa, Botswana, Rhodesia, Directorate of Military Survey, Ministry of Defence, OS, 1968, 1:250,000.
- 22) Joint Operations Graphic-Air map. Sesheke, Zambia, SW Africa, Botswana, Rhodesia, Directorate of Military Survey, Ministry of Defence, OS, 1968, 1:250,000
- 23) Joint Operations Graphic Ground Map, Seheke, Zambia, SW Africa, Botswana, S, Rhodesia, Directorate of Military Survey, Ministry of Defence, OS, 1968, 1:250,000 as in No. 22 above, annotated in red to show limits of Chobe National Park.
- 24) Joint Operations Graphic Ground Map, Kavimba, Botswana, S, Rhodesia, SW Africa, 1970 Sheet, 1:250,000 annotated in red to show limits of Chobe National Park with No. 24 above.
- 25) Republic of Zambia, Sesheke, Surveyor-General, Lusaka, 1971, 1:250,000.
- 26) Botswana Sheet 1725 C3 and Part C4, Department of Lands and Surveys, Gaborone, 1974, 1:50,000, Edition 1.
- 27) Botswana Department of Lands and Surveys, Gaborone, 1974, 1:1,000,000.
- 28) Limits of the Chobe National Park
 - a) Plan: Chobe District, Department of Town and Regional Planning, Gaborone, 1975. TRP6, T2 - 4, 1:250,000
 - b) Chobe National Park Plan, 1980 BP 179, 1:250,000
 - c) Chobe National Park Plan, 1983, BP 179-a, 1:250,000
- 29) Botswana, 1976, partially revised Department of Lands and Surveys, Gaborone, 1:1,000,000. Edition 2.
- 30) Extract of Botswana, Sheet 1725 C3 and part C4m Department of Lands and Surveys, Gaborone, 1977. Edition 2.
- 31) Chobe National Part Tourist Map, 1977, 1:250,000
- 32) Caprivi compiled by the Joint Air Reconnaissance Intelligence Centre, (JARIC) South African Defence Forces, Sheet A, c.1977/8, and 1:100,000.
- 33) Zimbabwe, Kazungula, Surveyor-General, Zimbabwe 1981. 1:250,000

- 34) South Africa Military Map, 1984, 1:50,000.
- 35) Botswana Sheet 1725 C3 and C4, Department of Lands and Surveys, Gaborone, 1984, 1:50,000. Edition 3.
- 36) Botswana North Sheet, 1986 ed., Department of Lands and Surveys, Gaborone, printed CTP, 1:000,000.
- 37) Flight Plan. 21 July 1977 for JARIC Map, No. 32 above.

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This book is a rare study of German colonialism in Africa. Its geographical focus is the Caprivi strip - an eccentric panhandle created by the Anglo-German Treaty of 1890. The Strip juts eastwards from South West Africa (today's Namibia) to the Zambezi River, and separates German and British colonial territories. The author, in constructing the history of this still remote (but now tourist-frequented) stretch of Central Africa, utilises insights and evidence drawn from African customary law, anthropology and archaeology. She delineates the imposition of German imperialism during its short period of ascendancy, 1884-1915. She also deals with the somewhat neglected uprising that pitted the Ojibherero Nama and Damara peoples of South West Africa in an extraordinarily unequal, brutal and prolonged war of resistance against German imperialism from 1904. The story of the Strip is brought up to date in the author's examination of the legal dispute that broke out between independent Namibia and Botswana in the 1990s over the precise international boundary between them along the Chobe River. In this bizarre codicil to the colonial history of arbitrary frontier demarcations, the International Court of Justice succeeded in bringing about a peaceful settlement of the Kasikil/Sechudu Island case in 1999.

Dr Ejia Okupa was born in Nigeria where she developed an early interest in anthropology and archaeology. Educated at Bedford College of Further Education, at Homerton College, Cambridge and University College London, she received her PhD in African Law and Ethno-Jurisprudence from the School of Oriental African Studies, London. She is the author of an e-book in this series entitled *International Bibliography African Customary Law*.

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