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## Political effects of the General Contract Strike 1971–72 on Owambo contract workers

Napandulwe Shiweda\*

### *Abstract*

*Being based on oral interviews, archival records and much of the published literature on the topic as well as press reports, this article analyses the political effects of the General Contract Workers Strike of 1971–72 on Owambo contract workers. It shows how, through the workers' political consciousness and organizational potential, the strike was successful in the struggle against the colonial contract labour system. The first part of the article provides a brief outline of how the workers developed their campaign from a growing sense of discontentment with the oppressive contract system. It explores the various factors that led to the strike, and examines the court hearings, Owambo unrest, and the public floggings that ensued. The second part traces the role of the Owambo 'traditional' authorities in the public floggings which had an enormous impact on the state of politics in Owambo. The article maintains that while Owambo headmen had authority over contract workers their position lacked legitimacy. When the Owambo kingships came under colonial control, chiefs and headmen found their authority profoundly changed, and allied themselves with colonial officials. They used public floggings to consolidate their power, claiming that they were an old 'tribal' custom based on traditional forms of discipline and punishment. The final section outlines the key debates surrounding the public floggings and the aftermath of the strike. The analysis shows that although the strike did not end the poor working conditions and workers were still separated from their families, it laid the foundations for the struggle for the underlying political aim: independence from colonial South Africa.*

### Introduction

According to Gretchen Bauer, the general strike of 1971–72 is a landmark in the historiography of labour in Namibia. More than 20,000 contract workers participated in

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the strike which effectively shut down 23 workplaces and 11 mines in its first month.<sup>1</sup> The strike appears to have had started in Walvis Bay. It was reported in the *Windhoek Advertiser* of December 1971 that the workers in the Municipality Compound there were planning to strike on 14 December in protest against the contract system.<sup>2</sup> According to Hayes, it was said that the workers in Walvis Bay also wrote to workers in other parts of the territory urging them to strike on that day.<sup>3</sup> On Monday 13 December, the vast majority of the Windhoek Municipal compound (about 6000 contract workers) did not leave the compound for work.<sup>4</sup> Katjavivi claims that the strike began in response to a comment by the South African Commissioner for Indigenous People in Namibia, Jannie de Wet.<sup>5</sup> De Wet was reacting to Diocese treasurer, David de Beer, who referred to the contract labour system during a talk at the University of the Witwatersrand. His talk was reportedly picked up by *Die Suidwester*, the National Party newspaper, and made front-page news. As a result, Jannie de Wet said in a broadcast on Radio Owambo that the contract labour system was not a form of slavery because the workers could go home whenever they liked.<sup>6</sup> A group in Walvis Bay, after hearing the broadcast, wrote to other contract workers all over the south of Namibia suggesting that they should take “the boer Jannie de Wet” at his word, and go home. In so doing, argues Katjavivi, “de Wet touched the nerve of people already full of anger at the way their lives were brutalised by this system.”<sup>7</sup> De Wet’s statement brought an immediate reaction with letters being exchanged at the beginning of December 1971 between contract workers in Windhoek, Walvis Bay and Tsumeb, sharing ideas on how to organise a strike.<sup>8</sup> This suggests that there was a high level of literacy among contract workers.

Oral accounts relate that throughout the compounds of Namibia De Wet’s speech became the topic of debate, and the pro-strike sentiment spread across the country as letters telling people to take action were circulated back and forth between the different compounds and Owambo.<sup>9</sup> The strike spread to Walvis Bay, Tsumeb, Klein Aub and

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<sup>1</sup> Gretchen Bauer, *Labour and Democracy in Namibia, 1971-1996*, Ohio, Ohio University Press, 1998: 18.

<sup>2</sup> National Archives of Namibia (NAN), ELFI-0581, Stephen Hayes, *The Strike of Owambo Workers in South West Africa and the Churches*, Diocese of Damaraland, 24 December 1971 (postscript written 4 January 2012): 2.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Peter Katjavivi, *A History of Resistance in Namibia*, Paris, UNESCO Press, 1988: 67.

<sup>6</sup> National Archives of Namibia (NAN), ELFI-0581, Stephen Hayes, *The Strike of Owambo Workers in South West Africa and the Churches*, Diocese of Damaraland, 24 December 1971 (postscript written 4 January 2012): 2.

<sup>7</sup> Katjavivi, *History*: 67.

<sup>8</sup> Ibid.; also see David Soggot, *The Violent Heritage: The Untold story of South Africa's Vietnam*, London, Rex Collins, 1986: 46.

<sup>9</sup> Interview with Mr. Hinananye Nehova, Windhoek, 30.1.2009, and interview held by Patricia Hayes with Leonard Nghipandulwa, Ondangwa, 1995. Also see, Soggot, *Violent Heritage*: 48.

Oamites copper mines.<sup>10</sup> Hayes claims that negotiations on the strike began the day the strike started in Windhoek, when a meeting was held in Walvis Bay attended by Mr. G. White, the Chief Native Affairs Commissioner for South West Africa — and a group of headmen from Owambo and the Lutheran Bishop Leonard Auala.<sup>11</sup> A similar meeting was held the following day in Windhoek also with Jannie de Wet and representatives of SWANLA. Here Mr White gave the workers a choice between returning to work and awaiting the result of a meeting to be held in February, or returning to Owambo. The strikers decided to return to Owambo.<sup>12</sup> In response, the government started to arrest those whom they regarded as the strike ringleaders while the rest of the strikers were allowed to return to Owambo. According to a secret report by the state ethnologist Mr. Budack, after Owambo strikers left their work places for Owambo the South African police and Budack addressed some Tjimbundu men on the border at Oshikango and sent them back to their areas of origin to enlist workers to go south.<sup>13</sup> Therefore, it seems that South Africa agreed to repatriate strikers to Owambo in order to replace them with new recruits, especially from Angola.

The strike was described as a paralysis that spread to other centres while panic in the white community grew when businesses became affected, goods piled up on the railways, building construction stopped and heaps of garbage encroached onto pavements.<sup>14</sup> In an attempt to put an end to the growing economic chaos, the government called on headmen from Owambo to persuade the workers, particularly at Walvis Bay to return to work. According to SWAPO the administration's calls for replacements backfired as the first batch of strike-breakers from Owambo came out in solidarity with the strikers and only 1000 workers from elsewhere in Namibia and neighbouring countries were recruited.<sup>15</sup> In the meantime, an ad hoc strike committee was elected in Owambo, led by Johannes Nanguutuala, who set up a manifesto pinpointing the worker's grievances. The committee passed a series of resolutions setting out the worker's rejection of the contract system and demands for its replacement.<sup>16</sup> Thus, within a month of the start of the strike and a fortnight after most of them had returned to Owambo, the strikers had a coherent set of demands, an elected leadership, a form of grassroots organisation and clearly defined tactics.<sup>17</sup> However, the South African officials, the directors of SWANLA

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<sup>10</sup> Katjavivi, *History*: 68.

<sup>11</sup> Hayes, *Strike*: 3.

<sup>12</sup> Ibid.: 4.

<sup>13</sup> National Archives of Namibia (NAN), BAD, Box 18, File no. O.13, 1972, Owambo: Unrus in die Kuanyama-gebied, translated by Kletus Likuwa.

<sup>14</sup> Soggot, *Violent Heritage*: 48.

<sup>15</sup> See SWAPO of Namibia, *To Be Born a Nation. The Liberation Struggle for Namibia*, London, Zed, 1981: 190; Soggot, *Violent Heritage*: 48.

<sup>16</sup> SWAPO of Namibia, *Nation*: 198.

<sup>17</sup> Ibid.: 198.

and the homeland government were not prepared to negotiate with the worker's committee.<sup>18</sup>

The strike forced the authorities to reorganize the contract labour system by integrating the local power structures in the Owambo into the recruitment process as agencies with partial control. Thus, South African officials met with their Owambo allies and came to a number of decisions: recruitment would no longer be carried out by SWANLA; labour employment offices would be organised henceforth by the Owambo government, workers would know their wages and fringe benefits from the outset, and they would be permitted to maintain contact with their families.<sup>19</sup> But although they had agreed to abolish SWANLA as a negotiator of labour contracts, they replaced it with an employment bureau run by the Owambo Legislative Council, and which allowed only minor changes in the contract system. According to SWAPO,

the bureau's provisions were much the same as those of the Bantu labour Regulations in South Africa at the time and was nothing more than propaganda to sell the 'new deal' to the strikers as a major change.<sup>20</sup>

Furthermore, Johannes Nangutuuala the leader of the worker's committee was apparently tricked into going on Radio Oshiwambo to tell the workers to stop striking and go sign up for work. But when the workers turned up for work they discovered that, other than two incidental changes, and the substitution of the Owambo government for SWANLA, everything had remained as before. The workers felt betrayed. To make matters worse, the Owambo Legislative Council took over SWANLA's role of recruiting contract labour and was thus seen as active accomplices in the deception.

Infuriated workers retaliated by attacking the properties of so called 'tribal' collaborators and informers. According to David Soggot, some 400 government stock inspection kraals and fences, including the colonial Angola/Namibia border fence, were

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<sup>18</sup> The Owambo Legislative Council was a result of the Odendaal plan which followed general pattern of race relations established in South Africa in 1961 by Fox Odendaal. Under this plan every person in then South West Africa was to be classified ethnically as belonging to one of ten population groups, namely; Owambo, Kavango, Caprivi, Basters, Tswana, Damara, Nama, Herero, 'Bushman', Kaoko. Each group was assigned a 'homeland' within the territory, where its members were recognized as 'citizens', with full rights. Outside the homeland every person is considered an alien, without rights. The theory was to push the message of 'separate development' for all Africans, according to their ethnicities. The concept sought to enable the various groups to exist as separate and fully-fledged nations in every respect, each with its own territory and political system, and that development would depend on the inherent potential for growth of the different peoples and the responsible guidance of the South African Government in its role as guardian. However, the political stability and economic position of the homelands were still entirely dependent on South African support. This will be discussed in detail in the following article. However, for a full discussion on the Owambo Homeland Government, see: Gerhard Töttemeyer, *Namibia Old and New: Traditional and Modern Leaders in Ovamboland*, London, Hurst & Company, 1978: 54-140; unpublished article titled, South West Africa, found at NAN, Elizabeth S. Landis Accession, A. 636/1 Findaid 2/54, 1946-1989; Christopher Saunders, "The transitions from Apartheid to democracy in Namibia and South Africa in the context of decolonization", *Journal of Colonialism and Colonial History*, 1, 1, 2000 (n.p.).

<sup>19</sup> Soggot, *Violent Heritage*: 49.

<sup>20</sup> SWAPO of Namibia, *Nation*: 198f.

destroyed.<sup>21</sup> In response, the South African regime sent armed police into Owambo. Intimidation, arrests and even killings by the police were reported.<sup>22</sup> What had started as a peaceful strike led to Owambo becoming an occupied zone as police reinforcements were drafted into the territory. The striker's pent up anger now turned against the Owambo government and collaborating chiefs. A Race Relations survey of 1972 reports that

during January and early February 1972, gangs armed with such weapons as pangas, bows and arrows, hunting knives, and axes attacked kraals of several headmen and of a senior Legislative Councillor, burning huts and several shops.<sup>23</sup>

Groups of strikers also attacked the kraal of Philipus Kaluvi, a headman directly concerned with the contract system and burned down his general dealer's shop; the homes of other chiefs and headmen were damaged or destroyed and official buildings were burnt down; sub-headman Samuel Kaulinge was assaulted and seriously injured – his wife was killed after she intervened.<sup>24</sup>

In response to the unrest, regulations for the administration of a district of Owambo were gazetted as Proclamation R17 of 4 February 1972. This introduced quasi-emergency regulations which (with certain exceptions such as church services, meetings of statutory bodies or called by heads of kraals to discuss domestic matters, sport gatherings, entertainments etc.), effectively prohibited political meetings; it became an offence to undermine the authority of the State, the Owambo government, or any chief or headman; individuals could be arrested without a warrant and detained for questioning; detention was incommunicado with no right of access to legal advisers.<sup>25</sup> Furthermore, failure to obey the lawful order of a chief or headman was punishable; it also became a criminal offence to make an intimidating statement, to boycott a meeting called by an official, chief or headmen, to fail to obey any lawful order given by a chief or headman, or to treat him with disrespect.<sup>26</sup>

According to *The Star*, these quasi-emergency regulations were very similar to Proclamation 400 introduced in the Transkei during the Pondoland disturbances of 1960.<sup>27</sup> The Pondos were fighting against the imposition of the Bantu Authorities Act;

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<sup>21</sup> Ibid.: 202; also see, Soggot, *Violent Heritage*: 49, and South African Institute of Race Relations, *A Survey of Race Relations in South Africa 1972*, Johannesburg, Institute of Race Relations, 1973: 438f.

<sup>22</sup> See Katjavivi, *History*: 68 and Soggot, *Violent Heritage*: 49.

<sup>23</sup> South African Institute of Race Relations, *Survey*: 438f.

<sup>24</sup> Soggot, *Violent Heritage*: 50, also see NAN, BAD, Box 18, File no. O.13, 1972, Owambo: Unrus in die Kuanyamagebied.

<sup>25</sup> For a full account on the Proclamation R17 of 1972, see; Soggot, D. *The Violent Heritage*, p 50 and South African Institute of Race Relations, 'A survey of race relations', pp. 438f.

<sup>26</sup> Again, see Soggot, *Violent Heritage*: 50 and South African Institute of Race Relations, *Survey*: 438f.

<sup>27</sup> "Some Chiefs more powerful", *The Star*, 24 November 1973. Note: A large number of news article cuttings come from the National Archives of Namibia in Windhoek, they are found under Accession NAN, A. 570, SWA: Security (Floggings), February – Dec 1973.

the extension of passes to women; and schemes for the rehabilitation and reallocation of land in the Transkei. In response, the South African government gazetted a similar Emergency Proclamation 400 in 1960 and according to Govan Mbeki, 4,769 men and women were held in custody for indefinite periods during that year.<sup>28</sup> Both proclamations prohibited meetings without permission, imposed strict conditions of entry, made it illegal to disobey a chief, boycott his meetings, or fail to “render such services as should be rendered in accordance with native law and custom”.<sup>29</sup> In the end, many Owambo people were radicalised by the general strike in 1971-72. This led to the boycott of Owambo elections in August 1973. A detailed account follows of how the unrest in Owambo unfolded and which factors moved people to respond in the way they did.

## The Owambo unrest

According to a secret report by K.F.R. Budack on the unrest in the Kwanyama area in 1972, several factors contributed to the violent attacks on some of the Kwanyama headmen and government structures.<sup>30</sup> One such factor was the division of the Kwanyama ‘tribal’ area by the Namibia/Angola international border. The report claims that, this border fence was broken down by many protesters whether they were teachers, headmen or ordinary ‘tribesmen’ apparently because it had no practical meaning for them.<sup>31</sup> Oral testimonies maintain that, most people had relatives who lived across the border, as well as cattle posts where more grazing space was to be found. Furthermore, some cattle owners who had cattle on the Angolan side of the fence were unhappy with the fact that they could no longer move freely to and fro with their cattle especially during the drought season.<sup>32</sup> The report further states that during the night of the 16 January 1972, the fence between Namibia and Angola was reportedly cut and destroyed in 21 places. The fence had been destroyed the whole length of the Kwanyama border. In the west, the fence was destroyed up to the border area with Ombalantu and in the east up to the boundary with Kavango.<sup>33</sup>

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<sup>28</sup> Allison Drew, “Govan Mbeki’s *The Peasants Revolt: A Critical Examination*”, in: Thembele Kepe and Lungisile Ntsebeza, (eds.), *Rural Resistance in South Africa. The Mpondo Revolts after Fifty Years*, Leiden, Brill, 2011: 67-89 (79f.).

<sup>29</sup> “Some Chiefs more powerful”, *The Star*, 24 November 1973.

<sup>30</sup> NAN, BAD, Box 18, File no. O.13, 1972, Owambo: Unrus in die Kuanyamagebied. Kuno Franz Robert Budack was a government ethnologist from 1966-1989. He worked for the South African administration conducting research and writing about ‘ethnic’ groups in Namibia to demonstrate the government’s ‘achievements’ in the economic, social and political organization of the people (personal conversation with Antje Otto of the National Museum of Namibia, 4 November 2011).

<sup>31</sup> NAN, BAD, Box 18, File no. O.13, 1972, Owambo: Unrus in die Kuanyamagebied.

<sup>32</sup> Interview with Hinananye Nehova, Windhoek, 30.1.2009, Vilho Tchilongo, Ongwediva, 18.06.2010 and Lucas Shinedima, Onuno, 2.08.2008 and 23.06.2009.

<sup>33</sup> NAN, BAD, Box 18, File no. O.13, 1972, Owambo: Unrus in die Kuanyamagebied.



The second factor was the problem of cattle *mangas*.<sup>34</sup> According to the same report, there was great bitterness amongst the cattle owners as the cattle had to be counted and inspected at the *mangas* weekly.<sup>35</sup> Many people complained that they had to drive their cattle long distances to the *mangas* and the condition of the animals deteriorated as a result. This was especially true during the dry and hot season before the summer rains had fallen and while grazing areas were still scarce. If they refused to take their cattle to the *mangas* they were punished. They also stated that sometimes when they arrived at the *mangas*, they found that there were no inspections but only counting.<sup>36</sup> This was a major source of discontent as in some instances, this trek to and from the *mangas* took two full days. As a result, most people lost their trust in the headmen and the South African administration, and wanted to solve their problems themselves. The report claims that some Kwanyama people had a meeting on the 16 January 1972, where they decided to destroy all the *mangas* and to refuse to take their cattle for inspection.<sup>37</sup> It seems that the cattle movements to the central *mangas* had long been a major problem in Owambo. According to Julia Mbida, there were stories about Hahn 'Shongola' (when he was Native Commissioner of Owambo 1920-1946) asking people to take their cattle to the *mangas* for inspection of their tongues and to burn them if they were diagnosed with the lung and foot sickness, but people refused. The young men (especially headmen's sons) who worked in the south told the elders not to accept the inspections and the burning of diseased cattle.<sup>38</sup> There was a similar reaction to the 'pure-blood' bulls that were sent to Owambo in 1918 to improve the quality of livestock there, which the colonial administration saw as 'dwarf' cattle and of little commercial value.<sup>39</sup> Mbida claims that the young men who worked as farm workers in the south, told people that if they agreed to have the bulls, the calves would belong to the white men. They also claimed that the white men's cattle were too huge and Owambo cows would not be able to cope with the birth of such large calves.<sup>40</sup> It seems that this was the local peoples' discourse and vernacular understanding of the colonial 'development'<sup>41</sup> or

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<sup>34</sup> A *manga* is the local term for a cattle chute – a narrow alley, through which cattle can only walk single file before they are branded, injected with medicine or loaded on to a truck. See Ben Fuller, "'We live in a Manga'. Constraint, Resistance and Transformation on a Native Reserve", in: Patricia Hayes, Jeremy Silvester, Marion Wallace and Wolfram Hartmann, (eds.), *Namibia under South African Rule. Mobility and Containment 1915- 1946*, Oxford, Currey, 1998: 194-217 (194).

<sup>35</sup> NAN, BAD, Box 18, File no. O.13, 1972, Owambo: Unrus in die Kuanyamagebied.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Interview with Julia Mbida, Odibo, 20.08.2008.

<sup>39</sup> NAN, SWA, Box 0573, Union of South Africa, *Administrator's report*, 1926, p 34.

<sup>40</sup> Interview with Julia Mbida, Odibo, 20.08.2008.

<sup>41</sup> For a full discussion on colonial development undertaken by British, French as well as Belgian colonial powers in the aftermath of the Second World War, as a process of "innovatory paternalism" which was aimed at bringing about "development" of their colonies, see Frederick Cooper, "Development, modernization, and the social sciences of the era of decolonization: the examples of British and French Africa", *Revue d'Histoire des Sciences Humaines*, 10, 2004: 9-38; idem, "Modernizing bureaucrats, backward

betterment schemes which had been introduced in the country. Hence, it is important to analyse what these measures meant to the locals.

In a separate but similar situation, Lorena Rizzo in her analysis of conflicting perceptions, understandings and ways of countering stock diseases (inoculations) in Kaoko, asserts that as early as 1938, there was a growing reluctance among inhabitants of Kaoko to have their stock inoculated and branded. She argues that this reaction was to be expected because not only did the people witness a significant increase in police in their region, but also because the control and supervision of their herds were at stake.<sup>42</sup> What is interesting here is Hahn's narrative and logic on the question of accepting and rejecting the inoculation: it was accepted by the Herero sections in Kaoko but rejected by the Ovattjimba and Ovahimba groups in northern parts of the region. Hahn regards this rejection as an issue of Africans' susceptibility to modernisation, to which the Herero population was undoubtedly amenable, but which was much more extraneous to those colonial subjects who lived in the remote areas of Kaoko and were still perceived as wild and uncivilised.<sup>43</sup>

However, according to Rizzo, the pastoralists' refusal to have their cattle inoculated or branded was possibly linked to the perception that the veterinary intervention was linked to the restrictions imposed on land use and mobility of herds, particularly across the Kunene River. Furthermore, branding of stock allowed the colonial state to mark animals which had been inoculated and later on to identify stock which had been kept away from inoculations – it served to count each and every animal in the area – thus, from the pastoralists' perspective, the brands on their livestock were associated with a claim to property.<sup>44</sup> This is very similar to what was happening in Owambo and although there is no clear documentation of earlier resistance to the inoculation and branding of cattle in the archives, it was nevertheless an issue. Thus, based on this analysis, it is important to stress that although the desire for modernity was strong among African people, and they wanted to be assimilated into the mainstream of modernity, new colonial development was also viewed with suspicion and only wanted in certain ways, and on the Africans' terms.

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Africans, and the development concept", in: Frederick Cooper and Randall Packard, (eds.), *International Development and the Social Sciences: Essays on the History and Politics of Knowledge*, Berkeley, University of California Press, 1997: 64-92; Joana Lewis, *Empire State-Building: War & Welfare in Kenya 1925-52*, London, Currey, 2000. Economic developments (e.g. in Kenya) were projects considered as an imposition of an unwanted modernity. Colonial governments from the late 1930s sought to assert legitimacy and foster the cooperation of colonized people via development programmes, but development quickly became politicised – a basis for claims on the resources of empire, an insistence on voice in deciding what development policies should be. This relates to the programmes implemented by the South African government in Owamboland to promote and improve farming techniques which later led to rebellions in these areas.

<sup>42</sup> Lorena Rizzo, *Gender and Colonialism: A History of Kaoko (North-Western Namibia) between the 1870s and 1950s*, Basel, Basler Afrika Bibliographien, 2012: 219.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.: 221.

The third factor which led to the unrest in Ukwanyama area was the collaboration between the headmen and the South African administration. According to the report, it was not only the South African government that was distrusted by the people but also the headmen, who were seen as 'stooges' who only did the bidding of the 'whites'. Furthermore, many Kwanyama people felt that the Owambo Legislative Council was merely an instrument of the South African government especially after the appointment of Rev. Cornelius Ndjoba as Chief Minister of the 'Tribal' Owambo Executive. The report further claims that, as a result of this strained relationship with the headmen, on 18 January 1972 around 300 Kwanyamas gathered at the senior headman Phillipus Kaluvi's homestead. He, however, was on his way to Grootfontein where he was to have a meeting as a new representative of northern labourers.<sup>45</sup>

The purpose of the gathering of Kwanyama people outside Kaluvi's home was for them to bring and destroy their inspection booklets and to refuse to take their cattle to the *mangas*. However, before the meeting could commence, a police patrol arrived at the scene. Witnesses reported that the police captain said the following words: "Headman Kaluvi had said that we can shoot five of you, if you do not go away from here now, we will do it!" The South African police apparently had names of the seven Kwanyamas who were considered "trouble makers" (ringleaders) and arrested them there. According to the report, some fighting followed as a result and in the process, three police officials were hurt while one Kwanyama man was seriously injured and later died at the Oshakati hospital on 21 January 1972.<sup>46</sup>

After this incident, the report further claims that about 200 Kwanyama men arrived at senior headman Kaluvi's homestead and demanded to know where he was. When they discovered that he was in Grootfontein they told his wife that they were going to kill him because, just like his father Hamukoto wa Kaluvi, he was a 'sell out', as he had betrayed five men to the police. According to the report, by 7pm the same day roughly 40 armed Kwanyama men arrived at Oshikango police station. They were armed with bows and arrows, Owambo knives, axes and pangas. They demanded that the seven men who had been arrested earlier that day be released. Meanwhile, the South African police received information that there were a number of Kwanyama men hiding in the bushes near headman Kaluvi's homestead waiting to attack him upon his return and so they advised him not to return. Meanwhile, Kaluvi's wife apparently fled to the Odibo area. During the nights of 23-24 January 1972, Kaluvi's son's shop and Kaluvi's homestead were burnt down. Apparently, headman Kaluvi was later captured, but he was not seriously injured.<sup>47</sup>

According to oral testimonies, after the incident at headman Kaluvi's homestead Kaluvi convened a meeting on the 26 January 1972 at Omafo so that he could explain the new

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<sup>45</sup> NAN, BAD, Box 18, File no. O.13, 1972, Owambo: Unrus in die Kuanyamagebied.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

contract work agreement.<sup>48</sup> However, about 3,000 men gathered at the 'tribal' offices at Omafo and requested that all the other headmen also be present. On arrival at the 'tribal' offices, according to the report, Kaluvi became scared, left the new agreement articles with the 'tribal' secretary and escaped through the back of the offices where the meeting was to take place.<sup>49</sup> The contract workers' committee and the people became restless and wanted to know where Kaluvi was. A member of the Legislative Council, Rev. Corneluis Ndjoba addressed them and tried to explain the new agreement and the new work issues. However, people were more interested in Kaluvi, as they wanted to confront him about the five people he supposedly betrayed to the police.<sup>50</sup> This meeting was a landmark because the group demanded that headmen and the whole traditional authority come together to be questioned. They had decided to take the law into their own hands as most people questioned the institution of the council of headmen and saw it as having been forced upon them after king Mandume's death.

Moreover, according to the report, many Owambo people felt that the Owambo Legislative Council and the Owambo 'Tribal' Executive were not true representatives of the 'tribes' as their own people were not represented in these councils. They feared that people like Kaluvi could not understand their grievances as they just sat in their offices while the white officials did all the work.<sup>51</sup> The latter point is interesting because the South African government sent white personnel to work as administrators or even directors under which African counterparts worked. Aaron Nambadi argues that the colonial administration placed administrative staff in key positions to ensure that the Kavango Legislative Council made decisions and passed acts that were favourable to the colonial administration.<sup>52</sup> This also applied to Owambo. Thus, people saw the Legislative Council as an extension of South Africa's rule even though the homelands were supposed to be self-governing.

The fourth factor was the conflict between the Kwanyamas and Tjimbundus. According to the report, there was a large number of Tjimbundus in the Kwanyama area especially on the Angolan side of the border. Their number was increasing because most of these Tjimbundus had already worked in the south, and had technical and mechanical skills for the work in the mines.<sup>53</sup> As indicated earlier, these Tjimbundu men were addressed by state ethnologist Kuno Budack and the South African police, and some were sent back to their areas of origin to seek more workers to come south. According to the report, more Tjimbundus had already started to arrive but because of the strike, they were stopped and harassed by Kwanyama strikers. The report further claims that since 'olden

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<sup>48</sup> Interview with Vilho Tshilongo, Ongwediva, 18.06.2010 and Lucas Shinedima, Onuno, 23.06.2009.

<sup>49</sup> NAN, BAD, Box 18, File no. O.13, 1972, Owambo: Unrus in die Kuanyamagebied.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Aaron Nambadi, *The Kavango Legislative Council, 1970-1979: A Critical Analysis*, unpublished MA Thesis, University of the Western Cape, 2007: 118f.

<sup>53</sup> NAN, BAD, Box 18, File no. O.13, 1972, Owambo: Unrus in die Kuanyamagebied.

times' there had been jealousy between Kwanyamas and Tjimundu and this seems to have aggravated the clashes. Finally, these factors can be seen as indicators of the desire of the people to break free of containment as symbolised by the cutting of the fence.<sup>54</sup> The South African government's policy which controlled both land and movement of African people, limited specific groups to 'native reserves' in the Police Zone and to Owambo and other northern regions. As a consequence, I believe political activism in Owambo at that time opened doors to resistance against all their grievances, whether it was the resented international border fence, the headmen's rule, or the cattle mangas.

### Opposition to colonial South Africa's policy of separate development

Following the recommendations of the 1962 Odendaal Commission and in open defiance of the United Nations, South Africa proceeded to legislate for separate development in Namibia towards the end of the 1960s. Despite opposition, Owambo, still in the vice-like grip of the R17 Emergency Regulations, was proclaimed self-governing, and in June 1973 elections were set for 1 and 2 August 1973.<sup>55</sup> There was widespread opposition and while elections to a legislative assembly were being prepared in Owambo, both SWAPO and the dominant Evangelical Lutheran Church in Namibia (ELCIN) called for a boycott.<sup>56</sup> The South African administration sought to push through its separate development policy crushing all resistance along the way, and the elections were held as planned. However, the parties that called for a boycott were successful, as, according to SWAPO, only 2.5 per cent of those eligible to vote did so, and many of these were Bantustan policemen and officials whose very livelihoods depended on their loyalty to the South African regime.<sup>57</sup>

Government officials argued that the opposite was the case, according to Gail-Maryse Cockram, "in January 1975, the SWAPO call to the people of Owambo, to boycott the new elections being held there, failed dismally, and the poll increased from 2-5 per cent in the previous election to a surprising 55 per cent."<sup>58</sup> The boycott, however, brought about a wave of brutal repression throughout Namibia, particularly the repeated officially sanctioned violence, imprisonment, torture, and public floggings in response to manifestations of opposition.<sup>59</sup> It targeted, in particular, the youth and SWAPO's leaders. Even though SWAPO at no time was declared illegal or banned, hundreds of men and women were rounded up by the police, and accused of being members of the

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<sup>54</sup> There is an analogy in Ben Fuller's article on the Otjimbingwe area residents (cf. Buller, "Manga").

<sup>55</sup> SWAPO of Namibia, *Nation*: 210.

<sup>56</sup> Tor Sellström, *Sweden and National Liberation in Southern Africa: Solidarity and Assistance 1970-1994*, Vol. 2, Stockholm, Nordic Afrika Institute, Elanders Gotab, 2002: 273.

<sup>57</sup> See SWAPO of Namibia, *Nation*: 210; and Sellström: *Sweden*: 274.

<sup>58</sup> Gail-Maryse Cockram, *South West African Mandate*, Cape Town, Juta, 1976: 472.

<sup>59</sup> SWAPO of Namibia, *Nation*: 206.

organisation.<sup>60</sup> It is clearly evident here that proclamation R17, as Riedwaan Moosage puts it, “set the basis for future assertions of power and authority, firstly, by the South African government and secondly, by the tribal authorities, as seen with the August elections, to manipulate and assert its authority.”<sup>61</sup>

## Public floggings in Owambo

In the middle of August following the elections, many Owambo men and women were arrested by the South African police, and detained without charges. However, in October-November they were ‘released’ but immediately handed over to the ‘tribal’ authorities. For many it meant walking out of one detention centre and into another. According to several news reports, after the Owambo elections in August 1973, an undisclosed number of Owambo men in the homelands of the Kwanyama and Ndonga ‘tribes’ were publicly flogged for offences which one tribal authority described as “most serious”.<sup>62</sup> The *Cape Times* reported the ‘tribal’ authority’s spokesman as stating:

The men ignored repeated warnings by tribal chiefs not to hold political meetings without first consulting the ‘tribal’ authorities concerned. It was not only contemptuous, but was aimed at breaking down the authority of the chiefs. Any attempts to disturb peace and quiet in the homeland as well as attempts to intimidate people or to incite them to undermine the authority of the chiefs, would not be tolerated. The ‘tribal’ authorities would continue to punish offenders according to the ‘tribal’ system “as is our right”, he stated.<sup>63</sup>

It is clear from this discourse that the headmen of the various ethnic groups in Owambo at the time viewed the act of calling and holding unlawful political meetings as a most serious charge. They thus tried to justify their beatings of those who refused to follow their laws and warnings by claiming that they could not tolerate their power being undermined. However, in most of the cases, membership of SWAPO was stated as the ‘crime’ which was ‘punished’ by flogging. Other crimes leading to 20 or 30 strokes included the singing of SWAPO songs, using the name Namibia, wearing a SWAPO flag on one’s shirt, or simply wearing a shirt in SWAPO colours (red, green and blue). The floggings were carried out with the broad rib of the *makalani* palm, where in some cases men were ordered to strip for the beatings, while the women were told to lift their dresses and crouch over stools. According to media reports, men received between 18 to 31 lashes on the buttocks with this palm branch and the majority of the victims had been held incommunicado and without charge under the “quasi emergency procla-

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<sup>60</sup> Sellström, *Sweden*: 274.

<sup>61</sup> Riedwaan Moosage, *Epokolo. The 1973-4 Public Floggings*, unpubl. research paper, University of Western Cape, 2006: 12f.

<sup>62</sup> See “Flogging – call backed by SA General”, *Cape Times*, Johannesburg, 13 November 1973; “More Public Beatings”, *The Cape Times*, 13 November 1973; “Inhuman and Degrading Punishment”, *The Times*, 24 November 1973; “The Agony of a Public”, *Rand Daily Mail*, 21 November 1973.

<sup>63</sup> “More Public Beatings”, *Cape Times*, 13 November 1973.

mation".<sup>64</sup> Therefore, joining SWAPO, the symbolic act of affiliating with an organisation which stood for the liberation of Namibia and which led to such a humiliating punishment, was seen as a challenge to the very basis of South Africa's apartheid policy in Namibia.

However, prior to these incidents, there were cases of SWAPO members being flogged in the early 1960s. According to the former President Hifikepunye Pohamba, he was flogged for allegedly threatening the stability of the government of South Africa which was represented by the chiefs or headmen.<sup>65</sup> According to Pohamba he was the first victim of flogging in Owambo and a man called Phillipus carried the punishment out:

I was the first person to be arrested and flogged in the north, in June 1961 after having been chained, because there were no prisons ... no jails. I was in chains for a week at Ohangwena and this is the place where Eliaser Tuhadeleni Kaxumba ka Ndola used to be chained too... I was chained there. Kaxumba was however not flogged, but I was flogged. I was given 24 strokes on the buttocks. It was tough."<sup>66</sup>

Note here that possibly in the absence of prison facilities in Owambo at the time, offenders were chained up for days before they were sentenced to flogging. In the 1970s people were imprisoned incommunicado for weeks or even months before they were released to the 'tribal' authorities for a publicly announced flogging. The issue of publicising the floggings and the idea of a spectacle will be covered in more detail in the course of this article.

Another news report suggested that chiefs and headmen in Oukwanyama and Ondangwa areas were very hostile towards all persons of differing political thinking particularly members of SWAPO and DEMKOP, two legal political organisations in South-West Africa/Namibia and Owambo.<sup>67</sup> The chiefs in four areas of South West Africa, including Owambo, had much wider powers of trial and punishment than chiefs in other parts of SWA and the Republic. Actually, *The Star* noting the legacy of indirect rule, states that Proclamation 348 of 1967 gave chiefs in Owambo, the Okavango, the Kaokoveld, and Zessfontein "exclusive and original jurisdiction" in all civil and criminal matters between Africans — except treason, murder, rape, culpable homicide, and public violence. Fines may be imposed "in accordance with native law and custom".<sup>68</sup> The chiefs and headmen

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<sup>64</sup> "Inhuman and Degrading Punishment", *The Times*, 24 November 1973.

<sup>65</sup> Interview with Former President Hifikepunye Pohamba, State House, Auasblik, Windhoek, 31.2.2010.

<sup>66</sup> Ibid.

<sup>67</sup> "Judge orders curb on SWA floggings", *The Cape Times*, 15 November 1973. DEMKOP stands for Democratic Co-operative Party. DEMKOP was led by Johannes Nangutuuala, who headed the ad hoc contract workers committee in 1972. DEMKOP had some following in Owambo and amongst the contract workers but after a short time it became defunct and its leader Nangutuuala worked for the Owambo Legislative Council for a short while. Mr. Nangutuuala was one of the people who were publicly flogged in 1973 following his release from the police cells at Ondangwa, where he was being held incommunicado, without charge. He was handed over to the 'tribal' council by the South African Police and was then publicly flogged, being given 21 lashes with the rib of a palm branch.

<sup>68</sup> "Some Chiefs more powerful", *The Star*, 24 November 1973.

were also given increased power, and increased pay. Thus, for them, SWAPO was a serious political threat as they feared that if SWAPO were victorious, they would lose their positions and therefore, their benefits.<sup>69</sup> To the South African authorities, the presence of an active SWAPO movement which called for a unified Namibia threatened their whole political system, not only in Namibia but eventually in South Africa as well. Therefore, a seemingly symbiotic relationship developed between the South African government and the Owambo 'tribal' authorities in relation to the legal dualism.

Mahmood Mamdani argues that the colonial state in Africa was 'bifurcated', with different modes of rule for urban 'citizens' and rural 'subjects'. The colonial strategy of 'divide and rule' took two related forms: an enforced division of Africans along ethnic lines, and an enforced division between town and countryside.<sup>70</sup> Thus, Africans were considered, not as 'natives' or indigenous Africans, but as a 'tribesmen'. According to Mamdani, colonialists justified 'indirect rule' on the basis that 'tradition' and 'custom' were indigenous forms of social organization. Moreover, civil power, it was claimed, protected rights, while customary power enforced tradition. The former was organized on the principle of differentiation to check the concentration of power, the latter around the principle of fusion to ensure a unitary authority.<sup>71</sup> But they reinforced and used these identities to divide and manage rural Africans. In order to enforce their dual policy of 'ethnic pluralism' and urban-rural division, colonialists, Mamdani emphasizes, exercised 'force to an unusual degree'.<sup>72</sup> In this way, colonial despotism was highly decentralized.

In practice, according to Mamdani, "direct rule meant the reintegration and domination of natives in the institutional context of semi-servile and semi-capitalist agrarian relations".<sup>73</sup> He argues that direct rule was the form of urban civil power and for those uncivilized, who were denied the rights of citizenship, direct rule meant an unmediated – centralized – despotism.<sup>74</sup> In contrast, indirect rule meant a rural tribal authority. As he argues, "indirect rule" came to be the mode of domination over a "free" peasantry.<sup>75</sup> Since the administration of Owambo took the indirect form in the inter-war years, the people were governed by their chiefs and headmen, and laws remained customary, even though they came under the supervision of the Native Commissioner of Owambo and then later fell under South African military administration during the war from 1966 to 1989. In short, it was about incorporating 'natives' into a state-enforced customary order.<sup>76</sup> Thus, this legal dualism consisted of South African legislation and Owambo tribal

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<sup>69</sup> Interview with Hinananye Nehova, Windhoek, 30.1.2009.

<sup>70</sup> Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton, Princeton University Press, 1996: 18.

<sup>71</sup> Ibid.: 16-18.

<sup>72</sup> Ibid: 22-24.

<sup>73</sup> Ibid: 17.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid: 18.



authority 'customary' law. And it was this dichotomy that led to the questioning of the legitimacy of the authority granted to the tribal authorities, particularly when the dismissal by the South African government of public floggings as an old customary practice of the Owambo is considered (discussed later in this article), further illustrating the divide between the centralized and decentralized power of the colonial state.

It was the bonds and ruptures between the urban power (South African government) and the rural power (tribal authorities) that made their collaboration beneficial through authority and legitimacy. However, Mamdani argues, it should not be surprising that custom came to be the language of force, masking the uncustomary power of Native Authorities. The day-to-day violence of the colonial system was embedded in customary Native Authorities in the local situation, not in civil power at the centre.<sup>77</sup> Yet, he argues, we must not forget that customary local authority was reinforced and backed up by central civil power.<sup>78</sup> Evidently, the Owambo tribal authorities may have appeared to bear the sole responsibility for the floggings but the South African government actually formulated the legislation for them. And so, it is clear that a relationship existed between the ruling groups in Owambo and the South African government with regards to corporal punishment.

The fact that the majority of the flogging victims were first detained without charges for a couple of months and were then handed directly to the 'tribal' authorities, suggests that the South African authorities formulated and the Owambo 'traditional' authorities implemented the flogging policy. However, the South African government was able to distance itself from the floggings by claiming that they were an old Owambo 'tribal' custom with which they had nothing to do. Yet, the myth about flogging being a 'traditional' way of punishing offenders was exploded in the affidavits included in the application for interdicts by Bishop Richard Wood,<sup>79</sup> in a quest to halt any form of corporal punishment against members or sympathisers of SWAPO and DEMKOP.<sup>80</sup> Bishop Wood collected affidavits from people who claimed to have been flogged and used these to support his applications to the Windhoek Supreme Court. I return to these later.

The two organisations, SWAPO and DEMKOP, had been critical of the South African government's policy of creating African homelands in the disputed territory and thus their members were targeted for floggings. Bishop Wood's application asked the South

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<sup>77</sup> Ibid.: 22f.

<sup>78</sup> Ibid.: 23.

<sup>79</sup> Reverend Richard Wood was the Bishop of the Anglican diocese of Damaraland in Namibia for two years until his expulsion in 1975. He was elected following the expulsion of Bishop Colin Winter, whose stance against apartheid had won international acclaim. Wood was accused of being the author of political statements issued by the South West Africa People's Organisation (SWAPO) in a legal action over the public flogging of male and female SWAPO supporters in Owambo.

<sup>80</sup> See NAN, AACRLS.235, Vol.1 and Vol.2, Affidavits submitted to the Supreme Court of South Africa by Richard James Wood, Leonard Nangolo Auala and Thomas Ndalikutala Kamati against the Ondonga Tribal Authority and the Oukwanyama Tribal Authority on 22 March 1974.

African government to stop the floggings of members of opposition organisations by the 'traditional' authorities in Owambo. As the 'traditional' authorities' jurisdiction was derived from the South African government they had the legitimacy to impose sentences of public floggings. *The Star* reported that a proclamation in the quasi-emergency regulation of 1972, noted earlier, allowed maximum fines and terms of imprisonment to be imposed by chiefs for offences under the regulations, but it did not curb their right to inflict "corporal punishment in accordance with 'native' law and custom".<sup>81</sup> As a result, according to *The Star*:

Chiefs in South Africa and in other parts of South West Africa do not have jurisdiction automatically; it must be conferred on them by the Minister of Bantu Administration. The Bantu Administration Act of 1927 says that South African Chiefs may be given power to try and punish any offence at common law or under Bantu law and custom and under criminal law except for 35 specified offences. These offences range from murder and treason to witchcraft and faction fighting and include most common law crimes. Customs in conflict with public policy may not be enforced through the application of native law and custom in chiefs courts. The infliction of corporal punishments by chiefs in South Africa is regulated by the Criminal Procedure Act. This lays down that not more than 10 lashes may be given, and that whippings must be given in private and in accordance with the regulations of the Prisons Act. South African Chiefs may impose corporal punishment only on unmarried men under the age of 30. None of these restrictions apply to corporal punishment imposed by chiefs in Owambo.<sup>82</sup>

Even so, flogging remained a legal punishment, although it was not supposed to be carried out in public or to consist of more than 10 strokes. In apartheid South Africa, lashes with a cane were an accepted form of judicial punishment — but there were certain statutory rules and conditions which ensured they were not abused.<sup>83</sup> However, 'tribal' courts in African areas were traditionally independent as far as their own law and custom were concerned. Only when they inflicted punishment found to be unnaturally cruel or repugnant could the South African authorities intervene under the terms of the Native Administration Act of 1972 and declare such forms of punishment illegal.<sup>84</sup> The issue of cruel or repugnant punishment will be examined later in this article. The maximum number of lashes which could be administered under South African laws was 10 — although in practice, no more than six with a heavy cane.<sup>85</sup> In Owambo, however, up to 31 lashes were inflicted on political detainees.

This throws up important questions about punishment in Owambo. Was there a limit to the number of lashes? The media reported the arguments brought by lawyers in South Africa on the maximum number of lashes a person should be given as punishment. The simple fact is the history of punishment and of the forms of pre-colonial enforcement of

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<sup>81</sup> Jean Le May, "Chiefs' right on floggings unlimited", *The Star*, 17 November 1973.

<sup>82</sup> "Some Chiefs more powerful", *The Star*, 24 November 1973.

<sup>83</sup> Staff Reporter, "SA law lays down rules for caning", *Rand Daily Mail*, 13 November 1973.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

laws and administration of justice in Owambo is vague. According to Edwin Loeb, there were a number of procedures that included fines and, in some cases, forms of torture to extract confessions.<sup>86</sup> During his term as Kwanyama king, Mandume used a variety of punishments which were educational and symbolic.<sup>87</sup> In both written and oral accounts he is said to have held court hearings at his palace at Ondjiva.<sup>88</sup> According to Philippus Shilongo's affidavit,<sup>89</sup> Oukwanyama and Ondonga laws and custom provided for proceedings of a civil or criminal nature to be conducted in such a way that the accused persons or defendants were entitled and permitted to challenge accusations made against them, and to call witnesses in order to prove their innocence.<sup>90</sup> However, although there were arguments that, according to Kwanyama custom, only men were flogged and there were no cases of men receiving more than 10 lashes, there does not seem to have been a fixed precedent as to the number of lashes given as punishment.

This history requires careful analysis as, according to Hayes, Manning and Hahn inflicted floggings on the Kwanyama. She asserts that after Mandume's death in 1917 there was a show of unity between Hahn and the Kwanyama headmen through the flogging of 'radicals', with all parties present at the spectacle.<sup>91</sup> Hayes further argues that this ritualised sharing of authority represented a displacement to a new distant central power, mediated through the bodies of the young Kwanyama men undergoing this punishment.<sup>92</sup> This display thus strengthened the relationship between Hahn and the headmen, as according to official colonial correspondence, when the South African administration embarked upon the active government of Owambo a few years after 1915, it found the several 'tribal' Chiefs in Owambo holding almost absolute power and, in the punishment of criminal offences, resorting frequently to methods 'barbaric' in the

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<sup>86</sup> For a full discussion on this issue, see Edwin M. Loeb, *In Feudal Africa*, Bloomington, Indiana University Press, 1962: 69-79.

<sup>87</sup> Mandume's punishment practices and concepts of justice reflected a variety of cultural and social forms of control which determined important aspects of penalties. These forms of control were often symbolic and physical, signalling a pre-modern ethos. See Patricia Hayes, "Cocky Hahn and the black venus. The making of a native commissioner in South West Africa, 1915-46", *Gender & History*, 8, 3, 1996: 364-392.

<sup>88</sup> Patricia Hayes and Dan Haipinge, (eds.), *"Healing of the Land". Kaulinge's History of Kwanyama. Oral tradition and history by the late Reverend Vilho Kaulinge of Ondobe as told to Patricia Hayes and Natangwe Shapange*, transcribed and transl. by Dan Haipinge, Köln, Köppe, 1997: 33. For a full account on the punishments of offenders against Mandume's decrees see Patricia Hayes, *A History of the Ovambo of Namibia, c 1880-1935*, unpubl. PhD, University of Cambridge, 1992: 164-166; idem, "When you shake a tree". The precolonial and the postcolonial in Northern Namibia", in: Derek Peterson and Giacomo Macola, (eds.), *Recasting the Past. History Writing and Political Work in Modern Africa*, Athens, Ohio University Press, 2009: 75-94 (77-79).

<sup>89</sup> Bishop Richard James Wood, Bishop Leonard Nangolo Auala and Thomas Ndalikutala Kamati collected affidavits from people who claimed to have been flogged and used them against the Ondonga Tribal Authority and the Oukwanyama Tribal Authority on 22 March 1974 to support their applications to the Windhoek Supreme Court.

<sup>90</sup> NAN, AACRLS.235, Vol.1 and Vol.2, Affidavits submitted to the Supreme Court of South Africa, pp. 52f.

<sup>91</sup> Hayes, "Cocky Hahn": 56.

<sup>92</sup> Ibid.

extreme.<sup>93</sup> It therefore became an important task of the officers to whom the immediate supervision of Owambo had been assigned, to bring about a 'more civilised policy'. This led to the gradual introduction of an understanding between the Native authorities and the Administration whereby cases of murder and rape (probably the three capital offences – treason, murder and rape were intended) should be dealt with by the Administration, while other criminal offences would be dealt with by the chiefs and councils of headmen.<sup>94</sup> Of course, the use such punishment or lashes was stopped altogether for a time but according to the same correspondence, 'ruling natives' constantly requested that some form of deterrent should be re-established and that lashes might be given in serious cases.<sup>95</sup>

The latter argument is significant when looking at the history of punishment in Owambo. According to oral testimonies, lashes prevented crime because an offender who was not in a position to pay compensation or a fine (which was usually the case) and could not rely on his family for assistance, was given lashes.<sup>96</sup> Oral testimonies insist that flogging was being used as a punishment in Owambo before the 1970s. According to Lucas Shinedima,

public floggings were only carried out on people who had done wrong or could not pay their fines. It was not only the time of *omapokolo*<sup>97</sup> that people were beaten, but also during Ndjukuma and Nehemia's time, but it was mostly done when someone was denying her/his crime.<sup>98</sup>

Thus, corporal punishment was an issue of headmen asserting their authority as headmen, *omalenga*, punishing people who had done wrong by either imposing fines or, for those who could not pay a fine, beatings. Thus 'making confess crime' suggests that people were made to understand that they would be punished unless or until they confessed, as demanded by the 'persecutors'. The offenders usually confessed to the crime to satisfy their persecutors.

Pastor David Shihepo's affidavit gives even more insight into the history of punishment in Owambo. According to his affidavit, Shihepo was born around 1885 and was about 20 years old at the time of the fighting between the Germans and the Owambos and in particular at the time of the fall of Fort Namutoni in 1904.<sup>99</sup> He became familiar with the

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<sup>93</sup> NAN, Accession, A. 266/19/1 – Indirect Rule in Owamboland: Jurisdiction in Capital Cases: A letter addressed to His Honour The Administrator (undated).

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Interview with Vilho Tschilongo, Ongwediva, 18.06.2010.

<sup>97</sup> *Epokolo* (sing.) and *omapokolo* (plu.) is a broad rib of a *makalan'i* palm branch.

<sup>98</sup> Interview with Lucas Shinedima, Onuno, 02.8.2008 and 23.06.2009.

<sup>99</sup> On 28 January 1904, the breakaway chief of eastern Ondonga, Nehale IyaMpingana, sent forces armed with rifles and traditional weapons to attack the German fort at Namutoni. For a full discussion on this see Martti Eirola, *The Owambogefahr: The Owambo Reservation in the Making: Political Responses of the Kingdom of Ondonga to the German Colonial Power 1884-1910*, Rovaniemi: Pohjois-Suomen Historiallinen Yhdistys, Societas Historica Finlandiae Septentrionalis, 1992: 166-169.

laws and customs of the Kwanyama people in 1912 when he attended sessions of the 'tribal' courts. He maintains that prior to leaving Oukwanyama in 1912 he noted that the sentences imposed involved the death penalty or the payment of fines with cattle and that flogging in no way formed a part of the punishment according to the terms of Tribal Law and Custom.<sup>100</sup> He further stated that, at no stage prior to the 1940s was flogging ever imposed as a punishment by the 'tribal' court. In the case of Ondonga, he says,

it was only during the reign of King Johannes Kamonde Namene also known as Shihepo, that flogging was meted out to persons convicted of crimes, but it was after instructions had been received from a government official by the name of Hahn, to impose floggings on offenders.

As a result of the new policy introduced by Hahn, he became generally known in Owambo as 'Shongola Hahn'. However, Shihepo further claims, "the number of strokes imposed on offenders did not exceed six strokes, even though the offences in question might have been very serious."<sup>101</sup>

The issue of women being flogged publicly was also highlighted in the media. It was claimed that, while no woman could be sentenced to strokes under South Africa law, women were known to have been flogged in Owambo.<sup>102</sup> Moreover, according to *The Star*, caning under South African law was only administered in private, but in Owambo, the floggings were performed in public.<sup>103</sup> The *Rand Daily Mail* also suggested that when a South African court sentenced a man to strokes, he was always examined before by a medical officer — usually a district surgeon — who had to declare him fit to receive this form of punishment.<sup>104</sup> However, according to affidavits submitted by Bishop Wood from several people flogged in Owambo, no medical officer was in attendance and medical attention immediately after the flogging was refused.<sup>105</sup> There were also arguments that in Owambo, getting a district surgeon to do tests on the accused before flogging was impractical.<sup>106</sup> Bishop Wood submitted that the floggings were not only illegal in law, but also under African law and custom in Owambo.

With the public condemnation in the domestic and international media pressure mounted on the South African government, especially after the South African Minister of Bantu

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<sup>100</sup> See, NAN, AACRLS.235, Vol.1 and Vol.2, Affidavits submitted to the Supreme Court of South Afrika, pp. 94-98, and "Caetano yesterday, Vorster tomorrow — SWAPO mobilizes for Independence", *Namibian News*, Vol. 7, No. 6 & 7.

<sup>101</sup> "Caetano yesterday, Vorster tomorrow — SWAPO mobilizes for Independence", *Namibian News*, Vol. 7, No. 6 & 7.

<sup>102</sup> Note that the media, especially *The Rand Daily Mail*, *The Cape Times*, *The Star*, were more against racism and inequality than any other newspapers in South Africa at the time. As a result their more liberal and critical position on the apartheid South African government these papers came under scrutiny, government censorship and financial pressure, leading some of them to close down in the 1980s.

<sup>103</sup> "Beatings described", *The Star*, 24 November 1973.

<sup>104</sup> Staff Reporter, "SA law lays down rules for caning", *Rand Daily Mail*, 13 November 1973.

<sup>105</sup> See, NAN, AACRLS.235, Vol.1 and Vol.2, Affidavits submitted to the Supreme Court of South Afrika, and Staff Reporter, "SA law lays down rules for caning", *Rand Daily Mail*, 13 November 1973.

<sup>106</sup> Cape Times Correspondent, "Flogging — call backed by SA General", *Cape Times*, 13 November 1973.

Affairs, Mr Michael Botha, refused to intervene following protests by many South African politicians over the barbaric spectacles taking place in Owambo.<sup>107</sup> The *Rand Daily Mail* reported that he had stated that the floggings were a tribal concern and that the South African government wanted “nothing to do with the matter”.<sup>108</sup> The cruelty of the floggings was “not only repugnant to every sense of natural justice, but also to all standards of Western civilisation”, and many people called for a halt to the beatings.<sup>109</sup> This was the strongest argument in ending the punishment of opposition members by the South African government through the Owambo chiefs and headmen. Coming back to the South African government’s argument that it only intervened in ‘tribal’ matters when punishments inflicted were found to be unnaturally cruel or repugnant, the reasons for this reluctance to intervene in the Owambo floggings at the time are worth examining. The media reported that politicians in Namibia and South Africa, both nationalist and opposition, held the government responsible and called for an end to floggings.

As one reporter argues,

the South African authorities have never hesitated to meddle in tribal affairs when it suits their ideological aims. It had always been the South African tradition, and in some cases, the law, that if old African customs and laws offended the principles of public morality and natural justice they should be void and unenforceable.<sup>110</sup>

It is therefore necessary to examine the years of colonization in Owambo with special reference to the precolonial, ‘tribal’ or customary laws which Native Commissioners and colonial officials allowed to be maintained as custom and which were consistent with their views of what a ‘tribalised’ Owambo should be. Thus, seemingly, some of the repugnant ‘tribal’ laws were retained or invented.

Furthermore, a report by *GN Pretoria*, quoting Dr David Welsh, a lecturer in African law at the University of Cape Town at the time, commented that “although there is a long tradition of recognition for African law and custom, a South African court can rule that it is illegal for a ‘tribal’ court to inflict this type of punishment.”<sup>111</sup> Additionally, *The Cape Times* argued that:

As long as the government tolerates the imposition of public floggings as a punishment by tribal courts in Owambo it must bear full responsibility for such barbarities. If flogging is an Owambo tradition, then it should be eliminated. The government has impressive powers in Owambo which it does not hesitate to use against opponents of its own political protégés. It is involving itself more often than not in “domestic matters”. Here is an opportunity to use those powers to good effect by robbing ‘tribal’ courts of the power to impose sentences that went out to fashion with the thumbscrew, the stocks and the public gallows. It

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<sup>107</sup> “Inhuman and Degrading Punishment”, *The Times*, 24 November 1973.

<sup>108</sup> Staff Reporter, “Government slated over SWA beatings”, *Rand Daily Mail*, 15 November 1973.

<sup>109</sup> “Judge orders curb on SWA floggings”, *Cape Times Africa*, 15 November 1973.

<sup>110</sup> Staff Reporter, “Government slated over SWA beatings”, *Rand Daily Mail*, 15 November 1973.

<sup>111</sup> “No move to stop Owambo floggings”, *GN Pretoria*, 15 November 1973.

should, at the very least, institute an inquiry into the scale of 'tribal' punishments.<sup>112</sup>

David Loshak argues that the official South African position, that the public floggings in Owambo were a domestic affair of Owambos, was consistent with the Government policy of "separate development" for the various ethnic groups in South West Africa.<sup>113</sup> Owambos and others were granted a limited measure of autonomy as part of the government's plan for "self determination" which, it was argued, would eventually lead to complete independence.<sup>114</sup> As noted throughout this study, Owambo was run – indirectly by colonial officials – through 'tribal' chiefs and councils of headmen appointed by the South African Government. Since most of the floggings had been ordered by the chiefs and headmen and all powers of the tribal authorities were delegated by the government, the government was clearly responsible for the floggings. Thus, the South African government's efforts to disown the public floggings and the references to them as an Owambo 'tribal' custom, was clearly linked to the question of ultimate responsibility for this form of punishment. The floggings may have given the 'traditional' councils authority over their subjects but it lent them no legitimacy. What is clear, however, is that the floggings were not locally initiated as both parties argued, but were a South African government policy.

The role of Major Hahn, 'Shongola', should also be considered here. As indicated earlier he was known to have used the sjambok on any 'native' who misbehaved. Some argue that he is the source of the 'tradition' of flogging and Hayes claims that there are many references in oral history to Hahn's beatings of Owambo men, particularly at road works and other construction sites.<sup>115</sup> I argue that although flogging existed in precolonial times, it became legitimized in the colonial period as a response to young political activists who sought liberation.

## The role of Owambo headmen in public floggings

As noted earlier, individual men and women were first arrested by the South African police and held incommunicado for some time before they were handed over to be flogged by the Ondonga and Oukwanyama 'traditional' authorities. They were usually detained because they were members of SWAPO, or had 'shown sympathy' for anti-government causes, or even merely displayed an interest in political affairs. However, what is interesting here is, as Moosage argues, "the disciplining and punishment, which is shifted from a private space (prison) to a public space".<sup>116</sup> Releasing the accused

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<sup>112</sup> "Stop the floggings", *The Cape Times*, 31 October 1973.

<sup>113</sup> David Loshak was a *Daily Telegraph* and *Sunday Telegraph* resident staff correspondent in South Africa in the 1970s. He is the author of two books, *Daily Telegraph Guide to Retirement* and *Pakistan Crisis*. After his stint in South Africa, he returned to London to become the *Daily Telegraph's* Health correspondent.

<sup>114</sup> David Loshak, "Floggings A Domestic Affair", *The Cape Times*, 31 October 1973.

<sup>115</sup> Hayes, "Cocky Hahn": 57.

<sup>116</sup> Moosage, *Epokolo*: 9.

from prison where they were held in the privacy of a prison cell to the 'traditional' authorities who publicised the floggings, served to legitimize the power of the tribal authorities. The severity of pain inflicted with such punishments reveals much about the legitimizing effect of the event. First, people were invited to witness and therefore participate in the flogging. It may be important to consider the effect of familiarising the public with such events, and whether this was done for a purpose. The beatings were to be seen by all as humiliating and degrading. The intention to repeatedly publicize them was evidently linked to a 'spectacle'. What matters here in the realm of a spectacle is what can be seen. Large crowds always turned up to witness public floggings in Owambo. Typically, a victim was forced to strip to their underpants or nakedness if it was a man or to pull up their dress if it was a woman. He/she was then required to bend over a stool or chair while as many as twelve men pinned down his/her arms and legs. The weapon used was a broad *makalanirib*, a rather long (possibly 5 or 6 feet) piece of a very strong, freshly cut branch from a palm tree. The person who delivered the blows stood, and would use the full force of his weight, all his leverage, to deliver each stroke, cutting into the victim's flesh with each delivery. He typically spaced the blows, to prolong the agony of punishment, as a victim might receive two or three blows, then be forced to wait one minute before the flogging continued.<sup>117</sup>

According to a collection of affidavits by Richard Wood, four women (student nurses) were summarily accused by the Tribal Court at Ohangwena of having been absent from duty without leave and sentenced to six strokes of the *epokolo*. The Oukwanyama Tribal Court accused them of being members of SWAPO and they were then sentenced to floggings. Foucault's conceptualisation of why torture was performed as a public spectacle suggests that "the public execution belongs", as in this case, "to the ceremonies by which power is manifested". He further claims that it did not re-establish justice; it re-activated power.<sup>118</sup> In events such as this, the presence of people is required for the performance, to make an example. As Foucault argues,

[n]ot only must people know, they must see with their eyes. Because they must be made to be afraid; but also because they must be the witnesses, the guarantors, of the punishment, and because they must to a certain extent take part in it.<sup>119</sup>

At the public floggings in Owambo, the media reported that when the accused were being flogged, spectators, especially women, cried and covered or averted their eyes.<sup>120</sup> This gives the distinct impression that the spectators wanted to see the 'performance' but yet they were also afraid of seeing it happening. Thus, the use of public space for

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<sup>117</sup> See, NAN, AACRLS. 235, Vol.1 and Vol.2, Affidavits submitted to the Supreme Court of South Africa, p. 12.

<sup>118</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison*, translated by Alan Sheridan, New York, Random House, 1975: 47, 49.

<sup>119</sup> *Ibid.*: 58.

<sup>120</sup> See "Beatings described", *The Star*, 24 November 1973; Staff Reporter, "Priest describes public floggings", *Rand Daily Mail*, 15 November 1973.



floggings served to instill fear and cement the power of both the South African and the 'traditional' authorities, in this case the Oukwanyama 'traditional' authority, but definitely did not lend any legitimacy.

However, it is clear from the above account that the colonial and 'traditional' authorities were set on legitimating their power and authority with spontaneous public acknowledgment. The floggings were announced over a loudspeaker and were deliberately broadcast widely. Thus, the rise in political agitation in the country not only increased the tensions between older men and the of junior men younger generations, as the authority of senior (older men) headmen required the subordination, it also offered the young SWAPO activists new opportunities to challenge patriarchal authority. Initially, migrant labour and Christianity offered young men opportunities to escape the influence and authority of older men and father figures. SWAPO affiliation followed later. Consequently, the culture of obedience and subordination towards parents and senior men had begun to break down. Opposition from SWAPO towards headmen and the South African colonial administration further marginalised these patriarchs and as a result they joined forces with the colonial officials in an effort to reassert their control. Publicly flogging young men and women was one means they saw of commanding respect.

## Conclusion

This article has examined the general contract workers strike of 1971-72 and the opposition to separate development in Owambo with particular attention to the wave of public floggings that ensued. It has shown the significance of the strike which effectively shut down many workplaces during its first month resulting in serious economic damage. A comment by Commissioner of Indigenous People of Namibia, Jannie De Wet, led to a nation-wide strike and consequently to strengthened confidence and self-reliance among the contract workers. Some of the so-called 'ringleaders' of the strike were arrested, faced trial and were returned to Owambo while others were handed over to the Owambo traditional authorities. From 1972 to 1973 the Oukwanyama Council of headmen held 'tribal' hearings where defendants who had been handed over from detention by the South African police were publicly flogged at Ohangwena. This article argues that colonial officials' alliance with Kwanyama headmen in publicly flogging individuals associated with SWAPO or opposed to South African colonial rule, was linked to issues of legitimacy and the promotion of authority through claims of customary law. In many of the cases, membership of SWAPO, singing SWAPO songs, using the name Namibia, wearing a SWAPO flag on one's shirt, or simply wearing a shirt in SWAPO colours, was enough to earn a public flogging by the Owambo 'traditional' authorities. This article highlights the role of the Oukwanyama 'traditional' authorities in the public floggings as they attempted to claim legitimacy. The Ondonga and Kwanyama Headmen's Councils claimed that they were flogging men and women who refused to follow their laws and warnings, and thus undermining their power. Although the South African government distanced itself from the floggings by claiming that they were an Owambo 'tribal' custom with which it had nothing to do, evidence points to a reciprocal relationship between

them and the Owambo 'traditional' authorities with regards to the punishments. Floggings obviously gave 'traditional' authorities much more authority over their subjects but further damaged their legitimacy since the South African government was actually in charge of formulating the legislation regulating such punishment. What is clear, however, is that the floggings were not locally initiated as both South African government and 'traditional' authorities argued, because based on the discourse around the figure of 'Shongola' 'Cocky' Hahn, it is believed that the flogging system originated with him and became legitimized in the colonial time. This suggests that the putative pre-colonial system had become colonial and vice versa.

The 'traditional' authorities made public floggings a spectacle as they were set on legitimating their power and authority with a public demonstration to instil fear in all witnesses. This article thus highlights the dynamics of familiarising the public with such events, and examines intentions behind them. The beatings were to be seen by all as humiliating and degrading, and the reasons for repeatedly publicising them was evidently linked to creating a 'spectacle'. What mattered in the spectacle was what could be seen, since large numbers of spectators always turned up to witness the beatings. In this way, the colonial and 'traditional' authorities were seeking to legitimate their power and authority by soliciting a spontaneous public acknowledgement.

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