

A Comparison of the Law of Things and
the Law of Inheritance and Succession
of some Important Tribes of Traditional
South West Africa / Namibia

Submitted by
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requirements of the
degree of LL.M.

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Preface

This thesis was written in Mmabatho and Göttingen. At the outset the task seemed to be fairly easy: later on, after I had looked at the missionary sources closely in Germany, I had to realize that the legal systems were far more intricate and complex than I first had expected; this complicated my task.

Most sources were German, others in English and a few in Afrikaans. Translations from German and Afrikaans into English are my own.

Shortcomings and inaccuracies of this thesis naturally are my own.

Special thanks go to Professor F.A. de Villiers of the School of Law at the University of Bophuthatswana who initiated this thesis. Thanks go also to the University of Bophuthatswana for having accepted me as a Graduate Assistant for many months in 1983. Lastly, I want to thank my parents for continuous financial assistance.

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Abbreviations

I tried to use as few abbreviations as possible; some, however, were inevitable:

Am. Anth.	American Anthropologist
BRM	Berichte der Rheinischen Missionsgesellschaft
Fb	Fragebogen (Questionnaire)
Kolblatt	Deutsches Kolonialblatt
Moritz	E. Moritz: Die ältesten Reise- berichte in Mitteilungen aus den deutschen Schutzgebieten, vols. 28, 29, 31; 1915, 1916, 1918
Zs Erdkunde	Zeitschrift für Erdkunde
Zs Ethnologie	Zeitschrift für Ethnologie
Zs Kolpolitik	Zeitschrift für Kolonialpolitik, Kolonialwirtschaft und Kolonialrecht
Zs Rewi	Zeitschrift für vergleichende Rechtswissenschaft

Introduction

The object of this study is a comparison of the laws of things, inheritance and succession of different SWA/Namibian tribes, especially also in respect to their different systems of descent-reckoning and their different modes of living. This study concentrates on the traditional systems of those tribes. Under "traditional" I understand the time until these tribes became influenced by western culture and religion.

These western influences were carried into SWA/Namibia from the south: The first missionaries in the country were the brothers Albrecht of the London Missionary Society around the years 1800 to 1810 at Warmbad. Later, missionaries wandered further north, until shortly before 1850 they started missionizing among the Herero and from around 1870 among the Ovambo. Consequently, I have drawn extensively on missionary sources. Especially for the Khoekhoen the "Berichte der Rheinischen Missionsgesellschaft" proved to be very helpful. As for the other tribes, quite a few monographs were written by missionaries; for instance Irle: Die Herero; Vedder: Die Bergdama; and Tönjes: Ovamboland, to name just a few. As missionaries they were among the first to get into contact with the tribes and they were first to settle among them. For this reason they knew them best.

Already at the turn of the century these tribes were strongly influenced by western culture, so that research about these tribes which was done after 1920 had to be looked at with care. However, many of these were also used, like Loeb's Feudal Africa, in which he draws a picture of the

traditional Kuanyama. Some groups came into contact with, but stayed uninfluenced by western culture, like the Himba, a Herero-tribe, in the Kaokoveld. Also, the Herero of Botswana still are fairly uninfluenced. Reports on such groups have been drawn on carefully.

Other recent studies, like Kotzé: Die Kuanyama, or Louw: Die Ngandjera, were used to explain the situation of today.

As the "traditional" times for these tribes are gone long ago, the report on them is kept in the past tense. One exception is the San; there still are free roaming bands in the Central Kalahari, so that the report on them is kept in the present tense, although they, too, are vanishing fast.

To us, studying Customary Law, invariably brings about a comparison with the western legal systems; this becomes especially clear when trying to define the difference between custom and law: in customary law there are no clear cut boundaries between the two, although, according to Schapera¹, laws are all those rules which, when breached, can be punished before a tribal court.² Whenever customs proved to be as strong as, or at least nearly as strong as, laws, I mentioned them: for instance the custom among most SWA/Namibian tribes which demands of the heir to give a part of the inherited estate to his relatives as presents.

Some comparisons have to remain inadequate to a certain extent: For instance the notion of slavery/servants. This question proved to be difficult, and an exact comparison could not be found. Also, when terms like slavery are used, this is not meant in a derogatory way for the tribe concerned; it should be remembered that slavery only vanished in the 19th Century in Western Europe and North America.

1 Schapera: Handbook of Tswana Law 36

2 For the whole problem and details see Schapera: op.cit. 35 ff

I had problems with the terms "tribe"¹, "chief" and "headman". The set-up of the various SWA/Namibian tribes is so different from tribe to tribe that I could not bring myself to apply the same term for totally different things: for the villages of the Nama this term was used; for the San, however, I used the term band for a group of San living together. Similarly, the leader of a band of San was not called headman or chief, because of his completely limited powers. In every chapter, however, I made clear what was meant.

It should be noted that the terms "matrilineal" and "patrilineal" denote the mode of passing on the social heritage, i.e. property, office, rank and status. In a matrilineal society the social heritage is passed on, as a rule, from a man through his sister to her son, and thereby excluding the man's own children while it is passed on in a patrilineal society, as a rule, from father to son.

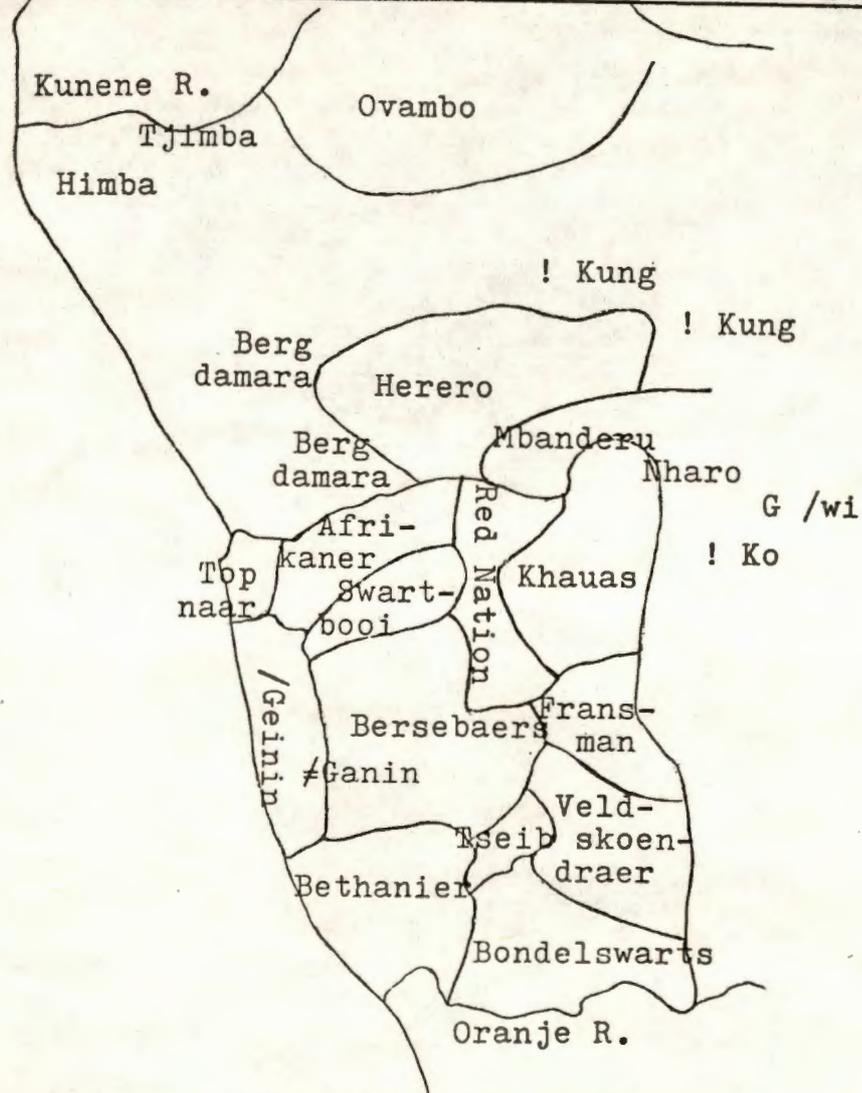
A matrilineal society is therefore no matriarchal society: it is not ruled by women, as will be shown later regarding the matrilineal tribes of the Ovambo.²

Throughout this study by "inheritance" is meant the obtaining of property while "succession" denotes the ascension to a status (i.e. chief, band-leader, kraal head).

1 For references to criticism of the term "tribe" see below p. 2, fn. 5

2 cf Meyer Fortes: Primitive Kinship, reprint in Freilich, M. (ed.): The Pleasures of Anthropology, New York, New American Library, 1983, 304 ff, 305 f

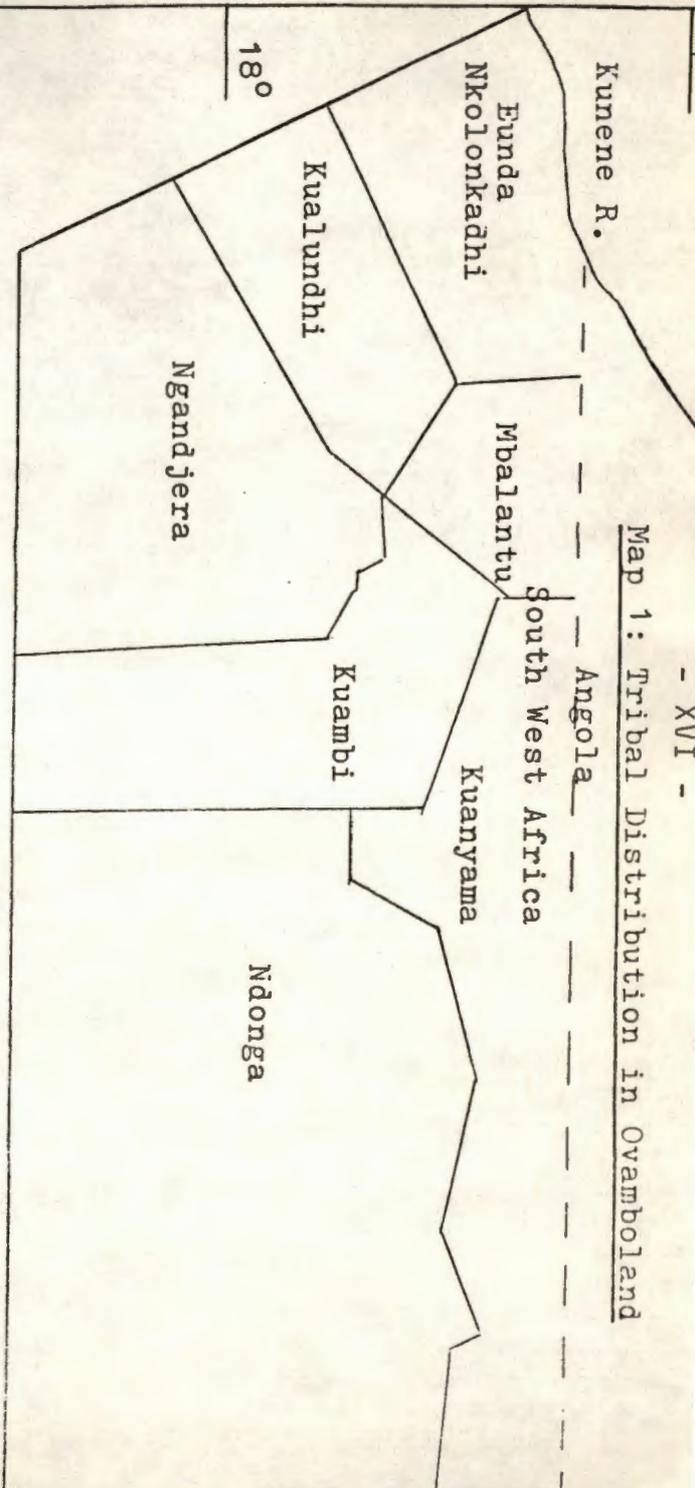
Map 2: Approximate Tribal Distribution around 1850



Sources: Helbig - Mythos Deutsch-Südwest 37;
 Lee/De Vore - Kalahari Hunter-Gatherers 11;
 Schultze - Südwestafrika: Völkerkarte, after p.298

Source: Louw - Ngandjera, after p.3

15° 16° 17°



Map 1: Tribal Distribution in Ovamboland

Chapter 1: The Khoe-khoen

1. Introduction

1.1 The Land

The traditional territory of the Khoe-khoen in South West Africa/Namibia stretched from the Orange River in the south to approximately the Swakop River and that line extended to the east towards Gobabis, in the north. This was the so-called Great Namaqualand.¹ It is a dry country so that water plays an important role: life was centred around the water-holes where cattle, sheep and goats had to be watered. Because of this dryness the herds of the Khoe-khoen used huge tracts of land to find sufficient fodder.²

1.2 The People

1.2.1 Production

The Nama were pastoralists breeding mainly cattle but also sheep and goats.³ Domestic animals, however, were only slaughtered and eaten on special occasions. But the milk of their animals was used, as sour milk was a part of their staple food. The other components of their staple food were veldkos, which the women collected and game, which was hunted by the men.⁴

The Orlam-tribes introduced cattle-raids as a mode of production.⁵ These raids usually did not involve violence on

1 As opposed to Small Namaqualand which lies in the northern Cape province, i.e. comprising the area south of the Orange River

2 Schultze: Südwestafrika 203; for details on Great-Namaland see for instance: Schultze op.cit. 189 ff

3 Lau: Kommando Politics 75, 77; see also Hirschberg 400; Schapera: Khoisan Peoples 235

4 Lau: op.cit. 75; Schultze: op.cit. 208; Hirschberg 400; Schapera: op.cit. 237 ff

5 Lau: op.cit. 95 ff

a large scale.^{1,2} Large herds, relatively scarce water and grazing potential esp. of the south of Great Namaland forced the Khoe-khoen to be a semi-nomadic people.³

1.2.2 Social structure and migration history

The Khoe-khoen in SWA/Namibia were divided into several tribes:⁴

name ⁵	European name	tribal centre
1.) Gai-//khaun	Rooi Nasie, Red Nation	Hoachanas
2.) !Gami-#nûn	Bondelswarts, Bondels	Warmbad
3.) #Aonin	Topnaar (in Kuiseb, Walvis Bay)	Rooibank
4.) !Gomén	Topnaar (Sesfontein)	Sesfontein
5.) !Khara-khoen	Fransmanne	Gochas
6.) //Haboben	Veldskoendraers	Koës
7.) //ǀ-gain	Groot Doden, Great Deaths	Schlip
8.) //Krau-/goân	Swartboois	Rehoboth, Salem, Ameib, Franzfontein
9.) Kharo-!oan	Keetmanshooper	Keetmanshoop
10.) !Aman	Bethanier	Bethanien
11.) //Eixa-//ain	Afrikaner	Klein-Windhoek

1 Lau: Kommando Politics 96

2 For a parallel to cattle raiding note e.g. the camel raiding of certain Arab groups: Lacey: The House of Sa'ud

3 Lau: op.cit. 128 f

4 I am using the term "tribe" for the different Nama and Orlam groups, being fully aware of the criticism which, firstly, is voiced about the term in general and, secondly, for using it in connection with the different Khoe-khoen groups. Keeping in mind that for instance the different Nama groups probably all were off-shoots of the Red Nation (Gai-//khaun), then at least in this connection the critique seems to be well founded. It would, however, go beyond the scope of this work on ethnological jurisprudence to engage in a longer discussion on this topic. The term "tribe" will therefore be used more out of "tradition" than out of conviction; Cf for a general criticism of the term "tribe": Lau: Critique 6 ff; in connection with Khoe-khoen: Lau: Kommando Politics 23 ff

5 For the spelling Budack: Stam en Stamkaptein 249 f; and Budack: Traditionelle Struktur 18 was used and will be adhered to throughout this theses

	name	European name	tribal centre
12.)	Gai-/khauan	Lamberts	Leonardville, Gobabis
13.)	/Hai-/khauan	Bersebaer	Berseba
14.)	/Khobesin	Witboois	Gibeon, Rietmond

The numbers 1 to 9 are Naman, i.e. those tribes who had been in Namaland for quite a time already, while the tribes under numbers 10 to 14 are so-called Orlam groups, i.e. those tribes which migrated into the territory during more or less the first half of the 19th century. The division into autochthonal and immigrated tribes today only has a historical significance.¹ As this thesis is dealing with the traditional structure of the customary law, the division is an important one because the Orlam groups as opposed to the Nama groups had been in long contact with the whites from the Cape and therefore were influenced by them.² The difference between both becomes esp. clear in the law of inheritance.³ Each tribe was headed mostly by a hereditary chief⁴ who was supported and often directed by a council of elders.⁵

Each tribe was divided into a number of patrilineal lineages claiming to be related in the male line.⁶ One of these lineages claimed seniority and provided the chief.⁷ According to Hoernlé⁸ the Khoe-khoen themselves recognized these divisions into tribes and sibs. They call the tribe !haos

1 Budack: Traditionelle Struktur 18

2 There are numerous hints to this influence of western "civilization": Hahn BRM 1851, 54; Wallmann BRM 1853, 55, BRM 1855, 49, 337; Eggert BRM 1858, 49; Krönlein BRM 1862, 247 f; Olpp BRM 1876, 79; Spellmeyer BRM 1905, 171; Hoernlé: Social Organization 4

3 See p.46 ff; see also Spellmeyer BRM 1905, 171

4 See p.50 ff;

5 See p.53 ff; Hoernlé: op.cit. 15

6 Schapera: Khoisan Peoples 225; Hoernlé: op.cit. 9; Hirschberg 398

7 Hoernlé: op.cit. 9

8 Hoernlé: op.cit. 9; see also Budack, op.cit. 18, 19

and the sib !hao-!nati, i.e. things within the tribe. Probably all Nama tribes of SWA/Namibia once were sibs within the Red Nation (Gai-//khauan)¹ which split off or simply wandered off when the members of the sib and the head of that sib became for one or the other reason disillusioned with the main tribe.²

The chief is more a primus inter pares³ than an autocratic ruler as found for instance with the Ovambo.⁴

In numerous accounts incidents are mentioned where the chief had to submit to orders from his council of elders or where simply nobody listened to him.⁵ Also, his clothes were nothing special as to distinguish him from his fellow tribe members.⁶ Nevertheless, the chief was a person who had certain powers and thus was a man of influence: visitors had to ask permission of the chief when they entered the tribal territory⁷, he had the duty to keep the tribe together⁸, he was the highest judge⁹, and he had strong powers to decide when it was time to leave one waterhole for another one.^{10, 11}

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- 1 Budack: Traditionelle Struktur 19
 - 2 See Hoernlé: Social Organization 9, 11; Budack: Stam en Stamkaptein 253
 - 3 Budack: Stam en Stamkaptein 262 f; Th. Hahn: Die Nama-Hottentotten 305; Hoernlé: Social Organization 15; Wallmann BRM 1850, 154; 1851, 397; Bam 1852 BRM 1853, 56; Schöneberg 1852 BRM 1853, 247; Wallmann BRM 1853, 360; 1856, 329; Eggert BRM 1857, 215; Hahn BRM 1862, 48; Vollmer BRM 1866, 278; Hirschberg 198
 - 4 See p. 121
 - 5 Scheppmann 1845 BRM 1850, 339 f; Kleinschmidt 1854 BRM 1855, 23; Krefit 1855 BRM 1856, 274; Kleinschmidt 1857 BRM 1859, 23; Weber 1858 BRM 1860, 52; Fabri BRM 1874, 46; Bam BRM 1883, 49; Pabst 1883, BRM 1884, 70; Hegener BRM 1888, 208 f
 - 6 Knudsen 1842 in Moritz 1916, 138; Hahn 1843 in Moritz 1916, 175; Scheppmann 1845 in Moritz 1916, 328; Wallmann BRM 1849, 4; Budack: Stam en Stamkaptein 260 f
 - 7 Budack: op.cit. 265, with further references
 - 8 Budack: op.cit. 274
 - 9 Budack: op.cit. 273; Budack: Traditionelle Struktur 221
 - 10 Budack: Stam en Stamkaptein 278
 - 11 For more details see Budack: Traditionelle Struktur 217 - 235

His powers and influence increased with his personal character. A convincing, amiable chief had a strong position and could even influence the councillors who assisted a chief in most questions.

1.2.3 Everyday Life

Khoe-khoen were living in a village with five to thirty and more round huts made from rush mats which were made and owned by the women.¹ Polygamy was allowed but not practised widely. Only the richer men would take a second wife², only very few would take a third one. Monogamy therefore was adhered to in most cases.

The marriage usually was patrilocal³; nevertheless, after the marriage the young couple would stay for approximately a year with their parents where the young husband had to work for his parents in law.⁴ Only then the couple would move to the village of the husband. Children were named in the following manner: all sons take the name of their mother, while all the daughters take that of their father as their chief name.⁵

1.3 The Sources

The main primary sources for the Khoe-khoen are reports written down by missionaries in Great Namaland and by travellers. Detailed reports were written down especially by the missionaries of the Rhenish Mission Society. With a few exceptions the early reports, i.e. up to ca. 1890,

1 See below p. 19

2 See for instance Hirschberg 400; Schapera: Khoisan Peoples 251; Kleinschmidt 1848 BRM 1849, 103; Wallmann BRM 1849, 3,6,115; 1851, 397; Kleinschmidt 1854 BRM 1855, 23; Hahn 1856, 268; Kreft 1855 BRM 1856, 273 f; Kleinschmidt BRM 1856, 344; Krönlein BRM 1857, 133; Krönlein/Kreft BRM 1857, 155; Brincker 1863 BRM 1864, 193 f; Burgsdorff/Kohler Zs Rewi 1902, 342

3 Hirschberg 400

4 Schapera: op.cit. 267; Th. Hahn: Tsuni-Goam 18; Burgsdorff/Kohler Zs Rewi 1902, 343; Olpp: Verhältnisse 1895, 175; Wandres in Steinmetz 318; Kleinschmidt 1856 BRM 1857, 93

5 Schapera: op.cit. 267; Wandres in Steinmetz 320; Schweickhardt: Franzfonteiner Hottentotten Fb 23

do not contain anything on the law of things or inheritance as such. But the numerous hints to the one or other topic esp. in the law of things made it possible to draw a picture, though it is far from complete. Many accounts are given about the law of succession so that it was possible to draw a clear picture here. Similarly, esp. for the law of succession, early accounts by travellers were useful.

For the law of inheritance and the law of things the answers to a questionnaire given mainly by missionaries but also to a few traders and farmers, were helpful. These questionnaires were answered around 1908 but still, by comparison with bits I could find in early reports, they reflect the traditional set-up because all the authors knew the respective tribes before the upheaval of 1905.

2. The Law of Things

The necessity to move around accounted for the fairly little possessions a Khoe-khoeb had in comparison, for instance, to the Ovambo tribes.

One exception has to be mentioned however: The Topnaars (≠Aonin) of the Kuiseb lived along the dry river-bed with their staple food being the nara. This wild fruit was dried and could thus be preserved for the winter. This allowed the Topnaars to lead a non-migratory life. However, as the surrounding land was arid to extreme arid, lying in the Namib-desert, they could neither acquire riches.

Thus, if the necessity to be mobile hindered the Khoe-khoen to acquire many goods, the extreme arid surroundings of the non-migratory Topnaars accounted for their poverty.

2.1 Immovable Property

2.1.1 Land

2.1.1.1 Grazing Land

As a general rule land was owned by each tribe and regarded as communal property.¹ This rule is in accordance with the land-rights of other herders, e.g. the Herero.²

Every member of a tribe usually was unrestricted in his movements on tribal land³ because it was communal property.

1 Schapera: Khoisan Peoples 319; Kohler Zs Rewi 1902, 350; Bethanier Hottentotten Fb 10; Fenchel Nama Fb 28; Berger Nama Fb 56; Eisenberg Nama Fb 64; Wandres in Steinmetz 325; Wandres in Zs Kolpolitik 1909, 675; Budack: Stam en Stamkaptein 273; Wallmann BRM 1851, 394 f

2 See p. 181

3 Schapera: op.cit. 236

The right to tribal land, however, existed only as long as it was not grabbed by another community.¹

Early missionary reports illustrate these circumstances: "Most chiefs have one or a few fountains (or waterholes) which they regard as the property of their tribe together with a smaller or larger piece of land surrounding those waterholes. Sometimes they even have a specially strong fountain which then functions as the centre of the tribe. ... To this centre they will always return after having grazed their cattle further away for a time."²

From this it becomes clear that the waterholes or fountains were claimed as their property by the different tribes and that the land surrounding them and between different waterholes rather were seen as an annexure to the property of these fountains. Definite boundaries therefore were not found but there was no doubt which waterhole belonged to which tribe.³

Over the land they claimed as being theirs they had the sovereignty and expected visitors to ask permission before settling in that area. Also, the missionaries had to obtain the permission of the chief when they wanted to missionize.⁴

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- 1 Schultze: Namaland 318; François: Nama and Damara 221; Wallmann BRM 1851, 394 f
 - 2 Wallmann BRM 1851, 394 f
 - 3 Hoernlé: Social Organization 3, 6; Budack: Traditionelle Struktur 29, see also the useful lists of waterholes 36 ff; Schapera: Khoisan Peoples 287
 - 4 Wallmann/Kleinschmidt BRM 1852, 327; Wallmann BRM 1854, 259, 260 f; Kreft 1852 BRM 1858, 70, 74; Kleinschmidt 1861 BRM 1862, 48; Schröder 1866 BRM 1867, 98; Heidmann BRM 1870, 172 f; see also Kleinschmidt 1862 BRM 1863, 83; Fenchel BRM 1864, 333

Accordingly, the missionary Scheppmann who in 1845 wanted to preach among the Topnaar around Walvis Bay (≠Aonin) first had to ask permission of the chief Kagab and also of the subchief Neigas of the region where he later established his station which later became to be known as Scheppmannsdorf.^{1,2}

When missionary Knudsen asked the chief David Christian of the Bethaniers (!Aman) only incidentally whether missionary Hahn and his tribe could settle at one of the waterholes of the Bethaniers David Christian forbade this and got very angry about the fact that Knudsen had actually invited S. Hahn before properly asking his permission.³ Missionary S. Hahn therefore did not move into the territory of the Bethaniers. He and his tribe moved to a place which they later called Berseba. Two years after having moved there the chief of the Bersebaers (/Hai-/khauan, ≠Khari-//khauan), Paul Goliath went to chief Dasib of the Red Nation (Gai-//khaun) to whom the territory of Berseba belonged and obtained the right to stay there. Dasib, however, did not sell the land but only granted Paul Goliath the right to stay there until his own tribe would need the place for themselves again.⁴ The Bersebaers, however, stayed there and after a few years they had obtained exclusive rights over the land simply by staying there. This illustrates that other Khoe-khoen who wanted to settle in another tribe's territory also had to ask permission.⁵

1 Wallmann/Scheppmann BRM 1850, 339

2 Interestingly the Topnaars also first had to ask Jonker Afrikaner for permission to accept a missionary and did nothing against his will as he had subjugated them: Wallmann/Scheppmann BRM 1850, 339

3 Wallmann/Knudsen BRM 1851, 129; Wallmann BRM 1853, 360; see also Wallmann BRM 1856, 324; see also Schröder 1866 BRM 1867, 98 who was met with considerable enmity from the Keetmanshoper (Kharo!oan) because he had moved to Keetmanshoop without getting their prior permission

4 Wallmann/Krönlein BRM 1854, 114 f; for a few years the Bersebaer paid the tribute of a horse yearly: Fenchel BRM 1884, 334

5 E.g. Vollmer BRM 1861, 229; Heidmann BRM 1870, 176, 183; Pabst 1878 BRM 1879, 152; Hegner BRM 1895, 111

The Witboois (Khobesin) therefore also had to ask Oasib of the Red Nation (Gai-//khaun) before they could think about settling in their territory.¹ When Oasib refused to give the permission for the place of their first choice² they had to take another one: for Kachazus, what later became known as Gibeon, Oasib gave his permission.³

The Keetmanshoopers (Kharo-!oan) settled in the area of the Bondelswaarts (!Gami-nûn). This granting of land led to a peculiar kind of allegiance: The Bondelswaarts got the paramountcy over the Keetmanshoopers which entailed, inter alia, that the Bondelswaarts had to approve the chiefs of the Keetmanshoopers.^{4,5}

The sovereignty of a tribe over its land also entailed that mining rights had to be obtained from the tribe of that area.⁶ Around the year 1850 quite a few prospectors came into the territory to search for gold and esp. copper. Accordingly, traders who mined copper in Jonker's territory obtained his permission and agreed with him to give an eighth of the production as a royalty to Jonker.⁷ Similarly chief David Christian of Bethanien was entitled to 350 Thaler yearly if copper was mined on his territory⁸

1 Vollmer BRM 1861, 229

2 Fabri BRM 1862, 144; Krönlein 1862 BRM 1863, 219

3 Krönlein 1862 BRM 1863, 219; Olpp: Verhältnisse 1895, 162

4 Fenchel BRM 1884, 334

5 For details see p. 59 f

6 Bam 1854 BRM 1855, 207; Wallmann/Kreft BRM 1856, 8; Kleinschmidt 1856 BRM 1857, 311, 315; Fenchel BRM 1890, 208

7 Bam 1854 BRM 1855, 207; see also Kleinschmidt 1856 BRM 1857, 315

8 Wallmann/Kreft BRM 1856, 8

by one trader but he also forbade other miners to work on his territory.¹

During the time of the rinderpest the various chiefs forbade the traversing of their land with infected cattle and established check-points to keep control.²

Similarly, a chief would sometimes force those people who wanted to travel across his land to pay a certain fee³: Jonker Afrikaner for instance, forced a few traders who were on their way to Lake Ngami in 1861 to pay 50 lb gunpowder for every wagon. When they refused he forced them to pay.⁴

Some writers claim that the land was owned by the chief of a tribe.⁵ This, however, is wrong. As outlined at other tribes like Ovambo⁶ and Herero⁷, grazing land was always communally owned with the chief having only the right to allocate certain pieces of land to individuals for special use. Especially when a chief was very strong and thus autocratic he could, because of his power, allocate certain pieces of land without having to ask the rest of the tribe for consent.

The selling of land was unknown to the Khome-khoen prior to the arrival of the whites.⁸ This can be deduced from

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- 1 Wallmann BRM 1856, 330
 - 2 Kleinschmidt 1860 BRM 1861, 74; 1861 BRM 1862, 107 f; 1862 BRM 1863, 78, 105
 - 3 E.g. Kleinschmidt 1861 BRM 1862, 48; Judt BRM 1887, 89; Olpp: Verhältnisse 1895, 165
 - 4 Kleinschmidt 1861 BRM 1862, 48; see also Th. Hahn in Palgrave: Report, p. XXVIII of annexure
 - 5 Schweickhardt: Franzfonteiner Hottentotten Fb 28
 - 6 See p. 123 f
 - 7 See p. 181
 - 8 Wandres in Zs Kolpolitik 1909, 675; Olpp: op.cit., 179; Burgsdorff/Kohler: Zs Rewi 1902, 350

a few remarks where Khoe-khoen chiefs deliberately did not sell waterholes and the surrounding land but only hired it out or simply left it to the use of the others.¹ The land, however, stayed theirs: Jan Jonker made it quite clear to missionary Brincker that he regarded the garden of the mission station as belonging to him. He also claimed that the money which the mission had paid to Andersson for his home and other buildings should be paid to him.²

Lastly, Koch³ states explicitly for the Topnaar that the immovable property, i.e. the nara-plants, could never be sold.

2.1.1.2 Gardens

Gardens were cultivated only under the influence of and near missionaries. They are not traditional to Khoe-khoen culture.⁴

These gardens were allocated by the chief of a tribe.⁵ The holder of the right only was allowed to cultivate the land, not to hire it out to others or sell it.⁶ He thus did not become the owner of the land but only had a right to use it which automatically ceased to exist when the holder of the right stopped cultivating the land.⁷

1 Wallmann/Krönlein BRM 1854, 115; Kreft 1857 BRM 1858, 70; Heidmann BRM 1870, 176; Schreiber BRM 1883, 363

2 H. Hahn BRM 1871, 98

3 Koch: Walfischbai BRM 1883, 52

4 cf Wandres/Steinmetz 314

5 Schweickhardt: Franzfonteiner Hottentotten Fb 28; Wandres: Zs Kolpolitik 1909, 676; Burgsdorff/Kohler: Zs Rewi 1902, 350; Olpp: Verhältnisse 1895, 179

6 Burgsdorff/Kohler: Zs Rewi 1902, 350

7 Schweickhardt: Franfonteiner Hottentotten Fb 28

All fruits from such a garden became the property of the cultivator.¹

If the head of a family, who had cultivated a garden, died, while he still had the garden under cultivation, his family was allowed to continue cultivating the garden.

This implies that the right to a garden once granted only fell back to the tribe with non-cultivation. Death was no reason for this.²

Wandres³ claims that a cultivator was allowed to give the right of use over a fruit tree - mostly fig trees to others.

2.1.2 Right to harvest wildgrowing fruits

2.1.2.1 Rules relating to the Topnaar (≠Aonin)

An example of privately owned immovable property was found with the Topnaars of the Kuiseb valley. Here the nara grows on thorny bushes. The fruit can be dried and preserved over a longer time so that this staple food of the Topnaars was eaten over most of the year.⁴

The different families owned the bushes.⁵ Only members of that family and their servants were allowed to reap any of the fruits of such a bush.

If another Topnaar was found to have taken from another man's bush he was charged by the owner at the chief.⁶

1 Berger. Nama Fb 56; Eisenberg Nama Fb 64

2 cf Berger Nama Fb 56; Eisenberg Nama Fb 64

3 Wandres Zs Kolpolitik 1909, 677

4 Wallmann/Scheppmann: Die Topnaar BRM 1850, 145 ff, 150 f; Koch: Walfischbai und seine Bewohner BRM 1883, 50 ff, 52; Schultze: Namaland 197, 198 ff; Budack: Topnaars 7; see also Palgrave: Report 6 f

5 Schultze: op.cit. 197; Budack: op.cit. 7, 9; Köhler: Die Topnaar-Hottentotten 123; also Koch: op.cit. BRM 1883, 51

6 Schultze: op.cit. 197; see also Koch: op.cit. BRM 1883, 52

A San or Bergdama, however, was shot on sight.¹ According to Koch² the bushes and the land around it could never be sold, but only be lent out for a time: for instance, when friends came for a visit from up-country they were given a bush which they could use. With the nara they reaped they could do what they wanted; eat them themselves, sell them or give them away as a present.³

Definitely the plants themselves were privately owned.⁴ As these plants are creepers it appears that the surrounding land also belonged to this property. This assumption is verified by Koch.⁵ He mentions the numerous fights which broke out when the creepers of such a bush crossed the own boundary and grew into another man's territory. Because his account also gives an insight over the handling of such fights, it is given in full:

"It is understandable that often fights broke out between the neighbours because the creepers of the bushes do not stop at the boundaries; sometimes, a new bush grows right on the boundaries; because a regular cultivation is of course not found. In such cases either the power of the stronger one wins or the whole tribe will come together and decide what is right."⁶

Also in a Memo on Walfish Bay⁷ it is stated that the tracts on which the Nara plants thrive are divided into several "patches". It is clear therefore, that although the main part of the private property was the nara plant itself, a certain amount of ground surrounding each plant was also part of the private property.

1 Schultze: Namaland 197

2 Koch: Walfischbai BRM 1883, 52

3 Koch op.cit. BRM 1883, 52

4 cf Schweickhardt: Nama Fb 28 (Franzfonteiner Hottentotten)

5 Koch: op.cit. BRM 1883, 52

6 Koch: op.cit. BRM 1883, 52; own translation

7 Memo on Walfish Bay 20th April 1891, cited from Köhler: Die Topnaar Hottentotten 113

These patches probably were the only example of private property of immovable goods with the Khoe-khoen¹, if not with all major tribes of SWA/Namibia.

2.1.2.2 Other wildgrowing fruits

Except for the just mentioned privately owned nara-bushes, a special right to trees or bushes was unknown.² This may be explained by the fact that in Namaland there were nearly no fruit trees at all.³ Where they existed probably every member of the tribe was allowed to reap the fruits.

2.1.3 Water

Natural vleys, open water and springs were communally owned, i.e. by the tribe which lived in that area.⁴ Every member of that tribe had the right to use this water.

It is not clear who became owner of a self-dug waterhole or dam. According to one source⁵ the builder of such a waterhole obtained certain rights of possession to the waterhole.⁶ He does, however, not specify the exact nature of these rights. If they were exclusive rights of possession, i.e. including the right of the digger to exclude others from using that waterhole, they would correspond exactly with those of the Herero⁷, where the builder had exclusive right of possession over his waterhole.

1 See Schultze: Namaland 318

2 Schweickhardt: Nama Fb 28 (Franzfonteiner Hottentotten); Fenchel: Nama Fb 36 (Keetmanshoop); see also Wandres in Steinmetz 325

3 Fenchel: Nama Fb 36 (No. 40)

4 Eisenberg: Nama Fb 64; Wandres/Steinmetz 325; Wallmann BRM 1851, 394; Olpp: Verhältnisse 1895, 179; Hoernlé: Social Organization 3

5 Berger: Nama Fb 56

6 Berger: op.cit. claims for the Nama of Berseba that "Besitzrechte" i.e. rights of possession are connected with the digging

7 See p. 185

But, for the Khoe-khoen, this seems not to have been the case.

Usually a waterhole was sunk by a whole family. The chief would then give the waterhole the name of the head of that family who had sunk the waterhole. But it always remained the property of the whole tribe so that every member of that tribe had free access to it.¹ Nobody could have an exclusive right to it. This is illustrated by the following incident: The missionary Knudsen insisted that any !Aman of Bethanien who wanted to use water from the missionary's house had to ask his permission. This insistence was one of the reasons why chief David Christian of that tribe banned Knudsen from that tribe's territory.²

Missionary Kreft, who was one of the later missionaries at Bethanien, only had a small garden in order not to clash with the people esp. since the water was scarce.³

Other events enhanced this view: When the Nama began to cultivate gardens and needed water for irrigation, a plan was drawn up beforehand, regulating how everybody would get his share. The chief saw to it that nobody changed this plan.⁴

This rule is in accordance with the climatic surroundings of Namaland. It is more arid than Hereroland, and this illustrates the necessity that every member of the tribe had to have free access to any waterhole in that area. Strangers had to obtain the chief's permission before they were allowed to use any water in tribal land.⁵

1 Wandres: Zs Kolpolitik 1909, 675; Budack: Stam en Stamkaptein 278; Olpp: Verhältnisse 1895, 179

2 Knudsen 1850 in Quellen III/2 : 68 cited from Budack: op.cit. 278; see also Wallmann BRM 1851, 129 ff, 137; BRM 1856, 325

3 Kreft 1855 BRM 1856, 274

4 Wallmann BRM 1851, 129 ff, 137; Budack: op.cit. 278

5 Budack: op.cit. 278; Anon.(Wallmann): Das Probejahr BRM 1851, 129 ff 136 (Bethanier); see also Kleinschmidt 1861 BRM 1862, 49; Hoernlé: Social Organization 4, 6

In accordance with the rule that guests had to be honoured, however, strangers then had the first right to use water on tribal land. It was the duty of the chief to ensure that no stranger on his land had to suffer from thirst.¹ Probably this rule disappeared later to a certain extent when more and more strangers passed through Great Namaland.² Then, sometimes the watering of cattle not belonging to member of the own tribe was forbidden.³ If one thinks in particular of the great cattle-trecks to Cape Town this becomes plausible.

The importance of tribally owned waterholes in the arid Namaland is also illustrated by the fact that some chiefs sent some of their tribal members to certain waterholes to protect them against the occupation by strangers.

2.2 Movable Property

Movable property was limited on account of the nomadic life of the Nama.⁵

2.2.1 General rule

The readiness to share food and also non-edible things is found with several tribes in SWA/Namibia.⁶ This, together with the unalienability of land, led observers to the conclusion that "communism" was practised regarding goods.⁷ But the notion that no private property existed, was wrong.

1 Wandres: Zs Kolpolitik 1909, 676

2 Wandres: op.cit. 1910, 277; Olpp: Verhältnisse 1895, 179

3 E.g. Kleinschmidt 1861 BRM 1862, 49

4 Compare Vollmer 1856 in Quellen V/2 : 91, cited from Budack: Stam en Stamkaptein 279

5 See above p. 7

6 See for the San p. 76 , for the Herero p. 188 f

7 François: Nama und Damara 222

This is illustrated by the existence of a law of inheritance¹, by the rules regarding the soregus² and the uncle-maternal nephew relationship of //nuri //gab.³ If no private property existed these rules would have been unnecessary.

Wandres⁴ and Vedder⁵, although they conceded the notion of private property in general, maintained nevertheless that all movable goods were family owned. They deduced this from the fact that nobody was allowed to sell anything without asking one's husband or wife or, if still unmarried, one's parents.⁶ Thus, according to Wandres⁷, an individual only owned his oms, his soul or breath, while he only had a usufruct of his clothes, weapons and stock, not being allowed to dispose of them without the consent of the rest of the family.

Even if this was true, the mode of possession was more similar to the western form of ownership than to a mode of pure family ownership:⁸ undisputedly an individual could acquire objects which he had the sole right to use. On the other hand, an individual had the right, as Wandres⁹ admits himself, to specify who would get what after his death. Also, as will be shown later¹⁰, the relationship of soregus could be entered into, which entailed gifts and presents.

1 See below p. 32 f

2 See below p. 28 f

3 See below p. 30

4 Wandres: Zs Kolpolitik 1909, 682 f; 1910, 278 f

5 Vedder: The Nama in Native Tribes 144

6 Wandres: op.cit. 1909, 683; 1910, 279

7 Wandres: op.cit. 1909, 682

8 See Schapera: Khoisan Peoples 324; Kohler: Zs Rewi 15, 1902, 349

9 Wandres: op.cit. 1909, 683

10 See p. 28 f

Therefore, it can be stated that the Nama enjoyed individual ownership of things but that the family had a certain right to hinder at least reckless dispersal.¹

2.2.1.1 Huts

The traditional hut was made from long bent sticks which were put together at the top. Over these large mats made from rush were placed.² These rush-mats were made by Khoekhoen women³ and brought with them into the marriage.⁴ They constituted a considerable wealth.⁵

According to Wandres⁶ who claims that all property was family-owned the hut also belonged to the family. As shown above this notion was not altogether correct. Accordingly, the hut was owned by the wife who brought it into the marriage.⁷

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- 1 Compare Schapera: Khoisan Peoples 324
 - 2 Roos and Marais: Bericht in Moritz 1915, 180 ff, 182; see also François: Nama and Damaraland 209; Schultze: Namaland 227 ff
 - 3 François: op.cit. 209; Wandres: Zs Kolpolitik 1910, 279; Schultze: op.cit. 229; Roos and Marais: op.cit. 1915, 180 ff, 182; A.Albrecht: Beobachtungen im Groß-Namalande in Moritz 1915, 202 ff, 205; Campbell: Travels in South Africa 309; Kleinschmidt: Tagebuch Nr.11, 5. Juni - 16. Oktober 1843, in Moritz 1916, 219 ff, 222; Knudsen 1844 in Moritz 1916, 151; Krönlein BRM 1858, 34; Kleinschmidt 1862 BRM 1863, 73; Olpp: Verhältnisse 1895, 164; Th. Hahn: Die Nama-Hottentotten 306
 - 4 François: op.cit. 209; Wandres: Zs Kolpolitik 1910, 279; see also Schultze: op.cit. 229; Olpp: op.cit. 175
 - 5 Wandres: Zs Kolpolitik 1910, 279
 - 6 Wandres: Zs Kolpolitik 1909, 677, 682
 - 7 François: op.cit. 208, 213; Hirschberg 400

2.2.1.2 Household Articles

Similarly household articles were owned by the one who had manufactured them or bought them or obtained them as a present¹.

2.2.1.3 Stock

Stock was individually owned as well.² As born nomads and cattle-herders each Nama knew all his own cattle. A family of which its members only had a few cattle would sent their cattle together for grazing. Every owner would afterwards recognize his own cattle again. The family would not acquire communal property over those cattle but , they would stay being individually owned.³

Every owner tried to increase his herd by all means.⁴

Women, too, could be owners of stock which would not become the property of their husbands because no joint property was known.⁵

Also children, especially sons, would get stock as a present when still young. This stock would then stay their own⁶. Girls would also sometimes get stock as a present or as dowry which they would bring into the marriage but which would stay their own.^{7,8}

1 Olpp: Verhältnisse 1895, 175, 179; different Wandres: Zs Kolpolitik 1909, 677, 682: familiy-owned

2 This is even conceded by Wandres: Zs Kolpolitik 1909, 677

3 Wandres: Zs Kolpolitik 1909, 677

4 Schapera: Khoisan Peoples 319

5 François: Nama und Damara 709

6 François: op.cit. 216

7 François: op.cit. 209

8 See also p. 24

2.2.1.4 Hunting Bag

Hunting was allowed to every member of the tribe.¹ Strangers had to ask permission to hunt on someone else's tribal land.² Some informants claim that none of the kill had to be given to the chief³ while Wandres⁴ claims that game generally was the chief's herd. According to the brothers Albrecht⁵ the Bondelswart chief Corregas claimed that all giraffes and wild horses which were on his land belonged to him alone. According to Wandres⁴ the chief would get pieces of meat from small game while he claimed the head and the four lower legs of big game. Shaw⁶ mentions only that the chief was entitled to an unspecified piece of each wild animal which he would claim even if it would be rotten when brought to him.

2.2.1.5 Honey

As with the other SWA/Namibian tribes, the finding of honey was something special and honey therefore was much sought after.⁷ Honey was eaten raw but beer was also made from it, a fact which very much disturbed the missionaries.⁸

1 Olpp: Verhältnisse 1895, 180

2 C. and A. Albrecht 1808 in Moritz 1918, 113 were forbidden to hunt on chief Bondelswart's land after an argument with him; Olpp: op.cit. 180

3 Kohler: Zs Rewi 1902, 351; Olpp: op.cit. 180

4 Wandres: Zs Kolpolitik 1909, 676; 1910, 277

5 C. and A. Albrecht 1808 in Moritz 1918, 113

6 Shaw: Report of Wesleyan Methodist Min. Society from 1821, in Moritz: Mitt. a.d. dt. Schutzgebieten 1915, 219 ff

7 Wandres: Zs Kolpolitik 1909, 676; Knudsen 1844 in Moritz 1916, 143, 150, 153

8 As the Khoe-khoen apparently got drunk from this honey beer and then quarrelled, the missionaries saw it as diabolic and crusaded against it wherever they could. The following quotations are only a few of those very many: Knudsen 1844 in Moritz 1916, 142, 143; Alexander I 181; Bam BRM 1888, 212; Th. Hahn: Die Nama-Hottentotten 307

The importance of honey is illustrated by the laws which applied to it and by the fact that fables regarding honey exist like the following which was collected by Knudsen in 1844: The bees asked the flies whether they did not want to collect honey as well. They answered. "Yes! You can look for it on the flowers in the veld while we want to look for it at the mouths of children." From then on flies are a plague when children eat honey.¹

Honey belonged to the finder. If somebody found a swarm of bees he marked this as his property by putting twigs in front of the entrance where the bees had their nest.²

The one who took honey from a nest thus marked was regarded as a thief.³ It was also forbidden to disturb a young swarm of bees or to force them away by taking all combs out of the nest.⁴

Wandres claims that the chief and/or a few elders had to get a share of the honey.⁵ Today, this rule is not known anymore among the Nama.⁶

A stranger to the area was not allowed to take honey. A swarm of bees and the honey was thus regarded as belonging to the neighbouring tribe already before it was discovered by a member of the tribe.⁷

1 Knudsen 1844 in Moritz 1916, 150; own translation

2 Wandres: Zs Kolpolitik 1909, 676

3 Wandres: Zs Kolpolitik 1909, 676

4 Wandres: Zs Kolpolitik 1909, 676

5 Wandres: Zs Kolpolitik 1909, 676

6 Budack: Stam en Stamkaptein 269

7 Wandres: Stam en Stamkaptein 1909, 683 (§ 1 d)

2.2.1.6 Fishing

Fishing was possible in the Fishriver, some of its tributaries and in the Orange River.¹ All members of the tribe were allowed to fish there.² However, only those who were living next to the rivers made use of this right.³

2.2.1.7 Resin

The resin of an acacia (acacia horrida Willd)⁴ was considered as communal property of which the chief had to get a share.⁵ This rule is nowadays forgotten just like the rule regarding honey.

2.2.1.8 Find

The finder was allowed to take the object along. But his right to his property was only comparable to the right of possession because the owner was always allowed to take his property back whenever and wherever he saw it.⁷

If he would find his property at somebody else's place he usually would give him a bit for having taken care of the object but that was not enforceable.

2.2.1.9 Women

Wives could not be regarded as the property of their husbands. Nama and Orlam women owned their huts⁸ and their husbands had to be respectful towards their women when they entered

1 Wandres: Zs Kolpolitik 1909, 675; 1910, 276 f; see also Olpp: Verhältnisse 1895, 180

2 Wandres: Zs Kolpolitik 1910, 277

3 Wandres: Zs Kolpolitik 1910, 277; Olpp: Verhältnisse 1895, 180

4 Wandres: Zs Kolpolitik 1909, 677

5 Wandres: Zs Kolpolitik 1909, 677

6 Budack: Stam en Stamkaptein 269

7 Wandres: Zs Kolpolitik 1909, 677

8 See p. 19

the hut.¹ They had a considerable say in many matters: When Jonker asked Kleinschmidt to send missionaries he stated that the men and women of his tribe were asked whether they wanted missionaries.² Also in richer families Khoe-khoen women had their own separate property³ which secured them a fairly independent life.

The Khoe-khoen wives were quite emancipated⁴ and could leave their husbands whenever they did not like them any more.⁵

Mention is also made from time to time of Khoe-khoen women who had considerable influence on their husbands, brothers or their sons⁶ or the tribe in general.⁷

Missionary Kleinschmidt⁸ states that an aunt of chief Willem Swartbooi of the Swartboois (//Khou-gôan) was allowed to stand up against chief Willem because she was the oldest woman of the tribe and the aunt of Willem and that such a woman could dare quite a lot according to Khoe-khoen custom.

- 1 Koch: Walfischbai BRM 1883, 50 ff, 56; Th. Hahn: Tsuni-//Goam 19
- 2 Kleinschmidt 1842/1843 in Moritz 1915, 244, 257
- 3 Roos and Marais 179, in Moritz 1915, 180 ff, 182 state that a man had to marry the widow of his brother when she had no own means to sustain herself and her children. This means of course, that a woman could well have means of her own: Knudsen 1844 in Moritz 1916, 143 states that with a Nama-couple which has a bit of property, each has his or her own property; Wallmann BRM 1851, 397; Bam 1855 BRM 1856, 304; Koch: Walfischbai BRM 1883, 55; Olpp: Verhältnisse 1895, 176; François: Nama and Damara 209
- 4 Wallmann BRM 1851, 397
- 5 Kleinschmidt BRM 1855, 19; Krönlein 1855 BRM 1855, 278 f; Wallmann/Kreft BRM 1856, 7; Weber 1857/1858 BRM 1860, 52; Kleinschmidt 1860 BRM 1861, 74; Weber 1862 BRM 1863, 270
- 6 The mother of the Topnaar chief Kagas hated subchief Neigab and drove her son to expell all of Neigab's people from the Bay area where they were fishing: Wallmann/Scheppmann BRM 1850, 341; Köhler: Die Topnaar-Hottentotten 108; Kleinschmidt 1856 BRM 1857, 83
- 7 Some women were regents for minor children, see p.55 f; see also Weber 1862 BRM 1863, 274; Brincker 1863 BRM 1864, 178
- 8 Kleinschmidt 1857/1858 BRM 1859, 23

2.2.1.10 Children

Children, too, could not be regarded as being property because they could not be sold. On the contrary, no evidence could be found in the sources that Khoe-khoen parents ever sold their children.¹

2.2.1.11 Slaves

Attached to the richer Nama and Orlam families usually were a number of servants, especially Bergdama², but also Bushmen³, Herero⁴, and even poor Nama.⁵

These slaves were mainly obtained after numerous fights between the different races.⁶ Children which were left lying in the veld would be picked up by a fighter and brought up in family.⁷

Quite a few also attached themselves voluntarily to Nama families esp. during times of drought.⁸

- 1 Knudsen 1844 in Moritz 1916, 151 states that Khoe-khoen would never sell their children; Wallmann BRM 1851, 397
- 2 Kleinschmidt: Tagebuch von 1842 in Moritz 1915, 244 ff, 247, 253, 254; Wallman from Kleinschmidt BRM 1849, 3; Wallmann BRM 1850, 153; 1851, 391; Kleinschmidt 1854 BRM 1855, 28; 1855, 49; Böhm BRM 1865, 83; Olpp BRM 1876, 75; Hoernlé: Social Organization 17
- 3 Kleinschmidt 1842 in Moritz 1915, 244 ff, 247; Knudsen 1844 in Moritz 1916, 142; Wallmann BRM 1851, 142, 391; Vollmer BRM 1854, 273; Kleinschmidt 1854 BRM 1855, 28; Wallmann BRM 1855, 49; Olpp BRM 1876, 75; Bam BRM 1880, 146
- 4 Alexander I, 221; Kleinschmidt 1854 BRM 1855, 25; 1854/1855 BRM 1855, 371; H. Hahn 1859 BRM 1860, 214; Olpp BRM 1876, 75; Bam BRM 1880, 146
- 5 Kleinschmidt 1842 in Moritz 1915, 244 ff, 247; Olpp BRM 1876, 75
- 6 Olpp: Verhältnisse 1895, 173
- 7 Wallmann: Jonker Afrikaner in BRM 1849, 113 ff, 124; Hoernlé: Social Organization 17
- 8 Kleinschmidt 1854 BRM 1855, 25; Kleinschmidt/Vollmer BRM 1853, 63; Olpp: Verhältnisse 1895, 173

It is doubtful whether they were regarded more as slaves i.e. property of their masters, or more as servants or dependants.

This latter view is favoured by a few sources¹: It is conceded that often they were treated harshly but they could not be considered slaves because they were never bought or sold and they "are free to marry as they will ...".²

It appears, however, especially from the older missionary sources that the servants, esp. those of the Nama, were rather regarded as slaves who were not even allowed to accumulate much wealth as their property was regarded as being the property of their masters.³

The liberal, pietistic⁴ missionary Olpp⁵ enhanced this view: "Bushmen, poor Nama, Bergdamara and Herero are working for the Hottentots. These people are only called servants but in reality they are nothing but slaves. After their masters' deaths they are inherited by their heirs just like the animals and often when their daughters marry they are given to them as part of the dowry."

In this connection it is interesting to hear the story which the Keemtmanshooper (Kharo-!oan) told themselves of how the Zeib-family, which produced the chiefs of the tribe, came into the possession of the Keetmanshoop area: A Bushman-jackal hunter of the old Zeib was hunting near a fountain to which his dog led him. "Because the Bushman, who was the servant of old Zeib, and his dog both were the property of Zeib, the fountain from that memorable

1 Schapera: Khoisan Peoples 234; Hoernlé: Social Organization 17

2 Schapera: op.cit. 234

3 Kleinschmidt 1842/1843 in Moritz 1915, 244 ff, 254; Kreft/Schröder/Knauer/Krünlein BRM 1865, 116

4 In contrast to nearly all other missionaries of SWA/Namibia Olpp is characterized very favourably by Helbig: Mythos Deutsch-Südwest 96

5 Olpp: Zur Charakteristik der Namas BRM 1876, 71 ff, 75 f, own translation: see also Olpp: Verhältnisse 1895, 173

time naturally belonged to Zeib and his people according to the custom of the land."¹ Furthermore, their masters apparently even were allowed to kill their slaves² and even where this seemed to have been not entirely the case, the judges and the chiefs were more than reluctant to punish somebody who had killed his slave.³ Also, apparently, slaves could be sold when their masters wished to do so; Knudsen⁴ states that enslaved Herero children could probably be sold but that he never witnessed this. Alexander⁵, however, had bought a Herero boy of approximately 10 years of age for two handkerchiefs and two strings of glass-beads. Of this Herero boy Saul Shepherd missionary Vollmer⁶ noted down that he had been sold several times among the Khoe-khoen already before Alexander finally bought him. Grown-up slaves, too, could be sold: Chief Umab, who only had about 100 members of his tribe left, also had four Bushmen-slaves of which he killed three. To missionary Kleinschmidt he said, that that was his right as the Bushmen belonged to him. Then he asked Kleinschmidt whether he wanted to buy slaves from him.⁷

Slaves were free to marry whom they wanted to⁸ but this did not mean that they herewith attained their freedom of movement: the aforementioned Saul Shepherd came to

- 1 Krefz/Schröder/Knauer/Krönlein BRM 1865, 116, own translation
- 2 Wallmann/Kleinschmidt BRM 1851, 142, 143; Kleinschmidt/Vollmer BRM 1853, 63; Kleinschmidt 1854/1855 BRM 1855, 371; Th. Hahn: Die Nama-Hottentotten 305; see also Weber 1868 BRM 1869, 120; Schweickhardt: Nama Fb 26
- 3 Wallmann/Kleinschmidt BRM 1852, 331
- 4 Knudsen 1844 in Moritz 1916, 151, states that an enslaved Herero-child might be sold, although he never witnessed this
- 5 Alexander I, 223 f
- 6 Vollmer BRM 1855, 105
- 7 Wallmann/Kleinschmidt BRM 1851, 143
- 8 Vollmer BRM 1855, 105; Schapera: Khoisan Peoples 234; Hoernlé: Social Organization 17

live among Jonker Afrikaner's people and there married a Herero slave-girl. When he was sent on a mission to the Red Nation at Hoachanas his wife had to stay behind because her master did not allow her to accompany her husband.¹

The institute of slavery changed into a simple servanthship only during the last decades of the 19th century. Based on a report by Burgsdorff / Kohler² could state in 1902 that "slavery has vanished nowadays, only free servant relationships still exist".

2.2.2 Restriction to Private Property

A few restrictions existed which encroached on the owner's unlimited right to the thing.

2.2.2.1 Soregus

Similar to the Herero custom of the orupanga the Nama had the soregus, a special reciprocal relationship between two persons.³ These persons ceremoniously entered upon a relationship which was characterized by giving and taking from each other and by mutual obligation and assistance in all aspects of life. Such a relationship implied that, since they were not allowed to refuse each other anything, each was allowed to demand or take from the other whatever he pleased.

The property of a partner to such a soregus could become the property of the other partner if he demanded it.

1 Vollmer BRM 1855, 106

2 Kohler: Zs Rewi 1902, 340

3 Schultze: Namaland 318 f; Schapera: Khoisan Peoples 321; Wandres: Zs Kolpolitik 1909, 682

Normally, if an old and a young Nama had entered into such a soregus the older one would give the young one a piece of cattle or goat while the young one would try to give something to the old one later on when he, the young one, himself one day has sufficient means. According to an example given by Schultze¹ the young one would even feel obliged to give something to the children of his partner after that partner's death.

Apparently, females could also enter such a soregus. Whether the soregus also implied wife exchange as with the Herero, is not sure.²

Schultze³ believes that the soregus could also tacitly imply the agreement to have sexual intercourse with the partner's wife only after the rules about sexual intercourse were liberalized around 1890.

Tindall⁴ tells of an incident where a man who had only a few things was visited by his soregus-partner who took away with him nearly everything this man possessed. Most probably this was an excess of the soregus custom but it shows the limitation of the right of ownership to things when one is a partner to such a union. Probably the view of Wikar⁵, who was a partner himself to such a soregus, is more correct. In sorrow, distress, hunger and bodily danger, they were to help each other. But he too confirms that he then was not allowed to refuse his partner anything he wished.⁶

1 Schultze: Namaland 319

2 See Schapera: Khoisan Peoples 252, 322; cf also Wikar: Berigt aan van Plettenberg in Moritz 1918, 61 ff, 73

3 Schultze: op.cit. 319

4 Tindall: Two Lectures 40 f

5 Wikar: op.cit. in Moritz 1918, 61 ff, 65 f; see also Schultze: op.cit. 319

6 Wikar in Moritz 1918, 61 ff, 66

2.2.2.2 Kinship - Relationship: //nuri //gab

A relationship based on kinship was that between a man and his sister's son. The advantages here were on the nephew's side: He could take, without asking, any fine stock from his uncle's herd while the uncle was only allowed to take for himself ugly misformed animals from his nephew's herd, like cattle with misformed asymmetric horns or goats with deformed ears. But the nephew could also take other fine specimen of any object of his uncle's possession while the latter was only allowed to take poor things from his nephew such as broken pots, a caross with holes and other damaged objects.¹ Schapera² claims that this privileged position of the nephew was based on the respect a man had to show towards his sister.

2.2.2.3 Restrictions relating to Honey^{2a}

A young swarm of bees was not allowed to be disturbed by anyone, including the finder. Furthermore, the finder was not allowed to take out all the honey from a nest because therewith he would force the bees to settle somewhere else. If he transgressed these rules the headman of the neighbouring village would punish him.

Lastly, the finder had to give some of the combs of his find to the chief or elders.³ The same applied when someone found resin.⁴

2.2.2.4 Hospitality

If someone was very hungry and had no other means to satisfy his hunger he was allowed to take a goat from another

1 Olpp: Zur Charakteristik der Nama BRM 1876, 71 ff, 75: Olpp: Verhältnisse 1895, 183; Schultze: Namaland 303; Schapera: Khoisan Peoples 272, 323; Spellmeyer: Nama Fb 82; Hoernlé: Social Organization 22 f

2 Schapera: op.cit. 323; 2a see p. 21 f

3 Wandres: Zs Kolpolitik 1909, 676; 1910, 277

4 Wandres: Zs Kolpolitik 1909, 677; see above p. 23

man's herd even in that other man's absence and without his permission. He had to inform the owner of the herd of his deed and then was not regarded as a thief as he would have been if he had taken the goat in order to sell it.¹

This rule had its origin in the general generosity and very high hospitality which forbade that a guest would leave a Nama's hut hungry.² Especially if both were from the same tribe the stranger was even allowed to help himself to whatever he could find in another man's hut even in that man's absence.³

The Topnaars of the Kuiseb valley (/Aonin) had a peculiar kind of hospitality which was closely connected with their nara-complex: When friends came from up-country, they were allocated a few bushes which they could use for a certain time. During this time they were allowed to reap those bushes and consume the nara-fruit themselves, sell the fruits or give them away as present.⁴

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- 1 Schapera: Khoisan Peoples 320; Burgsdorff/Köhler: Zs Rewi 1902, 349
 - 2 Schapera: op.cit. 320 f; Schultze: Namaland 318; see also François: Nama and Damara 222, 231 f; see also Th. Hahn: Tswi-//Goab 1, 32 Fn 4; Jacobus Coetsé Jansz in Moritz 1915, 163 ff, 164; W.van Reenen: Tagebuch in Moritz 1915, 190 ff, 193; Schmelen: Reise zur Erforschung der Oranje Mündung in Moritz 1915, 205 ff, 211; Kitchingman: Tagebuch in Moritz 1915, 214 ff, 214, 215, 218; Knudsen: Tagebuch No. 7, 1. Mai - August 1844 in Moritz 1916, 141 ff, 143; see also Campbell: Travels 303; Kleinschmidt: Briefe und Berichte 1842/43 in Moritz 1915, 244 ff, 254, 257; Knudsen 1844 in Moritz 1916, 143; Alexander I, 193; Rath in Moritz 1916, 234; Wallmann: Junker Afrikaner in BRM 1849, 113 ff, 124; Olpp: Zur Charakteristik der Nama in BRM 1883, 297; Spellmeyer: Zur Beurteilung des Nama-Aufstandes BRM 1905, 169 ff, 171; Olpp: Verhältnisse 1895, 167; Burgsdorff/Köhler: Zs Rewi 1902, 349 f; Th. Hahn: Die Nama-Hottentotten 305
 - 3 Schapera: op.cit. 320 f; Campbell: op.cit. 303
 - 4 Koch: Walfischbai BRM 1883, 52

3. Inheritance and Succession

3.1 Inheritance

The old Cape - Nama of a few centuries ago left a dead man's hut with all his belongings standing while the whole camp was moved.^{1,2} The hut and its furnishings like household articles were therefore at least in the 18th century not inheritable. This, however, was never or at least no longer the case in SWA/Namibia when the first reports were written down.

3.1.1 General Rule

Being patrilineal tribes the main rule was that one or more children of a deceased would inherit his estate.³

3.1.2 Different Rules for Different Tribes

However, it is not clear which of a deceased's children would get what; the sources differ quite substantially.

3.1.2.1 Cape Nama

According to Kolb⁴ only males could inherit property. As the hut and its furnishings was left untouched⁵ the inheritable property was primarily livestock.⁶ This went to the eldest son who also became head of the family. All that livestock which a father might have given to his younger

1 Kolb: Vorgebirge der guten Hoffnung 1719, 79, 581; Schapera: Khoisan People 325

2 Note the similarity with the Nharon; see p. 77 f

3 cf Schapera: op.cit. 327

4 Kolb: op.cit. 1719, 563; 1926, 141; see also Fritsch: Die Eingeborenen Süd-Afrikas 335

5 See above

6 Kolb: op.cit. 1926, 141; Schapera: op.cit. 325

sons during his lifetime remained theirs and guaranteed their independency. If they had no livestock of their own they stayed dependent on their eldest brother whom they had to help and who, in turn, had to support them as well as his mother and other wives of his father. His sisters were placed under his exclusive control and also had to obtain his permission when when they wanted to marry.¹

Failing a son, the heir would be the nearest male relative, i.e. a brother or a brother's son, never a female.

According to Kolb², the deceased, once he was on his death-bed, was not allowed anymore to hand out things of his own as presents to his younger sons without the permission of his eldest son who always was the main heir. Only presents made during his healthy life-time were regarded as valid presents which the owner could claim after the testator's death.³

3.1.2.2 Orlams

For the Orlam -tribes in SWA/Namibia the sources state the following:

3.1.2.2.1 Bethanier - Nama (!Aman)⁴

When a man died his legitimate children were his main heirs (Haupterben), while the husband was the main heir when his wife died. Illegitimate children were nevertheless regarded as heirs to their natural father or mother too. According to this source the children had the obligation to give an

1 Kolb: Vorgebirge der guten Hoffnung 1719, 1926, 141 f; Fritsch: Eingeborenen Süd-Afrikas 335; Schapera: Khoisan Peoples 325

2 Kolb: op.cit. 1719, 563; 1926, 141

3 Kolb: op.cit. 1719, 563

4 Nama Fb (Bethanier Hottentotten) 4

unspecified share of the inheritance of their father to their mother in case she was still alive. If a man had no children his wife would be the sole heir. When no wife existed his brothers and/or sisters were a man's heirs of the next order.¹ Next in line were further relatives according to their degree of relationship.²

The testator could stipulate that smaller parts of his estate should go to other persons who were not natural heirs.³

3.1.2.2.2 Berseba - Orlams (/Hai-/khauan, #Khari-/khauan)⁴

About the Bersebaers two questionnaires exist and one account on certain wishes of a deceasing man could be found in the missionary paper.

According to the questionnaires the estate of the parents was inherited by their children of both sexes.⁵ This rule is in accordance with the corresponding rules of the Bethaniers. Berger⁶, however, claims that the sons would get a bit more than their sisters.

Krönlein⁷ reports that when a man Salomon David Isaak died around 1860, he told his eldest son that he from then on had to be a support to his mother. Salomon David then gave the supervision over his son and his entire house to his eldest brother Jakobus Isaak and asked that brother to pay all his debts out of his estate. He also begged

1 Nama Fb (Bethanier) 48

2 Nama Fb 4, 48

3 Nama Fb 4

4 Krönlein: Salomon David BRM 1862, 247 ff; Berger: Nama Fb (Berseba) 51 ff; Eisenberg: Nama Fb (Berseba) 61 ff

5 Berger: Nama Fb 52; Eisenberg: Nama Fb 61

6 Berger: Nama Fb 52

7 Krönlein BRM 1862, 252

Jakobus to give twenty young oxen of his to the sons of a deceased brother of his because he had had the estate of their parents in his possession, probably as a guardian of the estate. He also begged his brother to substitute from his herd those animals which he had from time to time slaughtered from their "aandeel", their estate.

It can be deduced from this that a brother usually was the guardian of the estate of a deceased when that deceased's children still were too young. Also, that such a guardian had the right to take from such an estate from time to time an animal to slaughter for normal expenses.

Salomon David also begged his eldest son to stay at Berseba itself so that his children could go to school. This means that last wills were at least known.

3.1.2.2.3 Witboois (/Khobesin)¹

Here, too, we find that the estate of the father was inherited by his children of both sexes.² The eldest son, however, would get a bit more than the rest of his brothers and sisters.³ Olpp⁴ states that often also the youngest child was privileged. Burgsdorff⁵ claims that for every three oxen which they got, the eldest son got four etc.

If a man died childless, his brothers were his sole heirs⁶; according to Olpp⁷ his sisters and his grandparents were heirs too. However, it seems that the eldest brother of the deceased was his heir and that the heir gave presents to the others mentioned.

1 Burgsdorff/Kohler: Zs Rewi 1902, 337; Olpp: Verhältnisse 1895, 183 f

2 Burgsdorff/Kohler: Zs Rewi 1902, 347; Olpp: op.cit. 183 f

3 Burgsdorff/Kohler: Zs Rewi 1902, 347; Olpp: op.cit. 183; Olpp BRM 1876, 77

4 Olpp: Verhältnisse 1895, 183

5 Burgsdorff/Kohler: Zs Rewi 1902, 347

6 Burgsdorff/Kohler: Zs Rewi 1902, 347

7 Olpp: Verhältnisse 1895, 347

If a woman died her children of both sexes were her heirs.¹ Olpp² gives an account of the division of a larger estate which could be seen as a general rule: The cattle, sheep and goats were shared by all children (no details are given here). The ox-wagon usually was inherited by the eldest son, while the other sons inherited the weapons, horses and tools. The daughter would share the hut and the house utensils.

Debts of the parents had to be paid by their heirs.³

The head of the family, i.e. the eldest son or, if brothers of the deceased were left, the eldest brother managed the estate.⁴ Last wills were known: sometimes a man would leave something for his wife or vice versa. Lastwills were done orally before witnesses.⁵

3.1.2.2.4 Afrikaners (//Eixa-//ain, Totoxa-//ain)

About the Afrikaners only one account could be found relating to inheritance. Brincker⁶ writes the following about the estate of Jonker Afrikaner who died in 1861:

Jonker Afrikaner apparently had given all his cattle to Kamaherero to look after. Kamaherero was a follower of Jonker. Apparently Jonker had made Kamaherero the guardian of his estate and stipulated that his eldest son Jan Jonker should get all the cattle because Kamaherero only agreed to give the cattle to Jan after he would have moved away

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- 1 Kohler: Zs Rewi 1902, 347
 - 2 Olpp: Verhältnisse 1895, 184
 - 3 Olpp: op.cit. 184
 - 4 Olpp: op.cit. 183
 - 5 Olpp: op.cit. 183
 - 6 Brincker 1863 BRM 1864, 178

from his brothers and sisters. These brothers and sisters, especially a halfsister of Jan and daughter of Jonker and wife of a Jan Aris, wanted to take the entire inheritance for themselves excluding Jan Jonker. Here a strong tendency towards favouring the eldest son can be seen.

On the other hand, the strong enmity of the other brothers and sisters towards their eldest brother and their wish to share the estate between them all, seems to enhance the custom of the other Orlam-groups, namely that the estate is shared equally between all children irrespective of their sex.

Lastly, it is interesting to note that the guardian of the cattle was the Herero Kamaherero. The Herero were favoured by the Nama as cattle herders because of their skills in cattle-breeding. Strangely enough, Kamaherero was even the guardian of the estate and apparently this was, however grudgingly, accepted.

3.1.2.3 Nama-Tribes

The following could be found about Nama-tribes:

3.1.2.3.1 Bondelswarts (!Gami-~~n~~ûn)¹

While being at Pella, Little Namaqualand, in September 1813², Campbell met two chiefs from Great Namaqualand who gave him information on the Nama. These were: "Owib, the father and his son Bundelzwart ... from Warm Bath, and Fleurmuis"³, i.e. Nama of the tribe of the Bondelswarts (!Gami-~~n~~ûn) who had fled with their missionaries to Pella but were to return to the Warm Bath (nowadays Warmbad) area soon after. He was informed that the eldest

1 Campbell: Travels in South Africa, 3rd ed., London 1815

2 See Moritz in Mitt.a.d.dt.Schutzgebieten 1915, 259

3 Campbell: Travels 304

son inherited the whole estate of his father. His wife was not entitled to anything. If, for instance, a younger brother wanted to have a share of the inheritance, he had to fight for it.¹

3.1.2.3.2 Franzfonteiner Nama² (//Khan-/gôan = Swartboois)

The main heir was the eldest son. A differentiation between inherited and other things had to be made: Inherited things of a deceased were inherited by the eldest son or the eldest daughter while the other things were inherited according to the wishes of the testator.³

3.1.2.3.3 Keetmanshooper Nama⁴ (Kharo-loan)

Fenchel states for the Keetmanshooper Nama that the estate of the deceased was inherited by his children but that the eldest son would grab the main share of it.⁵

3.1.2.3.4 The Topnaar of the Walvis Bay Vicinity (Aonin)

3.1.2.3.4.1 Inheritance of the Nara-Patches

As the nara-patches along the Kuiseb valley were privately owned⁶, they were inheritable.

The sources state that the patches were owned by different families⁷ or lineages, as Budack expresses it.⁸

1 Campbell: Travels 309 f

2 Schweickhardt: Nama Fb 19 ff

3 Schweickhardt: Nama Fb 24

4 Fenchel: Nama Fb 33 ff

5 Fenchel: Nama Fb 33

6 See p. 13 f

7 Memo on Walfish Bay 20th April 1891 cited from Köhler: Die Topnaar-Hottentotten 113; Budack: Topnaar 7, 9

8 Budack: op.cit. 9

The Memo on Walfish Bay¹ states about the inheritability of these well-defined patches of bushes:

"The holdings descend through successive generations according to generally recognized law of inheritance, all the individual members of the family having equal communal rights over the family patch."

This inheritability of the nara-patches within the family is also mentioned by Schultze.²

A slightly different account is given by Koch³ who was living in Walfish Bay for many years in the 1870ies and 1880ies as the agent for the Rhenish Mission Society:

"From the beginning of December to the beginning of June this plant produces continually fruits, one bush approximately 50 to 150, so that one bush is nearly enough for two persons. The whole nara-field is divided among the people and inheritable property. Usually everybody has a few patches which belong to him and which are often lying at the extreme ends of the nara-field. This property is inherited by the children from their parents in such a manner that the youngest son is always the main heir because he has the duty to support and nurse his parents when they have grown old.⁴ ... Often women and girls have immovable property although they are excluded from it by the law of inheritance."⁵

From this account it may be deduced that the above mentioned inheritability of the patches by the different families was correct and the general rule. However, it seems

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- 1 Memo on Walfish Bay 20th April 1891 cited from Köhler: Die Topnaar-Hottentotten 113
 - 2 Schultze: Namaland 198; and implied by Budack: Topnaar 9
 - 3 Koch: Walfischbay und seine Bewohner BRM 1883, 50 ff
 - 4 Koch: op.cit. BRM 1883, 51
 - 5 Koch: op.cit. BRM 1883, 52

that the different members of the family then divided all these patches among themselves. This division may well have developed over the years through a definite usage. For instance: When a couple grew old, their children would take over the harvesting of the fields. Through this harvesting each child may become attached to certain patches of the parents' property. As the youngest brother had to support his parents¹ he would get a few patches more than his other brothers. When the parents finally died, each member would go on harvesting those patches he was used to. When one of the brothers died without leaving a family of his own his plants would fall to his brothers. Such a use would explain that the different patches one person was harvesting, might lie at different ends of the nara-field.²

The phenomenon that women sometimes were owners of nara-patches may be explained by the facts that the Topnaar population nearly did not grow at all³ and that there were sufficient nara-plants⁴: probably women took over patches when there were no male heirs in a family or when a father gave a patch to a favoured daughter.

3.1.2.3.4.2 Inheritance of the Rest of the Estate

Apart from this unique inheritability of immovable property only two accounts could be found where anything on inheritance is mentioned. The subchief Jakob Neichab (= Neigab) who was living around Scheppmannsdorf told missionary Bam

1 Koch: Walfischbai BRM 1883, 51, 56

2 See Koch: op.cit. BRM 1883, 51

3 According to Budack: Topnaar 3, the /Aonin-population increased from 1957 until 1975 only by 15 people to 450 people

4 Koch: op.cit. BRM 1883, 52, says that quite a lot of the pips could be sold: only since the flood catastrophe of 1933/34, when many of the nara-plants were destroyed, the nara does not play that important role anymore: Köhler: Die Topnaar-Hottentotten 103 f

that he, Neigab, had suffered a loss of cattle as well as sheep through his friends: These friends had come to visit other tribe members and were at a cattle-post of Neigab when the news reached them that Neigab had been killed by Jonker Afrikaner. They wailed for him being dead, slaughtered from his cattle and sheep and started to divide the rest of the cattle and sheep into two equal parts. They claimed that half of the cattle and sheep belonged to them because they, too, were his friends. Neigab, who had not been killed, returned and got back his cattle and sheep except those which had already been slaughtered. These were his loss.

Bam then finally remarked that such a procedure was often encountered with the estate of the Khoe-khoen.¹

The following conclusions can be drawn from this account:

The animals which usually were slaughtered for the repast were taken directly from the deceased's herd.

The friends of a deceased also feel the right to be entitled to quite a large part of the deceased's estate. This could mean that among the Topnaar the eldest son is not the sole heir of his father's estate. This view is supported by the observations about the nara-plants where the youngest son is the main heir.² Koch³ tells that after the death of a person the body was buried with his best clothes on and with a shoe on the left foot. Also, if possible, that object is put into the grave which the person was most attached to. These objects could therefore not be inherited.

1 Bam 1854 BRM 1855, 202

2 See above p. 39

3 Koch: Walfischbai BRM 1883, 56

3.1.2.4 Sources, which Deal with the Nama in general¹

A few sources do not distinguish between the different tribes:

3.1.2.4.1 H. v. François²

François made observations similar to those of the Nama tribes mentioned above³: The main heir was the eldest son. He especially got the whole livestock of the deceased if no special regulations were withstanding. The other children usually got a share of the remaining things (i.e. those except live-stock). But here, too, the daughters normally obtained nothing and even the other sons were more dependent on the goodwill of their eldest brother than on their right to inherit.⁴

The widow would retain the dowry she brought into the marriage and the progeny thereof. Similar, the younger children retained the livestock which they had obtained as presents.⁵

3.1.2.4.2 Wandres⁶

Wandres is the only source who specifies rules of inheritance to a certain extent. Only he gives details which go beyond the second order.

If a man died his wife and his children inherited equal shares. But as long as the wife lived, the estate of the man was not allowed to be partitioned.⁷ It stayed with

1 François: Nama and Bergdamara 216 ; Wandres: Zs Kolpolitik 1909, 657 ff; Nama and Bergdamara Fb 33; 1910, 269 ff; Vedder: Native Tribes 145; Schinz: Deutsch-Südwest-Afrika 100

2 François: op.cit. 216

3 See p. 37 ff

4 François: op.cit. 216

5 François: op.cit. 216

6 Wandres: Zs Kolpolitik 1909, 657 ff; 1910, 269 ff; Nama and Bergdamara Fb 33 ff

7 Wandres: Zs Kolpolitik 1909, 683 f; 1910, 280

the family and secured their daily food. One exception was allowed: If the widow wanted to return to her family, i.e. her parents or brothers and sisters, the chief would divide the estate. The widow would get her share and also that of her youngest child which she usually took along.¹

If a wife died the situation was similar: Everything stayed with the remaining family and no partition would take place.²

If both parents were dead, the live stock would be divided as follows:

- Each child would get a fifth of the estate. But they were not the only ones who were heirs. The following persons would get a tenth or a twentieth, depending on the number of living heirs: - the children of the eldest sister of the father,
- then the brother of the father,
- the eldest sister of the father,
- the eldest sister of the mother,
- the children of the brothers of the father,
- the children of the other sisters, i.e. the younger ones, of the father, and finally
- the children of the sisters of the mother.³

The personal effects of the parents, i.e. those things which were not livestock, were divided only among the children of the deceased if the parents had not stipulated otherwise in form of a last will. Therefore, when no opposing last will existed, the other relatives were excluded as heirs from the personal effects.⁴

1 Wandres: Zs Kolpolitik 1909, 684; 1910, 280

2 Wandres: Zs Kolpolitik 1909, 684; 1910, 280

3 Wandres: Zs Kolpolitik 1909, 685; 1910, 280

4 Wandres: Zs Kolpolitik 1909, 685; Nama and Bergdamara Fb 64

As the brothers of a wife did not belong to her family¹ they were not included as heirs, while other relatives could be included.² At the death of a childless couple whose parents were still alive, the parents would be their heirs; the parents of the man, however, had a preference.³ If their parents were already dead, the chief would divide the estate among the relatives of the couple.⁴ The heirs were probably chosen along the lines of the above list.

Illegitimate children of the man were regarded as legitimate ones while those of the women got nothing because they were full heirs to their natural father.⁵

Subtracted from the inheritable livestock were those animals which had to be slaughtered for the burial feast. These were therefore taken directly out of the estate before its partition.⁶

All those things, esp. livestock, which individual members of the family had got as a present from the deceased were also separated from the estate because they did not belong to it anymore, e.g. live stock of the children.

The debts of the deceased had to be paid by his eldest brother or his eldest brother's son. Only when neither of them could pay, the heir had to liquidate these debts.⁷

Last wills were known and respected. They were oral last wills which had to be made before a few witnesses. The chief would see to it that the nearest relatives of the deceased would not be totally ignored.⁸ Farther relatives

1 Wandres: Zs Kolpolitik 1909, 684; 1910, 280

2 Wandres: Zs Kolpolitik 1909, 684

3 Wandres: Zs Kolpolitik 1909, 684

4 Wandres: Zs Kolpolitik 1909, 684

5 Wandres: Zs Kolpolitik 1909, 685

6 Wandres: Zs Kolpolitik 1909, 685; 1910, 280; Nama and Bergdamara Fb 64

7 Wandres: Zs kolpolitik 1909, 685; 1910, 280

8 Wandres: Zs Kolpolitik 1909, 683; 1910; 279

or friends could therefore be heirs if this was stipulated by the deceased in a last will.

Usually no last wills were made because the rules of inheritance were generally known.¹

Three different persons were involved in the checking and dividing of the estate of a deceased:

The custodian of the estate of his parents was their eldest son.² Because he himself was main heir at the same time, someone else had to be guardian of the estate. This position was held by the parents of the deceased with a preference of the parents of the man.³ Only when these were dead would the parents of the wife hold this position. These parents also had the duty to take over the small children of the deceased couple and to look after their share of the estate.⁴

If no parents of the deceased couple were alive anymore the brother of the deceased man - but not that of the deceased wife, because he was not regarded as a member of the family - would be guardian of the estate.⁵

Finally, the partition of the estate was done by the chief who would be paid for his pains out of the estate.⁶

3.1.2.4.3 Vedder⁷

Vedder does not mention Wandres in his bibliography to his chapter on the Nama⁸ at all. His account on the law

1 Wandres: Zs Kolpolitik 1909, 683; 1910, 279

2 Wandres: Zs Kolpolitik 1909, 684; Nama and Bergdamara Fb 63

3 Wandres: Zs Kolpolitik 1909, 684

4 Wandres: Zs Kolpolitik 1909, 684; Nama and Bergdamara Fb 63

5 Wandres: Zs Kolpolitik 1909, 684; Nama and Bergdamara Fb 63

6 Wandres: Zs Kolpolitik 1909, 684 (§ 5); Nama and Bergdamara Fb 63

7 Vedder: Native Tribes 145

8 See Vedder: Native Tribes 149, 151

of inheritance of the Khoe-khoen corresponds exactly with that of the aforementioned Wandres so that it can be taken that Wandres is his source of information.¹

His account can therefore be omitted.

3.1.2.4.4 Schinz²

Schinz states, that with the death of the father his eldest son took his position and got his whole amount of livestock. He had the duty now to look after his mother and to feed her. Those things of the deceased which were not his livestock were divided by the chief among all the children of the deceased. The property of the widow remained her's. She could therefore keep, for instance, those things which she had brought into the marriage as dowry.

Similarly, all those animals which a father usually gave to a child as a present on its birth - usually a cow or at least a goat - and the progeny thereof did not belong to the inheritable livestock. They were separated from the main herd and remained the property of their individual owner.³

3.1.2.5 Conclusion

Similar to the old Cape Nama the accounts for the Nama of SWA/Namibia highlight the honoured position of the

1 It may well be that Vedder's source of information was Wandres' manuscript: Über das Recht der Naman und Bergdaman, 1908, which lies in Windhoek and which Budack has used for his Stam en Stamkaptein, see p. 290 there

2 Schinz: Deutsch-Südwest-Afrika 100

3 Schinz: op.cit. 100

eldest son.¹ That he was main heir is also stated by the general accounts of H.v. François² and Schinz.³

I would tentatively suggest that this was the traditional situation with the Nama at a time when they were not yet influenced by western civilization and religion. The eldest son was main heir and with this privilege he simultaneously obtained the position as head of family which meant that he had to support his mother and brothers and sisters in the same way his father had done this.⁴ To be able to support the whole family, he had to be main heir because without the means of his father he would not have been able to do just that.

The duties which were laid upon him also justified the other advantages he obtained by being head of the family: The newly-wed husband of his sister would work for him for a while⁵; in turn he had to provide the marriage feast. He would also collect the gifts which were made during a courtship to one of his sisters.

Rudiments of this custom can be seen in a few statements made on the Orlam where it is stated that the eldest son got more than his brothers and sisters.⁶

The development found with the here discussed Orlam-groups of the Bethaniers (= !Aman), the Bersebaers (= !Hai-/khauan) and the Witboois (= /Khobesin) towards an equal sharing not only between males but also between the children of both sexes may also tentatively be attributed towards the influence of western civilization and religion with which the Orlam-groups had been in long contact.⁷

1 Kolb: Vorgebirge der guten Hoffnung, 1926, 141 f; Schweickhardt: Nama Fb 24; Fenchel: Nama Fb 33

2 Nama and Damara 216

3 Deutsch-Südwest-Afrika 100

4 See above p. 32 f

5 Kolb: op.cit. 1926, 141 f; Schapera: Khoisan Peoples 325 f

6 Berger: Nama Fb 52 (Bersebaer = /Hai-/khauan); Kohler: Zs Rewi 1902, 347, and Olpp: Verhältnisse 1895, 183, on the Witboois (/Khoebisin); see also Brinckner 1863 BRM 1864, 174

7 See Hoernlé: Social Organization 4, 8; see also p. 3

In the traditional social structure the family was a closed-knit unity because its members were dependent on the head of the family who had inherited the property of the family and who was in charge of the property. Although this dependence (on the head of the family) was diminished to a certain extent by the abovementioned change of the inheritance pattern, the importance of the family and its unity is still found in the customs of western-influenced Nama as Wandres¹ points out:

If a couple died and left behind minor children their grandparents acted as guardians and trustees of their stock. Also, the chief had to see to it that a family would not become impoverished by a harsh last will of the testator who ignored his own children.

Finally, it can therefore be stated that the traditional pattern of inheritance favoured the eldest son as main heir and that of this main traditional point only rudiments are still seen at the turn of the century with the Orlam-groups.

3.1.3 Special Rules

Although the tribes had different rules, some rules remain still to be mentioned and discussed.

3.1.3.1 Rules regarding the Topnaars (= /Aonin)

What makes the Topnaars exceptionally interesting as a Nama tribe is the annual harvesting of the nara-melon and the rules relating to that plant. As outlined above², these nara-plants form the only immovable property which

1 Wandres: Zs Kolpolitik 1909, 684

2 See above p. 13 f

was and still is privately owned. From the sources it clearly is discernable that these plants were not individually owned. Instead a whole family always was and is regarded as owner.¹ Also, as no individual was the owner, these rights of ownership were passed on from generation to generation, with each individual member of the family having equal communal rights over the family patch.

3.1.3.2 Last Wills

Apparently, last wills were known for quite a time.² The last will had to be made public before a few witnesses.³

According to Wandres⁴, the chief had the duty to see to it that the nearest relatives were not ignored by the last will.

3.2 Succession

As shown above⁵, a Nama-chief usually was more a primus inter pares than a powerful, autocratic ruler.

This situation led one of the earliest travellers to the southern part of SWA/Namibia, Carel Frederick Brink⁶, who was a participant of Hendrik Hop's expedition to Great Namaqualand in 1761/1762, to the observation that they had no chief (Oberhaupt) whatsoever and yet were living

1 Budack: The Aonin or Topnaar 9; Palgrave cited from Köhler: Die Topnaar Hottentotten 113

2 E.g.: A member of the Lamberts (Gai-/khauan) ordered his heirs to give a young cow to missionary Judt, Judt BRM 1887, 86; a child begged that her small chair should be given to its schoolmaster, Albath BRM 1897, 375; Olpp: Verhältnisse 1895, 183; Wandres: Zs Kolpolitik 1909, 683

3 Olpp: op.cit. 183; Wandres: Zs Kolpolitik 1909, 683

4 Wandres: Zs Kolpolitik 1909, 683

5 See above p. 4

6 cf Brink: Tagebuch in Moritz 1915, 167 ff, 178

in peace. Because this observation was based only on a short meeting with the Nama it does illustrate the relatively modest role of a Nama chief.

However, he nevertheless had certain powers and certain duties which clearly put him above his fellow tribesmen.

3.2.1 General Rule

Generally the status of a chief was inherited by his eldest son¹ of his main wife.² This means that the chieftainship was hereditary in the male line of the senior sib.³

The fact that the eldest son of a chief usually was the hereditary heir of his father's chieftainship, is most aptly illustrated by the numerous remarks esp. of the missionaries: When speaking of the eldest son of a chief they often call him the future chief.⁴ This, of course, is information the missionaries were told by the members of the tribe.

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- 1 Kolbe: Vorgebirge 1926, 43; Schinz 103; Schapera: Khoisan Peoples 332; Budack: Stam en Stamkaptein 284 f; Fabri BRM 1856, 321; Kleinschmidt in Moritz 1915, 250; Wallmann/Kleinschmidt BRM 1852, 324; Wallmann/Kreft BRM 1856, 8; Wallmann BRM 1856, 321; Kleinschmidt BRM 1859, 138; Olpp: Zur Charakteristik der Namas BRM 1876, 71 ff, 77; Heider BRM 1878, 309; Olpp: Verhältnisse 1895, 168
 - 2 Budack: Stam en Stamkaptein 284
 - 3 Hoernlé in Am. Anth 1925, 9; Schapera: Khoisan Peoples 225 f; see also Budack: Stam en Stamkaptein 250; Budack: Traditionelle Struktur 236, 241; Wallmann BRM 1851, 396 f; Th. Hahn: Die Nama-Hottentotten BRM 1883, 63 f
 - 4 Kleinschmidt/Vollmer BRM 1853, 63 f; Kleinschmidt 1855 BRM 1856, 100; Wallmann BRM 1855, 351 f; Kleinschmidt 1856 BRM 1857, 83; Krönlein/Kreft BRM 1857, 196; Kleinschmidt BRM 1859, 138; H. Hahn 1859 BRM 1860, 212; Krönlein 1862 BRM 1863, 216, 220; Brinckner 1863 BRM 1864, 178; Kleinschmidt 1864 BRM 1865, 335; Krönlein BRM 1867, 359; Olpp BRM 1872, 139; Albath BRM 1896, 369; Müller BRM 1902, 45; Nyhof BRM 1910, 244; Geibel: Kolblatt 1909, 825

The rule of primo-geniture is also enhanced by the fact that in those cases when a younger brother or someone else tried to succeed to the chieftainship at least a part of the tribe followed the actual heir, i.e. the eldest son of the former chief, at least initially until the one or the other could win the whole tribe behind himself, as Jonker Afrikaner, a younger son¹ of Jager Afrikaner did², or until the tribe finally broke up as happened to the Bethaniers (!Aman) when the Boois-families decided to leave because of constant difficulties with chief David Christian Fredriks.³

Even when a chief was not popular and a brother broke away, many members of such a tribe would stay with the hereditary chief as was the case with chief Jan Fredriks of the Bethaniers when his brother Christian broke away.⁴

Also, a chief was a chief even though he might have been poor. Mostly, a chief was rich⁵ because he also inherited all the cattle and other animals of his father. But some chiefs were impoverished for one or other reason which entailed that members of his tribe were richer than the chief. This, however, did not alter anything at the acceptance of such a man as chief.⁶

Therefore, for the Law of Succession primo-geniture is the rule.

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- 1 cf H. Hahn: Jonker Afrikaner in BRM 1862, 29 ff, 33; Fabri BRM 1865, 23
 - 2 Wallmann: Junker Afrikaner in BRM 1849, 113 ff, 114 f, 121; H.Hahn: op.cit. in BRM 1862, 29 ff, 33, 38 f
 - 3 This split must have happened before 1875 already because the then missionary of Bethanien, Kreft, tried in 1875 to bring them back: Bam 1879 BRM 1880, 145; Bam 1883 BRM 1884, 80: also, the Keetmanshooper (Kharo-loan) had separated from the Red Nation (Gai-//khaun): Fenchel BRM 1895, 334; split within the Bersebaer (Hai-/khauan): Hegener BRM 1895, 113, 236
 - 4 Kleinschmidt 1842 in Moritz 1915, 250
 - 5 Kleinschmidt 1842 in Moritz 1915, 250; Wallmann 1851, 397; 1855, 339
 - 6 Wallmann/Scheppmann BRM 1850, 338; Subchief Neigab of the Toopnaar (Aonin) was richer than the chief Kagab; Eggert BRM 1857, 212, 215

When a chief had no son, one of his brothers would be next in line for the chieftainship¹ with a preference of the oldest.²

Next in line were the sons of the brothers when a chief had neither living sons nor brothers left.³

Two examples are given to illustrate these rules:

Old Abraham of the Bondelswarts (!Gami-/nûn) had abdicated in favour of his eldest son Jacob Christian. Around 1868 Jacob Christian died so that old Abraham, who by now was blind, took over the chieftainship again. Because of his disability he would have liked to hand over the chieftainship to that son of his who now was the oldest. The elders of the tribe, however, refused this because they feared that the chieftainship then would not get to the real heir Willem Christian, eldest son of Jacob Christian and grandson of Abraham. Because he still was a bit too young to take over the full chieftainship, the elders elected him as sub-chief and only later he became chief.⁴

Another good example is also given by missionary Weber⁵ about the Khauas-Hottentots (Gai-/khauan). In the year 1864 a small-pox epidemic raged in Gobabis. On the 13th of February the old chief Amraal Lambert died and his eldest son Lamber Lambert became chief.⁶ On February 28th Lambert Lambert died, so that his eldest son Wilm was next in line but he too died on the 28th of February.⁷ The missionary then hoped for the second son of Lambert Lambert, Abraham. but he died on March the 5th.⁸ Only two sons of Lambert

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- 1 Kolbe: Vorgebirge 1926, 44; Schapera: Khoisan Peoples 332; Budack: Stam en Stamkaptein 284; Budack: Traditionelle Struktur 262
 - 2 Schapera: op.cit. 332; this follows from the rule of primo-geniture, cf Budack: Stam en Stamkaptein 284; Budack: Traditionelle Struktur 262
 - 3 Schinz 103; Schapera: op.cit. 332; Budack: Stam en Stamkaptein 284; Budack: Traditionelle Struktur 262
 - 4 Weber 1868 BRM 1869, 111; 1869 BRM 1870, 210
 - 5 Weber 1864 BRM 1864, 325 ff
 - 6 Weber BRM 1864, 326
 - 7 Weber BRM 1864, 329
 - 8 Weber BRM 1864, 329 f

Lambert were now left, Andreas, approximately 20 years old, and John, who was 16 years of age. A member of the tribe said to Weber about Andreas that he had to learn to read and write if he would get through the epidemic.¹ This, of course, he said because Andreas was next in line for the chieftainship. However, those two were still too young to take over the chieftainship. Therefore, the missionary went on and said that it was not sure who would become interim chief. He guessed that that probably would be a nephew of the old chief Amraal.²

When one sib became extinct, the chieftainship would go over to the head of that sib which was next in the order of that respective tribe.³

Schapera⁴ claims that according to Tindall the chieftainship went to the youngest son in the first place. This, however, was not the case, as Budack⁵ points out, because Tindall's statement is concerned with the position of the youngest son regarding the Law of Inheritance and not that of Succession.

3.2.2 Approval of the Elders

Every tribe had a definite tribal council consisting of the chief and a number of elected councillors, which varied from tribe to tribe.⁶ This council could, if it had a good reason, refuse the person who had a hereditary right to

1 Weber BRM 1864, 330

2 Weber BRM 1864, 330

3 Hoernlé: Social Organization 10; Budack: Stam en Stamkaptein 284; Budack: Traditionelle Struktur 263

4 Schapera: Khoisan Peoples 332

5 Budack: Stam en Stamkaptein 285; Budack: Traditionelle Struktur 263

6 Schapera: op.cit. 332; Schinz 102; Fritsch 361 f

the chieftainship and choose another man. If the oldest son was for some or other reason unqualified for the status as chief these councillors could choose another male member of the family ¹, most probably a brother of refused man.

An example of the approval of the elders is the following: After the death of the chief Joseph Booi of the Bethaniers (!Aman) only a minor son of Joseph, also with the name of Joseph, was left. Because he still was too young he could not lead the tribe. Accordingly the elders elected an uncle of small Joseph, called Willem - he was later called David Christian - as a regent. After four years the whole tribe decided to make David Christian the real chief under the obligation that after his death Joseph would be the next chief.^{2,3}

Under normal circumstances, however, the eldest son was usually excepted without questions by the tribe.⁴ Yet there were quite a few instances where it took the councillors considerable time to make up their minds ⁵:

On December 12, 1868, old Abraham of the Bondelswarts (!Gami-/nûn) died.⁶ Until March 5, 1869 it took the elders to accept finally the rightful heir Willm Christian.⁷ Eight days they needed before they accepted the eldest son of chief #Goraxab//Oasemab of the Gai-//khauan (Red Nation, Rooi Nasie) in around 1878.⁸

- 1 Budack: Traditionelle Struktur 263; Budack: Stam en Stamkaptein 285; see also Fritsch 361 f; Kolbe: Vorgebirge 1926, 44; Wallmann BRM 1856, 323; Olpp: Zur Charakteristik der Namas BRM 1876, 71 ff, 77; Heider BRM 1878, 310; Olpp: Verhältnisse 1895, 168, 169
- 2 Wallmann BRM 1856, 321, 323
- 3 Joseph became chief after the death of David Christian in 1881: Pabst 1881, 328
- 4 Schapera: Khoisan Peoples 332; Fenchel 1883 BRM 1884, 72
- 5 E.g. Weber 1869 BRM 1870, 207; Hegner 1893 BRM 1894, 20 f
- 6 Weber 1869 BRM 1870, 207
- 7 Weber 1869 BRM 1870, 210
- 8 Heider 1878 in Quellen VI: 24 cited from Budack: Stam en Stamkaptein 285

Similarly, as Budack¹ points out, the ascendancy of Klein-Kido (/Gâbeb !A-//îmab), who was the only son of chief David (!Ā-//îb !Gamemab) of Gibeon, to the chieftainship was not altogether undisputed because the missionary Olpp² welcomed the ascendancy as totally unexpected. According to Budack³ the formal rules of succession were not adhered to in quite a few cases.⁴

It therefore can be said that the rules of Succession were that of primo-geniture, corrected and checked, however, by the tribal councillors.

3.2.3 Regency

The institute of a regent was well known among the Nama tribes. If the eldest son of a chief was still a minor at his father's death, some near relative in the male line, mostly the father's brother, would act as regent until the eldest son comes of age.⁵

Such a regency was in a few cases administered by a woman:

The gao-taras (female chief) Gamés of the Red Nation probably was a regent for some time around 1830, probably for her minor brother !Na-khom Gamab who was heir to the chieftainship after his half-brother Tsawúb Gamab had died without children.⁶

Hahn⁷ mentions a gao-taras with the name of Xam-/hâs who was regent for her minor son and Jod⁸ was told of a third gao-taras who played a role with the /Khobesin (Witboois).

1 Stam en Stamkaptein 285

2 Olpp 1876 in Quellen XVI: 244 cited from Budack: op.cit. 285

3 Budack: op.cit. 285

4 E.g. Krönlein BRM 1874, 84: the elders of the Bersebaer (/Hai-/khauan) elected after chief Paul Goliath's death his brother Jakobus Isaak as chief although Paul Goliath had a son.

5 Schapera: Khoisan Peoples 332; Kleinschmidt 1842/1843 in Moritz 1915, 138 ff; Wallmann BRM 1856, 323; Nyhoff BRM 1910, 244; Budack: Traditionelle Struktur 137, 257

6 Budack: Stam en Stamkaptein 285 f; Budack: Traditionelle Struktur 89

7 Th. Hahn: Tsumi Goan 19

8 Petrus Andreas Jod, cited in Budack: Stam en Stamkaptein 286

Her name was !Ā-//îs and she was regent after her husband had died without own children. After she had married again the tribal council ruled that her first-born son should be the next chief.

A woman, however, could not succeed of her own right to the chieftainship but could only be a regent.¹ This is also implicitly stated by Vedder², when he says that between 1830 and 1840 Games "took over the reign till he became of age". The nearest a woman was to being chief is our third example. If it is true, then this is in so far remarkable as !Ā-//îs was made regent without a potential future chief in sight. But still, as soon as she had married a restriction to her regency was decided.

Perhaps this "liberal" attitude should be seen in connection with the fact that the /Khobesin were an Orlam tribe influenced by western civilization?

Still, even the possibility of a woman being regent is in itself remarkable enough. This fact illustrates aptly the quite emancipated and strong position of the Nama women. However, those women which really were regents for a while probably had to have a very strong position in their tribe which was based on their own intelligence and energetic appearance. This is underlined by Hahn³ who states that the "energetic" wife of a chief might be the ruling-woman when her son was not yet of age.

Other forms of regency were also known. The above mentioned examples that women were regents, were exceptions. Usually some male relative of the minor heir of the chieftainship would take the part of a regent.⁴

1 Schapera: Khoisan Peoples 332; Budack: Stam en Stamkaptein 286; Budack: Traditionelle Struktur 260

2 Vedder: Native Tribes 115

3 Th. Hahn: Tsuni-//Goam 19

4 cf Anon.: Häuptling von Bethanien BRM 1856, 321

The tribal council would elect the regent¹: In 1842, after the missionary Knudsen had taken over the station of Bethany again, the !Aman (Bethany) elected two relatives as regents for the minor heir Joseph who was a son of Joseph (sic) and a grandson of Kobus Booï. One of the two regents was the uncle of young Joseph, i.e. the brother of the elder Joseph, who had taken his brother's widow for his wife, as was the custom with the Nama and Orlam tribes. Tentatively, two rules might be drawn up:

As long as a chief had an own son he was the heir to the chieftainship: this would not go to the chief's brother on grounds that the chief's son still was too young. As long as an obviously not disabled son existed the only status a chief's brother could attain, was that of a regent.

Secondly, although the regent probably had to be elected by the tribal council a tendency existed to prefer nearest male relatives: perhaps, because, as e.g. a brother of the former chief, they had the greatest influence.

Lastly, the regency did not have to be filled by one person only, but, as we have seen in Bethany 1842, it could also be filled by more persons.

3.2.4 Abdication

The chief had the personal right to abdicate in favour of his heir during his lifetime on any good reason like ill health or advancing old age. Such abdications were mentioned from time to time.²

1 Anon.: Häuptling von Bethanien BRM 1856, 321

2 Wallman from Kleinschmidt BRM 1849, 2ff, 6 mentions that when he started missionizing among the Swartboois of Rehoboth, he visited the ex-chief Manasse who then was around ninety years of age, could not walk and was nearly totally deaf and blind. At that time Manasse's son Fredrik Willem Swartbooï was chief which indicates that Manasse had abdicated. H.Hahn BRM 1862, 30 f: The grandfather of Jonker Afrikaner abdicated because of old age in favour of his son Jager: see also Weber 1868 BRM 1869, 111 for a case among the Bondelswarts (IGami-/nûn); Fabri BRM 1871, 134; Fenchel 1883 BRM 1884, 72, where Tseib of the Keetmanshooper (Kharo-loan) abdicated because of old age in favour of his eldest son Jonathan

Schapera claims that abdication was an entirely personal right of the chief so that he could not be compelled to abdicate against his own will.¹ This seems to have been the case. When the Swartbooi chief Fredrik Willem Swartbooi grew too old his councillors, who thought him unable to govern, tried to talk Fredrik Willem into at least accepting his son David as co-regent. Those people, however, did not talk about a formal deposition of the chief.² In fact, they did not manage to talk Willem into abdication but only managed to accept his son David as a co-regent.³ H. Hahn⁴ even claims that it was custom among the Khoekhoen that those chiefs who reached a very old age abdicated.

But here too, no mention is made that the old chiefs ever were forced to do so.

The only case I could find where someone actually was deposed against his will, was that of the Keetmanshooper chief Jonathan by chief Willem Christian of the Bondelswarts (!Gami-/nûn).⁵ But here apparently total inability to govern was found, as will be explained later.⁶

3.2.5 Paramount Chief

Quite often the institute of a paramount chief is mentioned.

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- 1 Schapera: Khoisan Peoples 332; cf Schinz 102; Olpp: Verhältnisse 1895, 168; Budack: Traditionelle Struktur 264.
 - 2 Kleinschmidt 1856 BRM 1857, 89
 - 3 Kleinschmidt BRM 1859, 148
 - 4 H. Hahn: Jonker Afrikaner BRM 1862, 22, 30 f
 - 5 Fenchel BRM 1880, 208
 - 6 See p. 60

Until the 1860 the chiefs of the Red Nation (Gai-//khaun) were mentioned as having been paramount chiefs¹ who even collected certain taxes.² Undoubtedly, around the years 1820 these chiefs were regarded by the other Nama tribes as the paramount chiefs.

Similarly, the Afrikaners (//Eixa-//ain), an Orlam tribe, were regarded around the years 1840 as being paramount to other Orlam and even Nama and Herero tribes.³ This paramountcy, however, was probably based only on the strength of that tribe and its chiefs, and not on a long tradition.⁴ Thus, as long as the Afrikaners had strong chiefs like Jonker they succeeded in rallying behind them a number of tribes and their paramountcy was quite strong:⁵ At the end of the 1840's Jonker ordered the Topnaars (/Aonin) to leave the Kuiseb and move to the Swakop river. Chief Kagab and his people did so and Neigab, who stayed at the mission station, was in great fear because of his own insubordination.⁶

However, after Jonker's death, the strength of the Afrikaners disintegrated because Jonker's son Jan did not have Jonker's personal charisma and his strong abilities as a leader anymore.

A hereditary paramountcy then did not exist.

Another kind of paramountcy was found between the Bondel-swarts (!Gami-/ !nun) and the Keetmanshoopers (Kharo-!oan)

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- 1 Gorth BRM 1853, 374; Wallmann/Krönlein BRM 1854, 114; Wallmann BRM 1854, 257, 259; 1855, 50, 350, 351; 1856, 134, 230; Kleinschmidt 1856 BRM 1857, 311; Fabri BRM 1862, 244; 1865, 24; Budack: Traditionelle Struktur 76 f; Kitchingman 1820 in Moritz 1915, 215; Th. Hahn: Die Nama-Hottentotten 305
 - 2 Vollmer 1854/1855 BRM 1855, 365, states that taxes for Oasib were abolished esp. by the Orlam for many years already because they did not feel like paying to Oasib; Olpp: Verhältnisse 1895, 162
 - 3 Kleinschmidt 1842/1843 in Moritz 1915, 244 ff, 256; Rath in Moritz 1916, 234; Wallmann: Junker Afrikaner in BRM 1849, 113 ff, 125; Wallmann/Scheppmann BRM 1850, 339, 347; Kleinschmidt 1849 BRM 1850, 348; 1854 BRM 1855, 27 f; Schöneberg BRM 1855, 62
 - 4 Vedder: Tribes 119; Schapera; Khoisan Peoples 335
 - 5 Wallmann/Scheppmann: Die Topnaar BRM 1850, 145 ff, 151, 154; Wallmann/Scheppmann BRM 1850, 339, 347; Kleinschmidt 1849 in BRM

because the Keetmanshoopers had settled on the tribal territory of the Bondelswarts.^{1,2} The Bondelswarts, inter alia, had to approve the chiefs of the Keetmanshoopers.³ When old Tseib abdicated in favour of his eldest son Jonathan in 1884, the elders were quick to approve this. However, before Jonathan was finally made chief the approval of the Bondelswarts had to be obtained.⁴

In 1890, after Jonathan had given away mining concessions which included the rights over his people and over his chieftainship, he was declared unable to govern and deposed by Willem Christian without protest.⁵ It must be understood that the majority of people living in and around Keetmanshoop in 1884 already were Bondelswarts.⁶ This fact, and the paramountcy of the Bondelswarts because the land belonged to them, together with the above mentioned sell-out of the interests of the Keetmanshoopers by the clearly inadequate chief Jonathan led to his deposition 6 years later.

3.2.6 Sib-Leader (!hao-!nati di gai-khoegu or !hao-!nati di tana-khoegu)

Each Nama tribe was divided into different sibs. The leading sib furnished the chief.

(from p. 59) 1850, 348; Wallmann/Scheppmann BRM 1854, 15 f; Bam 1854 BRM 1855, 201; 1855 BRM 1856, 301

6 Wallmann/Scheppmann BRM 1850, 347; see also Wallmann/Scheppmann BRM 1854, 16; see also Köhler: Die Topnaar-Hottentotten 109

1 Fenchel 1883 BRM 1884, 334

2 See also p. 10

3 Fenchel 1883 BRM 1884, 72; 334; see also Wandres BRM 1890, 198

4 Fenchel 1883 BRM 1884, 72

5 Fenchel BRM 1890, 208; Wandres BRM 1890, 198

6 Fenchel 1883 BRM 1884, 334

The other sibs also had a head who had certain very limited rights and duties. His main duty was to see to it that his sib prospered.

Similar to the chief a sib-head inherited this status from his father, etc.; the status of a sib-head was based on genealogical seniority.¹

3.2.7 Sub-chief (!nagamâ gao-aogu)

According to Budack², a sub-chief (!nagamâ gao-aogu) for the Nama was not a sib-leader nor a chief of a subjected tribe nor a district leader but the main advisor and deputy of the chief: When a chief was ill or away the sub-chief took over his position for that time. As deputy of the chief he also played an important role in the jurisdiction of the tribe.

The main difference to the status of chief was that the status of the sub-chief was not inheritable. A person could become sub-chief by either being elected by the tribal council or by being appointed by the chief himself.³

No inheritable status was therefore connected with the position of a sub-chief.

1 Budack: Der Unterhauptling 64

2 Budack: op.cit. 67

3 Budack: op.cit. 67

Chapter 2: The San

1. Introduction

1.1 The Land

The San live in a region comprising the central Kalahari, Eastern SWA/Namibia and up to Southern Angola. The region does receive a fair amount of rain; this rain, however, falls only during a few months in summer. Then, after a short abundance, water becomes scarce for most of the year again.¹ A fairly large amount of game is found.

1.2 The People

1.2.1 Production

The San were, and a few still are, hunter-gatherers. Staple food is veldkos, i.e. edible plants, which are collected by the women. They also collect small animals like mice, lizards, snakes, grasshoppers etc. The men mainly indulge in hunting. This lifestyle governs their whole life. The studies done by Marshall and Lee in the fifties and sixties were done on San who lived still as hunter-gatherers. On these traditional groups, this account is based. Therefore, although this traditional mode of living is now vanishing, this account is written in the present tense.

1.2.2 Social structure

The San are divided into several tribes² which are only united by common languages. Usually these different

1 See for instance Yellen and Lee in Lee/DeVore: Kalahari Hunter-Gatherers 30

2 The term "tribe" is used although no tribal organization with political organization exists. Therefore the critique of the term "tribe" applies here as well as in Chapter 1, see p. 2; see also Silberbauer 62

tribes are divided like this:¹

Northern San - comprising mainly the !Kung

Central San - comprising mainly the Nharo, G/wi, //Gana
and the

Southern San - comprising the !Kǀ² and a few others which
are nearly or are already extinct.

The largest entity within a tribe is the band, usually comprising about twenty five persons among the !Kung of Nyae Nyae³, between forty and sixty among the G/wi⁴, thirty to fifty among the Nharo as found in 1928⁵ and thirty to thirty five among the !Kǀ.⁶ There is a continual coming and going as members leave for other bands, on visits or permanently. The band is comprised of a few extended families so that every member of a band is related in some way or other to another member of the band.⁷

The band claims certain territories for collecting veldkos and for hunting. Leadership among the San is not found in the sense that a chief or headman exists.

The most that can be said is that a sort of leader may exist to whom members of the band go quite informally to ask for help. Such a man has no authority.⁸

The older studies still report about a "headman"⁹ although they, too, state that his powers are minimal.¹⁰ They seem to have been stronger in earlier years.¹¹

1 See Lee in Lee/DeVore: Kalahari Hunter Gatherers 8

2 This spelling is used by Heinz: !Kǀ Bushmen; Lee in Lee/DeVore: op.cit. spells it !Xo

3 Marshall: !Kung 196

4 Silberbauer 62

5 Bleek: Naron 4

6 Heinz:op.cit. 52

7 See Marshall: op.cit. 197 f; Silberbauer 62

8 Marshall: op.cit. 195

9 Wilhelm: !Kung Buschleute 154; Kaufmann: #Auin 154; Bleek:Naron 36 f

10 See esp. Bleek: op.cit. 37

The G/wi of the central Kalahari also do not know the institution of a headman. The band is a rankless society where every adult member has equal rights. No difference between the status of adults is found. If somebody cannot reconcile his opinions with that of the majority, he leaves the band and joins another. A band may also split in two.

A good hunter may have an important say in all matters regarding hunting while another member's view may be counting more than others in another matter where he is regarded as being very good. This, however, is only a question of esteem, not of status. One interesting position involving a matter of status is that of the "owner" of the band's territory. Such an owner should be the oldest descendant of the man or group of men who first moved into the area. "The position of 'owner' does not invest the title holder with any special status except the honour of being the first to be asked for permission to settle."¹

Silberbauer then goes on to make it quite clear that this status is only symbolic: "This (i.e. the permission to settle) may, of course, be refused by the band as a whole even if the 'owner' should agree to the entry of the newcomer."² The 'owner' thus has no power to overrule the rest of the band.

The 'owner' can either be male or female.

Silberbauer tells of a very old woman in one band, who, being half-senile and crotchety, and having no authority whatsoever, was nevertheless always pointed out as the 'owner' of the territory to whom visitors therefore had to go first to announce themselves and ask permission to stay.³

1 Silberbauer 71

2 Silberbauer 71

3 Silberbauer 71

The observations of Marshall¹ for the !Kung of Nyae Nyae are quite similar: One man in a band, called K"xau N!asi, gives focus to the ownership of the resources of plant food and water that his band claims as its own, i.e. he "personifies that ownership and gives it a voice".² However, as with the G/wi he has no powers to withhold resources from a member of his band nor does he have a stronger claim to these resources than anybody else. He, too, is the one who has to be asked by outsiders when they want to take veldkos or water from the band's resources.³

For the !Kǒ Heinz⁴ gives a slightly different version: With them the "headman" is the initiator of undertakings; he may even stand out a little among his fellow band members and he represents his band in negotiations with outsiders. "One could describe him as the soul of the band's activities, but not necessarily its leader."⁵

Various bands of a region are related to each other through intermarriage. The members of these different bands frequently visit each other and then also share the food with their hosts. Such "related" bands Heinz⁶ calls a band nexus because of their close kinship and friendship ties. Similar to the band nexus of the !Kǒ probably are the related !Kung bands of the Nyae Nyae area⁷ and the "band alliances" of the G/wi.⁸

1 Marshall: !Kung 191 - 195

2 Marshall: op.cit. 192

3 Marshall: op.cit. 193

4 Heinz: !Kǒ Bushmen 55 f

5 Heinz: op.cit. 55

6 Heinz: op.cit. 91 ff

7 Heinz: op.cit. 91

8 See Silberbauer 76

1.2.3 Family Life

San are living mostly with one wife only although polygamy is practiced from time to time.¹ After a San has married he has to render bride service to his parents-in-law for quite a time. This leads to a slight tendency towards matrilocality according to a study of the Dobe !Kung by Lee.² After having rendered bride service, quite a few couples return to the husband's parents thus living patrilocal. Other couples also live neolocally.

1.2.4 Sources

Main sources were older studies done by Bleek in 1928, Kaufmann 1910, Passarge 1907 and Wilhelm between 1914 and 1919. Of the newer sources esp. the studies of Marshall of the Nyae Nyae !Kung of SWA/Namibia, but also those of Silberbauer, Heinz, Lee and Steyn were referred to. The stress, however, has been laid on those tribes which also occur in SWA/Namibia.

Secondary sources like Immenroth and Schapera have only occasionally been mentioned as they are exclusively based on primary sources which I have used too.

1 Schapera: Khoisan Peoples 103

2 Lee in Lee/DeVore: Kalahari Hunter-Gatherers 78

2. Law of Things

Regarding the primitive lifestyle of the San, there are naturally not many things which a person possesses.

2.1 Immovable Things

2.2.1 Land

The San are neither cattle raisers like the traditional Khoe-khoen and Herero were, nor agriculturalists like the Ovambo; land is therefore neither valuable to them for grazing cattle nor for cultivating grain. Because they are hunters and gatherers, land only has a value for them as hunting grounds and for collecting veldkos and fire wood.^{1,2}

Marshall records a man who said: "What good is ground that produces no food? One cannot eat it."³

In accordance with the other tribes of SWA/Namibia land as such has no value for the San; selling of land is completely unknown to them.

Land belongs to the various bands.⁴ For the Nyae Nyae !Kung Marshall⁵ has recorded the following which applies more or less to the other San tribes as well: Every !Kung speaks of his n!ore which is the territory where he lives or where he comes from, i.e. that place to which he belongs.⁶

To fulfill the requirements of a band, its territory has to have a permanent or at least semipermanent waterhole

1 Lee: Subsistence Ecology 170, found the ratio of the food intake of the !Kung in the Dobe area to be 25 % meat to 75 % vegetables!

2 E.g. Kaufmann: Die Auin 148, 156; Marshall: !Kung 72, 92

3 Marshall: op.cit. 72

4 Marshall: op.cit. 71; Bleek: Naron 4; Wilhelm: !Kung Buschleute 158

5 Marshall: op.cit. 71

6 See also Lee in Lee/DeVore: Kalahari Hunter-Gatherers 77 f

as a base for the band during the dry season. Also for this dry season there have to be areas of plant foods (veldkos) near the waterhole to which the people must be able to walk for gathering veldkos without perishing from thirst. A band may also have an area further off, like the waterless mangetti groves, which can only be reached during that time of the year when rainwater can still be found in open pans, temporary waterholes, or hollow trees. A band therefore has more than one area which it claims as its exclusive territories for gathering veldkos.¹ On this ground a band frequently moves around, depending on where veldkos and game are found. Thus, "they are nomads - yet cling to the soil".² Bleek describes the attachment of the Nharo to their territory by the following incidence: The band which she had studied begged her to stay in order to earn more tobacco and clothes. Yet no persuasion could bring them to move to a place near to Gobabis where they could have had all that.³

Such a territory of a band has no clearly defined boundaries which could be depicted on a map with a clearly drawn line. Each San, however, knows exactly where the territory of his band begins and ends.⁴ Between the territories of the different bands there may be and often are strips of no-man's-land where no veldkos is gathered.⁵

It has to be stressed that the notion of band territoriality in all its strictness does not apply to hunting among the !Kung of Nyae Nyae.⁶ For the !Kung of Dobe Lee claims that not only for hunting but also for collecting veldkos the notion of territoriality is wrong.⁷

1 Marshall: !Kung 71

2 Bleek: Naron 4

3 Bleek: op.cit. 4

4 Marshall: op.cit. 71 f

5 Marshall: op.cit. 72; Heinz: !Kõ Bushmen 106

6 Marshall: op.cit. 131

7 Lee in Lee/DeVore: Kalahari Hunter-Gatherers 75

In the Nyae Nyae and Dobe territories animals belong to no-one until they are shot. There they may be followed and shot anywhere.

However, Marshall limits this observation to the Nyae Nyae area and concedes that the situation may be different between !Kung who are not as closely bound by kinship and friendship ties as the Nyae Nyae !Kung and in areas which are more densely populated.¹

She was told by one of her informants that he once had been hunting far away from the people he knew. He nearly had a fight with another !Kung which frightened him so much that he decided not to go there anymore.²

For the Hukwe Gusinde³ states that every Hukwe is free to hunt, collect veldkos or fish wherever he wants to. Apart from a tendency of the Hukwe people to go where they had been successful before, these are territories which are neither claimed by bands nor by individuals.

Heinz⁴ gives a slightly different distribution of land among the !Kö: Only between different band nexusses a strip of no-man's-land is found; this band nexus is therefore the true territorial group. The clearly defined area of the band nexus itself is subdivided into the hunting areas which belong to the different bands. Though the strips of no-man's-land are missing between the areas of the various bands within the nexus, each band member knows exactly his area, although disputes about the exact extent of band territory are known: Heinz reports about a certain dispute that no fight erupted but that the dispute never really was settled.⁵

1 Marshall: !Kung 132; see also Booyens 42

2 Marshall: op.cit. 132

3 Gusinde: Von gelben und schwarzen Buschmännern 105

4 Heinz: !Kö Bushmen 106

5 Heinz: op.cit. 84

The territory of a band is accessible to everyone in the band; the band is the smallest territorial unit. Nevertheless, each family has a certain area of activity: A man is expected to go hunting on that side of the village on which his hut is built. Similarly his wife will collect veldkos and firewood there only: "No woman would think of walking through a settlement to collect wood from the opposite side."¹ But clearly, these places do not represent subdivisions of the band's land; even when a band does break up and the families go off to such places.²

Visiting between people of different bands is found often and, apart from keeping kinship and friendship ties alive also helps to keep the resources of an area equally distributed.³

When a hunter wishes to hunt another band's territory he may do this only after having obtained permission from that other band.⁴ Among the !Kō such permission will normally be granted readily to members of the same band nexus.⁵

Thus only between friendly hunting bands can it occur that a hunter from one band will trespass into the region of another in pursuit of a wounded animal. Among the #Auin the game will then be shared.⁶ Marshall also states that hunters will give a present of meat to the owners of a territory, when they hunt away from the Nyae Nyae area, if they should meet them, although a tribute is not obligatory.⁷

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- 1 Heinz: !Kō Bushmen 28
 - 2 Heinz: op.cit. 28
 - 3 Marshall: !Kung 181
 - 4 Heinz: op.cit. 84
 - 5 Heinz: op.cit. 84
 - 6 Kaufmann: Die #Auin 148
 - 7 Marshall: op.cit. 132

The land a band claims as its own is owned communally;¹ although there is an awareness of the "headman's" association with territorial control among the !Kǃ, they themselves hold that "all band territory belongs to everyone in the band".² This view is supported by the fact that individuals can enjoy recognized facilities, mostly water, within their band area³ and that a "headman" does not have the power to exclude a member of his band arbitrarily because the right to a territory is inalienable.⁴ The abovementioned association of the "headman" with territorial control results from the control over the resources of a band which is exercised only on behalf of the band by the "headman" together with the group of old people.⁵

The only private use of ground which could be found among the San is mentioned by Kaufmann about the ≠Auin⁶ around 1910: When among the ≠Auin a man burns a piece of veld in order to promote the growth of veldkos, he alone has the right to those plants. On this specific piece of ground nobody has the right to gather veldkos without the permission of this man, not even members of his band. This right, however, extends only to plants which have grown after the fire. This right therefore is only a usufructuary one which does not confer ownership of the land.

Nowadays San are more or less used to strangers passing through their territory. Formerly, however, travellers had to ask permission to pass through a band's territory.⁷ Territoriality was strictly respected formerly: In fear of being mistaken for poachers San seldom went to

1 Heinz: Kǃ Bushmen 84; Marshall: !Kung 187; Lee in Lee/DeVore: Kalahari Hunter-Gatherers 77 f; Kaufmann: Die ≠Auin 148

2 Heinz: op.cit. 84

3 See below p. 72

4 Marshall: op.cit. 189, 192

5 Heinz: op.cit. 84

6 Kaufmann: op.cit. 148, 156

7 Heinz: op.cit. 85

trade but rather left this to the women. The fear of getting prosecuted by San-bands was strong among the San from other territories.¹

In conclusion it can be said, that, in accordance with the other tribes of SWA/Namibia no individual ownership of land is known among the San.

2.1.2 Water

Open water or underground water-sources are regarded as property of the band which claims the surrounding area as its own.² Among the !Kǃ, apparently every member of the !Kǃ is allowed to drink water from such sources. From a waterhole which just lies on G/wi territory, !Kǃ people would not drink because here not only a band boundary but even a language group boundary exists.³

Among the !Kung of Nyae Nyae all people are allowed to drink from large permanent water-resources they come upon.⁴ Similarly, among the !Kǃ everyone is free to drink from government boreholes.⁵ With the !Kung and the !Kǃ individually owned water resources are found: water-trees and stones with potholes which contain water are owned by the finder who would be resentful if anyone, including his sons, would drink from them.⁶

Yet, water is thought as belonging more to mankind than to individual bands. If someone is very thirsty he takes water also from individual resources:⁷ "If you are very thirsty, you have no time to ask permission."⁸

1 Kaufmann: Die ~~Auin~~ 148; Roos: !Kaũ Bushmen 81; Wilhelm: !Kung Buschleute 161; Heinz: !Kǃ Bushmen 12

2 Marshall: !Kung 187 f; 190 f

3 Heinz: op.cit. 86

4 Marshall: op.cit. 71 ff; see also Booyens 63 f

5 Heinz: op.cit. 86

6 Heinz: op.cit. 29; Marshall: op.cit. 191

7 Marshall: op.cit. 190; Heinz: op.cit. 29

8 Marshall: op.cit. 190

The ownership of scarce water either by an individual or by the band probably entails more the managing than the withholding of water.¹

This is verified by the observation Kaufmann² made around 1910 about the ~~∅~~Auin which more or less also applies to other San-groups: When there is sufficient water everyone may drink from it, but as soon as the water becomes scarce the members of the band have an exclusive right to it.

Water in ostrich eggs is individually owned.

2.2 Movable Property

Due to his nomadic lifestyle and the harsh living conditions which keep the San continually on the move and which keeps him from collecting many personal items, the things a San possesses are pretty few.

2.2.1 Household Items

The extremely simple huts of the San consist of a few branches which are put up against the wind.³ Gusinde enumerates 6 different kinds of shelters for the Hukwe.⁴ As the main purpose of a hut is to keep the fire alive⁵, the huts are most diligently built during the rainy season to provide shelter from rain and wind.⁶ But even now these huts are most simple. During the dry season anything from a small barrier of twigs around the body to keep off small animals to a few sticks bound together against the wind will suffice.

1 Marshall: !Kung 190

2 Kaufmann: Die ~~∅~~Auin 148; see also Marshall: op.cit. 187 f

3 Knudsen 1844 in Moritz 1916, 154; Kaufmann: op.cit. 139; Roos: op.cit. 81

4 Gusinde: Buschmänner 1966, 105 - 109; see also Kaufmann: op.cit. 138

5 Gusinde: op.cit. 1966, 107

6 See also Marshall: !Kung 88

However, even those huts which are built more steadfast - because the band intends to stay at one place for a few weeks - are too simple to be of any value; they are left to break down.¹

Besides, when someone has died in a band, the band leaves the "village" as it is and settles somewhere else, building new huts.² The question of inheritability of huts does not arise at all.

Apart from this a San family will have wooden pots, simple wooden spoons or spoons made from the shell of a tortoise of which the lower, flat part has been cut away.³

Emptied tschamma are used as drinking-bowls. Further, to grind veldkos, a family will have a wooden mortar with a stone glued with resin to the bottom. To grind hard veldkos, two flat stones are used. To carry water, a bushman uses an ostrich-egg.

To gather veldkos, every woman has her own wooden stick for digging. Pipes for smoking are manufactured by the San themselves from a red, soft stone.⁴

Men often carry a pipe-crammer on a piece of string around their necks. To tattoo the skin, any piece of metal is used.⁵ To sew, women use a piece of bone or sometimes a suitable piece of metal.

2.2.2 Clothing

San have only few clothes which are made from animal skins. Some of them wear sandals also made from the skin of an

1 Gusinde: Buschmänner 1966, 109; Heinz: !Kö Bushmen 29

2 Heinz: op.cit. 29; Kaufmann: Die Auin 138; Passarge: Buschmänner 110; Roos: !Kaū Bushmen 83; Yellen in Lee/DeVore: Kalahari Hunter-Gatherers 65; Wilhelm: Die !Kung Buschleute 153

3 Bleek: Naron 6; Kaufmann: op.cit. 144

4 Kaufmann: op.cit. 148

5 See for all this Kaufmann: op.cit. 138 - 141

antelope. Furthermore they have a bag for collecting anything they may find in the veld made from the skin of a steenbok.¹

2.2.3 Hunting Utensils

Bow and arrow are mostly used for hunting. But San also use spears with an iron point. These iron points are very precious to the San, because they can only obtain them through swopping them in from Lake Ngami.² For the arrows the San have a quiver. Apart from the arrows in the quiver, there is a small container made from Eland-horn or bark in which the arrowheads, also made from metal, and the arrow-poison, are carried around.³

Very seldom only does a San have a dog for hunting. These are bought from Tswanas.⁴

Each artifact is owned outright by an individual.⁵ Who manufactures or finds something becomes its owner.⁶

Among the !Kǃ those household objects which a woman brings into marriage go to the husband while those things the husband brings into the marriage go to his wife. However, this does not apply to very personal things like clothing, beads, bows and arrows.⁷ A man, just like his wife, may use his or her property as they wish, independently of the partner or family.⁸

1 See Kaufmann: #Auin 142

2 Kaufmann: op.cit. 144

3 Kaufmann: op.cit. 144

4 Kaufmann: op.cit. 144; Bleek: Naron 16

5 Marshall: !Kung 188; Heinz: !Kǃ Bushmen 30; see also Kaufmann: op.cit. 145, 155

6 Gusinde: Von gelben und schwarzen Buschmännern 127; Steyn: Nharo 206; Schapera: Khoisan Peoples 148; v. Zastrow/Vedder in Schultz-Ewerth 420

7 Heinz: op.cit. 30

8 Heinz: op.cit. 30

Children, too, can own property¹, esp. their aprons, skins and also beads, but at least among the !Kõ they cannot dispose of them against their parents' wishes.²

2.2.4 Food

Collected veldkos, game and water in ostrich eggshells for storage are the individual property of that person who has collected or hunted the object.³ Before being hunted, however, game is regarded as being anyone's animals, esp. because the larger game is migratory.⁴ When game is shot with another man's arrow, the game belongs to both men according to !Ko customs⁵, while it exclusively belongs to the owner of the arrow with the !Kung.⁶ The owner of game has the right to control its distribution⁷, and as game is always shared, no arguments will arise when for instance more than one arrow has hit an animal. Then it belongs to the hunter whose arrow has hit first.⁸

Everyone at the village, including visitors will receive a share of the game. It never happens that a hunter would keep an animal all to himself; the social pattern of sharing is so strong that such a manner is unheard of.⁹ Also, the meat would start to rot if not consumed within a few days. Also veldkos is shared when others are in need for it.¹⁰

1 Marshall: !Kung 188; Heinz: !Ko Bushmen 30; Gusinde: Von gelben und schwarzen Buschmännern 127; Steyn; Nharo 206; Schapera: Khoisan Peoples 148

2 Heinz: op.cit. 30

3 Marshall: op.cit. 188 f; see also Heinz: op.cit. 87; Kaufmann: Die Auin 156

4 Heinz: op.cit. 87; see also Kaufmann: op.cit. 156

5 Heinz: op.cit. 87

6 Marshall: op.cit. 297

7 Marshall: op.cit. 188, 297

8 Marshall: op.cit. 296

9 Marshall: op.cit. 303; Heinz: op.cit. 67; Steyn: op.cit. 175 f

10 Marshall: op.cit. 189; see also Heinz: op.cit. 67

Honey¹, just as a nest of ostrich eggs², belongs to the finder. He will indicate his claim with a bunch of grass stuck into a forked stick or a twig from a tree or bush or by marking the tree itself in which the honey is. If someone else would take from such a clearly marked nest he would be killed.³

Small animals are not shared to the extent as large game.⁴ Mostly, the hunter will share this with his or her⁵ immediate family and someone who might be around.⁶

3. Law of Inheritance and Succession

Regarding inheritance the following should be kept in mind: As there is not much - or with some San tribes nothing - to inherit, the feuds and strife which accompany the partition of an estate with other tribes like the Khoe-khoen or Herero, do not take place with the San. All have the basic tools which they need for their life in its natural surroundings; if not, they can be produced easily. There is also no general tendency to own more than others.⁷

3.1 No Inheritance with Some Tribes

Bleek stated in 1928 for the Nharo, that the deceased were buried with their clothes on. In addition, all their other possessions were put into the grave. If

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- 1 Th. Hahn: Die Buschmänner, Globus 1870, 120; Wilhelm: Die Hukwe 22; Gusinde: Von gelben und schwarzen Buschmännern 120; Marshall: !Kung 188
 - 2 Bleek: Naron 36; Marshall: op.cit. 188
 - 3 Th. Hahn: op.cit. 120; Marshall: op.cit. 188
 - 4 Steyn: Nharo 175; Marshall: op.cit. 295 f
 - 5 Tortoises, lizards, grasshoppers, snakes etc. are also collected by women, Marshall: op.cit. 295 f
 - 6 Marshall: op.cit. 295 f
 - 7 See for instance Steyn: op.cit. 107

a bow or a spear was too long it was hung on a bush nearby.¹ Passarge confirmed this in 1907 for the Nharo and mentioned that some food was also given into the grave.² Müller recorded in 1912 about a San (probably a !Kung from around the Nyae Nyae area - see map in his report) who had died while trying to pluck the fruits of the baobab. In his grave were put all his weapons and tools and also those fruits which he had already plucked before he fell to his death.³ Von Zastrow/Vedder (1931) confirmed for the !Kung, that all tools and other things were buried together with the deceased. When he left a wife with small children his brother inherited the wife and children together with his bow and arrows.⁴

In 1929 Roos was in the fortunate position to be a witness to the burial of a young lad of the !Kaũ, of the Northern !Kung. The lad was buried with all his clothes and possessions. Some food and water, which remained from his food he had used during his illness, were put at the foot of the grave. His bow and quiver were put on a pole. When Roos examined the contents of the quiver later, he found out that all arrow-heads, except three, had been removed and given to the eldest brother of the dead boy.⁵ This is a clear patrilineal pattern.

Among the more recent studies which claim that no inheritance exists, Silberbauer (1965) must be mentioned: About the G/wi he found out that all implements and weapons of the deceased are broken and placed on top of the grave.

1 Bleek: Naron 35

2 Passarge: Buschmänner 110

3 Müller in Kolblatt 1912, 530 ff, 538

4 von Zastrow/Vedder in Schultz-Ewerth 419

5 Roos in Bantu Studies 1931, 83

6 Silberbauer 93

3.2 Reports of Tribes with an Inheritance Pattern

In contrast to the above-mentioned groups, some had or have an inheritance pattern. However, with these tribes the deceased are also buried with their clothes on.¹ Similarly, hides and blankets which are used as cloaks are buried with him.² These very personal things of the deceased can therefore never be inherited.

3.2.1 Earlier Reports on Laws of Inheritance

Of the early reports the following mentioned the institute of inheritance: For the #Auin Kaufmann stated in 1910, that the eldest son was sole heir of his father's meagre estate which comprised a few tools and hides. Neither his wife nor his other children would inherit anything; they only kept those things which always had been their property.³ Unfortunately Kaufmann does not give any more details about further orders of inheritance or the inheritance of a woman.

Wilhelm⁴ states for the !Kung, that he always observed that the things of a deceased were distributed and not put into the grave as he had heard about the "Kaukaubuschleute" i.e. the Northern !Kung.⁵

When a man died his eldest son was main heir. He usually chose the best from the weapons and tools while the remaining things were distributed among other near male relatives. When the son was still a child a brother of the deceased would be the main heir.⁶ The wife of the deceased was only allowed to keep a few of the household items like pots and spoons.⁷

1 Steyn: Nharo 207

2 Wilhelm: !Kung Buschleute 153; Silberbauer 92

3 Kaufmann: Die #Auin 155

4 Wilhelm: op.cit. 153

5 Compare Müller in Kolblatt 1912, 530 ff, 538

6 Wilhelm: op.cit. 159

7 Wilhelm: op.cit. 151

When a woman dies, her husband is the first to take his share.¹ Wilhelm unfortunately does not say what that is. He then states that perhaps her elder daughters or sisters would get a share.²

Wilhelm's observations about the !Kung are in contrast to those of Passarge and v. Zastrow/Vedder. This enforces the view that the inheritance laws not only differ between San-tribes of different language groups but also between bands of the same tribe.

Lastly, about the San who lived in and around the Etosha Pan, Hei-//om, in a questionnaire answered by the Bezirksamt Namutoni around 1910, stated that the eldest son is the sole heir of his father while the eldest daughter is sole heir of her mother. However, only those children were considered who were present in the village. Married children living somewhere else could not inherit.³

3.2.2 Recent Studies on Laws of Inheritance

In contrast to Bleek⁴ who claimed that no inheritance was found among the Nharo, Steyn⁵ found that some things were inherited: No formal pattern of inheritance exists; if a man dies, his father or one of his brothers takes his things and divides them among the deceased's sons whereby the oldest son is favoured to a certain extent. If the deceased has no sons his objects are divided among his brothers and other male relatives.

If a woman dies her father divides her things among her daughters, if she has no daughters, among her sisters and other female relatives.

1 Wilhelm: !Kung Buschleute 159

2 Wilhelm: op.cit. 159

3 Namutoni Fb 1

4 Bleek: Naron 35

5 Steyn: Nharo 207

The difference between the two reports could have one of the following reasons:

Within the Nharo the different bands have and had different inheritance patterns and Bleek and Steyn studied different bands.

On the other hand, the customs may have changed during the approximately forty years which have elapsed between the two studies.

For !Kō Heinz gives a few facts:

Property given to either husband or wife by his or her parents remain with the spouse after the other's death. However, property given by one spouse to another is returned to the parents of the donor on his or her death.¹

Special objects like beads, headbands or belts are handed down from mother to daughter or daughter-in-law as a sign of affection.² These, then are not given back. The law of inheritance among the !Kō is strictly bilateral without a preference for male or female children.³

There is no compulsory levirate among the !Kō: A woman may marry her brother-in-law but this she only does sometimes.⁴

Access to land and its resources, esp. veldkos is vested in band membership. The children of a couple are members of the band of their father and mother because a wife does not relinquish her band membership on marriage.

Regardless whether they make a choice or not, children therefore inherit access to resources and band territory bilaterally.⁵

1 Heinz: !Kō Bushmen 30

2 Heinz: op.cit. 31

3 Heinz: op.cit. 186, 235

4 Heinz: op.cit. 222

5 Heinz: op.cit. 186, 235; Lee in Lee/DeVore: Kalahari Hunter-Gatherers 78; Silberbauer 68

In conclusion it may be said that, where inheritance takes place, it occurs in two forms: inclined towards patrilinealism with a preference for the oldest son, or bilaterally with neither preference for males nor females.

3.3 Law of Succession

3.3.1 Succession to the Status of the "Owner of Resources", i.e. "Headman" of a Band

This status devolves from the father to the eldest son, i.e. patrilineally.¹

Among the ≠Auin, no regency would take place when a son was not old enough to succeed; the band would just live on because the "headman" in any case had no powers.² For the !Kǃ Heinz asserts that when a son is too young a brother of his father assumes authority, but when he dies, authority falls back to the now matured son.³

The further orders are given for the !Kung by Marshall:⁴ If the eldest son leaves the band for a longer time or permanently, the position is taken by the next eldest son because the designation of K"xau n!a is not taken along. If the eldest son is away only temporarily, he would fill the position again. If no son is left in the band upon the death of the K"xau n!a, the designation passes through a daughter, presumably the eldest, to her son.⁵ This also happens with the G/wi: In the abovementioned example⁶ the designation of the old woman would be inherited by her daughter, probably because no son was there, and then by

1 Kaufmann: Die ≠Auin 154; Wilhelm: !Kung Buschleute 154, 159; Marshall: !Kung 193; Heinz: !Kǃ Bushmen 57 f; Steyn: Nharo 59

2 Kaufmann: op.cit. 154

3 Heinz: op.cit. 57; see also Steyn: op.cit. 59

4 Marshall: op.cit. 193 f

5 Marshall: op.cit. 194

6 See p. 64

the daughter's son.¹ Marshall, too, gives an example of this: In one band this position passed through two generations of women, a daughter and a granddaughter of the old K"xau n!a, whose husbands both were incomers to the band, until it eventually passed to the great grandson of the old K"xau n!a.²

A strong patrilineal inclination can thus be noted. Only for the Hei-//om matrilineal succession to the "headmanship" is found. With them the heir is the eldest son of the eldest sister of the deceased "headman".³ This fact is startling, but probably correct, Schapera attributes the matrilineal system to the influence of the bordering matrilineal Ovambo.⁴

However, Schapera's⁵ and Lebzelter's⁶ claim that the !Kung also adhered to matrilinealism is wrong. I could not find one source which states matrilinealism also for the !Kung. On the contrary, Wilhelm⁷, who studied the !Kung between 1914 and 1919 and Marshall⁸ expressly state that succession is patrilineal.

3.3.2 Leadership

The "owner" of K"xau n!a may or may not be a leader of his band.⁹ Such a "leader" emerges because he is a good hunter or has an agreeable personality. He is an individual who

1 Silberbauer 71 f

2 Marshall: !Kung 194

3 Fourie: Tribes 86

4 Schapera: Khoisan Peoples 150

5 Schapera: op.cit. 150

6 Lebzelter: Eingeborenkulturen 41

7 Wilhelm: !Kung Buschleute 154, 159

8 See above footnote 2

9 Marshall: op.cit. 195; Silberbauer 75 f; Heinz: !Kö Bushmen 57; Steyn: Nharo 59

initiates plans. This initiation often also shifts round different persons in the band. "Leadership" therefore is a factual phenomenon which changes according to the acceptance of the members of the band. No inheritability arises here.

3.3.3 "Chiefs"

In older reports the institution of "chiefs" is mentioned.

The Nharo¹, #Auin² and the !Kung³ had quite powerful men who ruled over more than one band.⁴ Apparently no chief existed who ruled over all bands of a tribe. Probably they were "chiefs" to band nexusses.⁵ Already at the turn of the century, such "chiefs" were vanishing.⁶

This position was inheritable by the son of the former "chief", i.e. patrilineally.⁷

Today, no such "chiefs" exist; only Heinz states about the !Kō that one of the band "leaders" in a nexus may be considered the "boss". This type of authority rests on lineage and personality and is not found often.⁸ Therefore, it can not be regarded as hereditary.

1 Bleek: Naron 36 f; Passarge: Buschmänner 114 f

2 Bleek: op.cit. 36

3 Wilhelm: Die !Kung Buschleute 154

4 Wilhelm: op.cit. 154; Bleek: op.cit. 37; see also Heinz: !Kō Bushmen 95 for the !Kō

5 Heinz:op.cit. 91

6 Wilhelm: op.cit. 154; Passarge: op.cit. 115; Bleek: op.cit. 36

7 Wilhelm: op.cit. 154; see also Bleek: op.cit. 36, who mentions the claim of a son of a former "chief"; Passarge: op.cit. 115

8 Heinz: op.cit. 95 f

Chapter 3: The "Namib-Bushmen", ≠Ganin and /Geinin

1. Introduction

The ≠Ganin and /Geinin are extinct for a number of years already. Range estimated their number in 1914 at about fifty¹, while Seydel estimated them to be 100 around 1910.²

The so-called Namib-Bushmen were no pure blooded San but were a mixture with the Naman.³ Their lifestyles were the most deprivative of all SWA/Namibian inhabitants. Also, they had an interesting pattern of inheritance which makes it desirable to include them in this study.

The /Geinin San were living in the desert north of a line Keetmanshoop - Lüderitzbucht, while the ≠Ganin were living in the Naukluft and Zaris Mts.⁴

They were leading an exceedingly primitive life. Living on a few oryx they were able to hunt, on a bit of veldkos which the women and children found; on the coast they lived on seals, birds, fish which was found on the beach, lobsters and shells. "The life of the Namib Bushmen is a continuous fight against hunger because the desert supplies only little."⁵

They were living in small bands of around seven people⁶ migrating to wherever they could find something to eat. These bands consisted of a few nearest relatives and were therefore only slightly extended families.⁷ Most couples

1 Range: Beiträge 73

2 Seydel: Kolblatt 1910, 503; in Buschmann Fb 7 he states the figure of 400, but later corrected it to 100

3 Range: op.cit. 72; Märcker: Kolblatt 1910, 661; Trenk: Die Buschleute der Namib 170

4 Range: op.cit. 73; Seydel: Buschmann Fb 7; see also Seydel: Kolblatt 1910, 503

5 Range: op.cit. 73 f

6 Range: op.cit. 73

7 Seydel: Buschmann Fb 9 = Kolblatt 1910, 504; Trenk: op.cit. 166

were monogamous, but a few "richer" men practiced polygamy and even polyandry occurred.^{1,2}

At the end of the summer the nara-fruits, which also grow in the southern part of the Namib, are ripe and they moved there.³ During winter, when life in the drier parts of the western Namib became impossible they used to wander eastwards towards the mountains of the Nubib Mts., Zaris Mts. and the Naukluft Mts.⁴

Sources were primarily the two accounts of Seydel and Trenk, but also Range and a few others.

Rodenberg was only mentioned matter-of-factly as he is a secondary source.

2. Law of Things

Just as the San of eastern SWA/Namibia and Botswana, the so-called Namib-Bushmen did not have much property. They, too, led a nomadic life which restricted their property to an amount which they could carry.

2.1 Land

For these people, too, land had a value only as ground for hunting and collecting veldkos.

Similar to the Kalahari San each band had an area in the Namib which they regarded and defended as their own.⁵ To these grounds for hunting and the collection of veldkos

1 Seydel: Buschmann Fb 9

2 This is to my mind the only tribe where polyandry was practised in SWA/Namibia

3 Range: Beiträge 74; Trenk: Die Buschleute der Namib 168

4 Trenk: op.cit. 168

5 Trenk: op.cit. 168; Range: op.cit. 74; see also Spellmeyer: Buschmann Fb 22

one or more waterholes belonged which were also regarded as belonging to the band.

When the waterhole of one band was empty this band would stay at another band's waterhole against a contribution probably of a bit of game. Similarly, when the game had left the territory of a band, this band would hunt in the territory of another band but then had to hand over a portion of the kill.¹ Similar to the Topnaar of the Kuiseb (≠Aonin), the nara-plants in the vicinity of the Namib-Bushmen were regarded as the property of certain bands.² As a band usually was no more than a slightly extended family, these plants were family-owned. Although permission was given to other bands to use hunting-grounds and waterholes, a selling of them to other bands was unheard of.³

One of the sources, Seydel⁴, states that when a hunting group had decided to put up camp, the headman of the group would allocate the spot to every family where they had to build their hut and erect their cookingplaces. By building the hut on that piece of land, Seydel reckons that the head of the family - but not the family as a whole - gained possession of it as his private property.⁵ This, however, cannot be the case. Seydel goes on and states, that the head of the family lost his possession through non-use and that land was inalienable.⁶ Here clearly Seydel confuses the right to possess with private property.

The head of the family thus only had a right to possess and a right to forbid others to enter his piece of land.

1 Trenk: Buschleute 168

2 Range: Beiträge 74; Trenk: op.cit. 168

3 Trenk: op.cit. 168; see also Seydel: Buschmann Fb 13

4 Seydel: op.cit. Fb 13 = Kolblatt 1910, 505

5 Seydel: op.cit. Fb 13/14 = Kolblatt 1910, 505

6 Seydel: op.cit. Fb 13

2.2 Movable Property

The movable property consists only of the weapons of the men, clothes, sandals, pots and carriers for water, sometimes hunting dogs and a few other utensils.

2.3 Find

If something is found near a Bushman village, it is returned to the loser if he can be detected. If he cannot be detected, the head of the family or the headman of the band gets the object. The headman can give it as a present to someone else. If something was stolen from somebody, the owner is to take that thing back from whoever may possess it. He is not obliged to pay any compensation to the current possessor.¹

2.4 Restrictions to Ownership

Generosity and hospitality were practised as far as possible: "Although no law exists which guarantees one person a share of the abundance of another, this is general custom.² The traveller has a claim to hospitality and support; both are given to him freely."³

The Namib-Bushmen deposited water in ostrich eggshells or in oryx-stomachs or tsammas, and meat at certain places in the waterless Namib.⁴ If somebody came along who urgently needed water and meat, he was allowed to take some. Not to be mistaken for a thief, he had the duty to take up the track of the depositor and inform him and pay him.⁵

1 Seydel: Buschmann Fb 14

2 Seydel: op.cit. Fb 14, see also Fb 8; Seydel: Kolblatt 1910, 505; Spellmeyer: Buschmann Fb 30

3 Seydel: op.cit. Fb 14

4 Trenk: Buschleute 169; Spellmeyer: op.cit. Fb 27 f

5 Trenk: op.cit. 169

3. Law of Inheritance and Succession

3.1 Law of Inheritance

An interesting system of inheritance is revealed by the sources.

Only a blanket made from hide was given into the grave of a deceased¹; all other things a Namib-Bushman had, namely "weapons, clothes, sandals, cooking utensils, hunting dogs etc." could be inherited.²

The sources differ slightly on the system of inheritance. According to Seydel, the eldest son was the sole heir when his father died. Neither his wife nor his other children were entitled to anything from the estate of the deceased.³ It is custom⁴ that when an eldest son had become heir to his father's estate, the possessions he hitherto had, like clothes - probably only sandals and skins of cloaks, are meant here - and weapons would devolve to his younger brother. The former possessions of that younger brother in turn devolve to the one younger than he himself and so on.⁵

The eldest son inherited together with the estate the status as head of the family which even gave him the right to give orders to his mother.⁶ Trenk⁷ on the other hand states about the same group of Namib-Bushmen as Seydel⁸, that the wife of the deceased was the heir of the first order and that only after her death, the eldest son became

1 Trenk: Buschleute 169

2 Seydel: Buschmann Fb 8

3 Seydel: op.cit. Fb 8 = Kolblatt 1910, 504

4 Seydel: in op.cit. Fb 8 speaks of Law (Recht), in Kolblatt 1910, 504 he calls this custom (Sitte): whether this "right" is thus enforceable, is questionable

5 Seydel: op.cit. Fb 8 = Kolblatt 1910, 504

6 Seydel: op.cit. Fb 8 = Kolblatt 1910, 504

7 Trenk: op.cit. 169

8 Seydel and Trenk went together on the expedition into the Namib which led to the writing of Seydel: Kolblatt 1910, 501, and Trenk: Buschleute der Namib in Mitt.a.d.dt.Sch.1910, 166

the sole heir of the estate. With the death of the father, however, the eldest son immediately became the head of the family who had to look after his mother and had to provide her with food.

These two statements are probably not as contradictory as it seems at first. They may boil down to a sharing of the estate. Clearly the wife of the deceased had no use for her husband's clothes like his sandals. She also had no use for her husband's weapons and the hunting dogs if he had any. It can thus be accepted that these things would go to the eldest son immediately after the death of his father. Trenk's assertion that the eldest son became head of the family and as such had to provide food for his mother, strongly indicates the above interpretation. All other things of the estate, namely, the household things, would devolve to the wife of the deceased, because she went on being in charge of the cooking, the hut and so on.

This interpretation is emphasized by a further observation Trenk¹ does: "If a married son dies, his widow does not stay with the family of her deceased husband, but she goes back to her family, taking half of the estate along while the other half remains with her husband's family."²

Surely, she did not take the weapons along while leaving household goods like pots behind.

When Seydel³ says, that the eldest son inherits everything from his father, including household goods, but asserts at the same time that the son becomes head of the family just as his father had been, then this entails that his mother goes on being in charge of the cooking and the hut.

1 Trenk: Buschleute 169

2 My own translation

3 Seydel: Buschmann Fb 8 = Kolblatt 1910, 504

That also means that the household goods have to remain with her otherwise she would not be able to go on as before. Only after the death of his mother the eldest son would also inherit the household items.¹

This interpretation would thus mean that the eldest son was heir to the estate of the father to that extent as it entails non-household goods while the wife of the deceased retained the household goods. The eldest son also inherited the status as head of the family from his father. With the inheritance of certain clothes and weapons from his father, the eldest son gave his things to his younger brother and he in turn to his junior and so on.

This system could thus be called a parallel inheritance system,² similar, but not equal, to that of the Bergdama, where only sons inherit from the father and daughters from the mother.

The institution of a last will was unknown to the Namib-Bushmen.³

3.2 Succession as "Chief"

A "paramount chief" of all Namib-Bushmen did not exist anymore in 1910. Trenk states that "the family in which this status was inheritable, was supposed to have died out".⁴ Therefore, if such a "paramount chief" over the /Ganin or /Geinin or over both really existed, the mode of succession was from father to son because the Namib-Bushmen were patrilineal.⁵ This may also be deduced from the fact that the system of inheritance and of succession

1 Trenk: Buschleute 169

2 See also Baumann: Vaterrecht und Mutterrecht in Zs.f. Ethnologie 1926, 65; Immenroth: Die Kleinwüchsigen 206

3 Seydel: Buschmann Fb 13

4 Trenk: op.cit. 170

5 Seydel: op.cit. Fb 8 (No. 1)

to the head of the family was patrilineal.¹

According to Seydel², if a fight or war between groups or tribes erupted, a "headman" would be elected only for this time of war. His powers were according to his personality stronger or weaker. A right to seize the property of his "subjects" or over their life and death he did not have. This war-time "headman" above all was bound by the decisions of a war-council to which every male participant in the war was a member. Such a chief probably was that person deemed to be the bravest and the best at war by his fellow members of the band.³

3.3 Succession as Headman of a Band

In many cases the head of the family was also the head of the band. Then the status was inherited patrilineally, as seen above.

If there were more families in a band, the eldest of the band acted as headman.⁴ His powers were quite extensive compared to other San-tribes: The other members had to follow his orders - as seen above, he allocated the spot which a family had to take up in a camp - and he was an arbiter when a quarrel within one family or between two families of members thereof erupted.⁵

1 See above p. 89

2 Seydel: Buschmann Fb 19 = Kolblatt 1910, 506

3 cf Spellmeyer: Buschmann Fb 28

4 Seydel: op.cit. Fb 18 = Kolblatt 1910, 503, speaks of the "Dorf- or Werftälteste".

5 Seydel: Kolblatt 1910, 503, see also Buschmann Fb 7, 15

Chapter 4: The Damara (Daman; Bergdamara, /Nu-khoen)

1. Introduction

The origins of the Damara are unclear. According to Vedder¹ they are immigrants from the Sudan. This, however, seems not to be the case: mostly, the Damara are regarded as being, together with the San, the original inhabitants of SWA/Namibia.²

They clashed with the incoming Hereros and with the Khoekhoen whose language they took over while nearly completely losing their own language. Only a few words of this extinct language could be collected esp. by missionary Vedder.

With the Orlam immigration into SWA/Namibia around the turn of the 19th century, the Damara communities experienced radical transformations. Therefore, only a few accounts exist which refer to the probable Damara mode of living as it was before the abovementioned transformations. They exchanged self-made copper rings and beads for cattle and goats from the Khoekhoen.³ They cultivated tobacco and dagga⁴ but also "calabashes" and pumpkins⁵ which implied fairly permanent settlements.⁶ Especially their hunting methods revealed a high degree of sophistication: They had hunting fences into which they chased the game until they

1 Vedder: Zur Vorgeschichte der Völker Südwest-Afrikas III: Die Bergdama in Journal SWA Sc. Society Vol. II 1926/27, 35 ff, 39; see also Malan: Peoples 14

2 See for instance BRM 1867, 131 ff, 132; for a fairly recent anthropological study: Knussmann: Die Dama - eine Altschicht in Südwestafrika ? in Journal SWA Sc. Society Vol. XXIV 1969/70, 9 ff, 30 f

3 v. Reenen in Moritz 1915, 193; Barrow in Moritz 1915, 258; Wikar in Moritz 1918, 79

4 BRM 1849, 323

5 Andersson: Lake Ngami 153

6 Galton 103 f; Alexander II 121 f, 136

could kill them at the conical end of those fences or until the game fell into pitfalls.¹

Although a picture of the Damara before their subjugation by Khoe-khoen and Herero can be drawn, these sources are not detailed enough to be sufficient for a representation of the law of things and inheritance. Only after their subjugation and only after they had lost a considerable element of their traditional lifestyle, more detailed reports were written. This account therefore had to be based on material which describes the Damara either living in some mountain hide-aways, like Vedder's monograph², or living at missionary stations like the answers to questionnaires by missionaries.³

On the mission stations, like Okombahe, they were living by keeping goats and sheep and by cultivating pumpkins, tobacco, melons and other edibles.⁴

Vedder's monograph is based mainly on a group he found in the mountains around Otavi.⁵ This group was marginalized and impoverished. They lived from veldkos and hunting⁶ and a few goats they may have possessed.⁷ Their huts were very simple: when out in the veld they would even sleep without any shelter.⁸ In the village, the huts were built in

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- 1 BRM 1852, 211; Büttner: Die Bergdamara in BRM 1878, 29 ff, 34 (= Cape Monthly Magazine 1879, 285 ff, 288); Schaar: Freuden und Leiden 6; Kolbe BRM 1848, 202
 - 2 Vedder: Die Bergdamara 1923
 - 3 Esp. Raumann, Elger and Brockmann: Bergdamara Fb
 - 4 Schaar: op.cit. 6 f, 12
 - 5 cf Lau: Critique 63
 - 6 Vedder: Tribes 42, 59
 - 7 Vedder: op.cit. 58
 - 8 Vedder: op.cit. 47 f

a circle around a big tree. There were rarely more than ten huts to a village and only members of one "family sib" would live together.¹ They were led by the head of the family, who naturally simultaneously was head of the band. His powers were little more than those of the San "headmen".

Because they were living high up and away from all other groups around, Vedder was led to the conclusion that he had found one of the last examples of the traditional Damara. However, they were only one group which certainly was not representative of all Damara when compared with the findings above. Lau² criticized Vedder vehemently in a recent study because of his conclusions - esp. because of his theory that the Khoe-khoen picked up and enslaved the Damara on their migration which ended in SWA/Namibia³, and which implied that the Damara had been enslaved already before they had arrived in SWA/Namibia.⁴

Although this theory certainly is questionable, Vedder's monograph should be taken as what it is: a good account on at least that marginal group of Damara. Because it still is the only in-depth study of any of the different Damara groups, and because it contains many details which are of interest here, I have mainly drawn from this book, but also from his chapter on the Bergdamara in Hahn/Vedder/Fourie: The Native Tribes of South West Africa.

However, I have also referred to the answers to questionnaires by missionaries and a few other accounts.

The different Damara groups as given by Vedder⁵ were the following:

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- 1 Vedder: Tribes 48
 - 2 Lau: Critique 1979
 - 3 See above p. 3
 - 4 Lau: op.cit. 64
 - 5 Vedder: op.cit. 42

- | | |
|-------------------|----------------------------------|
| 1. /Gowanin | between Rehoboth and Hoachanas |
| 2. Tsoa-xou-daman | in the Swakop river valley |
| 3. !De-gan | Erongo Mountains |
| 4. !Omen | Waterberg and along Omarur river |
| 5. Aro-daman | Waterberg |
| 6. Animin | around Okahandja |
| 7. Dumin | east of the Waterberg |
| 8. /Geib-daman | in the Outjo veld |
| 9. Aobe-//ain | in the Omaruru veld |
| 10. Dauna-daman | Brandberg |
| 11. Ao-guwun | south of Sesfontein |

Today these divisions do not function any longer and, therefore, only reflect an earlier pattern of settlement.¹

2. Law of Things

To be able to understand the law of inheritance a short look at the possessions of the Bergdama must be undertaken.

2.1 Immovable Things

2.1.1 Land

Also for the Damara land as such had no value. It only became valuable to him when he could graze his animals on it, use it as hunting grounds or gather edible plants, small animals and firewood there, or use it to grow edibles there.

2.1.1.1 Collecting and Grazing Land

The land on which Bergdama grazed their goats and collected veldkos was considered communal ground and could not be

¹ Malan: Peoples of SWA/Namibia 14

sold.¹ Every band had a definitely defined area for collecting the fruits of the field and for hunting.² Those who transgressed into the land of another band, for instance in pursuit of a wounded animal, got punished where they were caught, with a severe hiding.³ Sometimes the punishment for taking something from another band's area was even more severe: in Parasis Mts. near Otavi a man had transgressed into another band's area and had stolen field onions. He got killed for this.⁴ However, thieves from other areas were not always killed. Sometimes everything he had carried along was confiscated and he was told to run away.⁵ Still, almost every Damara refrained from pursuing a wounded animal as soon as it had left his own area and from collecting veldkos from another band's territory.⁶

As Damara had to fear subjugation either by Herero or Nama constantly, they did not claim large tracts of land like the Herero, but only relatively small hide-aways in the mountains.

Illustrating this is the fact that when mining companies sought the right to exploit some mines in the Otavi Mountains, they bought them from the Herero who lived quite a distance away from the site but claimed that land as being theirs.

But those mountain hide-aways they were living in, they were prepared to defend. Anderson⁷ writes about the "exterminating war" which the !De-gan, living in the Erongo Mountains, waged against the Hereros living in the plains below.

1 Vedder: Tribes 71

2 Rodenberg 93; Wagner-Robertz: Häuptlingstum bei den Dama? 60

3 Rodenberg 93

4 Vedder: Bergdamara 151 f

5 Vedder: op.cit. 150

6 Rodenberg 82

7 Anderson: Lake Ngami 114; see also Rodenberg 89

2.1.1.2 Agricultural Land

After the threat of subjugation by other tribes eased and later eliminated by inter alia the influence of the missionaries, Damara also settled in the plains.

Now the land was gradually regarded as belonging to the chief.¹ He had the right to give certain tracts of land to his tribesmen for growing corn and vegetables. In exchange for this granting of land, the tenants had to give the headman a certain share of the harvest.²

This grant was a usufructuary right³ only; therefore, the user of the land was not its owner. Accordingly, he had no right to sell that land.

The chief also had no right to sell the land. This shows that this "ownership" was on behalf of the tribe: As we have seen, he was the one who had the authority to allocate the land which, of course, looked as if he was "owner" in our western sense.

Such usufructuary rights were not conferred to individuals but rather to a whole family.⁴

As land was not owned by individual members of a tribe, it thus could not form part of an estate.

2.1.2 Water

Springs and open water were considered to be free property.⁵ Travellers were allowed to use them without having to beg permission from the band living near to it or to pay for it.

1 Raumann: Bergdama Fb 17; Brockmann: Bergdama Fb 102

2 Raumann: Bergdama Fb 17; Brockmann: Bergdama Fb 102

3 Brockmann: Bergdama Fb 102

4 Brockmann: Bergdama Fb 102

5 Vedder: Tribes 71; Vedder: Bergdama 147; Rodenberg 93

If, however, a Damara of another band wished to water a rather large herd of animals, it was expected of him to ask the headman of the community whether there was enough water to allow the watering of cattle. Here as well, no payment was expected.¹ Non-Damara, however, were never expected to ask permission of such a nature.

After moving into the reserves, water too, was regarded to be the property of the headman. His animals had to be watered first.²

In Bergdama law the one who had dug a waterhole, was not the owner of it. In this respect Bergdama law differs from that of the Herero where the founder of the waterhole was its owner and as such had the right to exclude others from using the well. As water is community owned in Bergdama law, its law is more community inclined in this respect than that of the Herero. No immovable things, therefore, could belong to a Damara estate.

2.2 Movable Things

Not all property a Bergdama may own was able to be inherited. The estate of a deceased therefore has to be divided into those things which could be inherited and into those which could not.

2.2.1 Property which could be Inherited

Most important to the Damara was the stick for digging up edible roots, field onions and small animals which live in the earth. Because they were more or less tied to a

1 Vedder: Bergdama 147

2 Brockmann: Bergdama Fb 102

certain area, they did not move around much and thus had more household utensils than, for instance, the San.¹ They had bowls to clean the corn, buckets to fetch water and carry the milk in. For the grinding of corn and field food they used grinding stones and mortars. There were pots made of clay, calabashes and a few empty ostrich eggs for keeping dried and ground veldkos in them or for carrying around water.²

A Damara had as weapons arrow and bow and in more recent times knives and axes.³

Further, clothes belonged to the movable property of a Damara.⁴ They were mostly fabricated from leather. If a person died of an incurable or infectuous disease, his clothes were not taken off, however, but he was buried with them. A sleeping-skin is always buried with the corpse.⁵

Damara females wore armrings made from leather, or from iron or copper. Because of the relative scarcity of ostriches in the areas where Damara live, ornaments made from ostrich shells were not so often found.⁶ The Damara also wore amulets.⁷

From the horn of the Springbok and other small buck, whistles were made which were used when in danger through enemies or wild animals.⁸

Further, to the estate belonged dogs and goats and, according to Vedder⁹, only in recent times a few cattle.

1 Rodenberg 87 f

2 Rodenberg 87 f; see also Vedder: Bergdama 143

3 Rodenberg 88; Vedder: op.cit. 143

4 Vedder: op.cit. 143; Rodenberg 88

5 Vedder. Tribes 56

6 Rodenberg 88

7 Vedder: op.cit. 45; Rodenberg 92

8 Rodenberg 88

9 Vedder: Bergdama 143

It appears, however, that also in earlier times they had cattle if the circumstances permitted this. Anderson¹ records that Galton had seen numerous cattlespoors in the Erongo in 1851 and he himself had seen a few cattle spoors around the Omuveroom, which must be either the Omatako or the Etjo, probably not the Otavi Mountains.²

It thus seems that, circumstances permitting, the Bergdama had had cattle for a considerable time already, but probably never many of them. Only after they were freed from subjugation to Nama and Herero, were they able to breed any larger herds.

2.2.2 Things not being able to Belong to the Estate

The hut of the deceased did not belong to the estate because living in a hut where the deceased had died would mean to bring harmful and destructive consequences onto oneself. Therefore, the hut was either burnt down or, more probably, demolished. In that case the wood was either used as firewood or it was used to rebuild the hut elsewhere. To rebuild the hut elsewhere did not entail bringing harmful consequences onto oneself, as death was found only there where the deceased had died.³ The fear of death and of what might happen to them, kept the Bergdama from taking a deceased's hut as it was.

This phenomenon was found with other tribes too; with the Herero these huts were *res religiosae* and were therefore not inheritable.⁴

Non-inheritable and thus not belonging to the estate were those goats which were, according to the custom, given to

1 Anderson: Lake Ngami 114

2 Anderson: op.cit. 154

3 Vedder: Bergdama 143

4 Meyer: Recht 73

all families of the community after somebody had died. If the deceased had only a few goats, one of them would be slaughtered and consumed at a meal at which the community participated.¹ This custom was according to the Bergdama informants of Vedder, taken over from the Herero ozondjoza, according to which, after a burial, many oxen were slaughtered and consumed by whoever wanted to. With the Herero this custom should ensure that the deceased had a respectable herd of cattle in the thereafter. This belief of the Herero was, however, not adopted by the Bergdama.²

Lastly, those goats did not belong to the estate which the deceased had given as a present to his wives and children and which he had marked with a nick in the ear.

2.2.3 Find

The person who picked up a find took it into his own possession to use it as his own. There was no rule forcing the finder to try to find out to whom the thing belonged. But if he knew the owner, i.e. because he was a friend or a member of the community, and he nevertheless did not give that thing back, the others would punish him by calling him "sweet-toothed" (naschhaft - lâya "acquisitive").³

If the owner of a thing which he had lost, saw it in the possession of another man, he had to give the proof to the current possessor of his ownership. He then was allowed to take possession of the thing again. The owner was thus not allowed just to take his thing back but was obliged to notify the current possessor of the fact that that was

1 Vedder: Bergdama 143

2 Vedder: op.cit. 143

3 Vedder: op.cit. 147

his property. Only then was he allowed to take his property along without being entitled to claim anything for depreciation or damage to the thing.¹

2.2.4 Honey

Taking into account the harsh and deprivative life of the Damara, the find of honey in the field was something special.² This is illustrated by an anecdote told by Vedder.³ At Otjimbingwe a Damara was suspected by his Herero-Master to have found honey. According to Herero law, the find of honey by a non-Herero belonged to the master of the discoverer of the site. The Herero burnt his Damara slave severely with a torch to find out the place of the honey-site. Although he was severely tortured, the Damara pretended innocence only to enjoy his find with even more delight afterwards.

Accordingly, the Damara have at least as strict a honey-law as other tribes, like, for instance, the Herero.⁴

The finder of a beehive was regarded as its owner.⁵ Whether some of the honey had to be given to the headman or not, probably differed from tribe to tribe and depended on the strength of the headman as well.

Where the headman was not very strong, as was the case with the Damara who lived in the mountains, the finder probably did not have to give anything to the headman.⁶ In the reserves the headmen were, as a rule, stronger because the government accepted and supported the institution of the headmen which lent more weight to their status. It

1 Vedder: Bergdama 147

2 Vedder: Tribes 59

3 Vedder: Herero Fb 69

4 See below p. 188

5 Raumann: Bergdama Fb 18; Vedder: Bergdama 147; unclear Brockmann: Bergdama Fb 103

6 Vedder, who worked mainly among the Gowanin, does not mention such a tribute to the headman either in his "Native Tribes" nor in his "Bergdama"

is therefore not surprising to find that here the discoverer was obliged to give part of his honey-find to the headman.¹

To show and prove his ownership, the first discoverer put a stone in front of the entrance of the beehive or, as the Nama² did, he could also put a stick, branch or small bush in front of the beehive.

It was essential, however, that this was done in such a way that the ownership mark was clearly perceivable as that of a human being.³

If the swarm of bees was still young, it was not allowed to disturb them in any way.⁴ It was also forbidden to take all the honey out of the hive because this forced the bees to wander away.⁵ Lastly, honey was only allowed to be taken out of the hive, when the building of the combs was finished and the combs were filled with honey.⁶

If anybody stole honey from an adequately marked beehive, the owner took to self-revenge by burning a certain species of nettle in front of the entrance to the beehive. This was believed to bring around the death of the thief.⁷ The ownership of a beehive was inheritable: Raumann⁸ mentions that swarms of bees existed which were inherited over three generations.

1 Raumann: Bergdama Fb 18; Brockmann: Bergdama Fb 103

2 See above p. 22

3 Vedder: Bergdama 147

4 Rodenberg 93

5 Rodenberg 93

6 Vedder: op.cit. 147

7 Vedder: op.cit. 147

8 Raumann: op.cit. Fb 18

2.2.5 Hunting

The bag of hunting belonged to the person who had hunted the animal down. If a stranger participated in a hunting spree the animals which he killed were considered to be those of his host.¹

When the community went on a chase together, the animals were later divided equally.

Although the Bergdama considered the game within his territory as his property, he did not quarrel with Herero, Nama or white hunters who shot game on his territory.²

This changed only with the erection of reserves for the Bergdama. If a Bergdama had shot game and he had to fetch help in his kraal, he would mark the carcass similarly to the possession mark put to a beehive, by putting branches and twigs on the game.³

1 Vedder: Bergdama 48

2 Vedder: Tribes 71

3 Vedder: op.cit. 73

3. Law of Inheritance and Succession

3.1 Law of Inheritance

As with other tribes¹ the partition of a deceased's estate gave rise to numerous claims and fights as to who should get what.² Nevertheless, the Damara had definite rules of inheritance.

3.1.1 Main Rule for Inheritance

The main rule laid down that the son may inherit from his father but never from his mother, while the daughter may inherit from her mother but never from her father.³

Sole heir of the first order of his father was his eldest son with the main wife. Sole heir of the first order to a woman was her eldest daughter.⁴

3.1.1.1 Male Inheritance

If the son was not grown up at the time of the partition of the estate, a relative of the son would act as trustee of the son's inheritance, until he was grown up, in the following order. Similarly, the same order applied regarding the succession of the deceased if he did not have a son.

3.1.1.1.1 Second Order

Second in order was the father of the deceased. If the deceased had no son then his father was unconditional heir. If he was trustee because his grandson was still a child,

1 See for instance the Herero, p. 197

2 Vedder: Tribes 72

3 Vedder: Bergdama 144; Vedder: Tribes 71

4 Vedder: Bergdama 144; see also Brockmann: Bergdama Fb 95

then this entailed that he could use the inheritance and have the usufruct of it.¹

3.1.1.1.2 Third Order

If the father of the deceased was not alive any more, the brothers of the deceased were next in line beginning with the eldest.² In case the eldest brother had taken over as trustee and died himself before the child was grown up, his next eldest brother took over the trusteeship and so forth.

3.1.1.1.3 Fourth Order

If no brothers of the deceased were alive, the husbands of the deceased's sisters, commencing with the eldest sister, took over the trusteeship³, or became heirs to the estate.

3.1.1.2 Female Inheritance

If a women died, the eldest daughter was her heir. The estate of a women could contain, except for her own ornaments, also a small amount of goats. These might have been presented to her by her parents when she was still a child.⁴

As soon as the first ring was placed around the ankle of the child, or as soon as it received its first necklace of beads, the child possessed the right to own property.⁵

On the other hand, she could have received a few goats from her husband during his lifetime as a present to ensure that she would be well off after his death.⁶

1 Vedder: Bergdama 144

2 Vedder: Bergdama 144; Vedder: Tribes 71; see also Raumann: Bergdama Fb 1

3 Vedder: Bergdama 144; Vedder: Tribes 71

4 Vedder: Tribes 71

5 Vedder: op.cit. 71

6 Vedder: op.cit. 71

All such goats, including the progeny thereof, were not regarded as family property but as her own¹ although it was administered by her husband.

If there was no eldest daughter or if she was not grown up at the time of the partition of the estate, the order in which trusteeship of the succession devolves, is according to the same rules as those of the male heir.

3.1.1.2.1 Second Order

The mother of the deceased female was the trustee or heir of the second order.²

3.1.1.2.2 Third Order

If she was not live anymore, the sisters of the deceased, commencing with the eldest, were next in line.³

3.1.1.2.3 Fourth Order

These were followed by the wives of the brothers of the deceased female, also commencing with the wife of the eldest brother.⁴

3.1.1.3 No further Orders mentioned

Further orders were unfortunately not obtainable from any sources but it may be assumed that next in line were the children of brothers or sisters of the deceased.

3.1.2 Usufruct of the Estate by the Trustee

When the estate was taken into trusteeship, as outlined above, because the heir was still a child, the trustee

1 Vedder: Tribes 72

2 Vedder: Bergdama 144; Vedder: Tribes 71

3 Vedder: Bergdama 144; Vedder: Tribes 71

4 Vedder: Bergdama 144; Vedder: Tribes 71

also had the usufruct of the things because as a rule the heir was nursed by the trustee. Having the usufruct, the trustee had a right to use them in his household which entailed wear-off and occasional breakage of things. The trustee, however, only had to hand over those things to the heir on his coming of age which were still in existence. The heir could not claim liability for those things broken.¹

This also applied to the small herd of goats or even cattle, which had not to be delivered with all their progeny as some of them were occasionally slaughtered by which measure the heir also had the usufruct as he shared in the meal.²

The usufruct of an estate, even if it was only a small one, was a great advantage to the normally very poor Bergdama. Thus, as the sources say nothing about an heir or trustee being allowed to waive the estate or trusteeship, it can be assumed that everybody is happy and accepts when he was scheduled to become an heir or trustee.

3.1.3 Time of Partition

Immediately after the burial, the aforementioned³ goats were given to the different families of the band or, if the deceased did not have many goats, one goat would be slaughtered to be eaten communally by all after the burial.⁴

The partition of the estate, however, took place only three to five months later.⁵ Until that time the estate stayed in the possession of the whole family which had the usufruct for that time.⁶ Only now the heir was allowed to take possession of his share.

1 Vedder: Bergdama 144

2 Vedder: op.cit. 144

3 See above p. 101 f

4 Vedder: Bergdama 143

5 Vedder: Bergdama 144: 3 - 4 months; Vedder: Tribes 72: 4 - 5 months

6 Vedder: Bergdama 144

3.1.4 Custodian

Custodian of the estate was the eldest son of the eldest sister of the deceased.¹ Because the custodian himself could only be heir in less than the fourth order, the chance that he would be heir and custodian in one person was very slight. Through this rule, which could be seen as some kind of matrilineal influence - or a remnant thereof - the Damara did not experience the incongruity which the Nama had by regarding the eldest son of the deceased, who was the heir of the first order, as being the trustee of the estate until its execution as well. They thus also had a custodian of the estate. This was the eldest brother of the deceased who saw to it that the trustee did not enrich himself unjustly.²

Accordingly, custodian of the estate of a female should have been the eldest daughter of the eldest brother. Whether this really was so, could not be verified.

3.1.5 Further Distribution

Legally only the eldest son or the eldest daughter of a deceased was sole heir and there need not have been a further distribution of the inheritance. As this rule was felt to be unjust towards the other sons and daughters and other near relatives of the deceased, custom demanded of the heir, or, in the event of the heir still being a minor, of the trustee, to give all of them presents out of the estate.³ As this partition was usually accompanied by violent quarrels⁴, the headman of the village attended in person at the distribution of the inheritance to enforce order. Although the distribution was not made by him, he

1 Tiem: Bergdama Fb 87; Wandres: Bergdama and Nama Fb 63

2 Wandres: Nama and Bergdama Fb 63

3 Vedder: Bergdama 145; Vedder: Tribes 72

4 Vedder: Tribes 72

attended because his person was respected and his decision often was authoritative.¹ For his supervision he was not entitled to any remuneration.²

Also, the trustee who executed the partition on behalf of the minor heir was not entitled to a remuneration for that job. But as a relative of the heir custom allotted him a share of the inheritance too. He thus took for himself what he deemed fit.³

The above illustrates that the position as a sole heir is by far not as advantageous as might be expected; especially if a trustee undertook the partition quite often only very little was left over for the heir.

This custom of having to share the inheritance with others had spread to such an extent that Vedder states: "One gains the impression that the eldest son, the eldest daughter, are really not considered as the lawful heirs but merely as trustees who have to make the most favourable distribution amongst all."⁴

When the inheritance of a deceased female was distributed, the same regulations applied. Vedder states: "Männer haben sich nicht in die Streitigkeiten zu mischen."⁵ This can be interpreted in the following way: The headman of the village was everybody's headman and thus he would attend also at the partition of the estate of a female. On the other hand it could not be taken that the custodian of the estate would be a male. The assumption made above⁶ that the custodian of the estate of a female was the eldest

1 Vedder: Tribes 72

2 Vedder: Bergdama 145

3 Vedder: op.cit. 145

4 Vedder: Tribes 72

5 Vedder: Bergdama 145; transl.: Men are not allowed to arbitrate in the fights.

6 See above p. 110

brother's daughter of the deceased, could thus be true. Lastly, the sentence stresses another point, namely that the rule "men inherit from men only" and "women inherit from women only"¹ also applied to the custom which asked the heir to distribute the inheritance further: If a man's inheritance was distributed further by the heir or his trustee, only men would get anything while only females would be bestowed with presents from the estate of a woman.

3.1.6 Clothes

The clothes of the deceased were not inherited by the heir but they were given as a present to old men or women. Young people would not wear them because they feared that they would be infested by the same illness of which they believed the deceased had died of.² The wearing of the clothes would thus shorten his or her life considerably.

3.1.7 Last Will

If a man or woman did not like his or her own family, for instance because of many quarrels, and he did not want his property to be inherited by members of his family, he could declare someone not related to him as his heir.³ This declaration had to be made before at least two witnesses.⁴ If somebody just alleged that the testator had declared him to be his heir without being able to cite witnesses, he would not be believed.⁵

If, however, witnesses proved the claim to be correct, then the last will of the testator was honoured by the

1 See above p. 106

2 Vedder: Bergdama 145

3 Vedder: op.cit. 145; Raumann: Bergdama Fb 16

4 Vedder: op.cit. 145 speaks of "von einigen Personen", i.e. a few persons

5 Vedder: op.cit. 145

others because they were afraid of the deceased.¹ After a death had occurred, nobody would hinder the heir thus instated from taking the estate because a hindrance would incur the wrath of the deceased and the one who would dare to take the estate against the will of the deceased, would not be happy with these possessions.

The respect for the will of the deceased, however, did not prevent those who were disinherited from hating the favoured one, and often a lifelong enmity broke out.²

3.1.8 Borrowed Property

If the deceased had borrowed something, the owner would claim back his property immediately. The heir then returned the property without having to pay a lending-fee. Either the property was given back as it was, disregarding the wear of the thing, or agreement was sought over something which had the same value.³

3.2 Law of Succession

3.2.1 The Head of the Band

Usually the status as head of the band was inherited in the same way as the estate, namely by the eldest son of the main wife.⁴ If he was still a minor, the trustee of the estate also became the head of the band, but only until such time when the real heir came of age.⁵ He then became head of the band, and as such keeper of the holy fire.⁶

1 Vedder: Bergdama 145; Raumann: Bergdama Fb 16

2 Vedder: op.cit. 145

3 Vedder: op.cit. 146

4 Vedder: op.cit. 146

5 Vedder: op.cit. 146; Raumann: Bergdama Fb 23; Elger: Bergdama Fb 84; Brockmann: Bergdama Fb 109; Wagner-Robertz: Hauptlingstum bei den Dama? in Journal of SWA Sc. Society Vol XXIX 1974/75, 57 ff; for Aro-Dama: 63 f

6 Vedder: op.cit. 146

If the deceased had no sons, the status was inherited in the abovementioned order of the estate.¹

If nobody even in the fourth order was alive, the status went to the eldest son of the eldest sister.² If also this order did not exist, the band dissolved itself, its members seeking attachment to other bands.³

In the Okombahe-Reserve, the order of succession to the status as head of the band was different from that of the /Geiö-daman as told by Vedder above: In Okombahe the eldest son of the head of the band was successor to the estate and the status. If the deceased had no own sons, next in line was immediately the eldest son of the eldest sister⁴ of the deceased. The influence of matrilinealism - perhaps stemming from former contact with the Ovambo - seems to be far greater here than under the /Geiö-daman.

Keeping in mind the weak position of the head of the band, it is not surprising to find that the headmanship was not inseparably connected with the estate of the former chief: If the band disliked the new headman because he was a miser or stirring trouble or because he was unjust, it might chase him out of the village together with all his possessions. The band then elected a headman from among the other sons of the deceased.

Alternatively, the band could also agree upon a new site for a village, mostly near the old one, and move to that place simply leaving the unpopular headman where he was.⁵ One of the other sons of the deceased was then made head of the new village.⁶

1 See above p. 106 f

2 Vedder: Bergdama 146; Wagner-Robertz: Häuptlingstum 64, for the Aro-Dama

3 Vedder: op.cit. 146

4 Raumann: Bergdama Fb 4

5 Vedder: op.cit. 146; Wagner-Robertz: op.cit. 60, for the !Gaiö, Auguwun, Dauna and a part of the Aro-Dama; see also Elger: Bergdama Fb 84

6 Vedder: op.cit. 146

At least for the /Geiö-daman, the Ao-guwun, the Dauna-daman and those Aro-daman, who were not neighbours with the Ovambo, no larger entities than the band occurred.¹ Their highest authority was the head of the band. The social structures of these groups therefore were comparable to those of hunter-gatherers like the San.

3.2.2 "Chiefs" with greater Influence

Recent field-work by Wagner-Robertz² among the /Gowanin and the northern Aro-daman (i.e. those neighbouring on the Ovambo) showed evidence that they had had "chiefs" who were recognized as such by at least several bands.

3.2.2.1 The /Gowanin

The /Gowanin once had a "paramount chief" who also subjugated other Dama-tribes. His powers were quite absolute, transcending from his own band to all other bands of his own and other "tribes" he had subjugated. His eldest sister was quite influential and her eldest son was the rightful heir to this chieftainship³; this line of succession thus being purely matrilineal.

This chieftainship, which probably existed around 1830⁴, disintegrated fast. Travellers and missionaries like Galton⁵ and Büttner⁶ found only rudiments left in the years 1850 to 1880. Only after they were not subjugated anymore, the chieftainship could live up again.

1 cf Wagner-Robertz 60; Büttner: Die Bergdamara BRM 1878, 29 ff, 30

2 Wagner-Robertz 60 ff

3 Wagner-Robertz 61; according to one tradition the eldest son of the eldest brother was the heir, but this is, as Wagner-Robertz also say, highly unlikely

4 Wagner-Robertz 60

5 Galton: Narrative of an Explorer in Tropical South Africa 1853, 249 ff; Berichte der Rheinischen Mission, Barmen 1879, 265 f

6 Büttner: The Berg-Damara, in the Cape Monthly Magazine Vol XVIII, No. 109, May 1879; New Series 285 ff = BRM 1878, 29 ff

Neither of the late missionaries working among the Bergdama, recorded a matrilineal succession to the chieftainship.¹ This was, as seen above, purely patrilineal. The abovementioned matrilineal succession therefore seems to have been forgotten by the Damara during their time of subjugation.

3.2.2.2 The northern Aro-daman

Büttner² mentioned in 1878 that north of the Waterberg Damara had chiefs who ruled over several thousand people. Probably he referred to the Aro-daman who lived around the Waterberg, but also to the north of the Waterberg.³

Wagner-Robertz confirms this: These Aro-daman had had "chiefs" who ruled over at least "several" bands.⁴ In contrast to the matrilinealism found among the /Gowanin, first heir among the Aro-daman seemed to have been the eldest son of the chief.⁵ Only when he had no sons, the eldest son of his eldest sister would become chief.⁶ It is peculiar that among the /Gowanin, who lived in the area around Rehoboth and did not border on the Ovambos, outright matrilinealism commands the rules of succession while the Aro-daman, who bordered on the Ovambos were mainly patrilineally inclined.

Among the northern Aro-daman the main woman of a chief was quite influential and as such, demanded respect.⁷

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- 1 Raumann: Bergdama Fb 23; Elger: Bergdama Fb 84; Brockmann: Bergdama Fb 109; also Vedder: Bergdama 146, who has done most of his research among the /Geiß-daman
 - 2 Büttner: Die Bergdama BRM 1878, 29 ff, 30
 - 3 cf Wagner-Robertz 58, footnote 5
 - 4 Wagner-Robertz 62
 - 5 Wagner-Robertz 62, see also 63 f
 - 6 Wagner-Robertz 63 f
 - 7 Wagner-Robertz 63

After the death of a chief she stayed in the village and was highly honoured. The heir of the chief had to support her and the other wives the chief might have had. If a son of the eldest sister of the deceased was the deceased's heir, then he might even marry one or more of the former chief's widows.¹

1 Wagner-Robertz 63

Chapter 5: The Ovambo

1. Introduction

1.1 The Land

Ovamboland lies in the northern part of SWA/Namibia between the Etosha Pan in the south and the Angolan border in the north, between the Kaokoveld in the west and the Okavango tribes in the east.

Typical for the territory are the vast, sandy plains which are flooded after the usually heavy rains which fall during summer. The rainfall varies between 400 and 550 mm¹, making it that part of SWA/Namibia with the highest rainfall except for the Kavango and Caprivi areas.

Lots of trees are found here like baobab (*Adansonia digitata*), marula (*Sclerocarya caffra*), wild date (*Berchemia discolor*), wild fig trees (*Ficus cordata* and *Ficus sycormorus*), makalani palms (*Hyphaene ventricosa*), to name just a few.² In the north west Ovamboland borders onto the Kunene river which never dries out.

1.1.1 Production

The Ovambo practice a mixed economy. The men are cattle raisers, while the women are agriculturists. They grow mainly finger millet, but also sorghum, maize, beans, pumpkins, water melons and ground nuts. These two main modes of production are evenly balanced.³

Cattle are seldom slaughtered, meat is obtained also from goats, and pigs which are also raised. Secondary food

1 Malan: Tribes 77

2 cf Malan: op.cit. 77; see also Lehmann: Zs Ethnologie Vol. 79, 27 ff

3 Malan: op.cit. 86; Baumann 1975, 493; Wulfhorst Fb 19

source is fish which is caught extensively after the arrival of the floods in the shallow watercourses called oshanas, which traverse the central part of the country.¹

Because of the many trees, wild fruits thereof, like marulas, figs, the fruits of the baobab and others, form another part of the food supply.²

Formerly, also game was hunted. Today it has become scarce so that the amount of meat gained through hunting is negligible.³

1.3 Social Structure

The Ovambo tribes stretch far into southern Angola. The following tribes occur:

name of tribe	% of Ovambo population around 1980 ⁴
Kuanyama	36,56
Ndonga	28,66
Kuambi	11,84
Ngandjera	7,74
Mbalantu	7,38
Kualundhi	5,03
Eunda and Nkolonkadhi	2,79

In Angola the following Ovambo tribes are found:

Kuanyama
Ndombothola
Mbadya (Kwamatwi)
Kafima
Vale

Most Kuanyama live in SWA/Namibia.⁵ Each of these tribes has its own dialect which are closely related. Nevertheless,

1 Malan: Tribes 76, 86

2 Bruwer: Kuanyama 7

3 Bruwer: op.cit. 78

4 Malan: op.cit. 78

5 cf Malan: op.cit. 78

two "written languages" have established themselves, OshiNdonga (N) and OshiKuanyama (K).¹

The Ovambo are basically matrilineal tribes. Kinship is determined through the mother while the question who the father is, does not matter.² Children are affiliated to the lineage and clan of the mother.

Although matrilineal, society was still patriarchal (i.e. "men-dominated"), and men were therefore kraal heads and chiefs.

Each tribe is divided into between twenty and thirty clans (epata) which is a named, non-totemic matrilineal kinship group descended from a remote ancestress.³ Through a common clan name⁴ all her descendants recognize their common origin and observe the rule of clan exogamy.⁵

Lineages are corporate segments of clans composed of people who are descendants from more recent ancestresses. Their characteristics is their shallow genealogical depth comprising members of three living and two further ascending generations of ancestors.⁶

Important for this study of the law of things and of inheritance and succession is the clan function of property control within the lineage: all possessions of a man are first of all regarded as his property during his lifetime. This right, however, is overshadowed by the rights of the clan to these things which result in the inheritance of property by the nearest clan, viz. lineage members.

This matrilineal system brings about the avuncular affection of nephews to their mother's brothers whose heirs-to-be they are.⁷

1 Malan: Tribes 80

2 Bruwer: Journal SWA Sc. Society Vol. 18/19, 43; Malan: op.cit. 80

3 Malan: op.cit. 81; Tuupainen: Marriage 30; Bruwer: Kuanyama 52

4 See the list of Kuanyama clan names in Appendix 3, p. 235

5 Tuupainen: op.cit. 28; Bruwer: op.cit. 52

6 Malan: op.cit. 81; Tuupainen: op.cit. 30; see also Bruwer, op.cit. 42 f

7 Bruwer: op.cit. 48

Not all tribes have chiefs: The Eunda/Nkolonkadhi probably never had any, while the Kuanyama, Kuambi and Mbalantu have lost theirs.

The Kuanyama lost theirs in 1917. As this study is concerned with traditional times and as it is based mainly on the Ndonga, who still have chiefs, and the Kuanyama, succession to the chieftainship will be discussed for both.

Those tribes which do not have a chieftainship are ruled more or less in a republican way by a council of non hereditary headmen.¹

The others have hereditary chiefs. The chief is assisted by a council of headmen.

A more recent development is the distinction between (senior) headmen and sub-headmen. The former is in charge of a district (K: oshitukulwa² or oshitopolwa³) while the latter is appointed over a ward (K: omukunda). Around the turn of the century and before the powers of a chief were virtually without limits: He had the power of life and death over his subjugates, he seemed to have had the sole right over the tribal land and over the property of his followers. In these matters only his will was important.⁴

If, on the other hand, matters of the state were involved like agreements with other tribes, concessions to other tribes the establishment of missionary stations, war and peace,

1 Tuupainen: Marriage 12; Malan: Tribes 89

2 Kotzé: Kuanyama 85

3 Malan: op.cit. 87

4 Rautanen: Fb 16; Dammann/Rautanen: Journal SWA Sc.Society Vol.27,34; Wulforth: Fb 39; Brincker: Ovambo-Mission 23, 25; Bruwer: Kuanyama 32; Laubschat: Kolblatt 1903, 643; v. Winkler: Kolblatt 1902, 196; Anon.: BRM 1896, 211; Hahn: Tribes 8, 18; Estermann I 124; Stals: Blankes en Ovambos 228; Schinz: 285

the chief could not decide alone but had to listen to his councillors or omalenga (K, sing.: elenga). He could not rule against their majority. Also he could not kill a respected person of his tribe or a missionary against their majority.¹

He was, however, not obliged to execute a resolution of the omalenga.² Uejulu of the Kuanyama spared the lives of missionaries simply by refusing to obey the advice of his omalenga and medicine-men.³

1.4 Sources

Sources were mainly answers to questionnaires by the missionaries Wulfhorst (on the Kuanyama) and Rautanen (Ndonga) which were printed around 1910, but also other publications by Rautanen. Tönjes published his monography on the Ovambo (mainly Kuanyama) in 1911.

Other main sources were Loeb (1962), whose main research was based on traditional Kuanyama, and Estermann, who had missionized among the Kuanyama in Angola since 1923. A few more recent studies were used like the one of Kotzé.

2. Law of Things

Living in the subtropical north of South West in a region with the highest rainfalls of the whole country⁴, the land naturally is more fertile and arable than in the arid south where agriculture on a larger scale is virtually impossible without artificial irrigation.

1 Brincker: Ovambo-Mission 25; see also Bruwer: Kuanyama 32; see also Hahn: BRM 1867, 312

2 Brincker: op.cit. 25; Wulfhorst: Fb 40; Laubschat: Kolblatt 1903, 643; Estermann I 124

3 Brincker: op.cit. 25

4 See above p. 118

Such a favourable climate enhanced a fairly good, opulent living which, itself brought a lot more of "things" owned by people than in the south where quite a number of tribes were nomadic and thus were hampered in acquiring more things than they can carry.

Naturally again, the more people can own the more complicated the law of things becomes.

2.1 Immovable Things

2.1.1 Land

Originally the land of every tribe was divided into districts (K: omikunda, sing.: omukunda).¹ These omikunda were ruled by nobles of the chief's choice.² The districts again were divided into kraals. There were on an average twenty kraals in a large Kuanyama district³, less in smaller ones.⁴

A kraal head obtained his land from the ruler of the district (headman) after the chief had consented to the transaction.⁵

In the introduction the wide and unchecked autocratic powers of the traditional chiefs, who virtually had absolute powers over their subjugates, was outlined.⁶

2.1.1.1 Property of Land in general

Because these wide powers were relentlessly exercised to such an extent that the chief took back granted land

1 Loeb: Feudal Africa 42; Krafft: Rechtsverhältnisse 34; Stals: Blankes en Ovambos 228

2 Wulfhorst: Fb 32; Tönjes: Ovamboland 118, 120; Loeb: op.cit. 42; Laubschat: Kolblatt 1903, 643; Stals: op.cit. 228

3 Loeb: op.cit. 42; Krafft: op.cit. 34

4 Wulfhorst: Fb 32; Tönjes: op.cit. 120

5 Wulfhorst: Fb 32; Loeb: op.cit. 42

6 See above p. 121

whenever he wanted to, it appeared to onlookers as if land was the property of the chief alone.¹

A missionary² wrote about the Kuanyama around 1910: "Der Häuptling allein ist Herr des Landes, das heißt auch Herr des Bodens. Er kann nach Willkür Land geben, wem er will."³ This is stated even clearer by Krafft in 1914:⁴ "Eigentümer des Landes, das heißt des gesamten Grund und Bodens, ist der jeweils regierende Häuptling."⁵

It is correct that the chief was empowered to allocate land - through his sub-chiefs - to his subjugates. This power he had not, however, because he was the owner of the land, but only because legally he was the trustee of the tribal land.⁶

This is verified for the Ngandjera by Louw:⁷ "Die Kaptein besit stamgrond nie in persoon nie maar namens die volk. Hy kan byvoorbeeld nie grond vervreem nie deur dit te verkoop aan blankes."⁸

The chief was thus just the trustee of tribal land which he was not allowed to alienate by giving it to people who were not members of his tribe. To his tribe members, however, he was allowed to allocate land.

1 Wulfhorst: Fb 32; Hahn: Tribes 18; Krafft: Rechtsverhältnisse 26; Brincker: Ovambo-Mission 19, 23; Tönjes: Ovamboland 120

2 Wulfhorst: Fb 32

3 Translation: "The chief alone is the lord of the land, i.e. also owner of the ground. He can, arbitrarily, give land to whomever he wants to."

4 Krafft: op.cit. 26

5 Translation: "Owner of the land, i.e. of the entire ground and soil, is the ruling chief."

6 Malan: Peoples 89 f; Louw: Ngandjera 82; Bruwer: Kuanyama 32; Lehmann: Zs Ethnologie Vol. 79, 41

7 Louw: op.cit. 82

8 Translation: "The chief does not own tribal land in person but on behalf of the tribe. He cannot, for instance, alienate land by selling it to whites."

2.1.1.2 Sowing Land

The right to work on sowing-land might be bought by a married man¹ from a chief.^{2,3} The payment usually consisted of a few cattle.⁴ With this payment the tenant earned the right to work the sowing land for a lifetime. After the death of the tenant the land fell back to the chief (sub-headman today) who then was free to resell the right to work on the land to another married man. Sowing land was thus not inheritable⁵; the tenant did not become owner of the sowing-land but he only had the right to reap the harvest, i.e. he had a usufructuary right. The tenant was also restricted from selling the land or to lease it out to somebody else.⁶

The tenure to him was therefore bound by the condition that the tenant or member of his family worked the field and not somebody else. No subtenure was allowed. The same applied to Herero law: The right to cultivate a garden was only granted to the person who applied to the chief; this right was a strictly personal right and did not entail the right to sub-let that piece of land.⁷

But unlike in Herero law, where the actual usage of the granted piece of land was a prerequisite for being allowed to exercise the usufructuary right, actual usage was not a prerequisite with the Ovambo. If a piece of sowing land was not used for a year or two the land did not fall back to the chief automatically but stayed the land of the tenant.⁸

1 Kotzé: Die Kuanyama 83

2 Rautanen: Fb 8

3 Nowadays sowing-land is bought from a sub-headman

4 Wulfhorst: Fb 32; Bruwer: Kuanyama 32; Rautanen/Damann: Journal SWA Sc.Society Vol. 27, 34

5 Kotzé: Die Kuanyama 83; Brincker: Ovambo-Mission 19

6 Kotzé: Die Kuanyama 130

7 See below p. 183

8 cf Rautanen: Fb 8

As can be expected from an agricultural tribe like the Ovambo, they had developed quite a strong personal right over land, which, when it was granted to somebody, was independent of real usage: As soon as the tenant had paid the fee for the right to use sowing land the chief was not allowed to reallocate this piece of land or part thereof to someone else.¹

When a tenant died soon after starting to use the sowing-land, no repayment for the hiring-fee was made. A repayment was only made if the tenant died after having paid the fee but before he started using the land. In this case, the refund was paid to his matrilineal relatives.²

2.1.1.3 Plots for Permanent Buildings

In traditional times permanent buildings were unknown to the Ovambo tribes. Rautanen³ wrote in 1896 that no separate ownership of land was known and he also stated that houses were regarded as movable property; at least the material from which they were made: wooden poles and the roofs.⁴

The private property of small plots with permanent houses mentioned below must be seen as a new development which only took place after permanent buildings were introduced to that area by missionaries.

A sort of ownership which could be compared to our western system was found with the Kuanyama when someone intended to erect a permanent building. A member of the Kuanyama tribe could buy a plot from the sub-headman, who was in charge of the omukunda, if he intended to erect a permanent

1 Kotzé:Die Kuanyama 83

2 Kotzé:op.cit. 83

3 Rautanen/Steinmetz 344

4 Rautanen/Steinmetz 344

building on it.¹ Such a transaction required the assent of the headman of the oshitukulwa.² The sub-headman decided the size of the plot; it was not allowed, however, to be larger than 200 sq.ft.³

Permanent buildings, i.e. houses of stone, clay or cement, were not allowed to be erected on sowing land.

When this was nevertheless done by the tenant, his matrilineal relatives had to demolish it within three months after the death of the tenant. If they did not demolish it, the house became the property of the new tenant of the sowing land,⁴ Regarding the fact that sowing-land could be given away on tenure only, it must be taken that the house did not become the full property of the new tenant but that he only obtained the right to use it as long as he lived. His matrilineal relatives then were called upon to demolish the building, otherwise it would go to the new tenant in turn. The new tenant's right over the house was therefore inseparably linked to, and was the same as that over the sowing land.

A correctly purchased plot with its building stayed the property of the buyer and could consequently be inherited by the matrilineal relatives of the owner.⁵

2.1.1.4 Omukunda

When the sub-headman of an omukunda died, the omukunda automatically fell back to the headman of the oshitukulwa who could then reallocate it to someone else.⁶

1 Kotzé:Die Kuanyama 84

2 Kotzé:op.cit. 84

3 Kotzé:op.cit. 84

4 Kotzé:op.cit. 84

5 Kotzé:op.cit. 84

6 Kotzé:op.cit. 84

The rights a sub-headman had over the omukunda were therefore the same as those the tenant had over his sowing lands. An omukunda could accordingly not be inherited.

The sub-headman of an omukunda did not have the power to divide or change the boundaries of an omukunda without the assent of the chief.¹

2.1.1.5 Oshitukulwa

Similarly, when the headman of an oshitukulwa died, it was not inherited by his relatives.

The chief allocated these large districts to his proxies, including members of his own family like his brothers², sons of even female relatives.³ They then had a lifelong right of utilization: They sold the smaller districts (omikunda) to whomever they wanted.

Today, the sub-headman (i.e. the heads of the omukunda) of that oshikutulwa decide whom they are going to suggest for the job of headman of the oshitukulwa; this suggestion then is put before the Council of Headmen for acceptance.⁴

2.1.1.6 Grazing Land

Other land, like grazing land and "forests" were communally owned and were allowed to be used by any member of the respective tribe.⁵

1 Malan: Tribes 90; Kotzé:Kuanyama 85

2 Malan: op.cit. 90; see also Wulfhorst: Fb 32; Laubschat: Kolblatt 1903, 643

3 Wulfhorst: Fb 40

4 Kotzé:op.cit. 85

5 Rautanen/Steinmetz 343; Rautanen: Fb 9; Tönjes: Ovamboland 131; Low: Ngandjera 80

People who did not belong to the respective tribe always had to ask permission to graze their animals like their trek-oxen.

Forests, which occur in Ovamboland were communally owned too. Anybody was allowed to fetch wood for building or other purposes there.¹

2.1.2 Fruit trees

In the quite arid areas south of Ovamboland not many fruit trees are found. This situation explains why the southern tribes of SWA/Namibia, i.e. San, Khoe-khoen and Herero do not have any distinctive laws regarding fruit trees.

In fertile, sub-tropical Ovamboland, however, quite a number of wild fruit trees flourish like the marula palm, fig trees and others.² It is thus not surprising to find a distinct law regarding fruit trees among the different Ovambo tribes.

With the Kuanyama and Ndonga the situation was as follows: fruit trees which stood on sowing land, were allowed to be used by the tenant and his family. The fruits of such a tree thus did belong to him in the same way as the harvest of his field; the fruit tree was part of the tenure.³

If, however, the fruit tree standing in the sowing-land is a marula tree, then the tenant had to give a share of marula fruits to the sub-headman.⁴

Fruit trees not standing on sowing land were harvested by the sub-headman.⁵ Rautanen on the other hand claims that

1 Wulfhorst: Fb 32; Tönjes; Ovamboland 131

2 Louw: Ngandjera 82 f

3 Wulfhorst: Fb 32; Kotzé:Kuanyama 85; Rautanen: Fb 8; Rautanen/Steinmetz 344

4 Kotzé:op.cit. 85; Rautanen: Fb 8; Rautanen/Steinmetz 344

5 Kotzé:op.cit. 85

that person was allowed to harvest a fruit tree which did not stand on sowing land whose sowing land was nearest to that tree.¹

Fruit trees may not be sold, hired out or destroyed by their "owner".²

With the Ngandjera the situation was slightly different: Generally, regarding the fruit trees on sowing land, the situation was the same as with the Kuanyama, namely that a fruit tree standing on sowing land was part of the tenure.³

If, however, someone had been tenant of a piece of land for a long time and had cultivated a fruit tree thereon and eaten its first fruits, then he could stay the owner of that fruit tree even when he moved to another area. He thus had the right to reap the fruits of that tree while the new tenant was allowed to use the sowing field but had no right to the fruit trees thereon.⁴

To illustrate this, Louw⁵ gives the following example: The then⁶ chief of the Ngandjera, Ushona Shiimi⁷, had a marula tree in his garden which, because of the abovementioned reason, did not belong to him. He could only reap the fruits of the marula tree, because of his status as chief of the tribe but not, however, as an individual. This example also illustrates that the chief or his headmen not only of the Kuanyama but also of the Ngandjera reserved the right to himself to reap at least a part of the fruits of a marula-tree. The same applies to the Ndonga: The chief or his headmen had the exclusive right to reap the fruits of the marula-palm (*Schweinfurthiana*).⁸

1 Rautanen/Steinmetz 344

2 Kotzé:Kuanya, a 131; Rautanen: Fb 8

3 cf Louw: Ngandjera 82

4 Louw: op.cit. 82

5 Louw: op.cit. 8

6 1965/66, see Louw op.cit. 2

7 Louw: op.cit. 2, 80

8 Rautanen/Steinmetz 344

The reason for this prerogative was that from the marula fruits an alcoholic beverage would be made which was much sought after.¹

2.1.3 Water

There are several laws regarding water.

2.1.3.1 Dams

Dams were communal property which every member of the tribe was allowed to use.² Intentional damage led to prosecution and punishment by the chief.³

2.1.3.2 Waterholes

A man-made waterhole belonged to the builder. Especially in the dry season when water for animals becomes scarce a few cattle owners would unite and build a waterhole which they then owned together.⁴ If someone else wanted to use that waterhole he first had to get the permission of the owner.⁵ This situation was the same with the Herero⁶ and opposite to the customs of the Bushmen where every member of the hunting group was allowed to use a waterhole.⁷

A man-made waterhole which was situated on sowing land, did not become the property of the builder because the waterhole was inseparably linked to the land.⁸

1 Rautanen/Steinmetz 344

2 Kotzé:Kuanyama 85

3 Kotzé:op.cit. 85

4 Tönjes: Ovamboland 131

5 Wulfhorst: Fb 32; Tönjes: op.cit. 131; Kotzé:op.cit. 85

6 See below p. 185

7 See above p. 72

8 Rautanen: Fb 8: Krafft: Rechtsverhältnisse 26

The builder who was mostly also the tenant of the surrounding sowing land thus did have the right to use the waterhole as long as he lived; after his death, however, it fell back with the land to the sub-headman who then reallocated it to a new tenant. A man-made waterhole situated on sowing land could thus not be inherited.¹

2.1.3.3 Other Water

Other water, like rainwater in vleis or like water in rivers is communal property and may thus be used by any member of the tribe.²

2.2 Movable Things

As mentioned above, the Ovambo tribes are nearly non-nomadic and live in a fertile region which brings about that they have more property than their southern neighbours.

More property in turn brings about more rules and regulations regarding property.

2.2.1 Personal and Household Articles

The kind of ownership for these goods was categorized by whether they were obtained through own energy and ability or as a present from near relatives or inherited.³

2.2.1.1 Self-made Things and Things obtained through Trade

Personal things like clothes, weapons and ornaments which were self-made by a person or which were traded in for other

1 Kotzé: Kuanyama 85

2 Louw: Ngandjera 80

3 Kotzé: op.cit. 129

personal things or which were bought, were regarded as the personal property of the owner. He could do with it whatever he wanted to: He was allowed to sell it, give it away as a present, swap it or destroy it.¹ One exception to this rule has to be mentioned: All the clothes which girls were wearing during the ohango or initiation ceremony were burnt before returning home.² Similarly all clothes of boys were burnt, when they came back from the circumcision rites.³

Other incidents, too, demanded that certain things had to be burnt. The birth of twins entailed certain purification rites. During these rites the parents had to take off all the clothes they were wearing. These then were thrown into the wife's hut and clothes and hut were then burnt to the ground.⁴

A woman who had made pottery had to give one of the newly furnished pots to any relative of her father as a present. Only thereafter she was free to sell the rest.⁵

Another exception to the rule that self-made things belonged to the maker is recorded by Nitsche:⁶ The very precious whelk-shell-buttons were fashioned by the men⁷ from the sawed-off butt ends of the conical whelk shells which were varying from one to five inches in diameter.⁸ They were called omba in Kuanyama (pl. emba).⁹ According to the rule

1 Kotzé:Kuanyama 128

2 Rautanen/Steinmetz 332

3 Loeb: Feudal Africa 239

4 Loeb: op.cit. 230

5 Loeb: op.cit. 196

6 Nitsche: Ovamboland 125

7 Loeb: op.cit. 188

8 Loeb: op.cit. 188; Tönjes: Ovamboland 44 f

9 Loeb: op.cit. 188; Tönjes: op.cit. 44 f

regarding self-made things, these emba should belong to the maker.

In Kuanyama, however, the only males, who were allowed to wear them, were the chiefs in their headdresses. The only other persons who were allowed to wear them, were the following females: A king's daughter, noble women and women not of the royal clan but married to the king or a nobleman.¹

In Ondonga the emba were worn by the aristocrats of both sexes. Here the chief lent his emba to his favorites, and then took them back if his favorites fell into disgrace. It meant death to sell these ornaments.²

Presents which an adult received from a stranger, i.e. not from a near relative, were viewed as having been obtained through own energy and thus also fell into this category.³

In this category men and women were equal; the wife did not have to ask permission from her husband when she wanted to enter into any transaction with goods from this category.

2.2.1.2 Property obtained as a Present from a near Relative

Property which children received as a present from their parents was not full property in that sense as that they were free to do with it what they wanted to. Instead, they had to obtain their parents' assent for every transaction they intended to undertake.⁴

Similarly, a wife was not allowed, without her husband's assent, to sell, give away as a present, swap or destroy clothes, ornaments, pots or other household articles which she had received from her husband.⁵

1 Loeb: Feudal Africa 189; cf Nitsche: Ovamboland 125; Tönjes: Ovamboland 45, he managed to obtain only one of these shells through all the years living there, namely from a noble woman.

2 Nitsche: op.cit. 125

3 Kotzé:Kuanyama 129; see also Wulfhorst: Fb 22

4 Kotzé:op.cit. 128

5 Kotzé:op.cit. 128; see also Wulfhorst: Fb 26

2.2.1.3 Property received through Inheritance

Personal property, tools for tending the fields and household articles which a person received through inheritance were not allowed to be sold, swapped or given away as presents to strangers without the permission of the matrilineal family involved. If property out of this category was destroyed, the matrilineal family had to be informed about this.¹

2.2.2 Harvest

Each head of a kraal was the unconditional owner of the harvest from his sowing-land.²

Also children who had their own garden were free to sell or swap the products thereof, interestingly enough in this case without their parents' permission.³

2.2.3 Women

Similar to the Herero the wives of the Ovambo-men could not be seen as the property of their men.

Admittedly, they had to obey their husbands' orders and work for them especially in the fields.⁴

But a woman could have her own property like animals, household goods and part of the harvest from the fields.⁵ With her own property she could do whatever pleased her.⁶

1 Kotzé:Kuanyama 128 f

2 Kotzé:op.cit. 130

3 Kotzé:op.cit. 130 f

4 Rautanen: Fb 1

5 Rautanen: Fb 4, 5; Rautanen/Steinmetz 335; Wulfhorst: Fb 21, 26, 27; Loeb: Transition Rites 20 f

6 Rautanen: Fb 4; Wulfhorst: Fb 26, 27

If she were her husband's property surely her property would also belong to him. She also was allowed to leave her husband any time when he did not please her anymore and seek refuge with her family.¹

Further, a man could not sell², distrain³ or rent out⁴ his wife. She had a position, as Meyer⁵ noticed about Herero women, which was comparable to European farmers' wives at the turn of this century.

2.2.4 Children

A man's children were not related to him.⁶ Consequently, they did not belong to their father but to their mother.⁷ Being not related to his children, a father was not liable for their debts and wrongdoings.⁸

Nevertheless, a father had to give his consent if one of his daughters wanted to marry.⁹

2.2.5 Slaves

Various modes existed how slaves could be obtained.

Probably most of them were made during war: They got captured¹⁰ and then were not bought back by their relatives either because these relatives were killed or because they were too poor.¹¹

1 Rautanen: Fb 4 f; Wulfhorst: Fb 27; Loeb: Transition Rites 21

2 Rautanen: Fb 1; Rautanen/Steinmetz 329; Wulfhorst: Fb 22

3 Rautanen: Fb 1; Wulfhorst: Fb 22

4 Rautanen: Fb 1

5 Meyer: Recht 59, fn. 2

6 Tönjes: Ovamboland 128; see also above p. 120

7 Tönjes: op.cit. 128 f

8 Tönjes: op.cit. 128

9 Tönjes: op.cit. 129

10 Wulfhorst: Fb 28; Rautanen: Fb 5; Brincker: Ovambo-Mission 29; Krafft: Rechtsverhältnisse 25

11 Krafft: op.cit. 25; Wulfhorst: Fb 28; see also Tönjes: op.cit. 124; Brincker: op.cit. 29; Loeb: Feudal Africa 125; H.Hahn: BRM 1858,240, 250 f

A warrior was allowed to keep those men he had captured.¹ According to Wulfhorst² this applied only to normal warriors; omalenga had to give theirs to the chief. This is verified by Brincker³ who states that the chief got only a few slaves.

Wulfhorst⁴ also tells of "free slaves"⁵: Anybody could become a "free slave" because of his own wrongs. Someone who got sentenced to death but whom the chief had decided not to kill would be sold to someone.⁶ One could also become a slave because of the wrongs of others: A brother could give away a sister into slavery as "payment" for a murder he had committed.⁷

Lastly, sometimes a chief would order a culprit to hand over to him a female relative in compensation for some wrong the culprit had done.⁸

The difference between "normal" slaves and "free" slaves probably was only the different tribal relation. While a slave made during war, belonged to a different tribe, free slaves belonged to the same tribe as their "owner". Slaves became members of the family of their "owners": From earlier days Wulfhorst⁹ tells that only "with the years" slaves were regarded as relatives, while later studies found that they were regarded to be relatives quite soon after their enslavement.¹⁰

- 1 Wulfhorst: Fb 42; Tönjes: Ovamboland 123 f; Brincker: Ovambo-Mission 29
- 2 Wulfhorst: Fb 42
- 3 Brincker: op.cit. 30
- 4 Wulfhorst: Fb 28
- 5 "Freie Sklaven", Wulfhorst: Fb 28
- 6 Wulfhorst: Fb 28; compare also Rautanen: Fb 5, who speaks of obtaining slaves through "Kauf", i.e. buying; see also H.Hahn: BRM 1858, 265
- 7 Wulfhorst: Fb 28, 34; Krafft: Rechtsverhältnisse 25
- 8 Wulfhorst: Fb 28
- 9 Wulfhorst: Fb 28: "Mit den Jahren jedoch sieht man Sklaven als Verwandte an"; see also Loeb: Feudal Africa 125
- 10 Kotzé: Kuanyama 131; Loeb: op.cit. 125

Brincker¹, however, claims that a prisoner of war was regarded and handled as a member of his captor's family from the moment onwards that he got his first food in the kraal of his captor. He even got mourned like a family member when he had died.

Loeb² verifies this by stating that a captive woman who did not get ransomed, joined the clan of her captor.

This seems to have been true not only regarding the Kuan-yamas but also in respect to the Ndongas.³ Although a slave could own property, he, together with his property, belonged to his "owner". Being legally members of the family they nevertheless did all work given to them.⁴ Being admitted into the tribe and as members of specific families it was understandable that their owners, although they had far-reaching rights⁵, did not have absolute rights over them: They were not allowed to kill them⁶; slaves were regarded as grown-up, dependent children.⁷ Consequently, they could be allowed to found their own kraal or be forced to stay in that of their "owner", whatever pleased their owner.⁸

Among the Ndonga, the "owner" of a slave was liable for his debts and for the wrongs he did.⁹ There was one exception to this rule: Nobody was liable for debts and wrongs of the

1 Brincker: Ovambo-Mission 30

2 Loeb: Feudal Africa 89

3 Compare Rautanen: Fb 5

4 Kotzé:Kuanyama 131; Loeb: op.cit. 125

5 Rautanen: Fb 5, speaks of "unbegrenztes Recht", i.e. unlimited rights

6 Kotzé:op.cit. 131; Wulfhorst: Fb 28; Krafft: Rechtsverhältnisse 26

7 Kotzé:op.cit. 131

8 Rautanen: Fb 5; Wulfhorst: Fb 28

9 Rautanen: Fb 5

slaves which belonged to the chief. As members of the chief's family they were not liable.¹ Among the Kuanyama the owner of a slave was not liable for the wrongs his slave did just as a man was not liable for the wrongs of his son.²

Slaves could not be swapped or sold; here again one exception was made: The chief was allowed to sell his slaves or to give them away as a present.³

Another exception was selling slaves to another tribe: During chief Uejulu's time it was, according to Loeb⁴, customary to sell captives to those neighbouring tribes of the Kuanyamas which lived north of them, in exchange for brandy, clothing and guns.⁵

A woman who was slave to the chief could become a free woman by giving her children to the chief.⁶ Children of two slaves stayed slaves.⁷ Because there never were too many slaves, marriages between two slaves were seldom.⁸ More often a slave would marry a free woman; their children were free.⁹ This, of course, was due to the matrilineal reckoning of descent among the Ovambo: who the father of a child was, did not matter¹⁰; because the mother was free, the child was free too. Still, the possibility of such a marriage - and apparently every slave was allowed to marry - shows that slavery was not something to be ashamed of or something which was exceptionally hard.¹¹ The children of a slave woman always were slaves.¹²

1 Rautanen: Fb 5

2 Wulfhorst: Fb 28

3 Rautanen: Fb 5; see also Wulfhorst: Fb 28; H.Hahn: BRM 1858, 250; Wulfhorst: BRM 1907, 37; Welsch: BRM 1908, 157

4 Loeb: Feudal Africa 126

5 Loeb: op.cit. 126; H.Hahn: BRM 1858, 250 f

6 Wulfhorst: Fb 28

7 Rautanen: Fb 5; Wulfhorst: Fb 28

8 Wulfhorst: Fb 28

9 Wulfhorst: Fb 28;
Malan: Peoples 80

10 See above p. 120, 136

11 Wulfhorst: Fb 28

12 Wulfhorst: Fb 28

Integration and assimilation apparently took place fairly easy.

As mentioned already¹, slaves should not be killed. Through the great powers which a number of Ovambo chiefs acquired in the 19th century, it was possible that some of them waved the rules about captives becoming slaves: Mandume, the last chief of the Kuanyama², had the motto that all prisoners of war had to be killed.³

According to Wulfhorst⁴, among the Kuanyama only the chief was allowed to kill his slaves. But he, too, tells that only those captured slaves were allowed to be killed which were severely ill. This killing of severely ill "prisoners of war" had to be done, so it was believed, because the natural death of such a person would bring bad luck. They therefore were killed shortly before they would have died anyhow.⁵

Slaves and their offspring were inherited from one family member to the next. Even today rich Kuanyama apparently still hold slaves which they have inherited. Such a fact naturally is kept secret today as slavery is forbidden. These "slaves", however, would not refuse to help their "owners" if called upon even though they do not necessarily stay with "their" family. These people are thus looked upon not as being slaves but as being persons on whose help the family has occasionally a right.⁶

2.2.6 Animals (Stock)

As with self-acquired goods⁷, a man and his wife, too, could do whatever they liked with their own herd which they

1 See above p. 138

2 cf Lehmann: in Tribus, Vol. 4/5, 288

3 Lehmann: in Tribus, Vol. 4/5, 291; Hahn: Tribes 9

4 Wulfhorst: Fb 28

5 Wulfhorst: Fb 28

6 Kotzé: Kuanyama 131; see also Loeb: Feudal Africa 125

7 See above p. 132 ff

acquired through swopping and buying. Neither had to ask permission of the others for any transaction, be it sale, swopping or slaughter.¹

Family cattle, however, which were inherited, were not allowed to be sold nor swopped and were also only allowed to be slaughtered when the animal had reached an old age. Accordingly, the meat of this animal also was not allowed to be sold nor swopped but the family had to be invited so that they together could eat that meat.²

Children, which were still dependent on their parents, had to get their parents' assent prior to a planned transaction.³

A cow's calf belonged to the owner of the cow: The owner of the bull did not have any right over the calf whatsoever.⁴ The general information of Kotzé's⁵ informants was: "'n bul beteken niks".⁶

The present regulation regarding lost cattle is the following: Such cattle become property of the finder after one year after the case is reported to the headman of that region and after the headman in turn has informed the tribal bureaus.⁷

2.2.6 Find

The ownership of a lost thing stayed with the loser.⁸ He could claim his thing back from whoever possessed it. The

1 Wulfhorst: Fb 26, 27; Rautanen: Fb 4; Kotzé: Kuanyama 131 f

2 Kotzé: op.cit. 132

3 Kotzé: op.cit. 132

4 Kotzé: op.cit. 132

5 Kotzé: op.cit. 132

6 "A bull means nothing"

7 Kotzé: op.cit. 132

8 Krafft: Rechtsverhältnisse 26

loser decided on the amount of a finder's reward, but he could also take his thing back without paying a reward.

If, however, the loser could not be found, "so kann der Finder das Eigentumsrecht an der Fundsache für sich beanspruchen".^{1,2}

Because a statute of limitation was unknown among the Ovambo tribes, the claim of ownership could also not come under the statute of limitation.

Accordingly, the above sentence is to be interpreted in the following way: The loser stayed owner and could claim the thing back wherever he sees it. As the years go by, proof of ownership became more and more difficult so that the finder can be seen as the de facto owner. The possessor he is in any case.

2.2.8 Honey

According to Krafft³ and Rautanen⁴, no definite laws regarding swarms of bees existed. If someone found honey he became the owner.⁵

2.2.9 Hunting

According to Rautanen⁶, hunting was allowed to anyone. The hunting bag belonged to the hunter irrespective of where he had killed the animal.⁷ This clearly had to be defined to that

1 Krafft: Rechtsverhältnisse 26 f

2 Translation: "The finder can claim ownership of the find for himself."

3 Krafft: op.cit. 26

4 Rautanen: Fb 9

5 Krafft: op.cit. 26

6 Compare Rautanen/Steinmetz 343; Rautanen: Fb 9; also Wulfhorst: Fb 32; Tönjes: Ovamboland 131

7 Tönjes: op.cit. 131

extent that hunting without permission was only allowed to any member of the tribe, while white hunters and other non-tribal hunters had to ask permission.

Even tribal members, however, were subject to certain restrictions: They were not allowed to go hunting for elephant and ostrich. This was the exclusive right of the chief. If, however, someone had killed an elephant or an ostrich, the ivory and/or the feathers had to be handed over to the chief who in turn gave guns and ammunition for such a hunt.¹

This elucidates why elephant and ostrich were quasi "royal" game: Ivory and ostrich feathers constituted property of high value.²

Earlier on, when no guns existed in Ovamboland and when elephants, which often caused havoc in plantations, had to be killed with hunting-axes, a chief would give a few cattle to the hunters as reward.³ The same applied to those who killed leopards and lions.⁴ Here the skins had to be given to the chief.⁵

Thus, hunting was free to all tribe members; generally the hunting bag belonged to the hunter, except for ivory, ostrich feathers, leopard and lion skins.

2.2.10 Stolen Things

If somebody found something which was stolen from him in the possession of the thief, the thief had to hand this back immediately.⁶

- 1 Rautanen/Steinmetz 343; slightly different Wulfhorst: Fb 32; ivory did belong to the hunter; he just usually gave it as a present to the chief, who in turn gave a present to the hunter.
- 2 Rautanen/Steinmetz was published in 1903: At the turn of the century ostrich feathers were very much en vogue in Europe and therefore very dear.
- 3 Rautanen/Steinmetz 343; Rautanen: Fb 9
- 4 Rautanen/Steinmetz 343; for lions - Loeb: Transition Rites 79
- 5 Wulfhorst: Fb 32; Rautanen: Fb 9
- 6 Krafft: Rechtsverhältnisse 26; Rautanen: Fb 9; Tönjes: Ovamboland 128

If, however, the thief had already sold the stolen thing, the real owner could only buy it back from the present possessor.¹ Then, however, he had a claim against the thief which was to be satisfied out of the property of the thief.² The same applied when the thief had destroyed the thing already.³

Also, if the thief did not have the stolen thing anymore and if he was very poor, the owner could go to one of the thief's relatives and put a claim against him.⁴ He could also take the thief, or, if he could not find the thief, take one of his relatives into slavery.⁵

Under certain circumstances persons were allowed to take another person's things without being regarded as a thief: At the end of the efundula ceremony, which was a girl's puberty and a group-marriage ceremony, the girls smeared themselves with white clay and ashes and roamed the country. During this period they were called ash-girls and allowed to enter any garden in order to still their hunger by taking whatever quantity of millet or beans they desired.⁶ Tönjes and Loeb only mention that they were allowed to take millet and beans. The ash-girls probably were only allowed to take these foods but had to abstain from taking any other things.

2.2.11 Houses as movable Property

As already mentioned⁷, houses in traditional Ovamboland were regarded as movable property. This was brought about

1 Krafft: Rechtsverhältnisse 26; Rautanen: Fb 9; Wulfhorst: Fb 32

2 Krafft: op.cit. 26; Rautanen: Fb 13; Wulfhorst: Fn 32

3 Rautanen: Fb 13

4 Tönjes: Ovamboland 128

5 Tönjes: op.cit. 128

6 Tönjes: op.cit. 141; Loeb: Feudal Africa 249

7 See above p. 126

by the components they were made of: Wooden poles and a thatched roof. With this acceptance of houses as movable property, the Ovambo tribes are in accordance with the other SWA/Namibia-tribes further south. There the shelter were only huts (Herero)¹ or even only wind shelters (San).²

As movable property allowed individual ownership, somebody who for instance got expelled from his kraal, had the right to break the house down and take the material along or to sell the house.³

2.2.12 Dolls

The important role dolls played in social culture and tradition of the Kuanyama and certain peculiar modes of possessing and inheriting them, justify their special mention here. There was more than one type of doll:

(1) Pre-pubescent girl's dolls were the ones small girls played with like other girls all over the world. They were made from anthropomorphic sticks, capsuled and double-headed fruit pods⁴, and they were fashioned with black gum, seeds, red ochre and beads. Girls played with these dolls in imitation of mother and child and they dressed their dolls.⁵

Although these dolls were for every day use, they were spoken of as children.⁶

These dolls could be made by anyone, i.e. also by a girl's father.

1 Meyer: Recht 20

2 See above p. 73 f

3 Rautanen/Steinmetz 344

4 Loeb: Feudal Africa 117; Lebzelter: Rassen und Kulturen 232

5 Loeb: op.cit. 117

6 Loeb: op.cit. 114

(2) Far more important, however, were the puberty and courtship dolls. These a father was not allowed to make. According to Loeb's informant Viliho Snr.¹ a girl gave a stick to any boy in the kraal, even to her brother, who then would make her a doll. This practice however did not seem to have been the usual way to acquire a puberty doll. Tönjes² notes that they were very precious. The same is stated by Schär.³ If they really could have been made that easy, they would not have been so precious. It thus appears, that most of them were inherited and that not any girl could have one made for herself. These dolls were usually made from the slender ombango tree by cutting a forked branch. The fork represented the legs, while the single end had to be thicker and represented the head. The doll would then be fashioned with a mouth made from ostrich shell beads. Arms and fingers were made from beads.⁴ Also the lower part of the doll was decorated with beads from ostrich egg-shells resembling the apron an unmarried girl wore.⁵ The middle part was covered with small dark blue beads while the long necklace on the head and neck was made of iron beads.⁶ Imposted white beads were scattered among the iron beads while tassels of hair from a skunk's tail hung from the end of the necklace.⁷

Puberty dolls had more than one function. For one they were used as courtship mates; if a young man brought a doll to a girl this was seen as a silent declaration of love. If the girl now gave back the doll, this meant that she had accepted the young man's proposal to marry her.⁸ The doll,

1 Loeb: Feudal Africa 118

2 Tönjes: Ovamboland 134

3 Schär: in Loeb, op.cit. 115

4 Loeb: op.cit. 118

5 Tönjes: op.cit. 133

6 Tönjes: op.cit. 133

7 Tönjes: op.cit. 134

8 Lebzelter: Rassen und Kulturen 232

which up to now had no name, was now given a name by the man and sent back again to the girl with the mentioning of the doll's name. If the first-born child was a girl she would receive that name.¹

Dolls therefore also are imagery vehicles for a family's future progeny.² These dolls not only represented the children of their owners³, they were not only a material symbol of a future child but they shared the child's identity.⁴ Accordingly, an injury to the doll was believed to result in a future injury not to the owner but to the owner's child.⁵ A girl who lost her doll was believed to become barren.⁶

All this illustrates the high value attached to these dolls. They were dressed like brides, decorated with beads from ostrich egg shells, with dark blue beads and a long necklace on the head and neck, made of iron beads.⁶ Not surprisingly dolls of this kind were very precious so that, when a house burnt, the dolls were the first objects to be rescued.⁷ If a girl got captured in war together with her doll, the doll was redeemed first because the doll was believed to guarantee children for the family, as for generations already it was believed to have produced children for them. Accordingly, the doll was redeemed first for twelve cattle and only then the child was redeemed against only six cattle.⁸

Sometimes two or three girls owned the same doll at the same time.⁹ Dolls could not be sold, but they could be inherited.¹⁰

1 Lebzelter: Rassen und Kulturen 232; Tönjes: Ovamboland 132

2 Loeb: Feudal Africa 114

3 Loeb: op.cit. 114

4 Loeb: op.cit. 114

5 Loeb: op.cit. 114

6 Tönjes: op.cit. 132

7 Tönjes: op.cit. 132

8 Sckär: Manuscript in Loeb: op.cit. 115

9 Loeb: op.cit. 114

10 Tönjes: op.cit. 132; Loeb: op.cit. 114

- (3) That dolls could not be sold, changed with the conversion of many Ovambos to Christianity. Lebzelter¹ reports in 1934, that he bought a doll for two pounds. Trade dolls thus became fashionable. Loeb² mentions that trade dolls may resemble female and male while Bruwer³ states that he only saw female dolls.
- (4) Loeb⁴ further mentions family phallic dolls which he attributes to the Ndonga tribe and which well may have existed already in former times. Unfortunately nothing specific is known about these phallic dolls.
- (5) Lastly Loeb mentions clay pregnancy charms and toys which also might have existed during earlier times. According to one of Loeb's informants, fat pregnant dolls made by the medicine man became expensive professional pregnancy charms which the ondudu sold to barren women. Other informants said that barren married women seldom bought these dolls but resorted to other modes to overcome their sterility like herbal drinks.⁵
- Here not much is known.

2.2.13 Fish in periodical Rivers

Fish in periodical rivers were regarded as communal property which every member of the tribe was allowed to catch.⁶ Fish which was brought up in cultivated lakes or man-made waterholes belonged to the owner of the dam or waterhole.⁷ In Ndonga apparently quite a few cultivated lakes with their fish belonged to the chief.⁸

1 Lebzelter: Rassen und Kulturen 232

2 Loeb: Feudal Africa 119

3 Bruwer: Kuanyama 106

4 Loeb: op.cit. 119

5 Compare Loeb: op.cit. 119

6 Rautanen: Fb 9; Wulphorst: Fb 32; Krafft: Rechtsverhältnisse 26

7 Wulphorst: Fb 32; see also Rautanen/Steinmetz 343; Krafft:op.cit.26

8 Rautanen/Steinmetz 343

3. Law of Inheritance and Succession

The Ovambo are matrilineal tribes. The law of inheritance and succession is regulated accordingly, although a few exceptions to matrilinealism exist.

3.1 Law of Inheritance

As with other SWA/Namibian tribes, the death of any member of a Ovambo tribe gave rise to fights between members of the family. Such fights could be hefty and long.¹

3.1.1 Main Rule: Matrilineal Succession

The main rule regarding inheritance about all Ovambo tribes was that, with a few exceptions, the things of a deceased were inherited matrilineally.²

3.1.1.1 Male Inheritance

The profane livestock represented, similarly to the Hereros, the main portion of a man's property.³ The matrilineal heir was consequently regarded as being the main heir.⁴

3.1.1.1.1 First Order

Heir of the first order was a man's eldest living brother.⁵

3.1.1.1.2 Second Order

If a man had no brothers, his estate would devolve to his eldest sister's eldest son.⁶

1 Kotzé:Kuanyama 133; Wulfhorst: Fb 21; Estermann I 106

2 Loeb: Feudal Africa 108; Wulfhorst: Fb 21; Estermann I 105

3 Wulfhorst: Fb 21

4 Wulfhorst: Fb 21; Estermann I 105

5 Wulfhorst: Fb 21; Estermann I 105; see also Malan: Peoples 81

6 Wulfhorst: Fb 21; Estermann I 105; Malan: Peoples 81

3.1.1.1.3 Next Orders

According to the rules of matrilinealism, next in line would be the sister's daughter's eldest son¹, etc. If a man had neither brothers nor sisters the eldest living male descendant of his mother's sisters would be the next heir.

3.1.1.1.4 No Inheritance by a Wife

The wife of the deceased was not entitled to inherit anything from her husband² as she was not related to him.

The abovementioned³ institute of separate property which existed between husband and wife included that everything a man gave to his wife as a "present" - i.e. everything which he was not compelled to give to her - he could only give to her on loan. According to matrilineal laws everything a man possessed belonged to him and secondly to his matriclan. This also included that a man could always and at any time claim those things back from his wife which he had given to her in this manner.

Upon the death of a man his wife had to return everything she had received as a present from her husband during his lifetime. Together with clothing which she might have received from him she also had to return tools he had supplied and even ornaments like copper rings⁴ the women liked to wear around arms and ankles, pearls and other decorations which he had given to her.⁵ If any of these items were missing or destroyed at the time of his death, a woman was required

1 cf Tuupainen: Marriage 31 f

2 Wulforth: Fb 21; Rautanen: Fb 1, 4; Rautanen/Steinmetz 335, 336; Krafft: Rechtsverhältnisse 20; Estermann I, 105 f

3 See also p. 120

4 Tönjes: Ovamboland 44 f; Loeb: Feudal Africa 189

5 Tönjes: op.cit. 130; Nitsche: Ovamboland 125; Wulforth: Fb 26; Loeb: op.cit. 109; see also Wulforth: BRM 1892, 69

to bring forth a substitute for that missing piece.¹ Even an ox which a husband had had slaughtered for his wife during an illness had to be replaced by an ox from her own herd.²

The system of separate property is found in its extreme form here. As this led in many cases, together with the deprivation of the sowing-land after a man's death, to the impoverishment of a wife, discontent with the pure matrilineal system of inheritance grew. This impoverishment of the widows was one of many reasons which led to modifications of this system of inheritance already at the end of the traditional time. As will be shown later³, a husband who could afford it, would sell especially cattle at a low price to his wife with the knowledge of his matrilineal clan to secure her maintenance after his death.

Things acquired in this way were exempted from the duty to return everything received from a husband.

All things which a wife had to give back had to be returned to her husband's clanmates.⁴

3.1.1.2 Female Inheritance

If a woman died her belongings devolved to her children in the first order.⁵

Second in line was her mother, third her grandmother and lastly her siblings.⁶

Loeb⁷ recorded the then headman Viliho Snr. with a slightly different order: "A woman's property goes to her children;

1 Loeb: Feudal Africa 109; Tönjes: Ovamboland 130

2 Loeb: op.cit. 109; Tönjes: op.cit. 130

3 See below p. 157

4 Loeb: op.cit. 109

5 Tönjes: op.cit. 44; Estermann I 106

6 Tönjes: op.cit. 44

7 Loeb: op.cit. 110

her cattle go to her brother. If she has no son, her cattle go to her brothers. If a woman has no daughter, her ornaments go to her sisters or to her female cousins in the same clan."

Here, too, the children were heirs of the first order: A woman's daughters inherited her ornaments, her sons inherited her cattle.¹

Only when a woman had no daughter, her ornaments went to her sisters; if she had no sons her cattle went to her brothers. Therefore, a woman's brothers and sisters were heirs of the second order.

Although most of the ornaments a woman wore were her husband's², she also may have had some which did belong to herself. These she may have inherited, traded in or made herself. Ostrich egg shell-beads for instance were made by Ndonga and Ukuambi women.³ These beads of course then belonged to the producer. On the other hand, Kuanyama women were very eager to obtain these⁴ and by trading they got their own property. Nowadays Kuanyama women have learnt to make them themselves.⁵

3.1.2 Modes of patrilineal Inheritance

The Kuanyama and the Ndonga had a custom up to about 1850, that a chief had to kill his father after he had ascended to the throne, because it was said that patricide made a

1 Like that also Estermann I 106

2 Tönjes: Ovamboland 45: "Die meisten Schmuckgegenstände erhält eine Frau von ihrem Mann, die auch dessen Eigentum bleiben."

3 Loeb: Feudal Africa 188

4 Loeb: op.cit. 188

5 Loeb: op.cit. 188

chief strong and feared by others.¹ The chief would then seize his dead father's cattle which then were called onanghula, sacred cattle. Together with the seizure of these cattle the chief had to light a new fire (onjika jouhamba).²

Through this custom it was possible for a chief to override the matrilineal laws of inheritance and "inherit" patrilineally from his father as well as in the usual matrilineal way from his brother or uncle.³

Chief Haimbili, however, was the last of the Kuanyama chiefs to have killed his father Haufika in around 1811.

His follower, Musipandeka, broke with some of the harsher customs of the country; he did neither kill his father Sanikika nor the nobles he took over from Haimbili.^{4,5}

Patrilineal inheritance took also place in the case of sacred utensils and charms (amulets), except for the royal insignia of the chief⁶ which were connected with that status and accordingly were inherited matrilineally by the successor to that status.

Loeb⁷ states, that "a man usually hands down his charms to a son". Therefore, it appears that such charms had a strong patrilineal connection. Accordingly, it can be assumed that these charms were also inherited patrilineally if the deceased had no sons. In such a case charms would be inherited by the deceased's brothers or their children.

1 Loeb: Feudal Africa 24; Loeb: Transition Rites 19; Wulfhorst: BRM 1892, 70

2 Loeb: Feudal Africa 24

3 Loeb: op.cit. 24

4 Loeb: op.cit. 26

5 Lehmann: in Tribes Vol. 4/5, 1954/55, 318, is sceptical about this rule.

6 Loeb: op.cit. 108

7 Loeb: op.cit. 108

Patrilineal inheritance also occurs in connection with the utensils of a medicine man: As mentioned below¹, a medicine man normally taught a son or a daughter his profession. That child then inherited his father's basket and charms which he used for his profession.² Here we find that status and inheritance are inseparably connected in Olivier's sense.³

Here we also find a rare case that a female inherited from a man and even further that a female could also succeed to the status of a man.

But, as also a nephew or niece could inherit the status⁴, the equipment then, of course, would also go to them.

Succession and inheritance of the status and equipment of a medicine man are accordingly not strictly patrilineal.

Tentatively it can be stated that the sacred utensils of a medicine man were only usually inherited patrilineally while sacred things not belonging to a medicine man, like sacred cattle, utensils and charms were always inherited patrilineally.

3.1.3 General Rules of Inheritance

The actual situation at the partition of a deceased's property looked just as different from the aforementioned rules as it does with the Herero.

3.1.3.1 Actual Sharing

Heavy fights were usual as all members of the deceased's clan expected to get something of his property. Accordingly the property did not go to one heir as a whole but the

1 See below p. 171 f

2 Loeb: Feudal Africa 108

3 See below p. 209

4 See below p. 171 f

deceased's sister's son had to share the property with his uncles and according to Tönjes¹ with the deceased's mother and his sisters, brothers and other nephews of the deceased's mother's side.

This led Estermann to the conclusion that "the principle heir has an obligation to distribute part of the property to all the nearest uterine relatives ..."². Indeed, the expectations of near uterine relatives were so strong and seemed to be so entrenched in Ovambo custom, that one could speak of a law-like custom.³

Wulfhorst⁴ described the result of all these fights and squabbles like this: "Oft erhält der am meisten, der schnell sein Erbteil in Sicherheit bringt."^{5,6}

3.1.3.2 Modes of curtailing matrilineal Inheritance

Already in 1906 Josef Kohler⁷ pointed out, that there existed in matrilineal societies a strong tendency towards patrilinealism. This tendency could be seen with the Ovambo at the turn of the century already. Rautanen⁸ and Wulfhorst⁹ described around 1910 a possibility how a father could secure that his son could receive goods from him and keep them even after his father's death.

Only a few years later, in 1914, this was confirmed by Krafft¹⁰ who also writes about a mode to prevent all cattle to be

1 Tönjes: Ovamboland 44

2 Estermann I 106; see also Krafft: Rechtsverhältnisse 20

3 esp. Louw: Ngandjera 100, makes this clear: The estate is divided among as many uterine relatives as possible. How many relatives will receive something depends on the largeness of the estate.

4 Wulfhorst: Fb 21

5 Translation: "Often that one gets most who secures his share fast."

6 Similar Krafft: op.cit. 20

7 Kohler: Das Recht der Herero Zs Rewi 1906, 31; see also Malan: Peoples

8 Rautanen: Fb 1

9 Wulfhorst: Fb 21

10 Krafft: op.cit. 20

inherited by one's brothers or nephews. In order to secure at least some of the cattle for his own sons, a father had to give them to his sons during his own life-time. He was not allowed, however, simply to give cattle as a present to his son, because this was seen as an intentional degradation of the property which had to devolve to the matrilineal heirs. Such a present was not accepted by the matrilineal clan with the result that such cattle had to be returned to the matrilineal heirs after the father's death:¹ "Selbst Geschenke, die der Vater bei Lebzeiten seinen Kindern machte, werden den Kindern genommen."²

Instead, the following had to happen: "Will aber der Vater, daß seine Kinder nach seinem Tode einiges erben, so muß er es schon bei Lebzeiten seinen Verwandten bekanntmachen, und zwar als etwas, was an die Kinder durch einen Handel übergeht."³ The transaction between a father and his child therefore had to take the form of a trade transaction. A father could either sell⁴ cattle to his son at a very low price or he could swap them for something which is worth less than the cattle.⁵

For the Ngandjera Louw⁶ states that a father may take from the corn his son has reaped in his own garden and put it into his storage basket. The father then would claim that he had no corn left himself and that he has given a cow to his son as payment.

1 Rautanen: Fb 1; Wulfhorst; Fb 21

2 Wulfhorst: Fb 21; translation: "Even presents which a father had given to his children during his life-time are taken away from them."

3 Rautanen: Fb 1; translation: "If a father intends that his children should inherit anything from him after his death, he has to tell this already during his life-time to his relatives. This has to happen in some form of trade."

4 Krafft: Rechtsverhältnisse 20; Rautanen: Fb 1; Loeb: Feudal Africa 109; Malan: Peoples 84

5 Krafft: op.cit. 20

6 Louw: Ngandjera 100

Such transaction had to be made public: Still during his life-time a father had to announce such a transaction to his matriclan.¹ If this was omitted, the cattle were regarded as having been given to the son for the usufruct only and consequently had to be returned on the death of the father to be shared by the matrilineal relatives.

The same applied to women: In 1911 Tönjes² mentioned that during his life-time a man would sell a few cattle at a very low price to his wife who then was allowed to keep them as her own property. This developed into a regular mode of men to secure their wives. These transactions, too, had to be made public to be valid.

Another mode to ensure that one's own children were not left without a good inheritance made use of the matrilineal system instead of trying to beat it, as we have seen in the previous examples. This mode was told Loeb³ by Viliho Snr.: "Since a father may give his sons only his charms and his blessing, while his principal property goes to his nephew, a man tries to marry a woman who has wealthy brothers and thus to ensure a rich inheritance for his own children."

A third method to hold back a deceased's wealth could only develop with the acceptance of money as an equivalent for goods, and constitutes consequently a recent mode of evading the effects of matrilinealism: Some rich men bank their excess wealth so that their matriclan members have difficulty to obtain the money after his death.⁴

Often sons bury the money of their father so that the deceased's matrilineal heirs cannot find it.⁵

1 Krafft: Rechtsverhältnisse 20; Rautanen: Fb 1; Louw: Ngandjera 100

2 Tönjes: Ovamboland 130; also Loeb: Feudal Africa 109

3 Loeb, op.cit. 109

4 Loeb: op.cit. 110

5 Malan: Peoples 84

Malan claims that this practice has become usual lately.¹ The conflict between the matrilineal and the patrilineal mode of inheritance seems to have been in full swing already at the turn of the century.

Today the younger ones are in favour of a patrilineal system while the older ones still cling to the old system, although they themselves "sell" cattle to their sons.²

The most important arguments which traditionalists bring forth against a change towards a patrilineally orientated inheritance system are the following:³

- (1) Cattle - as with the Herero - do not belong to the individual but to the clan.
- (2) If a son were the heir to his father's property he might kill his father. Since a son and his father belong to different clans the Kuanyama feel that a son might be tempted to kill his father if he expected to inherit his father's property. On the other hand, an Ovambo is not likely to kill his mother's brother, i.e. his testator, because this relative is a fellow clansman.⁴
- (3) Matrilinealism was always followed in the old days and there is no reason to change it now.
- (4) A further argument is that the clansystem is matrilineal, i.e. the relationship between a man and his mother's brother is not just a formal one but also an emotional one. A purely patrilineal inheritance system would be in conflict with the matrilineal family law which is deeply entrenched into every aspect of the Ovambo life.

Probably nearest to an allround solution would be the retention of the matrilineal system with an enlarged and easier possibility to present property to one's own children.

1 Malan: Peoples 84

2 Kotzé:Kuanyama 133

3 Loeb: Feudal Africa 110

4 Compare Loeb: op.cit. 111 Fn. 20

3.1.3.3 Non-inheritable Property

As mentioned above¹, land and kraals (omukunda) could not be inherited neither can they now.²

But not only immovable property was non-inheritable; this applied also to some movable property: After his death, a kraal-head's clothing and ordinary decorations were put into his storage hut immediately after his death.³ According to Tönjes the entire kraal was then burnt or otherwise just left to decay, as a kraal that was not burnt could not be acquired by a new "owner".⁴

As wood has become scarcer, it became more valuable. Accordingly, today these rites are not adhered to anymore.⁵ Likewise pots, clothing and weapons, that once were left to be burnt or to rot, are nowadays distributed matrilineally among the members of the deceased's clan.⁶

3.1.3.4 Weapons

Weapons were to a certain extent excluded from the rule that all presents from a father to his son fell to the father's matriclan after his death.⁷

Among the Kuanyama a little boy received his first weapons after his first year. These were a little bow and a small kirrie-stick. Around the age of three his father would make him a real bow and some arrows.⁸ These weapons were the property of the son which he had not to give back.

1 See above p. 125, 128

2 Loeb: Feudal Africa 108

3 Loeb: op.cit. 109

4 Tönjes: Ovamboland 149

5 Loeb: op.cit. 109

6 Loeb: op.cit. 109

7 cf. Rautanen: Fb 1; Loeb: op.cit. 231 f; Krafft: Rechtsverhältnisse 20

8 Loeb: op.cit. 231 f

niece. Only when none of these existed a brother or a sister had the right to distribute the estate.

For the Ngandjera Louw¹ states in a recent study², that the mother of the deceased would be the person who has the right to undertake the partition.

If she is dead, one of the brothers of the deceased, beginning with the eldest, will divide the estate. If no brothers are alive, a sister of his mother or one of her elder children will be the executor.

Despite the differences in the accounts it should be noted that matrilinealism is adhered to in the choosing of an executor as well. Of the executor it was expected to distribute part of the estate to all near uterine relatives. The executor himself, as main heir, would generally keep a more valuable part. Still, a certain equity in this distribution was expected as otherwise months of strife would follow.^{3,4}

3.1.3.6 Last Will

According to Rautanen⁵, the institute of the last will was known but very seldom practiced. According to him they were not binding. For the Kuanyama Wulfhorst⁶ claims that a last will was not known around 1910.

3.1.3.7 Debts of the Deceased

If the deceased had any debts his heirs had to satisfy the creditor.⁷

1 Louw: Ngandjera

2 1967

3 See above p. 154 f

4 Estermann I 106; Louw: Ngandjera 100

5 Rautanen: Fb 8; Rautanen/Steinmetz 336

6 Wulfhorst: Fb 31

7 Krafft: Rechtsverhältnisse 27; Rautanen/Steinmetz 336;
Wulfhorst: Fb 33

To be valid, the debt had to be declared openly on the occasion of the lamentation for the deceased.¹ The creditor did not have a claim to the corpse of the debtor.²

A credit had to be paid back without interest. Accordingly, a thing of comparable value had to be returned.³ The same applied to a credit which became due through declaration during the lamentation for the deceased: The heirs were expected to hand over to the creditor of the deceased only a thing of comparable value.

3.1.3.8 Inheritance of Dolls

As outlined in the law of things, dolls were regarded as extremely precious.⁴

Apparently their main function was to guarantee a family's future progeny. These dolls were therefore inherited by succeeding generations in a family. They were handed down from mother to daughter.⁵ If a mother had more than one daughter, her eldest daughter would be the first to inherit the doll.⁶ Then, after she has had a first child, the doll would be handed down from the elder sister to her younger one.⁷

3.1.3.9 Special Rules of Inheritance for a Chief

When a new chief succeeded to the chieftainship, he was only allowed to take his predecessor's herds of cattle⁸, the

1 Krafft: Rechtsverhältnisse 27; Wulfhorst: Fb 33

2 Krafft: op.cit. 27; Wulfhorst: Fb 33

3 Rautanen: Fb 10

4 See above p. 147

5 Loeb: Feudal Africa 114; Tönjes: Ovamboland 132

6 Tönjes: op.cit. 132; Sckär 1916, in Loeb: op.cit. 115 f

7 Sckär 1916, in Loeb: op.cit. 114

8 Loeb: op.cit. 51

royal insignia and sacred things. His predecessor's herd stemmed in part from cattle he himself had inherited from his predecessor, in part from cattle which he seized after killing his father, which was a custom after ascending to the chieftainship¹, and in part from the important cattle raid that every chief had to conduct during his first year of his reign.² Sacred things were the sacred fire which burnt in every chief's kraal³, the sacred water which originally always was brought from Osamba near Ondonga and which was sprinkled into the holy fire to "refresh" it⁴, and the sacred sheep which were believed to be possessed by a supernatural power.⁵ The chief nominally was in charge of these things while among the Kuanyama the clan of the Roan Antelope had the custody over and was the keeper of the sacred fire, the sacred water and the sacred sheep.⁶

The chief, however, was not allowed to touch weapons, saddles, horses, or other profane things of his predecessor.⁷

Since the death of a man brought all his widows under the suspicion of witchcraft, the new chief would put at least the headwife and probably also some of the other wives of the former chief to death. Only after some time the new chief would marry the survivors.⁸

3.1.3.10 The Chief as "Co-Heir"

Tönjes⁹ tells of the Kuanyama that when one of the rich men of his tribe died, the chief would also inherit part

1 See above p. 152 f

2 Loeb: Feudal Africa 46

3 Lebzelter: Rassen und Kulturen 239

4 Loeb: op.cit. 48

5 Loeb: op.cit. 48

6 Loeb: op.cit. 47

7 Loeb: op.cit. 51

8 Loeb: op.cit. 51; Stahlhut: BRM 1905, 16

9 Tönjes: Ovamboland 131; also Wulfhorst: Fb 38

of the inheritance. The amount a chief would get depended on the size of the estate.¹ Probably this was a measure to keep a chief well inclined towards one's family.

3.1.3.11 Inheritance in the Case of Strangers

Often an Ovambo lived with another Ovambo tribe. When such a man died his property was inherited by his family which was called already at the first signs of a serious sickness.² A stranger's property therefore was not confiscated by his host-tribe.

3.2 Succession

3.2.1 Succession as Chief

It has been noted earlier³ that not all tribes had a chief. Originally most of the tribes had the institution of a chief whose status was inherited matrilineally. The only exception to this rule probably were the Eunda and Nkolonkadhi, who probably never had had this institution.⁴

Already around 1850 there was no chief anymore in Ombalantu (the Mbalantu), Onkolonkadhi (Nkolonkadhi) and Eunda with some form of republican rule as a result.⁵

Tribes that have lost their chiefdom recently (probably around 1910 - 1925) are the Kuanyama in 1917⁶ and the Kuambi.⁷

1 Wulfhorst: Fb 38

2 Wulfhorst: Fb 38

3 See above p. 121

4 Malan: Peoples 89; see also Loeb: Transition Rites 19

5 Malan: op.cit. 89; Stals: Blankes en Ovambos 228

6 Bruwer: Kuanyama 31; Loeb: Feudal Africa 35

7 Malan: op.cit. 89

During the time between 1850 and 1917, however, the following tribes continuously had a chief: Ndonga, Kuanyama, Kuambi, Ngandjera and the Kualundhi.¹

3.2.1.1 Theoretical Mode of Succession

Ideally the deceased chief's eldest brother was his successor.² Only when a deceased had no more brothers, the eldest son of his eldest sister succeeded him to the chieftainship.² When neither a brother nor a sister's son existed, the deceased's sister's daughter's eldest son would be next in line and so on.³ To illustrate matrilineal succession, the succession to the chieftainship in the Ndonga tribe from 1857 - 1967 is shown in the appendix⁴, as well as that one of the Kuanyama up to the death of the last Kuanyama king in 1917.⁵

With the Kuanyama the chiefs always belonged to the Mourning Clan, which was the royal clan.⁶

According to the rules of matrilineal succession and exogamy a chief's own sons were never eligible to become chiefs because they were not related to their father:⁷ The required nobility could only be inherited through the mother.⁸ Nevertheless, as long as a chief lived, his sons and daughters were regarded as nobles (omalenga) and were said to belong to the Cattle Clan.⁹

1 Stals: Blankes en Ovambos 228; Malan: Peoples 87

2 Tönjes: Ovamboland 118; Nitsche: Ovamboland 129; Brincker: Ovambo-Mission 30; Stals: op.cit. 228; Loeb: Feudal Africa 42; Loeb: Transition Rites 20; Tuupainen: Marriage 31 f; Bruwer: Kuanyama 31; Hahn: Tribes 8; Laubschat: Kolblatt 1903, 643

3 Tuupainen: op.cit. 31 f

4 See below p. 233

5 See below p. 234

6 Loeb: Feudal Africa 41 f

7 Brincker: op.cit. 30; Wulfhorst: Fb 39, 40; Tönjes: op.cit. 118; Loeb: Feudal Africa 41; Tuupainen: op.cit. 32; Malan: op.cit. 87

8 Tönjes: op.cit. 118; Nitsche: op.cit. 129; Stals: op.cit. 228

9 Loeb: Feudal Africa 42

Also a chief would give his sons a district (oshitukulwa, if not this, then at least an omukunda) to govern which thus made them headmen.¹ Because of their position, they were influential people.

The death of a chief changed things: His sons invariably lost their positions and with it their influence², because the new chief would allocate such positions of influence to his proxies. Sometimes, after the ascension to the chieftainship, the new chief might even kill sons of the former chief³, probably especially then, when their influence constituted a danger to him. As mentioned above⁴, the mother of the chief is the carrier of the nobility. This important function of her explains why she was highly respected by the members of her tribe and even had a certain influence in governmental affairs.⁵

Brincker⁶ claims for the Kuanyama that the chief could not rule against the omalenga and against the advice and wishes of his mother in matters of state. What she did not want, did not happen, but, on the other hand, not everything happened which she wanted. About the Ndonga, Rautanen⁷ remarks that although females had no voting rights regarding problems of the tribe, the mother of the chief nevertheless always had the right to speak in such meetings. This influence probably varied not only from tribe to tribe but also from chief to chief according to his affinity to his mother.

Loeb⁸ verifies Rautanen's statement by mentioning that in Ndonga the chief's mother, rather than her son lived in the royal palace and conducted the main ceremonies while her son lived nearby in another large kraal.

1 Loeb: Feudal Africa 42; Hahn: Tribes 8

2 Rautanen/Steinmetz 339; Loeb: op.cit. 42

3 Loeb: op.cit. 42

4 See above p. 165

5 Stals: Blanes en Ovambos 228; Loeb: op.cit. 59, 270, 282; Wulfhorst; Fb 40; Rautanen: Fb 16; Loeb: Transition Rites 19; Tönjes: Ovambo-land 118; Laubschat: Kolblatt 1903, 643

6 Brincker: Ovambo-Mission 25, 30 f

7 Rautanen: Fb 16

8 Loeb: Feudal Africa 270

About the Ukuambi he¹ reports that although they had a chief, his mother was the real source of power. "She helps to choose a new king, and it is said that she can if she wishes dismiss him from office."² But, however strong their influence, women could not become chiefs.³

What they could do, however, was to rule over a district (omukunda).⁴ Such omikunda were granted to nobles, i.e. the chief's proxies.⁵ Therefore usually the chief's mother had her own district.⁶ They also could become kraal "owners": a husband was expected to give an elderly wife of his a kraal of her own when he wanted to dismiss her.⁷

Similar to that of the chief's mother, but with lesser influence was the position of her sisters, the position of the chief's sisters and also of his wives.⁸ Actually also they, as all other females with the exception of his mother and her sisters, were regarded as the chief's "property".⁹

3.2.1.2 Succession in Reality

The practical side differed from this strictly legal view. If a brother of the deceased was present, the uncertainty of a successor was eliminated fast: In such a case the brother was made the new chief within a very short time.¹⁰ If only nephews were there, a time of uncertainty might follow. Ideally, as stated above¹¹, the eldest son of the

1 Loeb: Feudal Africa 282

2 Loeb: op.cit. 282

3 Malan: Peoples 87; see also Loeb: op.cit. 59

4 Wulfhorst: Fb 40; Loeb: op.cit. 40; Tönjes: Ovamboland 118

5 Tönjes: op.cit. 118; Laubschat: Kolblatt 1903, 643

6 Loeb: op.cit. 42; see also Spiecker: BRM 1907, 10

7 Loeb: op.cit. 42

8 Tönjes: op.cit. 118; Loeb: op.cit. 59

9 Loeb: op.cit. 59

10 Tönjes: op.cit. 119; Loeb: op.cit. 42

11 See above p. 165

eldest sister succeeded to the chieftainship. Usually all of the nephews would like to become chiefs. In order to attain this, they tried to collect as great a following among their tribe as possible already during the lifetime of the chief. Especially important was the help of influential people who were near to the chief.¹ With their help the potential successor tried to eliminate his competitors. These fights for the succession of the chieftainship probably led Rautanen² to the - in the stricty legal sense - wrong conclusion that: "Es gelten keine Prinzipien über die Thronfolge. Derjenige, der nach dem Tode des Häuptlings die Macht an sich gerissen hat, wird als Häuptling anerkannt."³ On the next page⁴, however, he concedes that certain rules existed: "At the death of a chief that nephew of his takes over as chief immediately who stood nearest to him so that lawlessness could not ensue."

This power wrangling is illustrated by an example Tönjes⁵ gives: Around 1905⁶ two nephews of the chief Nehale, of whom one was next in line of succession, were expelled from Ndonga. This happended because Namutaleni, the sister of Kambonde and Nehale, wanted to secure the chieftainship for her son although those two of her nephews, i.e. her elder sister's sons, were nearer in line.

She succeeded in talking Kambonde and Nehale into expelling those two from Ndonga. They fled to Ukuanyama from where they - futilely - tried to come back.

After the death first of Nehale and then of Kambonde, Namutaleni had reached her goal: Her son, who also was called Kambonde, could seize the chieftainship.

1 Tönjes: Ovamboland 119

2 Rautanen: Fb 16

3 Translation: "There exist no principles about the succession to the chieftainship. That one who has snatched up the chieftainship after the death of the chief is accepted as chief."

4 Rautanen: Fb 17

5 Tönjes: op.cit. 119 f

6 Tönjes talks about "vor einiger Zeit", i.e. a while ago. His book was published in 1911; probably it took him quite a time to write: 1905 can thus be accepted as more or less correct; see also Lehmann in: Tribus Vol. 4/5, 1954/55, 272 f

Reading this explains Rautanen's above mentioned remark. Loeb¹ tells the following about the succession to the Kuanyama chieftainship after Haimbili: Haimbili killed his younger two brothers after having succeeded to the chieftainship. One of his sisters and her son Musipandeka were driven from the country and settled in Ondonga. Nevertheless, Musipandeka managed to become Haimbili's successor by chasing one of the two other nephews of the deceased from the country and killing him. What happened to the other nephew is not known. This situation could be summarized with Rautanen's² words: "Wenn mehrere Thronfolger vorhanden sind, so wird der stärkste Häuptling."³

3.2.1.3 Renouncement

Renouncement to the succession of the chieftainship was known: The Kuanyama Haimbili - he reigned from 1811 (?) to 1859⁴ - who had been exiled during his youth and who consequently was not circumcised, renounced the succession on this ground in favour of another nobleman. Because of internal fights, however, Haimbili later grabbed the throne and drove the other nobleman out of the country.⁵

3.2.1.4 Abdication

On the other hand, resignation of someone who already was chief, in favour of his brother or nephew, was, at least in old times, unknown.⁶

1 Loeb: Feudal Africa 26

2 Rautanen/Steinmetz 338

3 Translation: "If more than one pretender for the throne exists, the most powerful ascends to the chieftainship."

4 Loeb: op.cit. 23

5 Loeb: op.cit. 23

6 Rautanen: Fb 16; Wulfhorst: Fb 40; Krafft: Rechtsverhältnisse 33

3.2.1.5 Other Modes of Succession to the Chieftainship

If somebody wanted to ascend to the chieftainship before his predecessor had died of a natural cause, he had to kill the chief, which apparently had happened occasionally.¹

Rautanen² tells of an exceedingly brutal chief of the Mbalantu who got killed by his own people: One day when they had to protect him with a sunroof made from straw while he was walking around outside his kraal, they let the roof fall down and burnt him. Since then the Mbalantu have adhered to a republican form of government.³

Another example was reported by Brincker⁴: Nahmandi, the nephew and follower to the chieftainship of Musipandeka, took power in 1881. He was a very unpopular chief who appeared to have waved the advice of his nobles and robbed cattle of his own people rather than capturing them in war against other tribes as was usual at that time. He got killed only two years after he took power by his sister who wanted her son Uejulu to succeed to the chieftainship which then happened.

When the last of the Kuanyama chiefs, Mandume, was killed in 1917 by South African forces, Ndapona, who was very influential, because she was the chief's mother, offered the chieftainship to Major Hahn, leader of the South African troops, since "he who kills the king becomes king."⁵ Although Hahn refused and the Kuanyama stayed without a chief since then, this illustrates another mode of succession to the chieftainship.

1 Wulfhorst: Fb 40; Rautanen/Steinmetz 338 f

2 Rautanen/Steinmetz 338 f

3 Rautanen/Steinmetz 339

4 Brincker: Ovambo-Mission 23

5 Ovambo Proverb in Loeb: Feudal Africa 37, 28; Loeb: Transition Rites 19

3.2.1.6 Reckoning of Succession after a forceful Succession

If someone succeeded to the status of a chief, then this was accepted as final, irrespective of the way the chief came to power and irrespective whether he had a de jure claim to the chieftainship. Therefore, after his ascension his brothers and nephews were next in line even though the present chief had not been the rightful heir to that status. In the abovementioned example¹ Mandume, a nephew of the usurper Kambonde was automatically accepted as next in line.² He then actually was the next chief after Kambonde's death.

Also, in the example of Major Hahn³, he would have from then on be hereditary chief of the Kuanyama.

Therefore, the matrilineal relatives of the deposed chief were out of the line of succession. They are not counted as potential and "real" heirs any more.

3.2.2 Succession to the Status of a Medicine Man

The status of a medicine man normally went to the deceased's son or daughter because he usually taught one of his children his profession.⁴ Whom he finally would choose, however, was the decision of the medicine man. He might also, apart from appointing an immediate descendant like son or daughter, choose a nephew or niece or even one of his patients.⁵ The one he choose to train would then inherit the spirit of an ancestor of the "medical" profession who

1 See above p. 170

2 Tönjes: Ovamboland 120

3 See above p. 170

4 Loeb: Feudal Africa 108, 122; Estermann I 201 f

5 Loeb: op.cit. 122; cf Estermann I 195

had practiced the same profession.¹ This was made possible through the initiation which a future medicine man had to undergo.² Together with that spirit he would inherit his predecessor's professional equipment and decorations.³

It is clear from the above that no inheritance of the medicine man's status took place but that an appointment to that status was made by the predecessor. Once the appointment was made, however, the successor was heir to the charms and professional equipment when his predecessor died. A few noteworthy points remain to be mentioned:

Here a patrilineal line of succession to a status was found. This, however, was no strictly patrilineal succession as also a nephew or niece or someone else could succeed to the profession of the medicine man.⁴

Noteworthy, further, is the fact that here a female could succeed to a status which was formerly held by a man and vice versa.

Lastly, as the successor of the medicine man inherited his charms and professional equipment, a case was found here, where a female could inherit things from a man.

Finally it should be noted that medicine men did never - or did not anymore - have a strong position and influence.⁵

3.2.3 Priests

According to Nitsche⁶, the Kuanyama did not have priests anymore around 1910; at that time the Ndonga still had

1 Loeb: Feudal Africa 122

2 Loeb: op.cit. 122

3 Loeb: op.cit. 122

4 Loeb: op.cit. 108

5 Rautanen: Fb 16; Nitsche: Ovamboland 129

6 Nitsche: op.cit. 129

some, but their powers were very much curtailed. Nitsche claims that priests once were found all over Ovamboland but that when they grew too dangerous for the chiefs, the chiefs eliminated them. In Eanda and Evale rudiments were still found. Nitsche reckons that the following process had taken place: First the priesthood ruled the tribes and then the chiefs, until these were supplanted by a republican form of government.

3.2.4 Non-inheritable Status

There were a few positions within the Ovambo society which were non-inheritable.

3.2.4.1 War Leader

In traditional times a chief would only lead one war against another tribe personally, namely the first during his reign. Thereafter all wars were led by war leaders. In Ndonga a war leader was called ondjoi, which means magician. A war leader in Kuanyama was called ondjaji or more commonly ondjai, meaning a medicine man of a high order.¹ The ondjai was as such a war leader but no soldier or fighter.² The following procedure led to the selection of a war leader by the chief.³ The chief would appoint any medicine man of high standing, who then first had to fight with a few men against a refractory noble within the own country. If he was successful and brought back all men, he was made a war leader. During the "test-fight" his good luck was tested. A war leader only led his men up to the last camp before the fighting started, but he would not take part in the battle himself.⁴

1 Loeb: Feudal Africa 84

2 Loeb: op.cit. 84

3 Rautanen/Steinmetz 336; Tönjes: Ovamboland 121; Loeb: op.cit. 84

4 cf Nitsche: Ovamboland 121

Instead he had to build up the spirits of the fighters and to heal any sicknesses which might have occurred on the march.¹ During the fighting he would continuously blow his deer horn at intervals to indicate that the fighting still was going on.² If on any expedition his good luck failed him and many of his men were killed he was not chosen again as war leader.³ One exception to the rule that a war leader stayed back at the last camp was the Kuanyama Kalolo, one of the important elanga of chief Uejulu: He was a famous warrior who accompanied his troops into battle. His bravery kept him the status of war leader.⁴

The status of a war leader thus depended only on his good luck or bravery and therefore was not inheritable.

3.2.3.2 Omalenga

The other non-inheritable status was that of a head of a district (elanga). These omalenga were also the councillors of the chief.⁵ He usually appointed them after his ascension to the chieftainship. They were his proxies and constituted much of his power-base through which he kept control over his subjects.

Understandably, to achieve this important control, every new chief would install his proxies after his ascension to the chieftainship.⁶ The omalenga of the previous chief then got killed or chased out of the country.⁷

If an elanga got too powerful he might even get killed by the chief who installed him.⁸ The status of an elanga was thus not inheritable.

1 Loeb: Feudal Africa 87

2 Loeb: op.cit. 87

3 Loeb: op.cit. 85

4 Loeb: op.cit. 91; Tönjes: Ovamboland 121

5 Rautanen/Steinmetz 336

6 Rautanen: Fb 16; see above p. 166

7 Loeb: op.cit. 51, 62

8 Rautanen/Steinmetz 336

3.2.4.3 Artisans

No special clans of artisans existed, their craft was neither organized in clans nor was it inheritable.¹

3.2.4.3.1 Blacksmiths

Apart from the medicine man the other recognized profession among the Kunayama was that of a blacksmith. The Ndonga, however, did not work with iron.² Similar to the medicine man, a blacksmith had to be initiated and he had to be possessed by the spirit of an immediate ancestor.³

Similarly too, a Kuanyama blacksmith usually handed down the profession to a maternal nephew or to an own son.⁴ But there was no clan of blacksmiths as there was one for the medicine men. Therefore the profession of a blacksmith was no position of status, blacksmiths were held in quite high esteem, but no status could be inherited.⁵

3.2.4.3.2 Other Artisans

Other artisans, too, did not form a clan. For instance, among the Kuanyama some specialists in woodworking and woodcarving existed but generally all Kuanyama men are skillfull woodworkers.⁶ Accordingly, a father might hand down the art of being a woodworker to his son⁷, while a mother might hand down that art of clay-modelling and basketry to her daughter⁸, but everybody was allowed to take up that art or refuse to do it when he did not feel like it.

1 Wulfhorst: Fb 39; Rautanen: Fb 15; Rautanen/Steinmetz 337; compare also Loeb: Feudal Africa 123

2 Loeb: op.cit. 203

3 Loeb: op.cit. 122

4 Loeb: op.cit. 123, 192

5 Wulfhorst: Fb 39; Loeb: op.cit. 123; only among the Ukualuthi the blacksmiths were met with the usual contempt African tribes had for that profession

6 Loeb: op.cit. 199

7 This was a male profession: Brincker: Ovambo-Mission 17; Rautanen/Steinmetz 337; Tönjes: Ovamboland 66 f; Loeb: op.cit. 199

8 These professions were female professions: Rautanen/Steinmetz 337; Tönjes: op.cit. 67 f; Loeb: op.cit. 194; Sckär in Loeb: op.cit. 194
Wulfhorst: Fb 39

Chapter 6: The Herero

1. Introduction

1.1 The Land

The traditional Hereroland extended approximately from the Ugab river in the north to the Swakop and White Nossob rivers in the south.¹ To the west the Namib-desert lies while in the east of the territory the Herero the Mbanderu live, a tribe closely related to the Herero.

The vegetation mostly is thornbush and camelthorn savanna, respectively.² The savanna dictates their nomadic lifestyles. The territory is crossed by numerous river beds where water-holes can be dug; surface water, however, is lacking, except for vlees after the rainy season.

The region is semi-desert with markedly less rainfall than in Ovamboland, the subtropical vegetation of Ovamboland with its fruittrees and palms therefore is missing entirely in Hereroland.

As mentioned above, related to the Herero are the Mbanderu.³ They lived east of them, i.e. in the northern Kalahari and eastwards towards the Lake Ngami. Conditions here are similar to those of Hereroland.

Also in the Kaokoveld, in the northwestern part of SWA/Namibia, Hereros live. But other related tribes are found here as well, mainly Tjimba and Himba, but also a few others.⁴

1 Vedder: Tribes 155

2 Malan: Peoples 55

3 Today it is commonly accepted that Herero and Mbanderu are of the same origin and came from the same area in more northern parts of Africa they inhabited before, cf Sundermeier: Mbanderu 11

4 For a detailed study cf Malan: Herero-Speaking Peoples of Kaokoland 116 f

Originally, the Herero had come from more northern parts of Africa and arrived in Kaokoveld in the middle of the sixteenth century.¹ Two centuries later they moved on towards the central regions of SWA/Namibia, leaving behind a section of the tribe which then became known as Himba and Tjimba.² They all are consequently of the same origin as well.

Kaokoveld is sparsely populated³ because of the ruggedness and aridity. In the west the Namib lies and further eastwards the interior highlands are characterized by their mountains which gradually fade into the sandy plains of western Ovamboland.⁴ Further Herero-speaking tribes are found in Southern Angola. Estermann⁵ lists the following groups: Zimba (= Tjimba), Himba, Tyavikwa, Hakavona, Kuvale, Kwanyoha and Ngendelengo.

Conditions in southern Angola and the Kaokoveld are similar to those of the Herero land because cattle raising was possible and formed the main activity.

1.2 Production

Herero⁶ were cattle raisers. The huge herds which belonged to the Herero surprised many missionaries and travellers: a rich Herero had herds of many thousand cattle.⁷ Their cattle completely controlled their lifestyles and their thinking: no event, whether it was a happy or an unhappy one,

1 Malan: Peoples 20

2 Malan: op.cit. 23

3 Around 1980 there lived approximately 13.000 people in these 50.000 km² according to Malan: op.cit. 17

4 Malan: op.cit. 19

5 Estermann III, 1

6 When using the term "Herero", all related tribes are included. When particularities are noted this is done by mentioning the distinct name of the tribe

7 cf Schultze: Südwestafrika 235

passed without a sacrifice of cattle. Every Herero tried by all means to enlarge his herds:¹ The more cattle he had, the richer and more influential he was. Therefore, meat from cattle was no staple food because cattle were only slaughtered at special events or when they were dying anyhow. But sour milk was produced and was the staple food.²

The necessity to find enough grazing for the cattle resulted in the nomadic lifestyle of the Herero.

1.3 Social Structure

Most strikingly, the Herero practiced double descent reckoning: Every person belonged to an oruzo (pl. otuzo) which is unilineally reckoned through the father and to an eanda (pl. omaanda) which is matrilineally reckoned through the mother.

These two groups represented two completely different functional interests: residence pattern, religious activities and the exercise of authority in the family were organized patrilineally, whereas the major economic function of control and inheritance was confined to the matrilineal grouping.³ Although the main feature of the omaanda seemed to be a material one, they had another feature which was just as important: although, mostly, members of an eanda lived scattered they felt as a family. The feeling of closeness to others was only among the eanda members, i.e. matrilineally.⁴ Relatives of the same eanda regularly undertook long journeys to visit each other or to adopt a nephew or niece when their parents had died.⁵

1 For a vivid description cf Schultze: Südwestafrika 234

2 Vedder: Tribes 170; Schultze: op.cit. 235

3 Malan: Peoples 60

4 Dannert: Fb 86; Malan: Himba 182; Gibson: Am.Anth. 1956, 130, 134

5 Dannert: Fb 86

Six matriclans were found with all Herero-speaking groups, while a seventh eanda occurred only with the Himba.¹ Some of these omaanda segmented into several sub-clans.² Every Herero became a member of one of these omaanda by birth. There was no ranking between the matriclans, no political seniority.³ The Herero were also patrilineally orientated; approximately twenty totemistic, exogamous otuzo existed⁴, which also had the same ranks.

The main features of the otuzo were their magico-religious prohibitions which mainly were food taboos to which all members of an oruzo adhered.

The oruzo of chief Maharero was called ovakuenohorongo. All its members were not allowed to eat cattle or sheep without horns or ears. They accepted the Kudu as holy and therefore did not eat Kudu meat.⁵ The ourasembi thought the chameleon holy while the ovahuatjinde did not eat meat from blue-greyish cattle.

Each oruzo was divided into a number of lineages of which the oldest male occupied the position of a village head.⁶

No centralized political structure existed among the Herero because of the system of double descent.⁷ The institution of a paramount chief was done by the German Colonial Government but was never accepted by the Herero themselves.⁸ Chief

1 Malan: Peoples 61; see also Irle: Fb 3; Vedder: Fb 57; Bernsmann: Fb 103; Dannert: Fb 83; Dannert: Herero 16

2 Dannert: Fb 83; Malan: op.cit. 61

3 Malan: op.cit. 61

4 Irle: Fb 3; Dannert: Fb 82; Kohler: Zs Rewi 1906, 413; Zastrow in Schultz-Ewerth 235; Malan: op.cit. 63

5 Irle: Herero 88; Schulte: Fb 35; Kohler: Zs Rewi 1906, 413

6 Malan: op.cit. 64

7 cf Malan: op.cit. 66

8 Sundermeier: Mbanderu 103

among the Herero were people who had managed to collect a large following because of their wealth and influence. They could be followed by their sons but usually the main part of the cattle were inherited matrilineally so that the heir to the chieftaincy was too poor to keep the followers his father had. Therefore, although theoretically the chieftaincy was inherited patrilineally¹, usually somebody else who was rich and influential became gradually accepted as chief. Around 1850, four such chiefs existed who all were rich in cattle.²

The real patrilineally inheritable status among the Herero therefore was that of a head of a lineage, i.e. a kraal head.

1.4 Sources

The Herero belong to those African groups which are fairly well documented.

Especially the answers by missionaries to questionnaires were used, but also longer monographs by the missionaries Irle and Vedder, but also Estermann.

Many other sources were used as well, including more recent studies by Gibson, Malan and Viveló.

Because of the great amount of sources I refer to the bibliography.

1 cf Sundermeier: Mbanderu 105 f, 108

2 cf Sundermeier: op.cit. 104

2. Law of Things

2.1 Immovable Property

2.1.1 Land

No individual ownership of land existed among the Herero; it neither belonged to individual persons nor to the chief¹, but all the land they had taken into possession mainly through grazing their cattle belonged to the tribe as such.² When a chief and his followers had settled at a place where nobody else stayed then this place was regarded as the property of that tribe, including as much surrounding land for grazing as the cattle of that tribe needed³, as long as the tribe stayed there.⁴ Similarly, an individual Herero or even a European could become owner of a waterhole and the surrounding grazing land by taking possession thereof. Everybody who wanted to settle at such a waterhole for a time had to obtain the permission of the owner beforehand.⁵

Around 1849 Kahitjene, who was one of the richest and mightiest chiefs, first wanted to settle for a time at Neu-Barmen where the missionary H. Hahn was living. Consequently he first asked Hahn for his permission.⁶ Later, he moved to Otjimbingwe where Rath was missionary and still later to Schmelens Verwachting which was the station of missionary Kolbe. Each time he obtained the permission to settle at these stations prior to moving there.⁷ When Rath told

1 Therefore wrong: Schulte: Fb 44; see also Werner 30

2 Andersson: Ngami 114 f; Irle: Herero 134; Irle jun.: Fb 7; Viehe/Steinmetz 310; Lang: Fb 25; Vedder: Fb 68; Zastrow in Schultz-Ewerth 256; Meyer: Recht 66; Dargun: Zs Rewi Vol. 5, 56 Fn 14

3 Andersson: op.cit. 115; Mayer: op.cit. 66; Strauss 67

4 H.Hahn: Zs Erdkunde 1869, 255; Andersson: op.cit. 115; Rath: 1849 BRM 1850, 363

5 H.Hahn: Zs Erdkunde 1869, 255; Andersson: op.cit. 115; Meyer: op.cit. 67

6 H.Hahn: 1849 BRM 1850, 61

7 Rath; 1849 BRM 1850, 363; Kolbe: 1850 BRM 1851, 147; see also Andersson: op.cit. 115; Meyer: op.cit. 67 Fn 2; Anon.: BRM 1852, 99

Kahitjene's messengers that he could settle wherever he wanted to because he, Rath, felt himself as a stranger and therefore not as the owner, the messengers made it quite clear that Rath was the first to have taken the place and that Kahitjene would therefore under no circumstances settle there without Rath's permission.¹ The newcomers accepted the 'owner' of a place as the chief of that place under whose guidance they placed themselves; in this manner a few missionaries became chiefs of Herero villages.² When, however, a whole tribe settled at such a place with the permission of the 'owner' then their chief stayed in charge.³

Usually, a chief would not refuse others the permission to settle at his place because an increase in the amount of his followers also increased his influence and strength as a chief. But in the Kaokoveld with its scarce waterholes which also did not have a large water supply, it sometimes happened that a chief refused this permission in order to secure the water supply of his people and their cattle.⁴

This possibility to claim an uninhabited waterplace and its surrounding land as the property of the man who first settled there stopped after 1860. From that time on the land had been divided up between the five major chieftaincies.⁵ The other notions regarding land however stayed the same.

The idea that land belonged to all tribe members was so much inherent in Herero thinking that no word for "boundary" exists in that language.⁶ Also with the Herero, land as such

1 Rath: 1849 BRM 1850, 363; see also Andersson: Ngami 115

2 H.Hahn: Zs Erdkunde 1869, 255; Anon.: BRM 1852, 101 f; Schöneberg: 1852 BRM 1853, 252; Anon.: BRM 1853, 39

3 H.Hahn: Zs Erdkunde 1869, 255

4 Malan: Himba 50

5 Sundermeier: Mbanderu 125; Werner 32

6 Büttner: Ausland 1882, 830; Meyer: Recht 68; Luttig 97

had no value for them; it only became valuable as grazing land for the cattle, as hunting ground or as place for gathering veldkos and firewood. This, together with the fact that in earlier times huge tracts of unused land were at the disposal of the Herero explains why the notion of alienability of land through sale was completely foreign to them.¹ Two special rules regarding land should be noted as they pose exceptions to the notion of communal property: Individually cultivated land and the land surrounding the graves of ancestors were not at the disposal of the tribe. With the arrival of missionaries the cultivation of gardens was introduced. A chief could allocate certain pieces of land to individuals. The individual then had an exclusive right over that land and its fruits; those persons which disturbed this right, were liable for the damage caused.² Samuel Maharero who - wrongly - claimed as his right the authority to sell land to settlers forbade his followers to cultivate gardens because these would have disturbed him in his plans to sell land.³

Two conclusions may be drawn from this: The chief was the person who had the right to allocate such land, and the cultivator had a strong legal position to this land once it was granted and he actually cultivated the land.

When the individual did not use the garden anymore, for instance because he had died or moved away, the land fell back into being communal property open to everybody.⁴ Therefore, this allocation only was a usufructuary right to the fruits but did not entail an ownership of the garden: consequently the holder of the right was not allowed to sell the land.⁵

1 Luttig 97; Zastrow in Schultz-Ewerth 256; Irle: Herero 135

2 Meyer: Recht 89; Strauss 114 f

3 Meyer: op.cit. 69

4 Irle: op.cit. 135; Meyer: op.cit. 67; Zastrow in op.cit. 257

5 Irle: Fb 7; Meyer: op.cit. 68

Even this usufructuary right was granted only under the condition that the holder made use of the garden. This right, therefore, was no right of ownership.

The land surrounding the graves of the ancestors was regarded as holy and could therefore not be used for grazing and other activities by the Herero: It was not allowed to be used for anything else but its religious purposes.¹

The unalienability of land also included permanent buildings, which were introduced by the missionaries, and the material used for building them.² The builder of such a permanent house only had the right to demolish the building.³ Accordingly, the mission stations only had the right to possess their houses and gardens but not to own them. The catholic mission made itself unpopular by demanding to buy their mission plot. After only three years the catholic missionaries had to leave the area of Maharero on his order.⁴ Accordingly, in the peace treaty between Khoe-khoen and Herero of 1870, the Herero only lent the area around Windhoek to the Afrikaners: "... the Herero Chiefs give, by way of loan ..."⁵

In accordance with this was the fact that the land the Herero gave to the settlers they actually wanted to give away on loan only and not through sale.⁶ This explains the hatred the other Herero chiefs had for Samuel Maharero who claimed the right for himself to sell land to get money.⁷

1 Meyer: Recht 67; Luttig 97

2 Irle: Fb 7; Meyer: op.cit. 68; Zastrow in Schultz-Ewerth 257

3 Büttner: in Münchner Allgemeine Zeitung 1893, no. 175, Beilage

4 Meyer: op.cit. 68 Fn 3; see also von Rhoden: Geschichte der Rheinischen Missionsgesellschaft 449

5 Palgrave: Report, Annexures p. III no. 3

6 Meyer: op.cit. 69

7 Meyer: op.cit. 69 f

2.1.2 Water

As shown above, a waterhole was regarded as the property of those who grazed their cattle in the area surrounding them. After 1860, after the land had been divided among the five major chieftaincies, the waterholes were regarded as the property of the tribe which claimed the area.

When somebody had dug a waterhole he was regarded as the owner, but only as long as he used it. As a visible sign that the waterhole was individually owned the Herero put a few branches over the waterhole.¹ If someone wanted to use some water or water his cattle he first had to ask the owner for permission.²

If somebody used such a waterhole without the permission of the owner, he could be made liable for damage esp. when that waterhole did not produce much water.³

2.2 Movable Property

Movable property was divided into property which belonged to the oruzo and to the eanda of a person.

2.2.1 Property of the oruzo

Each oruzo had its own holy property which was absolutely inalienable. The chief, who also was the priest⁴, as was the headman of a village, were the trustees of these res religiosae.⁵ Holy animals belonged to this category, mainly cattle but also sheep: goats however could not be zera.^{6,7}

1 Schulte: Fb 44; Meyer: Recht 67; Zastrow in Schultz-Ewerth 257; Vedder: Fb 68; Vedder: Tribes 194

2 H.Hahn in Zs Erdekunde 1869, 255

3 Meyer: op.cit. 89; Strauss 114 f

4 Irle: Religion 345; Zastrow in op.cit. 23

5 Irle: Religion 345

6 Meyer: op.cit. 31; Veder: Tribes 186

7 "Zera" means sacred, taboo; "dangerous because imbued with supernatural power" (Vivelo, F.: The Herero of Western Botswana, 203)

Pots for the milk (calabashes) also were zera and were used for the milk for the ancestors but also for the milk for everyday use which was made sour, and the wooden milkpales¹ in which the milk was kept before it was poured into the calabashes. Important things which belonged to each oruzo were also the ancestral sticks and the impliments which were used to kindle the holy fire and other holy implements which were kept in the huts of the chiefs or the headmen of a village.²

In addition, each oruzo had a few things which were always only zera to one specific oruzo, like certain old hides, certain sandals or arrow-heads.³ All these things could, because they were zera and therefore res sacrae, not even be sold by the chiefs. They could, however, as will be shown later, be inherited.⁴

2.2.2 Property of the eanda

All property belonging to the eanda, was individually owned.⁵

2.2.2.1 Ownership of Things which were self-made, self-raised or bartered

Principally a thing belonged to the person who had manufactured or produced it⁶: saddles for instance belonged to the

1 Vedder: Tribes 186

2 For a detailed description see Irle: Religion 345 f

3 Vedder: op.cit. 186

4 See below p. 193 f

5 Luttig 98

6 Luttig 98; Vedder: op.cit. 194

manufacturer. Similarly a woman alone owned the transportable hut she had built.¹

If somebody had helped to manufacture something he either did help for some form of remuneration or to do the other a favour. Therefore, according to Herero law, he had no right whatsoever - for instance as co-owner - to that object.²

Naturally the profane animals (cattle, sheep and goats) were the most important objects the Herero owned because the milk of these animals was their staple food. As born animal-raisers they always knew their own among the many thousands of cattle the Herero had; cuts into the ears of cattle were also used to mark them.³

To the eanda property also belonged guns, hides, wagons, ostrich feathers and ivory. These last two, together with cattle, were used mainly for bartering guns and wagons.⁴

The property of a woman consisted mainly of cattle and other animals, her clothes and the ornaments she wore.⁵ These consisted mainly of copper rings which she wore around her arms and legs.

But also men, at least the chiefs, wore ornaments. In 1842 chief Katjamaha gave two of his iron armrings as a present to the missionaries H. Hahn and Kleinschmidt.⁶

2.2.2.2 Find and Hunting

If somebody found something it belonged to him. If, however, the object had an owner who merely had lost it, he could

1 Meyer: Recht 72; Vedder: Tribes 192; Zastrow in Schultz-Ewerth 259; Gibson: in Am.Anth. 1956, 112 f

2 Vedder: op.cit. 194

3 Meyer: op.cit. 73; Vedder: op.cit. 194

4 Meyer: op.cit. 73

5 Meyer: op.cit. 32

6 Anon.: BRM 1851, 36

take it back anytime.¹ Minerals and wild-growing fruits could be taken into possession by everybody², but huts of a deceased which were left to rot were regarded as res religiosae and could therefore not be taken.³

Game belonged to the one who first had hit the animal, but not to the one who had finally killed it.⁴ Therefore, the right to do the first shot was given around when on a hunting party with many people. According to one source⁵, the headman of a village would demand up to half of the hunting bag when the hunt was a success and a lot of meat had been shot as for instance with large game.

Honey was claimed by the Herero living in the area of a swarm of bees. When somebody else found honey in Herero territory, he had to give it to them.⁶ Vedder⁷ tells of a Bergdamara who was expected to have honey. His Herero 'master' tortured him to find out where it was. Honey belonged to that Herero who found it.⁸

2.2.2.3 Restrictions to Private Property

With the Herero restrictions to private property existed which were also found with the tribes already discussed:⁹ a Herero did not commit a theft when he killed an animal from another's herd in order to satisfy his hunger which he could not satisfy otherwise.¹⁰ He was not allowed to sell such an

1 Irle: Fb 8; Schulte: Fb 44; Meyer: Recht 73

2 Meyer: op.cit. 72

3 Meyer: op.cit. 72

4 Irle: Fb 8; Vedder: Fb 69; Meyer: op.cit. 72

5 Schulte: Fb 45

6 Vedder: Fb 69; Irle: Fb 8

7 Vedder: Fb 69

8 Vedder: Fb 69; Irle: Fb 8

9 See above p. 28 ff, 76 f, 88

10 Meyer: op.cit. 88; Luttig 98

animal or parts thereof for his own profit.¹ He had no duty to substitute this animal from his own herd; but it could happen that another hungry man one day would slaughter an animal from his herd. Such rules were not only found with SWA/Namibian tribes but also with others: a very hungry Shona was allowed to take a few melons and cucumbers from another man's garden to satisfy his hunger without having to obtain the permission of the owner of the garden. Similarly to the slaughtered animal with the Herero which had to be eaten on the spot, the vegetables with the Shona also had to be eaten on the spot and the man was not allowed to take anything of it along because such an action was not necessary anymore for the satisfaction of his immediate hunger.²

2.2.2.4 Claims

If somebody had a claim against another man he had to remind that other man from time to time about his claim. If the man died, his claim was inherited by his relatives who then reminded the other man.³

1 This rule is similar to that of the Khoe-khoen, see above p. 31

2 Goldin/Gelfand: African Law and Custom in Rhodesia 266

3 Bernsmann: Fb 108 f

3. Law of Inheritance and Succession

3.1 Law of Inheritance

3.1.1 Rules at the Death of a Head of Family¹

Every head of family's goal was to increase the standing and influence of his village. The less an estate had to be divided the better it was for the continuity of the village. Usually, however, a partition of the estate had to be done because the eldest son mostly was the heir to the things belonging to the oruzo² while the eldest son of the eldest sister was heir to the things belonging to the deceased's eanda.³ One exception to the partition existed:

3.1.1.1 Heir of the first Order

If the deceased still had brothers, the eldest of them would become the heir to the things both of the oruzo and the eanda of the deceased because such a brother belonged to the same oruzo and eanda as the deceased.⁴

3.1.1.1.1 No Half Brothers as oruzo Heirs

Such an heir, as mentioned above, to both the eanda and oruzo part of the estate had to be a full brother of the deceased⁵ who also stemmed from the main wife of the deceased's father.⁶ Half brothers who had the same father, did belong to the same oruzo but not to the same eanda because husband and wife were not allowed to belong to the same eanda. Half brothers could therefore not become full heirs as full brothers could.

1 Those persons are spoken of here who are simultaneously priests, i.e. village heads or headmen. It is impossible to separate questions of inheritance and succession completely so that questions of succession have to be dealt with here already. The chapter on succession will therefore be quite short.

2 Gibson: Am.Anth. 1956, 129

3 Baumann: Zs Ethnologie 1926, 106; Dannert: Fb 90; Luttig 101; Meyer: Recht 31 Fn. 2; Gibson: Am.Anth. 1956, 129

4 Dannert: Fb 90; Bernsmann: Fb 111; Luttig 101; Zastrow: in Schultz-Ewerth 240; Melan: Himba 215; Strauss: 80; Hagolani 24

5 Luttig 101; Hagolani 24

6 Luttig 101; Strauss 80; cf also Bernsmann: Fb 110; Hagolani 24; cf also Kohler/Meyer: Zs Rewi 1900, 308

3.1.1.1.2 No adopted Children as Heirs to the Head of Family

Usually adopted children were regarded as being equal to one's own children. However, when Tjamuha, the father of Maharero, wanted to acclaim as his heir to both priestship and chieftaincy his adopted son, he could not do this. The followers of Tjamuha did not accept him as being able to inherit these high positions because he was neither of the same oruzo nor eanda as Tjamuha.¹

This is in accordance with the above mentioned condition that the heir had to be a child of the deceased and his main wife.

3.1.1.1.3 The Levirate

As the Herero practised the levirate the question, who took over wives and children of the deceased, has to be discussed.

According to a few sources² the full brother of the deceased took over his wives and children. All children not grown up already always belonged to the oruzo heir and stayed in the village of their father.³ As long as they were babies their mothers took them along but always had to return them to the village of the oruzo-heir after a year or two.⁴ Regarding the wives, however, the question arises whether they did not always belong to the eanda heir.⁵ No solutions to this problem could be found in the sources. In favour of the first assumption the fact may be taken that the influence of the new head of family was strengthened when

1 Dannert: Manuscript 2; Irle: Herero 87; Meyer: Recht 62; Vedder: Tribes 191

2 Kohler/Bensen: Zs Rewi 1900, 306; Büttner in Ausland Vol. 55, 856; Dannert: Recht 50, 51; Vedder: op.cit. 192; Zastrow: in Schultz-Ewerth 240; Kuvare: Kaokoveld-Herero 216

3 Irle: op.cit. 145

4 Meyer: op.cit. 32; Zastrow: in op.cit. 241; Dannert: Recht 50 f

5 Meyer: op.cit. 32, 65 f, 66 Fn. 1; Bernsmann Fb 111

the wives of the former head of family did not return to their families. Also, at those cattle-posts where one of these wives was living no new person had to be found because she would stay there, and lastly, the children which always stayed with the oruzo-heir, did not have to live without their mothers.

The women became wives of the heir without further ceremonies; the heir, however, was not compelled to take them.¹

3.1.1.1.4 Conclusion

In conclusion it may be said that although adopted children were usually regarded as equals to their brothers and sisters², this was not the case when a priesthood and headmanship was in question. In these cases they were not regarded as being able to inherit.

If, therefore, a full brother of the deceased was still alive, he inherited everything of his brother: The status as head of family together with the priestly functions, all cattle, holy and profane, and the sticks of the ancestors. After such a full brother's death, the estate and status would, however, not stay in his family, but would go over to other full brothers still alive. When such brothers did not exist anymore, status and the oruzo-estate went back into the family of the eldest full brother, normally to his eldest son.³ The following example may illustrate this: Tjamuha had four sons namely Kavikunwa, Kariteova, Maharero and Kavezeri. Kavikunwa, who as eldest son was first in line to the inheritance, perished in war and left a few children, esp. the eldest son Nikodemus. Also Kariteova, the second eldest son of Tjamuha died before his father.

1 Vedder: Tribes 192; Dannert: Recht 51; Zastrow: in Schultz-Ewerth 240; Kuvare 216

2 Vedder: op.cit. 191

3 Strauss 82; another example: Schlosser: in Zs Ethnologie 1955, 230; Strauss 85

Therefore Maharero became heir to the holy fire, i.e. the priestship and the status as head of family and, in this case also as "chief". The fourth son, Kavezeri, was adopted only and therefore was not eligible to succeed to these positions anyhow.

After the death of Maharero the holy fire should have fallen back to the family of Kavikunwa, namely to his eldest son Nikodemus.¹ This, however, did not happen because the German Colonial government instated the second son of Maharero, Samuel. This decision was not welcome and accepted by the Herero and was the cause of much unrest.²

3.1.1.2 Heirs of the second Order

When the deceased had no full brothers the estate had to be divided into the oruzo and the eanda part.

3.1.1.2.1 Heir to the oruzo Part

The eldest grown-up³ son of the main wife⁴ was oruzo heir: He inherited the status as head of family and with it the priestship, the holy cattle and all impliments connected with the oruzo. He also inherited the children of the deceased,⁵ but not his wives because the main wife was his mother. Weapons were also inherited by the eldest son at least among the Kaakoveld Herero.⁶

1 Meyer: Recht 38; Strauss 82

2 Meyer: op.cit. 38

3 Bernsmann 111; Kuvare: Kaakoveld-Herero 216; Dannert: Recht 52

4 Hagolani 24

5 Kuvare: op.cit. 216

6 Kuvare: op.cit. 218

3.1.1.2.2 Heir to the eanda Part

According to Vedder¹, the eanda-heir first in line were such brothers of the deceased with whom he had the same mother, or when such a brother did not exist, a brother of the mother. No other source mentions this, but, on the contrary, all other sources agree that the first heir to the eanda part of the estate was the eldest son of the eldest sister of the deceased.² Mostly, the main part of a man's estate were his profane cattle. These sometimes were up to a few thousand. The eanda heir therefore can be seen as the main heir to the estate. He also inherited the wives of the deceased; when no brother of the deceased became full heir, they belonged to the eanda part of the estate.³

3.1.1.3 Further Orders

3.1.1.3.1 Further Heirs to the oruzo Part of the Estate

If a man had no brothers anymore and no sons, the oruzo impliments and holy cattle would go to the eldest son of the eldest brother of the deceased.

If no oruzo heir existed, the eanda-heir would inherit everything including the oruzo cattle. These and the calabashes connected to these holy cattle the eanda heir first had to take out of the former oruzo by performing certain ceremonies and then he had to introduce them to his own oruzo by religious ceremonies before he was allowed to put them to his own cattle.⁴

1 Vedder: Tribes 195

2 Dannert: Recht 52; Meyer: Recht 31 Fn. 2; Baumann: Zs Ethnologie 1926, 106; Malan: Himba 215

3 Meyer: Recht 32, 65; Dannert: op.cit. 50

4 Meyer: op.cit. 31; Zastrow: in Schultz-Ewerth 244

The status as head of family and as priest could not devolve to the eanda heir. Therefore, if no oruzo heir existed, the holy fire was extinguished¹, the village disintegrated and its members attached themselves to other groups.

3.1.1.3.2 Further Heirs to the eanda Part of the Estate

If the eldest sister of the deceased had no son the eldest son of the next sister was the eanda heir.

If no such sons existed the eldest son of the mother's sister's daughter, i.e. a nephew of the second degree according to our reckoning, would be heir, etc.

3.1.1.4 No Women as Heirs

Women could not inherit from a man. Generally, women could never inherit anything from a man.

One exception to this rule is mentioned by Kuvare² for the Kakokoveld-Herero: The bowls a woman had in use usually belonged to her husband. When he died she inherited these bowls.

3.1.2 Inheritance at the Death of a Woman

The estate of a woman consisted mainly out of animals: At the name giving ceremony soon after the birth she usually was given cattle from her father and her matrilineal grandfather as a present³, she also would beg for animals

1 Viehe/Steinmetz 299; Hagolani 25

2 Kuvare: Kaakoveld-Herero 218

3 Meyer: Recht 42; Luttig 98; Kuvare: op.cit. 220; Dannert: in Folk-Lore Journal II 1880, 68; Hagolani 35; Irle: Herero 96

with her relatives¹ and lastly she would get cattle at her marriage and the birth of her first child.² These animals, together with the progeny could grow into a large herd when she was a good animal breeder.³

When a woman died, her sons were her heirs of the first order.⁴ When she had no sons, her brothers, beginning with the eldest, were her heirs.⁵ Next in line were her father⁶ and his brothers. Then came the sons of her brother.

From the above it follows that with the inheritance of a woman a purely matrilineal system was followed similar to that of the Ovambo. Similarly, too, the Herero woman could only possess, but not own things which she had obtained from her husband. Therefore, all animals her husband may have given to her as a present and iron rings, beads and other jewelry he gave to her, had to be returned to him or his eanda on his wife's death.⁷ The jewelry he would distribute in his eanda among his sisters and aunts.⁸

3.1.3 Inheritance at the Death of a Stranger

When somebody died away from his own group, his estate was inherited by the headman in whose area he had died.⁹ Only if he was married to someone from that area, his relatives would be heirs.¹⁰

1 Luttig 99; Hagolani 35

2 Dannert: Recht 21; Luttig 99

3 Dannert: op.cit. 21; Luttig 99; Kuvare: Kaakoveld-Herero 220

4 Dannert: op.cit. 33; Luttig 99; Kuvare: op.cit. 220; Kohler/Meyer: Zs Rewi 1900, 307

5 Dannert: op.cit. 33; Luttig 99; Hagolani 28

6 Dannert Fb 110

7 Dannert: Recht 33; Meyer: Recht 32; François: Nama and Damara 202

8 Meyer: op.cit. 32; François: op.cit. 202

9 Vedder Fb 75

10 Lang Fb 29

3.1.4 General Rules

3.1.4.1 The Division of the Estate

Usually the main heir, i.e. the eanda-heir, undertook the division of the estate.¹ Often a fight between the eanda heir and the oruzo heir erupted because the latter usually inherited far less than the former while he, too, usually had to run a whole village. The oruzo heir therefore would barter with the eanda heir in order to move him to give to the oruzo heir part of his share so that he, the oruzo heir, would not be left as a poor when the eanda heir left with all the cattle for his village. Samuel, the son of Maharero, was met with this fate: after Maharero's death, his herds were inherited by the eanda heirs Tjetjo and Riarua so that Samuel, a chief by succession but poor, had to sell land in order to be able to pay his bills for his high alcohol consumption.²

The giving away of a part of his eanda share of the estate by the eanda heir, was made easier for him by the fact that among the eanda cattle of the deceased there usually were some which would have been holy or even forbidden to the eanda heir because their features complied with his oruzo rules and taboos. Because he could use such cattle only to a small extent, he would readily leave them with the oruzo heir. Furthermore, when the eanda heir was a fair man he would in addition give so many cattle to his oruzo heir that his standing and the name of the village would not be endangered.³ In these cases the eanda-heir had the stronger power; in spite of contradicting tendencies⁴ towards patrilinealism, matrilinealism had quite a strong position in these cases.

1 Meyer: Recht 33

2 Meyer: op.cit. 69, and Fn. 3 on p. 69

3 Zastrow: in Schultz-Ewerth 244

4 cf Kohler: Zs Rewi 1906, 31

Sometimes the right of the stronger applied: An influential eanda heir would try to grab everything; he would destroy the oruzo impliments and would also take the oruzo cattle after initiating them into his own oruzo.¹

On the other hand, it also could happen that an oruzo-heir would grab everything and that the eanda heir would get nothing.² Such incidents, however, happened seldom³ because nearly nobody could take to build up enmity on a large scale against himself.

Therefore, when the eanda-heir did not outrightly refuse to share, something which could end up in long and exhausting enmity, each heir would indicate to the other which cattle he would like from the other heir's share. Long discussions would follow until both were more or less satisfied.

Sometimes the heirs could not come to a satisfying solution after a few weeks. A chief would then be called who would arbitrate. He would, of course, claim a fee⁴ which mostly was paid directly out of the estate.⁵ During Maharero's time he virtually forced heirs to call him to arbitrate in order to get a few cattle. Only a few rich and influential Hereros dared to refuse his services.⁶

In order to circumvent the costs for arbitration the heirs tried to come to a solution in the abovementioned manner on own accord.

No difference was made between property which was inherited and that which was bartered.⁷

1 Dannert: Recht 52; Luttig 103

2 Dannert: op.cit. 52; Luttig 103; Zastrow: in Schultz-Ewerth 242

3 Luttig 103

4 Bernsmann: Fb 111; Meyer: Recht 34; Strauss 104

5 Meyer: op.cit. 34; Bernsmann: Fb 111

6 Meyer: op.cit. 34

7 Bernsmann: Fb 111; Meyer: op.cit. 34; Strauss 104

3.1.4.2 Further Sharing

Both parts of the estate generally were inherited as a whole.¹ Each heir, however, would in most cases give something out of his share to his relatives.² He would do this to secure him their following.³ But there was no law to enforce this.⁴ Therefore the heir himself decided who would get what, whereby matrilineal uncles looked after the interests of the children.⁵

3.1.4.3 Change of Ownership

An heir to an estate did not become heir automatically upon the death of a deceased but he had to take possession of his share.⁶ Especially the heir to the status of head of family and priest had to take into possession the oruzo part with the following ceremonies: The end of a long string made from leather was fastened at the branch of a tree in the cattle kraal and the other end was put into a hole at the holy fire upon which the milk-pale of the deceased was put, from which he usually drank his milk. This was regarded as documentation that the oruzo cattle from then on were his own. The eanda heir, too, had to perform a ceremony to document his new ownership: Although the eanda-cattle were profane he had to initiate them into his oruzo by telling this fact to the ancestors. Then he sprinkled water by way of a branch from the holy omurapu bush onto the cattle which then were driven into his cattle kraal. In addition, an ox had to be slaughtered.⁷

1 Zastrow : in Schultz-Ewerth 241

2 Meyer: Recht 32

3 Zastrow: in op.cit. 241

4 Zastrow: in op.cit. 241

5 Meyer: op.cit. 33

6 Dannert: Recht 56; Luttig 101; Zastrow: in op.cit. 242

7 Meyer: op.cit. 33 f; Luttig 102

3.1.4.4 Trustee of the Estate

Until the final partition of the estate the oruzo heir was the trustee.¹ This probably was so because the oruzo heir, i.e. the son of the deceased, usually lived at the same place as the deceased while the eanda heir, who always lived somewhere else, first had to get the message of the death and then had to travel there.

The division of the estate was usually done by the eanda heir. Often, however, the two heirs would agree that the oruzo heir would divide the estate.² However, as mentioned above³, the right of the stronger could lead to the situation that the stronger grabbed everything. With the Himba the whole estate was given to the eanda heir who then undertook the partition.⁴

3.1.4.5 Division by the Chief/Head of Family

Because the duties of a chief and head of a village/family were to keep up law and order, he would undertake arbitration in all cases of a large inheritance where a dispute could not be eliminated.⁵ As we have seen above⁶, the arbitrator would be paid with cattle which were taken directly from the estate.

3.1.4.6 Last Will

Hereros mostly made use of a last will in order to secure that somebody would get something out of the estate who

1 Dannert: Recht 62; Zastrow: in Schultz-Ewerth 246

2 Meyer: Recht 33; Zastrow: in op.cit. 246

3 See above p. 198

4 Malan: Himba 216

5 Irle: Herero 144; Büttner: Münchener Allgemeine Zeitung 1893, No. 175, Beilage; Zastrow: in op.cit. 246

6 See above p. 198

otherwise would get nothing. A testator could therefore lay down that, for instance, the oruzo heir had to hand over to the child he loved most one or more milk calabashes together with the cows connected to them.¹ Such a gift from a deceased was always welcome, although holy cows were not allowed to be slaughtered; their milk, however, served as sustenance for that person, because milk was staple food with the Herero.²

If such a cow was given to a girl she could after her marriage and after her change into the oruzo of her husband even use the cow for slaughter.

In this manner the testator could secure that adopted children would also get a share of the estate.³ The testator could also rule that a certain relative should get nothing for instance because that relative had tried to murder the testator once.⁴

A last will had to be done orally in front of two or more witnesses who could be either male or female.⁵ Such last wills could be recalled and be substituted by another one in the same manner.

3.1.4.7 Disinheritance of the eanda Heir

In order to keep together the estate and therewith to guarantee the power and influence of a village, it happened that the head of the village ruled by way of a last will to disinherit the eanda heir-to-be. In such a case he would

1 Dannert: Recht 61; Zastrow: in Schultz-Ewerth 245; see also Viehe/Steinmetz 302

2 Wagner: African Studies 1954, 119

3 Cf Schulte: Fb 43

4 Zastrow: in op.cit. 245

5 Zastrow: in op.cit. 246

order his sons in front of a few witnesses to see to it that the eanda heir would not be able to enter the village. Should the heir dare to trespass he, the testator, would kill him.¹

It was not the law but the fear of the curse which guaranteed that the nephew would not even try to get anything from his share in most cases.² The order to disinherit the eanda-heir was seldom because the eanda heir was the sister's son and the potential son-in-law of the testator to whom he usually had a close relationship and to him he usually was generous.³ The disinheritance could therefore only occur where an oruzo had become strong and independant.

In order to suppress disputes the oruzo heir might give to the disinherited cousin a bit from his own estate.⁴

A strong tendency towards patrilinealism can be seen clearly in such cases.⁵

3.1.4.8 Disinheriting of the oruzo Heir

If the eldest son proved to be unfit for the status of head of village/head of family and priest, his father could disinherit him and proclaim the second son as his follower. The first son would then be only second in line. The second son then would inherit together with the status all oruzo implications and holy cattle of his father.⁶

1 Dannert: Recht 60; Vedder: Fb 67; Vedder: Tribes 194; Luttig 102; Kohler: Zs Rewi 1906, 31

2 Meyer: Recht 32; Irle: Herero 144; Kohler: Zs Rewi 1906, 31; Dannert: op.cit. 60; Vedder: Tribes 194; Zastrow: in Schultz-Ewerth 244

3 Luttig 102

4 Meyer: op.cit. 32; Dannert: op.cit. 60; Zastrow: in op.cit. 245

5 Kohler; Zs Rewi 1906, 31

6 Dannert: Recht 60; Zastrow: in op.cit. 245

3.1.4.9 No automatic Disinheritance

If a potential heir had assaulted or even tried to murder the testator, this did not bring about his automatic disinheritance. The testator therefore had to disinherit such a person in the abovementioned mode. If he did not disinherit him he would inherit his full share even if he had brought about the death of the deceased.¹

Although the other relatives had no law permitting them to hinder such a person from taking possession of his share of the estate, they would do everything to secure that he got as little as possible.²

3.1.4.10 No substitutional Heir

The Herero did not have the possibility to indicate another heir when the one of their choice refused the inheritance. If for instance a testator had indicated his second son as his follower and this second son refused, perhaps because he had become a Christian, then that son followed who was next in line; it was impossible for the testator to indicate for instance his second son as first and his fourth son as second choice.³

3.1.4.11 Lent-out Things

All things the deceased had lent out to other persons before his death had to be returned and belonged to the estate.⁴ As seen above⁵, all things a man had given to his wife, including jewelry, had also to be returned to be distributed in his eanda.

1 Dannert: Recht 61; Zastrow: in Schultz-Ewerth 245

2 Dannert: op.cit. 60

3 Dannert: op.cit. 61; Zastrow: in op.cit. 245

4 Dannert: op.cit. 62

5 See above p. 198

3.1.4.12 Debts of the Deceased

If the deceased had more debts than the worth of his estate, the heir was not allowed to refuse the inheritance¹; he had to pay for all the deceased's debts even when he had to take things from his own property to satisfy the creditors.² Before the arrival of white merchants such cases were unknown. Only the wish to obtain wagons, guns and other until then unknown objects drove the Hereros into debts³; however, with the afterthought that at least their heirs could make full use of these things.

3.1.4.13 Refusal of the Inheritance

A refusal of the estate was unknown. Everything was welcome to increase one's personal wealth and be it by one goat only.⁴

Refusals to the status of the head village/family and priest were known; with the conversion to Christianity a man was unable to be priest and he therefore had to refuse. Connected with the loss of status was the loss of all oruzo implements and cattle.⁵

3.1.4.14 Non-present Heirs

If the whereabouts of an oruzo heir was unknown at the time of the partition of the inheritance that brother or son stepped in who was next in line. When the real heir returned

1 Dannert: Recht 62; Zastrow: in Schultz-Ewerth 246

2 Dannert: op.cit. 62

3 Dannert: op.cit. 62

4 Dannert: op.cit. 62

5 cf Strauss 83

he took over everything from the younger one.¹ The usufruct esp. of the cattle which were used in a normal way were not to be returned. Also cattle which had been sold in order to secure a normal administration of the estate were not substituted. However, when cattle were given away as a present, or when they were sold to be able to buy guns, horses and wagons, these had to be handed over.²

If, however, the oruzo heir only returned five years and more after the partition of the estate, he would not get the holy fire and the status as head of family/village. This would stay with the intermediate heir. The real oruzo heir would only get the other oruzo things, esp. the cattle.³

3.2 Law of Succession

As mentioned above⁴, most questions concerning succession have been discussed already so that only a few facts still have to be mentioned here.

3.2.1 Succession as Head of Village/Family and Priest

Until the arrival of the missionaries, these positions of status were inseparably linked: Each head of a village simultaneously was head of his extended family and priest. He performed the tasting rites of the milk and his daughter guarded the holy fire.⁵

This position was succeeded to in the abovementioned⁶ order which applies to the oruzo heir: First heir was the eldest

1 Büttner: Ausland Vol. 55, 853; Dannert: Recht 62; Zastrow: in Schultz-Ewerth 246

2 Dannert: op.cit. 63; Zastrow: in op.cit. 246 f

3 Dannert: op.cit. 62 f

4 See above p. 191 fn. 1

5 Cf Irlé: Herero 78 ff; Kohler/Meyer: Zs Rewl 1900. 314 f

6 See above p. 190, 193 f

brother, when no brothers were left, the sons, beginning with the eldest, were the heirs.

It could happen that the testator disinherited the eldest son when he was clearly unfit and unable to succeed to such a position.¹ Such last wills were seldom.

The arrival of Christianity brought about the conversion of Herero so that these Christians could succeed to the status of head of family/village but not to that of the priesthood.² These formerly inseparable positions then fell apart: The next in line who still was a heathen then became priest.

When Samuel Maharero became chief which with him also included the position of head of family, he did not take over the holy fire because he had become a Christian. Another son of Maharero therefore took over the holy fire. When he, too, converted, it was extinguished.³

Women could never become head of family/village.

3.2.2 Succession to the Chieftainship

The status of a chief only emerged in the 19th century.⁴ Before that neither chiefs nor paramount chiefs of the Herero existed; the head of family/village was the strongest position.

The position of a chief was based on influence which was obtained through wealth in cattle.⁵ A chief did not even

1 See above p. 202

2 Strauss 83

3 Strauss 83

4 Sundermeier: Mbanderu 101 f; Viehe/Steinmetz 301

5 Meyer: Recht 22; Sundermeier: op.cit. 105; Vedder: Das alte Südwestafrika 661; Lang Fb 29; cf also Shapera: Herero Genealogies 5; Viehe/Steinmetz 301; Wagner: in African Studies 1954, 119

have to be head of family and priest¹; for instance Tjamuaha.² Where both came together, priestly functions and richness in cattle, a chieftainship could develop which could even be inherited by the eldest son if he was clever enough to keep the cattle and if he had the personal attributes to attract a large following.³

However, a continuous inheritable chieftainship over many generations was impossible: Richness in cattle and a large following were indispensable. When chief Kangombe died, his eldest son Tjomayo should have taken over but he refrained in favour of his younger brother Kambazembi because he was supposed to have had more cattle.⁴ Also Tjamuaha was not the eldest son of his father.⁵

Therefore, one cannot speak of real inheritability as regards chiefs.⁶

1 Sundermeier: Mbanderu 105; Kuvare: Kaakoveld-Herero 209

2 Sundermeier: op.cit. 105

3 Sundermeier: op.cit. 105; Kuvare: op.cit. 209; Schulte: Fb 51; Viehe/Steinmetz 301

4 Strauss 83

5 Sundermeier: op.cit. 106

6 Lang Fb 29; Kuvare: op.cit. 219; Schulte: Fb 51

Chapter 7: Conclusion

As shown in this research, traditional SWA/Namibia and its different tribes had a multiplicity of different laws of things, inheritance and succession.

These differences were based on several grounds of which the following probably were the most important ones: First, the different modes of descent reckoning necessarily accounted for basically different laws of inheritance and succession: with matrilineal tribes like Ovambos, members of the matrilineal family were the main heirs while with patrilineal tribes a person's brothers and children were main heirs.

Secondly, the mode of living accounted for different laws of things, inheritance and succession: the life as hunter/gatherers caused at least a few San-tribes not to have a law of inheritance altogether, as everything a person owned was buried with him. As shown above¹, this is still valid for the G/wi, but probably not anymore for the Nharo: Steyn found that certain things are inherited nowadays, something which did not take place in 1928 when Bleek made her studies.² Differences based on the mode of living can not only be seen between totally different groups like San and Ovambo, but also between Khoe-khoen and San: while the Khoe-khoen mainly used the land for grazing their cattle, the San used it for hunting and collecting veldkos.

However, there are many more grounds which account for the different rules.

No complete set of customary laws could be found which applied to all groups within a tribe: examples for this are the different notions of band territoriality in connection

1 See above p. 78

2 See above p. 77 f, 80

with collection veldkos and hunting¹ among the different groups of the San as well as the different laws in many areas among the Khoe-khoen and Ovambo. Especially with the Khoe-khoen it was found that each tribe had certain rules which only applied to that tribe.²

The tendency of the matrilineal tribes of the Ovambo towards patrilinealism at least in respect to the law of inheritance has been mentioned.³ It can therefore be stated that no pure matrilinealism with the Ovambos is found today anymore.

Interestingly, the patrilineal San also know matrilineal influence: Heinz⁴ reports for the !Kǃ that when they are on the move those little children which are yet unable to walk all the time have to be carried on the soulders of the mother's elder brother. When a little child does not have such an uncle, this responsibility falls on the mother's elder sister's husband.

With the Khoe-khoen a daughter will carry her father's name as main name, while a son would carry that of his mother.⁵ From this it seems that neither of the studied tribes is either purely matrilineal or patrilineal.

Olivier⁶ claims that no liquidation of the estate of a deceased takes place when he was head of family or head of a village: his heir simply steps into his place both in respect to the status as well as the ownership of the family property when a head of family died; with certain differences, this applied similarly at the death of a village head.⁷

1 See above p. 68 ff

2 cf p. 32 ff

3 cf p. 155 ff

4 Heinz/Lee: Namkwa 222 f

5 cf Schapera: Khoisan Peoples 267

6 Olivier: Die Privaatreg van die Suid-Afrikaanse Bantoetaalsprekendes 1981, 419

7 See Olivier: op.cit. 419

As we have seen, this is not entirely true in respect to all SWA/Namibian tribes: Based on the double-descent reckoning system the Herero-estate always fell into two parts when no full brother was the heir of the deceased. Necessarily the estate had to be divided and it often happened that the successor to the status was left with only a few material things.¹

Olivier's thesis therefore cannot be accepted for the entire SWA/Namibia.

Unfortunately, many problems especially in regard to the law of inheritance could not be solved. Schapera² already regretted that for the Khoe-khoen "not even a single concrete example of inheritance has been recorded".

Although I could find a few reports which also mentioned certain aspects of inheritance³, they are far from giving a complete picture of the law of inheritance.

Perhaps a longer research at the Archives of the Rhenish Mission Society in Wuppertal-Barmen, West-Germany, could still bring forth a bit more information esp. on the Khoe-khoen but also on the Herero, Damara and Ovambo. Similarly, the Archives of the Finish Mission Society in Helsinki, Finland, could still contain valuable, hitherto unpublished material in the form of diaries, letters and reports on the Ovambo.

More research, therefore, would be very helpful.

1 See above p. 197

2 Schapera: Khoisan Peoples 324 f

3 See above p. 32 ff

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(Which book is meant, should be clear from the footnotes; however, where it promised to make the identification easier, I have given the mode of citation at the end of the title in brackets.)

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Appendix 1

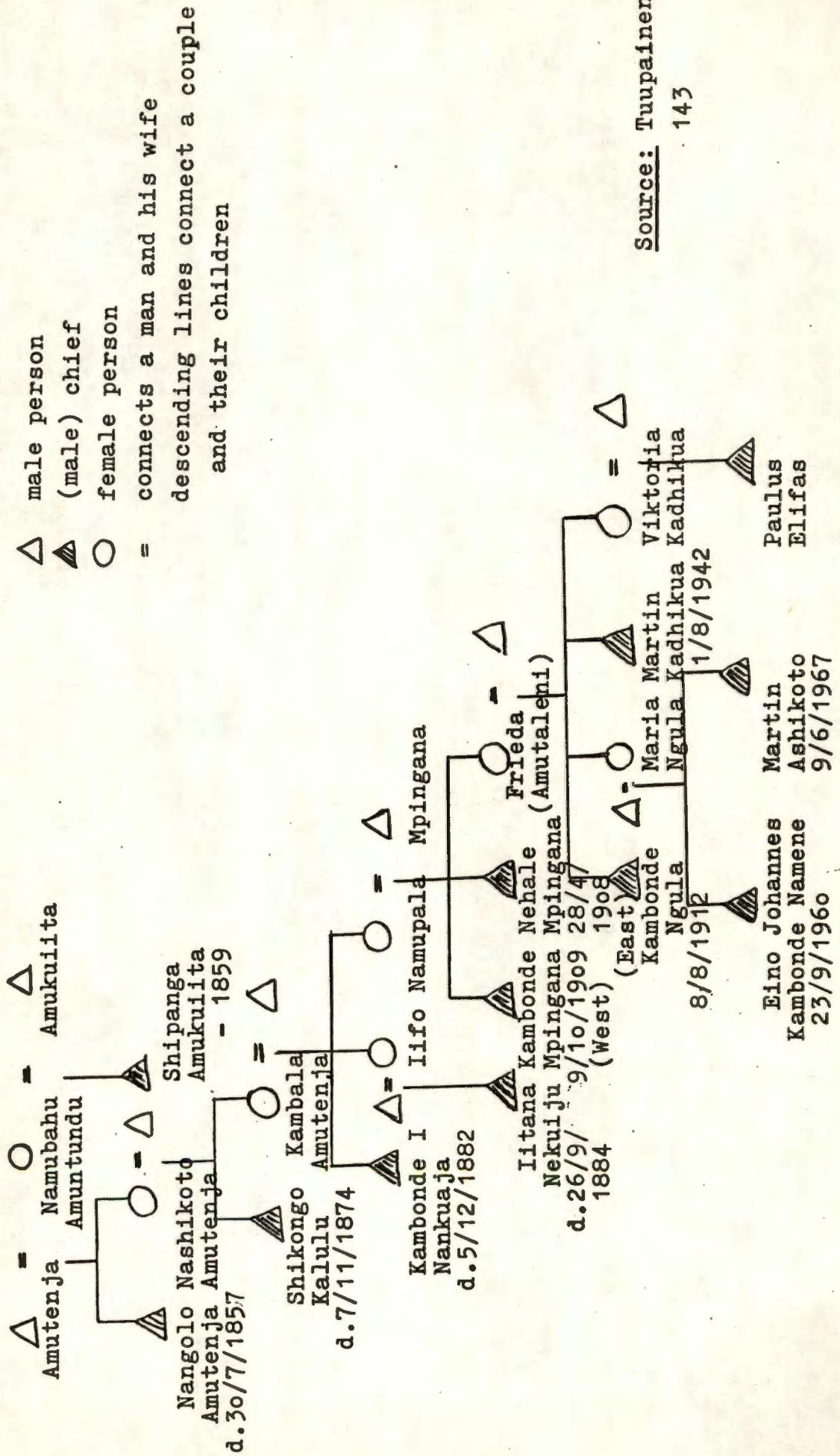
Chiefs of the Ndonga according to Tuupainen¹,
from 1850 to 1942

Nangolo Amutenja	ruled from ? to his death on 30 July 1857
Shipanga Amukuiita	died 1859
Shikongo Kalulu	died 7 November 1874
Kamonde I Nankuaja	died 5 December 1882
Iitana Nekuiju	died 26 September 1909 (he ruled over western Ndonga)
Nehale Mpingana	died 28 April 1908 (he ruled over eastern Ndonga)
Kamonde Ngula	died 8 August 1912
Martin Kadhikua	died 1 August 1942

(There were more chiefs after 1942, which are not
of interest here)

1 Marriage 143

Table 1: Graphical Representation of the Succession to the Chieftainship of the Ndonga 1857 - 1967



Source: Tuupainen: Marriage

Appendix 2

Chiefs of the Kuanyama, according to Loeb¹,
from 1850 to 1915

Haimbili	died by committing suicide in 1859
Musipandeka	died 1881
Nahmandi	died 1883
Mejulu	died 1903
Nande	died 1911
Mandume	he was killed in 1915; since then the Kuanyama had no chiefs anymore

1 Loeb: Feudal Africa 22 - 38

Appendix 3

Clan-names of the Kuanyama, according to Loeb¹

- 1.) Ovakuahnali, i.e. the Mourning Clan; this was the royal clan of later times
- 2.) Ovakuanangobe, the Cattle Clan; this was the original royal clan until it was captured by members of the Mourning Clan
- 3.) Ovakuaneidi, the Grain Clan
- 4.) Ovakuamalanga, Roan Antelope Clan
- 5.) Ovakuanekamba, Hyena Clan
- 6.) Ovakuasidilia, a minor rain-making clan
- 7.) Ovakuanahungi are People Who Sit Up Late At Night
- 8.) Ovakuanalamba are the chief rain-makers
- 9.) Ovakuanambuba, another Grain Clan
- 10.) Ovakuasiti, amulet makers (?)
- 11.) Ovakuahonga Clan, the Omuhonga Wood Clan
- 12.) Ovakuetembo, are migrators (?)
- 13.) Ovakuanavala, the Zebra Clan
- 14.) Ovakuananime, the Lion Clan
- 15.) Ovakuanambua, the Dog Clan
- 16.) Ovakuanandjaba, the Elephant Clan
- 17.) Ovakuanjoko, the Snake Clan
- 18.) Ovakuanambaxu, the Locust Clan
- 19.) Ovakuanaluhepo, the Grasshopper Clan
- 20.) Ovakuasidila, the Bird Clan

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(Appendix 3 - cont.)

- 21.) Ovakuanaxungi, the Pottery-Making Clan
- 22.) Ovakuauta, the Bow Clan
- 23.) Ovakuamuenjo, the Heart, Soul or Life Clan
- 24.) Ovakualemba, is a "Linking Clan", i.e. its members are dependant on other people of other clans
- 25.) Ovakuanangadu, the Crocodile Clan
- 26.) Ovakuumunghanga, the Guinea Fowl Clan
- 27.) Ovakuamani, the Forked Stick Clan
- 28.) Ovakuumajulu, the Cattle Nose Clan
- 29.) Ovakuafika, the Witch Clan