

Makongoro are the Hafumu of water and we respect them, or the ethno-philosophical foundation of customary water law in the Kavango Region of Namibia

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Abstract: Interviews on customary water law have been conducted within the framework of the TFO Project since March 2011. The research was meant to generate qualitative information on water, the Kavango River as the main source of water, but also locally pumped water or water provided by the Namibian public provider of water, NamWater. The intention of the of the (now completed) first phase of the research was to investigate the general perceptions of the people on water. The second (still ongoing) phase of the research looks at more specific matters, such as access to water, control of access, rules against pollution and rules to protect water etc. The purpose of this article is to present results of the first phase of the research, focusing on Ekongoro, the mythical figure that is widely reflected in the perception of water by the people in the research area. Who or what is Ekongoro? What is the social meaning of Ekongoro? Is there any legal relevance of Ekongoro? There is when taking note of what was stated by an interviewee: "Makongoro are the Hafumu of water– the Makongoro are the rulers of water - and we respect them". The very special placement of Ekongoro shows that Ekongoro is part of a network of relationships that reaches from human connotation in the specific sense to humanised non-human and even supra-human connotations. What the narratives about Ekongoro convey is an important ingredient of a worldview which could inspire the worldview of western societies, even prompt to amend the dominant attitude in this worldview in accordance with which nature is an almost unlimited object of scientific and commercial exploitation. However and primarily concerned with societies in which the narratives about Ekongoro exist, the research has discovered a complex framework of arguments in the customary perception of water that stimulates questions on the role and function of this framework in the foundation of societal politics and law.

Keywords: Customary water law; Ekongoro; protection of water; "ownership" of water; statutory law; sustainable use of water; worldviews and the ethno-philosophical foundation of customary water law.

Os *Makongoro* são o *Hafumu* da água, e nós os respeitamos, ou à base etno-filosófica do direito consuetudinário à água na região de Kavango da Namíbia

Resumo: Entrevistas sobre o direito consuetudinário à água foram realizadas no âmbito do projeto TFO desde março de 2011. A pesquisa foi feita para gerar informações qualitativas sobre a água e o rio Kavango como sua principal fonte, mas também sobre a água bombeada localmente ou fornecida pela provedora pública namibiana, a NamWater. A intenção da primeira fase da pesquisa, já concluída, foi averiguar as percepções gerais das pessoas sobre a água. A segunda fase da pesquisa, ainda em andamento, examina assuntos mais específicos, como o acesso à água, o controle de acesso, regras contra a poluição e proteção da água, etc. O objetivo deste artigo é apresentar os resultados da primeira fase da pesquisa, com foco em Ekongoro, uma figura mítica que é amplamente refletida na percepção da água pelas pessoas na área de pesquisa. Quem ou o que é Ekongoro? Qual é o significado social do Ekongoro? Existe alguma relevância jurídica do Ekongoro? Há, ao tomar nota do que foi dito por um entrevistado: "*Makongoro* são o *Hafumu* da água - os *Makongoro* são os governantes da água - e nós os respeitamos". O posicionamento especial de Ekongoro mostra que Ekongoro é parte de uma rede de relações que vai da conotação humana no sentido específico, a conotações humanizadas não-humanas e, até mesmo, supra-humanas. O que as narrativas sobre Ekongoro transmitem é um importante ingrediente de uma visão de mundo que poderia inspirar a visão de mundo das sociedades ocidentais, pronta para alterar a atitude dominante nessa visão, na qual a natureza é um objeto quase ilimitado de exploração científica e comercial. No entanto, e principalmente preocupando-se com as sociedades em que as narrativas sobre Ekongoro existem, a pesquisa descobriu um quadro complexo de argumentos na percepção consuetudinária da água, que estimula perguntas sobre o papel e a função desse quadro no fundamento da política da sociedade e do direito.

Palavras-chave: direito consuetudinário da água; Ekongoro; lei ordinária; "propriedade" da água; proteção da água; uso sustentável da água; visões de mundo.

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Introduction

The interest in rules of customary of the various Namibian traditional communities about natural resources gained momentum when the Namibian government considered amendments to the Nature Conservation Ordinance to provide for conservancies in communal areas. Conservancies in communal areas demarcated areas in which rural communities have responsibility for wildlife and gain benefits from its management.¹ The planned amendments became law and resulted in the proclamation of many conservancies. The statutory offer to establish conservancies was responded very positively by communities in all parts of Namibia.² The research on communal conservancies revealed although the Nature Conservation Amendment Act did not contain any reference to customary law an abundance of living customary law important to the administration and management of natural resources. The subsequent introduction of community forests by the Forest Act³ and research on forests in communal areas contributed further to the understanding of the working of customary law and its relevance in administering and managing natural resources.⁴

When approaching the framework of the research on water law within the TFO-Project, we – the research group in this part of the project⁵ – noted that customary law and water was basically ignored by Namibian statutory water law although some Namibian communities had provisions on water in their customary law.⁶

We also noted that customary water law was hardly considered in customary law research.⁷

Looking at Namibian research on customary law on the administration and management of natural resources and some recent pieces of research on water law, the guiding jurisprudential question of this research is the question of ownership:⁸ “Who owns the land, the minerals, the animals, the trees?” The questions about “ownership”, is not informed by the concept of ownership as it originated from the western traditional jurisprudence and which grants the individual the generally accepted power to deal with the object of ownership as he or she wishes.⁹ The general legal order of the country has known “ownership” in the latter sense since the integration of the Roman-Dutch law as the common law of the country¹⁰ and with this also contributed to the spreading of this concept. However, a different understanding of “ownership” exists under customary law. Land may be said to be “owned” although it is clear that this ownership is very different from ownership of land outside communal areas. “Ownership” of communal land only means that the “owner” has the right to use the land in a way that excludes or limits the rights of others, including the right of the traditional authority responsible for the administration of communal

ing equipment made of buckets or reeds]. Anyone who is found misusing water shall be prosecuted. If the Headman or people from the household misuse water, the matter shall be reported to the Traditional Authority.”

⁷ With respect to Namibian statutory water law, see Water Act, 54 of 1956 (as amended) and the Water Resources Management Act, 24 of 2004. – That customary water law is a neglected field in customary law research is also true beyond the borders of Namibia. As to Namibia, see, however, Falk (2008) earlier work of members of the TFO group as described above. (Cf. Hinz; Mapaire 2012).

⁸ Hinz (2008); Hinz; Mapaire (2012); Hinz (2012); Hinz (2013b) and the author’s presentation to the international conference on Sustainable Land Management organised held in Berlin from 17 to 19 April 2013 (Hinz 2013a) and generally Hinz; Ruppel (2008a) and Hinz; Ruppel; Mapaire (2012).

⁹ To this and the following, see: Hinz (1998); on the concept of ownership in Roman-Dutch law, see: Hosten; Schoeman (1995): 630ff. “Ownership” as legal and political concept has been on the agenda of legal and political anthropology since the early days of the disciplines. (Cf. Gluckman 1965:45ff. and Rouland 1994:216ff.) This article is not the place to recall the legal anthropological discussion on “ownership” in general.

¹⁰ See Article 66 of the Constitution of Namibia.

land and the right of the state which has to respect the customary law rights of the “owners”.¹¹

Indigenous languages reflect this understanding of “ownership”. In Rukwangali (the language widely used in the Kavango Region), the word for ownership is *umwenya*, the word for owner *mwenya*.¹² In the very close Owambo language Oshindonga, “ownership” is *uumwene*, the owner is *mwene*. However, words with *mwenya* or *mwene* cover a broad range of relationships: it is used to determine all sorts of relationships between persons and with respect to things. A person who gives a festival is the *mwene* of the festival, the master of the taboos is also *mwene*.¹³ Understanding the ownership in this sense means referring to a legally relevant social network with a broad variety of actors with a complex set of mutually interwoven responsibilities, duties and rights.

Research done for a master’s dissertation in law by one member of the research group revealed an unexpected picture on the ownership of water: For a good majority of the interviewed people the state, although claiming ownership under general law,¹⁴ was not seen to be the owner. Owners were the community, God and a mythical entity with the name of *Ekongoro*.¹⁵

On the background of this research instruments were drafted for empirical research on customary water law. So far, 200 interviews have been conducted since March 2011 in the Kavango Region, the adjacent part of the Caprivi Region and in the Okavango Delta,¹⁶ i.e. in Ngamiland of Botswana. The research was meant to generate qualitative information on water, the Kavango River as the main source of

¹¹ Cf. the Communal Land Reform Act, 5 Of 2002. Section 17(1) of the Act states that “all communal land areas vest in the state in trust for the benefit of the traditional communities residing in those areas ...”, avoiding in this wording the reference to ownership. Section 20 of the Act confirms the right to allocate communal land rights to the chief of a traditional community, respectively to the traditional authority.

¹² See the respective entries in Kloppers (1994).

¹³ See the respective entries in Tirronen (1986).

¹⁴ See here Section 4 of the Water Resources Management Act, 24 of 2004: “Subject to this Act – (a) ownership of water resources in Namibia below and above the surface of the land belongs to the State; ...”

¹⁵ Cf. here Mapaire (2012).

¹⁶ The name of the river changes from region to region: in Angola, it is called Cubango, in Botswana Okavango in Namibia Okavango and Kavango. The people of the Kavango region prefer Kavango.

¹ See: Nature Conservation Ordinance, 4 of 1974 and the Nature Conservation Amendment Act, 5 of 1996.

² Cf. Anyolo (2012); Hinz; Ruppel (2008b) and Ruppel; Ruppel (2013).

³ Act No 12 of 2001.

⁴ Cf. here Muhongo (2008); Mapaire (2012).

⁵ The TFO research group consists of the author as the group leader, Prof. Oliver. C. Ruppel, University of Stellenbosch, Clever Mapaire, a law graduate of the University of Namibia and currently reading for his PhD in law, and Christian Mukeve, a field assistant. Further related to the group are also those who contributed to Hinz; Ruppel (2008) and Hinz; Ruppel; Mapaire (2012).

⁶ See Section 15 of the Laws of Uukwambi in Hinz (2010):270ff. This section has seven, quite detailed sub-sections. I quote the first two: “15.1 Water is life. Therefore water shall be conserved because it is important to people, animals and plants for survival. 15.2 The Traditional Authority shall have the responsibility of protecting water, together with other Traditional Authorities. The Traditional Authority shall not allow water to be misused, including fishing with nets *ad iishongo* [Fish-

water, but also locally pumped water or water provided, in the case of Namibia, by NamWater¹⁷. The intention of the research was in its first (now completed) phase with some 80 interviews to investigate the general perceptions of the people on water.¹⁸ The second (still ongoing) phase of the research looks at more specific matters, such as access to water, control of access, rules against pollution and rules to protect water etc.

The respondents of phase one were primarily 'knowledgeable' people, older people of both sexes who were expected to be the bearer of wisdom, but also some younger ones in order to see to what extent the wisdom of the old people was still a lived wisdom. The interviews of the first phase were done in open dialogues that allowed directing the investigation to what the respondent wanted to focus on. With the exception of one group interview, the interviews were conducted in an individual face-to-face manner. The interviewees of phase one were mainly farmers, most of them male. All interviews were conducted in the local languages and translated by the interviewer, in some cases assisted by people of the locality of the interview.¹⁹

The purpose of this article is to present results of the first phase of the research, focusing on Ekongoro. Who or what is Ekongoro? What is the social meaning of Ekongoro? Is there any legal relevance of

Ekongoro? Most probably "yes" when we take note of what stated a 70 years old Thimbukushu-speaking farmer living at the Chobe River in the Caprivi Region in an interview about customary water law: "Makongoro are the Hafumu of water—the Makongoro are the rulers of water – and we respect them".²⁰ The article describes the results of the research in a Namibian context, i.e. places them into what has been developed with respect to customary law in Namibia over the years after independence with the constitutional confirmation of customary law.²¹

In the following part of this article, I will give a detailed description of Ekongoro, quoting from the interviews. In the last part, I will, as a first offer of interpretation, relate the description to a wider political anthropological context to explain the ethno-philosophical foundation²² of the perceptions of water maintained by the people in the Kavango basin. With this, the framework of the arguments on water as a social good will be established that will allow for further reflections on political and legal approaches to the use and protection of water.

Ekongoro

Who or what is Ekongoro?

Likongoro²³ is just another animal, no one can describe it, was said by one respondent,²⁴ while another stated:²⁵

Dikongoro is a creature that cannot be classified to anything, no one can tell if Dikongoro is an animal or a reptile.

Ekongoro is nevertheless described although with different features. Sometimes Ekongoro has horns, sometimes not:

There are snakes with horns in the river. These snakes can do the same things Dikongoro can do. People who have not seen the real Dikongoro consider these snakes as Dikongoro. Dikongoro does not have horns, and it never shows itself outside the water.²⁶

Another respondent stated the opposite:²⁷

Ekongoro looks exactly like a python and the only difference is that Ekongoro has horns.

Where do we find Ekongoro?

The place where Dikongoro lives is mostly covered with foam. The water is always deep and dark and does not flow.

[When] I was ... in Botswana. I heard people saying that Dikongoro was leaving its place. I ran with others to see how it was moving from one place to the other. When we got there, we saw a bundle of water grass and foam moving along from the west side to the east. The grass was fresh and green. No one could see what was at the bottom of the water, but dust was all over in the area [Dikongoro] moved.²⁸

The same respondent is very precise in naming places where one should be able to find Ekongoro:²⁹

These days, they [Makongoro] are very scarce to be found, but they still live in the water. There is a place at Kanorombwe where Dikongoro still lives. Also at Popa and Andara. there are

¹⁷ The Namibia Water Corporation Limited is the government controlled public water provider in Namibia.

¹⁸ Emphasis is on "perception", i.e. including the broader political anthropological context of the understanding of ownership of water and the Kavango River. In Hinz (2013b), I looked more specifically at the issue of ownership, the perception of ownership by the people and the consequences of these perceptions for development policies and, with respect to these, for water law (including statutory water law).

¹⁹ All the interviews were conducted by Mr Christian Mukuve Thapa under the instruction and guidance of the author who also drafted the interview guides and questions. Christian's home language is Thimbukushu, but he also speaks apart from English and Afrikaans, Rukwangali, Rumanyo, the language of the Shambyu and Gciriku communities. Responses in Setswana, the main language spoken in Botswana, were translated by locally recruited helpers. The wife of the author, Helgard Patemann-Hinz and the author have worked with Christian for more than ten years, in which Christian was field assistant for various projects of the University of Namibia and its Centre for Applied Social Sciences. The fact that Christian is based in Mbukushu explains that a greater part of the interviews were done in the Thimbukushu-speaking parts of the research area.

²⁰ Cf. interview 069. – Makongoro is the plural of Ekongoro in Thimbukushu, the language of the Hambukushu community in the Eastern part of the Kavango Region. Fumu (sing. of Hafumu) means king / queen or ruler and is also the title of the supreme leader of the Hambukushu community.

²¹ See Article 66 of the Constitution of Namibia.

²² With "ethno-philosophical foundation", I refer to work that relates social behavior, policies and law to meta-languages that guide societies and individual human beings. The Center for the Study of World Religions, Harvard Divinity School published a series of books on Religions of the World and Ecology, from which Grim (2001) is of particular importance for this article. For African philosophy and its relationship to various aspects of life in Africa (including law), see: Ramose (2002).

²³ Ekongoro (plural Makongoro) is Rukwangali; Likongoro (plural Makongoro) is Rumanyo (Rushambyu and Rugciriku); Dikongoro (plural Makongoro) is Thimbukushu. Quoting from interviews, I left the language used by the interviewee. In my own references, I follow the Rukwangali language and use Ekongoro.

²⁴ Interview 026.

²⁵ Interview 053.

²⁶ Interview 008.

²⁷ Interview 046.

²⁸ Interview 041.

²⁹ Interview 041 – The places mentioned in the following quotation are in Mbukushu area (Mukwe District).

places where Dikongoro is expected to live currently.

Another respondent had to report the following:³⁰

According to what I was told: Dikongoro still lives in a place we call Shadikongoro. And the agriculture irrigation site of Shadikongoro³¹ was named because of the fact that Dikongoro lived and still lives in this place.

Ekongoro is always close to water, but can also leave its preferred environment:³²

Dikongoro does not only live in the water, but it can also move underground. As we are sitting here, we may be sitting on it. It can dig underground from the river and pass through the place we are sitting.

The already above quoted respondent who mentioned the horns of Ekongoro also said:³³

The biggest Dikongoro has a bright, dark blue colour, others are white and black. ... [Dikongoro] .. is more like a snake, but it has four feet and heads on both ends. It burns to make ways in the ground. It smells very bad when it comes close to you.

Other respondents refer to snakes when they give their pictures of Ekongoro. One said:³⁴

Dikongoro is similar to a very big snake, it is very long, about 15 to 20 meters long, it pushes and pulls water and it can show a rainbow³⁵ as it makes different colours.

Another respondent stated:³⁶

Dikongoro is the biggest creature that lives in water, that lives in this river, the Kavango River. It is more like a snake

and like a python. I have not seen it, but according to my father who has seen it, it changes its colour, as it grows. It has a different colour when it is still young and it changes the colour when it grows older.

Ekongoro does not only push and pull water, it also swallows things:³⁷

Dikongoro can be compared to a giant, it swallows a lot of things, even canoes. If you are in the river, you will not know whether or not there is Dikongoro. It may swallow you before you realise it.

Several respondents told stories about attacks of canoes by Ekongoro:³⁸

One night, I went out to trap fish with our fishing nets with my work mate We first collected firewood and made fire and then started setting our nets. After a short while, we saw lights coming from the water, ... the light came with the wind, but we could not describe from where it came from! Our fire started burning strongly and we were unable to dim it. It came towards us and dived in the water, as it was getting closer to us. The lights and the wind went off when the light dived into the water. ... The lights came from a distance of 200 to 300 metres. [Later] ... our elder friend Xoro told us that what we saw was Dikongoro. We were lucky that it did not attack us.

Few days later, we went back to fish again. We were unlucky [and] ... did not catch even one fish. For this reason, I suggested to my partner to take a canoe and to go to the other side of the river. As we were heading the middle of the river, our canoe stopped moving forward. It suddenly bent to the side though we tried to control it, but we did not manage it because the water was pulling us to its will. After a short while, our canoe turned over We were floating on the water We were floating next to our canoe but it was hard for us to ... catch up to the canoe. My friend reached the

canoe after a while, but he was pushed far to the southern edge of the river, and I was pushed to the northern side

[Later], my friend crossed the river and came to collect me with the canoe. He ... suggested to set our net to the place we had in mind. But I refused to go to this place, because I knew that Dikongoro was ready to attack us again. He drove the canoe without me After a short drive, I heard him screaming: "The canoe is again not moving!" and [while screaming] he was pushed to the edge of the river again, but not too far this time.

When we came home, Xoro advised us not to cross the river where Dikongoro lives. Xoro said that we were again lucky [to have escaped].

From there on, we decided to go for fishing to other places, far from the place [where we were attacked]. And we caught more fish than we expected.

Another story of an attacked canoe is this:³⁹

[Dikongoro] attacked me and my friends once. Our canoe was held on the water. We tried to ride the canoe away but it was too hard! ... we realised that we were held by Dikongoro. We started talking to it as we were directed by our elders. We said: Fumu⁴⁰, what have we done to you? We did nothing to hurt you, we are just passing by, may you please release us to go? It released us, pushing the canoe very fast to the edge of the river. My friends fell out of the canoe and I was left alone in it. Dikongoro took me back to the deep water fast ... and drew me, the canoe and all our belongings, into the water. I lost my mind and I felt the very bad smell I was walking in the water, but managed to breathe. It took me almost six hours before I was released. I strongly believe that Dikongoro is still around in the place where it attacked me.

³⁰ Interview 043.

³¹ Again a place in the Mbukushu area.

³² Interview 004.

³³ Interview 008.

³⁴ Interview 010.

³⁵ Ekongoro is also the word used for rainbow. Cf. the entry "likongoro" in Möhlig; Shiyaka-Mberema (2005).

³⁶ Interview 023.

³⁷ Interview 006.

³⁸ Interview 007.

³⁹ Interview 010.

⁴⁰ Thimbukushu, meaning king / queen or ruler.

... When I reached the edge of the river, I understood that I had been swallowed. My clothes were missing and I was left with my pants only. Many people were standing at the river, wondering what had happened to me. They thought I was dead and they were surprised to see me alive after these long hours in the water.

I took another canoe and went back home. People said to me not to use the canoe again, but I told them, I did not think that it was my day to die, because I could have died already. Later, I was again attacked [by Dikongoro]. But this time, it did not swallow any of us, but only threw us, me and my friends to the edge of the river.

This happened in 1977.

The following story is also a story of an attack on a boat:⁴¹

I do not remember the year, but I clearly remember the things that happened.

It was when I went with my late elder brother down to the river. We drove our canoe to an area where he said we could catch more fish than from where we were. We did not cross the river. We were just close to the edge of the river heading to the west. We came across dark water where water was not moving. My brother wanted to stop the canoe saying: "This is the place! Now we stop here!" I did not feel comfortable, but I was afraid to object to his decision.

A while later, just before he stopped the canoe, we saw bubbles in the water and my brother got very excited: "Fish is greeting us already! Do you see this place? One can feel that there is fish!"

The bubbles increased with dust in the water as if the water was boiling, I was filled with fear. My brother tried to turn the canoe fast to get away, but it was too late Our canoe started spinning around the same area. The water started go-

ing in circles around us. We screamed, as the front side of our canoe was facing the deep water while the back of the canoe was nearly pointing to the sky. ...

All of a sudden, the storm was over and calm. We managed to steer our canoe to the edge of the river and run away. Right after jumping off the canoe, some people arrived at the spot. They said they heard the scream and they wanted to know what happened. My brother and I were just looking at each other in the eyes and none of us explained what happened until we arrived home.

Attacks by Ekongoro may also lead to mortal results:⁴²

A younger brother to my grandmother went to cross the river to an island to chop reeds for a house yard. They were three in the canoe. On their way back, they were attacked by Dikongoro and only my grandmother's brother was taken off the boat while the others others were pushed towards the edge of the river. They survived. My grandmother's brother disappeared in the deep water. Three days later, his corps was found in the water.

Another incident is said to have taken the lives of white teachers:⁴³

The Max Makushe School⁴⁴ opened in 1984. White people from South-Africa became the first teachers here. In 1987, I was to start my standard 5 class and I was 14 years of age.

During the same year, the white teachers received visitors from South Africa. On one day of their visit, it was a Thursday; they went to Fumu Mayavero⁴⁵ and asked him if they could go to the river at Andara for a ride. Fumu told them; that this was fine with him, but they should be careful not to 'make waves'

as the river was dangerous. They were four and a dog. They stated their trip. At around 14hrs, suddenly the boat got stuck and the boat started sinking a few minutes later. ... Only one man and the dog survived, the rest including the boat was not found till today.

The underground movements of Ekongoro can be observed as in the following statement:⁴⁶

If you go down the river side just after crossing the gravel road, you will find a big hole that was created by Dikongoro. Many people may say this hole was caused by water and soil erosion. But believe it or not, it was caused by Dikongoro. Water never reached that area to lead to erosion. The soil started breaking down due to Dikongoro that passed crawling under the soil. That caused the soil to break loose and fall down into the hole created by Dikongoro.

Thus, encounters with Ekongoro are also possible on land:⁴⁷

This happened in 1979 during winter time.

We lived very far from the river. We woke up that morning finding the soil in and outside our yard was wet, as if it had rained at night. We, children, were very scared. Our parents knew what this was all about. We heard them talking, that we [had to leave our place because:] "We are in water, our house is in a big hole."

When the family gathered around the fire, I asked my father why the soil around our yard was wet. My father told us that Dikongoro, one big creature from the river had come to visit our place from underground. He told us that our house was not safe anymore, because it was now standing on a hole filled with water. He explained to us that Dikongoro must have dug a hole from the river to our house, and that the hole must have been left with water in it. ... [My father said:

⁴¹ Interview 029.

⁴² Interview 043.

⁴³ Interview 041.

⁴⁴ Senior Secondary School, close to Andara in the Mukwe District of the Kavango Region.

⁴⁵ The then King of the Mbukushu traditional community.

⁴⁶ Interview 025.

⁴⁷ Interview 019.

“We cannot prevent our house from collapsing as the hole has remained under it. Our house will fall when the soil opens. ... We cannot wait for that to happen, we must shift [to another place] before that happens.”

Few days later, our father found a place for us to move to and we did so immediately.

However, it is also possible to appease Ekongoro:⁴⁸

If you are stopped with your canoe [by Dikongoro], the only way you can be released is by paying with your blood or something of silver or gold must be dropped down into the water. Then you will be free to go.

Another respondent reported:⁴⁹

During this very attack, my father insisted that my mother sacrificed her necklace to Dikongoro by throwing it down into the water. My mother did so and that is how we were released.

After a comparable encounter with Ekongoro

my brother ... realised that he had lost his watch in the water. Our grandmother told us that we were lucky and we were saved by the watch that fell into the water, which Dikongoro considered a gift offered to him.⁵⁰

The performance of certain behaviour in the community may also have an influence on the behaviour of Ekongoro:⁵¹

The elders warn children to be careful when they go to the river. They are warned to avoid deep water, as it is there that you find crocodiles, hippos and Likongoro. Especially when people from the same household or family go hunting or fishing to the river all remaining at home are expected not to play around or do anything that would taboos of the community.

When the men went to hunt hippos as ordered by the Hompa⁵², all family members of the hunters were advised to behave properly in order to save the lives of their fathers, husbands, sons and uncles. Upon returning from the hunt, all were expected to celebrate and sing.

Despite possible life-threatening attacks by Ekongoro:⁵³

Ekongoro is not a bad creature; it does not attack people any time. Ekongoro may live in your area for many years but it may disappear from the area without any incident caused.

Another respondent was more specific:⁵⁴

Yes, I believe Likongoro plays a big role to the river. There are places that were not deep before, but when Likongoro was said to be in these places, they became deeper and darker. It is Likongoro that breaks through the ground to other areas and creates streams. Streams that may become rivers or part of the [main] river. Streams created by flood are only temporally and they dry up when the flood disappears. The streams created by Likongoro may remain permanent ...

It is obviously possible to kill Ekongoro, but this may have very negative consequences:⁵⁵

According to the history told by our parents, Likongoro was killed by San⁵⁶ with the wrong thought that it was an animal. After it was killed, the river could not keep water anymore. Water was only coming in during floods, but went away after the rainy season. Few years later, the river carried little water even during the rainy season. ...

I can still remember how much water was flowing from the river to the main road when we

were still young. That was the time we used to hear from our parents about Likongoro being killed by San. We were told that the stream was losing water because Likongoro was not there anymore.

If the stream dries up today, then our culture must come back, we should look for water the way we used to do it.

Likongoro increases water at the area where it chooses to live. Likongoro can save water and fish as well.

There is a place at the river, right here at Katere,⁵⁷ where Likongoro still lives. The place is named Dumushi. All the people around here at Katere know the place. There are times when Likongoro makes noise. Everyone in the village will be alarmed by the noise, even the little ones. And whenever Likongoro makes noise, the villagers know that fish is ready for them in the area to catch. Early in the morning, you will see people going down to the river to pick up fish that was vomited by Likongoro. When the people get to the river, they catch live and fresh fish everywhere in the water around the place.

This happens every year, mostly from September to December.

Ekongoro:⁵⁸

can save water and fish as well. Where there is Likongoro, there is also water.

It is also said that⁵⁹

Dikongoro is the Hompa living in water and controlling fish and water where it lives.

The respondent from whom the title of this article was taken says:⁶⁰

Dikongoro is a creature that saves water at its place.... . Makongoro are Hafumu of water and we respect them.

⁵² Hompa is the equivalent to Fumu in Rukwangali and Rumanyo and means king / queen or ruler.

⁵³ Interview 062.

⁵⁴ Interview 018.

⁵⁵ Interview 034.

⁵⁶ Various groups of San live in the Kavango and the adjacent Caprivi Regiosn.

⁵⁷ Village on the Kavango River approximately 120 km from Rundu to the East.

⁵⁸ Interview 053.

⁵⁹ Ibid.

⁶⁰ Interview 069.

⁴⁸ Interview 008.

⁴⁹ Interview 025.

⁵⁰ Interview 029.

⁵¹ Interview 021.

Whenever we go to the river, streams or places expected to be owned by Dikongoro, we go with respect, we humble ourselves and get water in respectful manner. ...

Dikongoro is a Fumu that rules its own area of water and still needs to rule and govern people. That is why it takes people and keeps them alive in its world and releases them alive any time it wants to do so.

Another respondent held:⁶¹

God created water and kept a creature in charge to save and protect water from drying up. He placed Makongoro wherever there is water. There are Makongoro in the river and there are Makongoro in the ground water. If you look at the river even if it does not rain for some years, the river will remain there. ...

Dikongoro can bring rain and it can it. It creates rainbows and when the rainbow comes, the rain goes off.

On Ekongoro and ownership, one respondent had this to say:⁶²

The river is owned by God.

Dikongoro is just a creature that lives in water. It does not only live in the river but in different water places. Dikongoro is the biggest creature that lives in water, but is not the owner of the river or the water. It is more like in the case of the lion. We call the lion king of the jungle but still not the owner of the jungle.

A human being can become Ekongoro after his death:⁶³

Our grandfather was Dikongoro himself.

He used to catch lots of fish, he would fill the canoe to capacity. Whenever he was done with fishing, he would send for us: me, my younger twin sisters and his wife, our grandmother to go

down to the river. Our task was to remove the fish from the canoe. As soon as we had completed our job, our grandfather would bend down to the canoe and drink all the dirty water that was left in it from the fresh fish.

He always went without water and food to the river for fishing.

At home, I and my younger sisters, used to help our grandmother to store the fish on the roof of the house. Our grandfather was always sitting beside us, waiting for us to finish our work so that he could drink the dirty water that was left from fresh fish on the plates on which we carried the fish from the boat. After drinking this water, he would not eat that evening. Sometimes he drank late at night and would only eat on the next morning.

Our grandfather was from Zambia.

We were at school the day he died. We were going to the missionary school at Andara. He was buried in the cattle kraal in accordance with our traditional beliefs. All heads of the houses had to be buried in the kraals where the cattle were. On the morning after the burial, my twin sisters ... went to the kraal. They saw water coming from the grave of our grandfather. They ran back home to tell the parents what they had seen. Our parents warned us not to get closer to the kraal, because our grandfather could have taken with him anyone of us who would come close to the kraal down to the river.

A while later, we were all alarmed by noise that was sounding like thunder from rain. The noise came from underneath the earth and went down to the river. We saw the soil breaking from the kraal to the river side. Slowly, the soil was breaking away ...

Our father ... and his brothers had to shift our homestead to another place because of ... erosion. We were not told any reason why that happened. It was only later when our father told

us that our grandfather was Dikongoro and he is still alive in water where he survives in fresh fish.

What is the situation when there is more than one Ekongoro at the same place? The answer is:⁶⁴

Likongoro cannot live together with another Likongoro in one place.

In other words:⁶⁵

Ekongoro can also fight against the another Ekongoro if they meet. ... they ... fight ... over the river because each will think that the river belongs to it. ... they will fight until they divide the river for each one of them to take one part ...

It is noteworthy that Ekongoro is not the only mythical entity that lives in the Kavango River:⁶⁶

People mix the appearance of Dikongoro and sometimes think they see Dikongoro, but what they see is not Dikongoro, it is Mbava.

What is Mbava? Mbava is said to be the female Ekongoro:⁶⁷

... the female Dikongoro has wings. ... it is called Mbava.

If Mbava is in the area, the water may sometimes become red. And if someone sees its wings being spread in water, the person ... may lose a close relative or a loved one.⁶⁸

The most dangerous creature in the river is Mbava. It looks like a bird and may spread its wings across the water. Mbava is a very bad creature that attacks people the most!⁶⁹

A story on Mbava reported to us is, as follows⁷⁰

There was a man called Tjona Once, he caught a very big fish. He cooked it and ate it be-

⁶¹ Interview 072.

⁶² Interview 078.

⁶³ Interview 036.

⁶⁴ Interview 053.

⁶⁵ Interview 047.

⁶⁶ Interview 053.

⁶⁷ Interview 042.

⁶⁸ Interview 053.

⁶⁹ Interview 055.

⁷⁰ Interview 009.

fore everyone in the house. He felt very thirsty after eating. He reached out to a bucket of water, but all the water disappeared before he could get some from it. He reached out to other buckets with water, it happened the same. Tjona decided to go to the river. He tried to pick up some water with his hands, but the water dried out from his hands before it could reach his mouth. So, he tried to drink straight with his mouth from the river, but the water spaced away from his mouth before he could drink it. He now climbed on a tree the branches of which spread over the river. He jumped down hoping to dive into the water, but the water spaced away from the area he fell onto.

Tjona died at the same spot. ... People who came to the place did not see the body of Tjona, but the body of an animal instead. Tjona's body had changed into the body of an animal. They took the animal home and cut it into pieces. They cooked some parts in different pots. The head was cooked separately. While the head was still boiling, the cook came to open the pot to see how the meat was. The cook found that the pot did not have any meat but the head of Mbava. The head was alive. The cook got scared, and others came running following the scream of the cook. All these who were present saw the still living head looking at them out of the pot. Nobody could tell later if the head jumped out of the pot. All what people could say is that the head disappeared from the pot and they saw Mbava going to the river. The other parts of the body also disappeared from the other pots and from the storage rooms. That is how people realised that what they found was not an animal but Mbava. Mbava is family to Dikongoro and is able to do the same things as Dikongoro.

Ekongoro exists

"Dikongoro exists", was the message of one of the interviewees.⁷¹ Whether or not it exists in reality is not of interest. Of interest is that Ekongoro exists in the minds of people. The stories told about Ekongoro are stories heard along the Kavango River and in adjacent areas.⁷² They are obviously told from generation to generation and even appear in material used in schools.⁷³

Incidents with Ekongoro are remembered with details. Who was with whom when Ekongoro attacked is remembered and even the year in which incidents happened is recalled. The key-sentence chosen for the title of this article "Makongoro are the Hafumu of water [the Makongoro are the rulers of water] and we respect them" found, indeed, support in most interviews. This story about Ekongoro was not just the narrative of one respondent, who enjoyed to be interviewed and who allowed himself to be taken away by his imagination. The sentence for the title of this article found support in the sense that Ekongoro is still seen as a powerful entity in the relationship between human beings and water.

The picture drawn of Ekongoro differs in the recorded interviews, which is certainly not to surprise to all for whom Ekongoro does not exist: As it is a product of imagination and no authority supervises the production of these imaginations, how can you expect that everybody produces his or her picture in the same way? But also for those who believe in the existence of Ekongoro, the fact that its picture varies is eventually not of con-

⁷¹ Interview 005.

⁷² There was unfortunately no opportunity yet to investigate about Ekongoro in Angola. The fact that the same people live on the Angolan side where the river is the border between the two countries allows the conclusion that Ekongoro is present there as it is in Namibia. However, it would be important to learn about Ekongoro along the northern part of the river.

⁷³ Helgard Patemann-Hinz thankfully drew my attention to a textbook for standard 2 in Thimbukushu that contains a chapter on Ekongoro. After referring to Shadkongoro as the place where Ekongoro "lived in this place long ago", the text requests the learner to consult with their grandfathers or elders to tell them "rightfully" about Ekongoro. (Kloppers; Majavero 1991:25f.). - We did not ask the interviewees whether they were aware of this textbook. It would certainly enrich our understanding of Ekongoro learn to what extent learners have made use of the request to contact their grandfathers about Ekongoro and also to what extent the school-supported inquiries contributed to the story-telling on Ekongoro!

cern. Would the respondent for whom Ekongoro has no horns discuss this matter with the respondents for whom Ekongoro does have horns, they would most probably debate about the horns but not about Ekongoro as such. They would refer to the fact that there is not one Ekongoro but many and that they even fight with each other and eventually accept that there is diversity. Or, agree on what others have said, namely that it is not possible to describe Ekongoro!

It is beyond the scope of this article to look at the many water-related spiritual phenomena that are offered in many parts of the world. The world is full of water spirits, water monsters, water maids. Psychological explanations could be explored which relate mythical imaginations to fear of dark and deep water, storm, moonlight over water and show that responses to this most probably universal fear are also universally comparable.⁷⁴ I will leave this aside and go straight to the more abstract level of interpretation: What does it mean that folk philosophy, such as Ekongoro, holds that non-human part of the environment are inhabited by entities capable of interventions into the lives of and communication with human beings?

The British anthropologist Tim Ingold refers to one of the many recorded "nature"-related folk concept according to which the rain forest was understood to be the *parent* of the community that lived close to it, to shed light on conceptualisations comparable to the Ekongoro. Ingold says⁷⁵

To speak of the forest as a parent is not, then, to model object relations in terms of primary intersubjectivity, but to recognise that at root, the constitutive quality of intimate relations with non-human and human components of the environment is one and the same.

Generalising this, Ingold goes on by stating:⁷⁶

For hunter-gatherers as for the rest of us, life is given in engagement, not in disengagement, and in that very engage-

⁷⁴ Cf. e.g. on water spirits in African tradition: Baumann; Thurnwald; Westermann (1940):251ff. and on water spirits in the mythology of Indians in North America: Dieterle (o.J).

⁷⁵ Ingold (1996):129.

⁷⁶ Ibid.:151.

ment, the real world at once ceases to be 'nature' and is revealed to us as an environment for people. Environments are constituted in life, not just in thought, and *it is only because we live in an environment that we can think at all.* [Emphasis added]

The persons interviewed on Ekongoro and customary water law are not hunters or gatherers, i.e. people who live on hunting and gathering. They have experience with hunting, in particular fishing, but are to a large extent farmers, peasants that cultivate land for their living. They, nevertheless, adhere to the same understanding according to which non-human parts of the environment are animated. The animated non-human parts of the environment appear as if they were human-like entities, i.e. entities which human beings can see, even have encounters with. Human beings can communicate with these entities. Despite their power over human beings, they are part of the world of human beings. How else would it have been possible that the grandfather in one of the quoted interviews became Ekongoro after his death? As ancestor, he could become Ekongoro, as it is part a widely spread understanding in African traditional cultures that ancestors remain as the living-dead part of the human world, are able to communicate with the living-living, have influence on them, are even open to negotiate this influence.⁷⁷ They may induce fear, but they also allow negotiations to avoid negative consequences.

The fact that the Ekongoro is called Fumu is also to be considered in this context. The Fumu is not only a respected personality. The Fumu, usually an offspring of a royal house, has special relations to the ancestors that allow him / her to communicate with them for the benefit of the community. The office of the Fumu is religiously blessed, it is sacred although this does not exclude that the ruler acts wrongly and eventually against the aspirations of the community.⁷⁸

⁷⁷ Cf. here Hinz (2003):36ff.; Patemann-Hinz (2004)

⁷⁸ Cf. e.g. the description of "Royal prerogatives and duties" of the Kwangari Hompa in McGurk, Gibson (1981:68ff.) According to this, the Hompa is "the source and repository of wealth, dispenser of gifts, leader in war, officiant in religious ceremonies, and in some situations a medicine man. ... the chief or another member of the royal family is the 'rainmaker for all the tribes' and as such is the keeper of the hereditary rain-making medi-

Is Ekongoro good or bad? Ekongoro is reported to attack canoes and human beings, Ekongoro is also said to kill people. This is one side. There is another side according to which Ekongoro saves water and natural resources and protects them, that Ekongoro provides for the growing of grass by holding water available. To clarify this discrepancy, it will be helpful to observe here that there are two sorts of Ekongoro or two mythical entities that live in the waters of the Kavango River: There is Ekongoro and Mbava. Mbava is also called the female side of Ekongoro. Mbava is said to have the same powers as Ekongoro or even to be the most dangerous being in the waters.

Whether we have two separate but family-related mythical entities, Ekongoro and Mbava, which represent separately the quality of good and bad or we have the two qualities in one is eventually not very relevant. Relevant is that we have a dichotomy, the elements of which are related to each other. There is the one, Ekongoro, that maintains water as the source of life and for the availability of fish: It is the *rainbow*⁷⁹ that shines over the earth after life-supporting rain. There is the other, Mbava, which is very dangerous to people and may cause harm to them. Although further research will be needed to give the picture of Mbava more details,⁸⁰ the dichotomy between Ekongoro and Mbava, or the dichotomy within Ekongoro itself, reminds us of what is of essential importance in the discourses on the animation of nature.⁸¹ This discourse deals with the concept of force, that is neutral on the surface, but can turn out to be good or bad. The power in the animat-

cine." Similar notations can be found for the other traditional communities in the Kavango Region. (Gibson, Larson, McGurk 1981) See also Williams (1991):90ff. who analyses the foundation and governance of kingdoms in Owambo in a comparative manner which is also relevant to the Kavango kingdoms.

⁷⁹ See the linguistic explanation of Ekongoro above!

⁸⁰ As much as Ekongoro was part of the research interest from the beginning of the customary water law inquiry, Mbava came only late to our attention. More research is needed that would also require questions about the statement why Mbava is the female side to Ekongoro. The same applies to the story about the person who, after his death, appeared as and later, after cooking, was Mbava. I confess that I realised the importance of the interviews on Mbava only after I had worked through all the 80 first interviews and selected the information on Ekongoro and, in view of this, reread the interviews on Mbava.

⁸¹ Cf. here the discourses in African philosophy, e.g. articles in Coetzee; Roux (2002).

ed nature can, indeed, be supportive to humans, but also harmful, as the power of human beings can be good and bad.

There are two important messages in the interpretation of the phenomenon of animated nature: The first is that otherwise unexplainable causes of events are explainable with reference to the execution of power by the animated non-human world: You are not ill because of an illness, you are ill because somebody, a human or non-human force, made you ill.⁸² The second message is that the described power, despite its ambivalence, is not excluded from human influence. There is space for negotiation, as the possibility of donations of silver or gold items to Ekongoro demonstrate.

Ekongoro, as one of the option to allocate ownership of water and the Kavango River, shows that Ekongoro is part of a network of relationships that reach from human connotation in the specific sense (you communicate with Ekongoro) to humanised non-human and even supra-human connotations (Ekongoro, the Fumu of water; our grandfather is Ekongoro). This underscores again how different the concepts of ownership are: The concept of ownership in the imported Roman-Dutch law of the country and the concept of ownership in customary law.⁸³

Descola concludes his "Beyond nature and culture"⁸⁴ by stating that the attempts to rediscover worldviews, which do not separate nature from culture as in particular the western industrialised world is used to do it, are not meant to argue from one worldview against the other, but to show that there different worldviews, which all submit answers to problems human beings encounter when determining themselves within their environment. Descola also holds that we are very often caught in an ethnocentric understanding of our own worldview and take our world as the better one compared to others:⁸⁵

It would be wrong to believe that the Indians of the Amazon, the Australian Aboriginals or the monks of Tibet would have a more profound understanding of our age than the limping naturalism in the late modern times. Each type of being-in-

⁸² To the latter see again Patemann-Hinz (2004).

⁸³ See here already the remarks in the introduction to this article!

⁸⁴ Descola (2011):565ff.

⁸⁵ *Ibd.*:584 (translation from the German version of the book by the author).

the-world, each way to connect oneself with the world and to make use of it is a specific compromise between facts of generally accessible but differently interpreted perceived experiences and the mode of co-operation of the existing, as it conforms with the historical circumstances so that none of the compromises, as admirable they may be at times, will be able to have appropriate answers to all situations.

Apart from rights and duties around Ekongoro, there is also an element of fear: the fear that Ekongoro may swallow somebody despite of the fact that the swallowed person will be released to life after a period in the belly of the Ekongoro. This element of fear leads to recall what the philosopher Hans Jonas said in his “Imperative of responsibility. In search of an ethics for the technological age”, published in its German original in 1979 and up to now one of the most important philosophical reasoning of sustainable development. Jonas:

... moral philosophy must consult our fears prior to our wishes to learn what we really cherish. And although what is most feared is not necessarily what most deserved to be feared, and still less so is its opposite the thing most deserving our desire, that is, the highest good ... – although in consequence, the heuristics of fear is surely not the last word in the search for goodness, it is at least an extremely useful first word and should be used to the full of its helpfulness in sphere where so few unlooked-for words are vouchsafed us.

What Jonas does in the quoted statement is an ethical appeal for the change in perceiving the relationship between nature and culture. Looking at the conceptualisation of Ekongoro, we find that fear is part of an existing worldview. What we find in the philosophy of Ekongoro is, indeed, an important ingredient of a worldview from which the worldview of western society could be inspired, even be prompted to amend the dominant attitude in this worldview in accordance with which nature is an almost unlimited object of

scientific and commercial exploitation.⁸⁶ However and primarily concerned with societies in which the philosophy of Ekongoro exists, the open question is to what extent this philosophy can play the role of the foundation of societal politics, including law.

The work on the empirical material of phase two of the customary water law project will show how and to what extent customary water law is grounded in the philosophy of Ekongoro. The foundation of customary water law in the philosophy of Ekongoro will in particular allow identifying to what extent customary water law should be given more prominence in view of its objective to use water “respectfully”,⁸⁷ but also by demarcating areas where customary law interventions in favour of the “respectful” use of water will be difficult to achieve.⁸⁸ With respect to the latter, the expected further work will also refer to worldview shopping⁸⁹ or creating hybrid views in which references to different worldviews are integrated. Both happens with more or less success and must be seen as reactions to the inroads into the various communities from outside, national, but also international policies, driven by trends to globalisation.

List of interviews

The transcripts of all quoted interviews are on file with the Centre of African and Migration Studies, University of Bremen.

Interview 004 of 26 April 2011 with a farmer of 89 years of age

Interview 005 of 7 May 2011 with a headman 56 years of age

Interview 006 of 11 May 2011 with a farmer of 93 years of age

⁸⁶ See here Kalu (2001) who looks at an (West-) African worldview and juxtaposes it to the dominant Western view with consequences for development policies.

⁸⁷ So said in one of the above-quoted interviews and also to be translated as “sustainably”.

⁸⁸ At least without local input into the perception of water and, based on this, leading to amendments to the existing customary water law!

⁸⁹ Shopping of worldviews is coined after the legal anthropological observation of forum shopping, meaning the navigation between traditional and state courts in view of which forum would deliver a more suitable result. – We also know of institution shopping in cases of illness. One seeks assistance from traditional healers as one does it from hospitals, as the case may. (To the latter, see: Patemann-Hinz 2004).

Interview 007 of 11 May 2011 with a farmer of 70 years of age

Interview 008 of 15 March 2011 with a farmer of 71 years of age

Interview 009 of 16 May 2011 with a farmer of 71 years of age

Interview 010 of 28 May 2011 with a farmer of 95 years of age

Interview 018 of 4 November 2011 with a farmer of 68 years of age

Interview 019 of 5 November 2011 with a farmer of 58 years of age

Interview 021 of 5 November with a farmer of 78 years of age

Interview 023 of 9 November 2011 with a teacher of 63 years of age

Interview 025 of 13 November 2011 with a farmer of 86 years of age

Interview 026 of 13 November 2011 with a farmer of 66 years of age

Interview 029 of 24 December 2011 with a conservation officer of 56 years of age

Interview 034 of 9 April 2012 with a farmer of 74 years of age

Interview 036 of 13 April 2012 with a farmer of 68 years of age

Interview 041 of 4 May 2012 with a teacher of 45 years of age

Interview 042 of 4 June 2012 with a farmer of 85 years of age

Interview 043 of 4 June 2012 with a learner of 21 years of age

Interview 046 of 14 June 2011 with a farmer of 69 years of age

Interview 047 of 20 June 2012 with a farmer of 73 years of age

Interview 053 of 29 June 2012 with a farmer of 68 years of age

Interview 055 of 20 June 2012 with a farmer of 81 years of age

Interview 062 of 1 August 2012 with a farmer of 76 years of age

Interview 069 of 5 September 2012 with a farmer of 70 years of age

Interview 072 of 15 September 2012 with a farmer of 64 years of age

Interview 078 of 24 September 2012, group interview with teachers between 27 and 45 years of age

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