

Orange River Boundary: A Passive Dispute between South Africa and Namibia

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Abstract

The demarcation of the boundaries in the African continent has been a result of the colonial decisions and were done most of the times without taking the Africans into any consideration. This led to many arbitrary borders which later gave rise to border conflicts due to several reasons but mainly because of the contention on the accessibility to some resources present near the border. Orange River Boundary Conflict between South Africa and Namibia is one such border conflict that has raised issues with regard to utilization of water resources from the Orange River. Grazing rights of the local Nama population and diamond mining rights in the region has caused several disagreements leading to failed talks and conclusions. This paper attempts to analyze the Orange River disputed boundary, displacement of the Namas into the neighbouring regions due to the conflict and the sharing of the resources of the Orange River by Namibia and South Africa.

Keywords: *African continent, Border conflict, Nama population, Orange River, Water resources*

Borders in Africa were introduced during colonialism, which according to numerous scholars, were created without taking into consideration the knowledge, content and suggestions of the African population. Therefore, due to their colonial origin the boundaries of Africa are considered to be arbitrary by many scholars. Loisel (2004) characterized the African borders as follows:

Borders in Africa would be arbitrary and artificial, delineated by

exogenous colonial powers with little knowledge of the local communities, dividing pre-existing and homogenous ethnic groups and thereby stirring frustrations and conflicts. (p.4)

For Davidson (1992), the arbitrariness of the colonial borders and the dissection of ethnic groups and tribes in the colonial era are the major causes of African conflicts. (p.10) In other words, the ethnic wars that are caused by the arbitrary nature of African boundaries are the major causes for instability in the continent.

According to Griggs (2000), the mismatch between nations and states is responsible for the continents' instability, civil wars, genocides etc. (p.1) In the process of the European colonization of Africa, mainly the scramble of Africa, ethnic considerations were in general ignored and the colonies and protectorates included within their borders, with few exceptions, large numbers of different, often antagonistic tribes, while dividing others between different jurisdictions. Loisel (2004, p.4) also says that these borders are the product of continental and global rivalries among European powers. Scholars like Odugbemi (1995, pp. 501-503) and Clapham (1996, pp. 1-2) argue that everywhere borders are artificial and the case of Africa is not different from others. Though, from the start the Organization of African Union (OAU) acknowledged the imperfections of the national boundaries of African countries (which were the by-products of colonialism), it decided to accept the inviolability of the national boundaries in its 1964 resolution.

What constitutes the Orange River Boundary Dispute?

Namibia and South Africa share a nearly 1000 km long boundary, a considerable part of which runs through the Orange River, along the Northern high-water mark, rather than being in the middle of the river as is the international practice. This demarcation originated in July 1890 (Demhardt, 1990, p.356), when the Germans accepted this boundary line proposed by a military superior Britain and agreed to article III of the Heligoland-Zanzibar Treaty:

In Southwest Africa the sphere in which the exercise of influence is reserved to Germany is bounded. To the south by a line commencing at

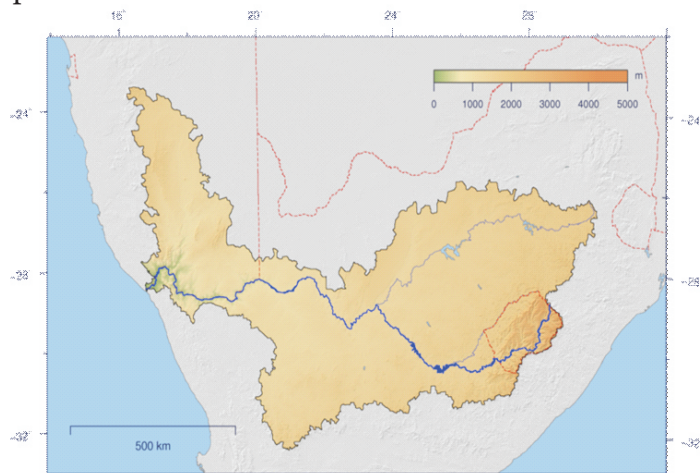
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the mouth of the Orange river, and ascending the north bank of that river to the point of its intersection by the 20th degree of east longitude (Herslet, 1967, p. 361).

The situation did not bring any major problems into the scene, until Namibia's independence from South Africa in 1990. The Namibian constitution, Article 1 (4) stipulated that: “The nation of Namibia shall consist of the whole of territory recognized by ... the United Nations as Namibia ... and its southern boundary shall extend to the middle of the Orange River”(Demhardt, 1990,p. 362).

Namibia referred to, amongst others, the Helsinki Rules on the uses of International Rivers to defend its claim. However, South Africa continued to adhere to the existing boundary contract claiming “both [river] banks (Evans, 1993,p. 134). From the early 1990s onwards, South Africa and Namibia discussed the location of the Orange River boundary, establishing a Joint Technical Committee to research and report on the boundary demarcation in 1993 (Evans, 1993, p. 134). Contrary to other Namibian territorial claims in South Africa (On 1 March 1994, following three years of bi-lateral negotiations, a South African-Namibian dispute over ownership of Walvis Bay, a coastal enclave, and 12 offshore islands was resolved, when South Africa returned these areas to Namibia) the boundary dispute was never settled.

Figure 1:Map.



Note: The Orange River between South Africa and Namibia seen in Black color

The issue mainly is complicated by two factors. Firstly, the presence of valuable natural resources in and on the banks of the Orange River is a bone of contention. The river mouth contains major diamond deposits and islands in the Orange River provide valuable grazing lands, while the river also provides good fishing opportunities and is a source of water, in the arid desert borderland. Both Namibia and South Africa claim access to these resources. When South Africa ruled Namibia, it exercised sovereignty over the whole river, which is very wide in some places. During this period, South Africa granted mineral rights to its mining companies to exploit the area's valuable diamonds, and land rights in the river's islands to the local communities in and around the Richtersveld. Under pressure from these beneficiaries, South African governments have generally been unwilling to release South Africa's access rights to these natural resources. Access to land and diamonds in what it perceives to be 'its' side of the river and river mouth is a key motivation for Namibia's request for boundary re-adjustment (Van Amerom, 2008, p.198). However, while South Africa has expressed the willingness to revise the boundary to follow the river's median line, it has never been willing to relinquish its water, grazing, fishing and mineral property rights, to the dismay of Namibia (Van Amerom, 2008, pp.206-227).

Secondly, the issue is also complicated because there have been disagreements over the actual boundary delimitation decided by the Germans and the British. South Africa did agree to review the boundary during the two presidencies preceding President Thabo Mbeki. However, the premature ending of De Klerk's administration and postponements during the Mandela regime meant that the process of specifying what had to be delineated was never accomplished (Conley & van Niekerk, 1998, p.131). Namibia requested a follow up of these tacit agreements. But former South African President Mbeki did not feel obligated by these never formalized arrangements of his predecessors. During his first presidency in July 2000, he decided that the boundary would not be adjusted (Graig, 2001, para.1) and demanded that Namibia should adhere to 'the OAU's policy on respecting colonial boundaries' (Pana, 2000, para.1). This has not happened; the Orange River boundary dispute has continued to flare up periodically and put pressure on the otherwise cordial relations between South Africa and Namibia (Evans, 1993, p. 140).

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It is also important to study the impact of this conflict on the local people living on the banks of the river. Some of the people of Namibia have been taking their cattle for grazing to these lands for years and now they have been denied these grazing rights. There have been agreements and disagreements regarding the actual boundary, whether it is in the middle or up to the North bank. Moreover, the conflict has caused drastic changes in the lifestyle of the people. Further, because of the discovery of diamonds, there have been creation of diamond prohibited zones along the coast, which forced the local people to migrate to other areas along the coast. There are challenges for the people staying in the islands regarding the grazing rights. For decades locals on both sides have enjoyed grazing rights on the islands in the middle of the river and South African miners have continued to exploit the resources that fall in the middle of the river but after the 1991 agreement by both the governments to recognize the boundary to be in the middle of the river, the grazing rights of the South African locals have been affected and they have been forced to leave their areas and move towards other places along the coast of the river.

Displacement of the Population from Orange River to small towns in Richtersveld, Northern Cape

The Orange boundary dispute has mainly affected the population living on the banks of the Orange River. These people have been left at the mercy of the South African government which still recognizes the earlier boundary. Apart from that, mining activities for diamonds have been on for a long time which has also led to displacement in the region. The displacement that took place as a result of the dispute between the two countries due to non-delimitation of the boundary has forced people to settle in small towns in the Richtersveld. These small towns are Steinkopf, Springbok, Port Nolloth and Okeip. The displacement has also resulted in significant changes in the lifestyle of these people who were mainly farmers and pastoralists and had to adapt to new ways of livelihood when they shifted to these towns.

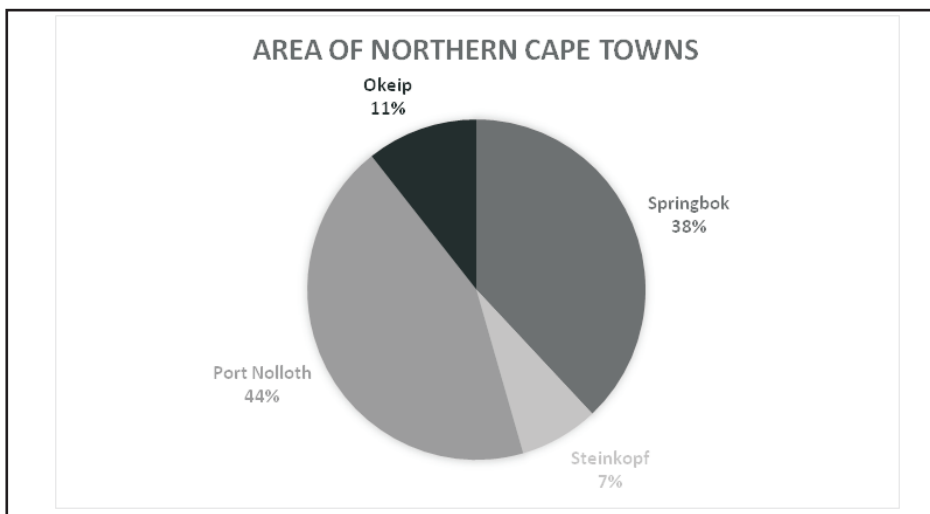
1. Steinkopf

Steinkopf, is the town where large number of people from the Orange River border shifted to, during the initial phase of displacement. This place is also

closer to the border and connects to Namibia by road. Almost everyone living in this small town has family members in Namibia too. The reason can be attributed to the fact that when the population shifted from the border a large number of them also chose to go to Namibia, because “Namas” as the word used for these tribes suggests, they had originated from Namibia. Since Namas were pastoralists, they kept changing places and had a settlement along the Orange River but due to mining activities and border demarcation conflict, all these people were forced to leave their lands. A large number of them went to Namibia and a substantial number shifted to South African towns in search of better livelihoods which they got in towns like Steinkopf.

Steinkopf has a population of 7,261 (2,278.63 per km²) consisting of 4049 females and 3212 males (2001 census). It has an area of 3.19 km². It was formerly known as Kookfontein and was established as a mission station of London Missionary Society but was later taken over by the Rhenish Mission. The good sides of this town were it had natural springs so that there was availability of water for the people and it has copper mining activities which helped the displaced people in getting jobs. Water holds an important place in the traditional Nama culture, a regular source of water was important for these people in selecting a new place to settle.

Figure 2: Area of the Northern Cape Towns



2. Springbok

A substantial population when displaced from near the Orange River settlements shifted to Springbok also. This is the largest town in the Namaqualand area. As of 2001, it had a population of 10,294. It is located on the road which connects the Cape to Namibia. So, people would usually take this route if they have to travel to Namibia from Cape Town and nearby areas. It is also the main town of Nama Khoi Local Municipality which includes a number of surrounding towns such as Okiep and Nababeep.

The reason for people shifting to this town was mainly in terms of better livelihood. The town is located at an altitude of 3300 feet between the high granite domes of Small Copper Mountains and this was the reason it turned into a major commercial and administrative centre for copper mining operations in the region. Even though mining activities are no longer a major commercial activity now, since mining has been happening for years and the resource has been almost fully exploited, the town still remains an important administrative capital in the region, more so because of its location as large number of tourists stop over here while going to Namibia. Today the main source of income for this town is not only mining activity, but commerce and farming as well.

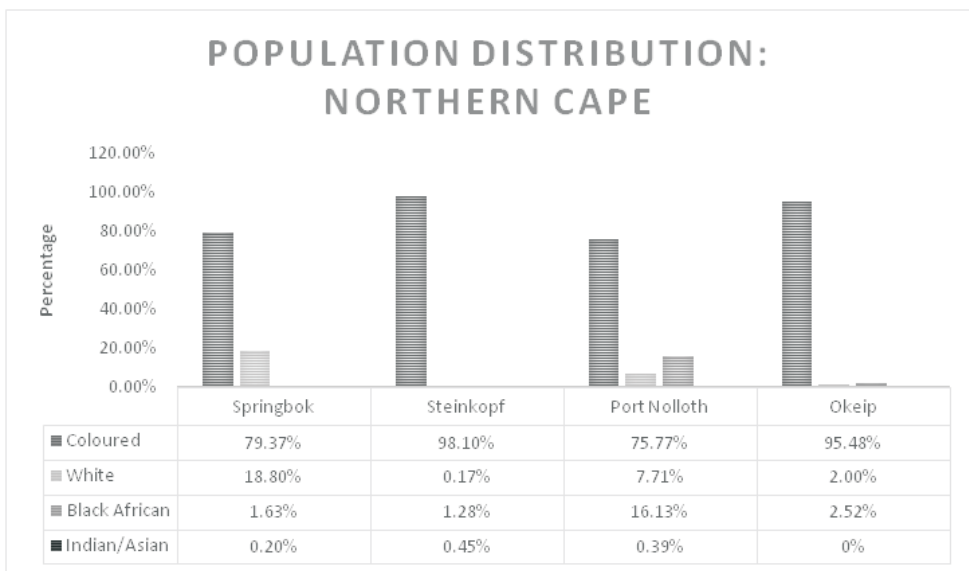
3. Port Nolloth

Port Nolloth is a town and small domestic seaport in the Namaqualand region on the northwestern coast of South Africa, 89 miles (144 km) northwest of Springbok. The population of this town is 4655 which includes 2328 females and 2326 males. It is the seat of the Richtersveld Local Municipality. The port was previously a transshipment point for copper from the Okiep mines, and diamonds from the Namaqua coast. Since 1970s, the principal seagoing activities have been fishing and small-vessel tourism. Today the town is a sleepy commercial hub with a number of holiday homes and a caravan park at the adjacent McDougalls Bay. It is also a gateway to the Richtersveld National Park, located 100 miles (160 km) to the north along the Orange River.

The bay upon which the port sits was known by the indigenous Namaqua people as Aukwatowa (“Where the water took away the old man”).

This place came to limelight when copper was brought from neighbouring copper mines in Okiep to be sent away by sea. The diamond rush as it was called, made everyone to flock to this lesser-known port. A rush of prospect seekers and investment re-established Port Nolloth as a substantial service centre, even as copper shipments ceased altogether in 1944. Thus, people who were settled along the Orange River served as useful labour in this port for many years. A number of Nama families still reside here. They have worked in the diamond mines for years and are settled in this small port now.

Figure. 3: Population Distribution in the Northern Cape



4. Okiep

Okiep is a small town in the Northern Cape province of South Africa, and in 1870s was ranked as having the richest copper mine in the world. The town is on the site of a spring that was known in the Khoekhoe language of the Nama people as U-gieb (large brackish place) and was originally spelled as O'okiep. The town has a population of 5241 which includes 2684 females and 2557 males.

Hence, this was a town that had huge prospects for work and provided livelihood opportunities to Nama people who used to stay at the Orange River

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boundary and were forced to leave their home. A number of them shifted to this small town and got engaged in copper mining for years. But as with most metals, copper suffered mixed fortunes, and in the early 20th century the copper price dropped below the profitable level, so that mining operations ceased, but were resumed when prices rose. Most of the population in this town still consists of Nama tribe who have moved from the South Africa-Namibia border.

Thus, two things are very clear from the above cases, firstly that almost all the people who have shifted from the Orange river belong to the Nama tribe and have shifted to these towns in the Namaqualand and secondly, these people have shifted either in search of better livelihoods since their lands were taken away from them for mining purposes, or because of the ongoing boundary dispute between South Africa and Namibia. We can see that this population has not only shifted to the Namaqualand but they have also gone to Namibia (the place where Namas originally belong to).

Hence, the conflict and mining induced displacement has not only snatched the lands of these pastoralists but this conflict has also separated them from their own people (relatives). Further, the Apartheid era has completely taken away their Nama identity as they were not allowed to follow their customs, their traditions and speak their language at that time and today these people are fighting hard to retain that identity. They are trying to become Namas once again.

Nature and Magnitude of the Dispute

As compared to the other displacement factors, what is the relative share of the boundary dispute? Though the other factors like mining in the Orange River have caused huge displacement, yet the displacement that took place as a result of the boundary dispute between Namibia and South Africa is of a greater magnitude. According to Namibia, the river boundary is in the middle of the Orange River but South Africa's position is that the boundary is on the Namibian bank at high-water mark, as based on the delimited boundary between Germany and Britain under the Helgoland-Zanzibar Treaty of 1890. In 1991, prior to the independence of Namibia, South Africa agreed to change the position of the boundary from the North bank to the middle of the river

(Thalweg)¹. However, disagreement existed concerning claims to mineral rights in the river, grazing rights in the islands in the river and fishing rights in the waters. As a result, South Africa backed out of its earlier commitment in 2001 stating that 1890 agreement should be upheld citing the utipossidetis principle, a principle according to which colonial boundaries, however arbitrarily drawn by the imperial powers are to be respected. Namibia has also threatened to take the dispute to the International Court of Justice if South Africa does not revert its 1991 position (Shah, 2009, p.356).

This started causing problems to the people mainly Namas residing on Orange River banks as the large number of these people depended heavily on the Orange River for water supply. These people had enjoyed grazing rights on the islands namely Krip, Long or Groot, Sand or Piet Maritz, Little or LambeVlei, Horse or Broe and Modder or Camp Islands located in the Orange River for years. They also enjoyed fishing rights in the waters of the Orange River. Fruits and vegetables were also grown in these areas.

But since 1991, they have been facing problems from both sides of the river due to the claims they make on the Orange River. After independence, Namibians claimed half the river that restricted the rights of the people residing on the South bank of the Orange River and since 2001, when South Africa declined the offer to demarcate the boundary, South Africa has been claiming the waters of the Orange River. This has caused people indulged in fishing to be treated as trespassers by the South African government.

These developments from time to time had finally forced these inhabitants to shift from these areas and find other places to settle. In terms of choosing some other place, the Namas chose towns that had at least a regular supply of water as water holds a special importance in their traditional rituals. Since, they were leaving their farms and cattle behind, they also wanted options for new livelihood. Thus, these people shifted further South towards the small towns that came to be known as Namaqualand later on. However, some of the Namas also went to Namibia, mainly because of ancestral roots in that region. So, today one can find members of the same family settled in South Africa as well as Namibia.

Since the Orange River's banks are highly diamondiferous and some deposits

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of alluvial diamonds were brought down from upstream by the flow and distributed by in-shore currents, diamond mining also took place in the region. This also caused further displacement in the region. But the diamond mining also provided employment to a number of people who were being displaced in the region. While talking to the inhabitants in the Richtersveld, one can find that every family has had one or two members working in the diamond mines along the Orange River for employment after they had lost their lands.

Conclusion

There have been many instances in the past when both sides of the government officials have either promised to settle the dispute or have agreed to enter into negotiations in order to find an amicable resolution to the conflict. During the 1990s the matter was brought up between the Government of Namibia and former South African governments headed by Nelson Mandela and F. W de Klerk. As a result, technical teams were appointed by the two governments in the early 1990s, and both countries had agreed upon a document concerning a new position for the border in Namibia's favour (this meant the border would be considered in the middle of the river). Unfortunately, this could not be finalized owing to the demise of F W de Klerk's minority-rule administration in 1994, but matter was further discussed when Mr Mandela became South Africa's President. Maps showing a new demarcation for the border were approved by the surveyor-generals of both countries but, again, the process was not completed before Mr Mandela's retirement.

During the term of South African President Thabo Mbeki, who succeeded Mandela in 1999, this border dispute was deliberated from time to time. A meeting was held between South Africa's President Thabo Mbeki and Namibia's President Sam Nujoma, in Upington during August 2011, where it was agreed that the issue was settled and that the border would remain where it was.

However, immediately after this the Namibian Foreign Affairs, Information and Broadcasting Minister, Theo-Ben Gurirab repudiated the news that the dispute stood settled.

From time to time, South Africa has also issued statements claiming the border

as it is, which again brings the two sides in conflicting positions. For instance, South Africa's Minerals and Energy Minister, Phumzile Mlambo-Mgcuka in 2002, told the South African Parliament that although negotiations on the issue between the two countries' foreign ministries were continuing, South Africa would not give up its claim to the border, based on the long-standing Organization of African Unity (OAU) policy of maintaining boundaries inherited from the colonial era. In 2013, the two countries agreed to establish a Joint Committee of Experts which later submitted its final report to the government, but nothing was done after the submission of report. The issue came to notice again in 2018, when the Democratic Alliance in the Northern Cape, South Africa raised this issue with the Minister of International Relations. The matter was once again picked up only because of the dispute and irregularities in issuing of mining licenses to South African firms along the Orange River.

The problem yet to be resolved is the potential geographical extent of mineral licenses awarded by Namibia along the river, as these are currently valid only for the north bank and do not extend into the river itself. Negotiations with South Africa for a relocation of the border between the two countries along the middle course of the Orange River have made little progress, despite a South African government-funded survey delineating a new boundary completed in early 2000s.

At present the border continues to run along the north bank which means that, in contrast to companies awarded concessions by Namibia, companies with South African licenses can prospect the entire river bed (Sebastain, 2008, p.94). In a step that was defined as surprising by Namibia, South Africa terminated abruptly the long-running discussions with Namibia on the position of the diamond-rich Orange River border. The South African Foreign Affairs spokesman Dumisani Rasheleng said in 2001 that the decision to confirm the 1,000-kilometer border on the northern high-water mark--rather than in the middle of the river, as demanded by Namibia--was not open to discussion. "As, far as the South African government is concerned, this matter has been laid to rest", (Sebastain, 2008, p.115-116) he stated. This shows the attitude of South Africa with regard to this dispute which will never reach a

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conclusion if they behave in the same manner. However, Namibia continues to insist that the question has been settled in its favor, and only technical details remain to be solved. At stake is not only the access to water, crucial to Namibia's parched south, but also the grazing rights of farming communities as well as the river's mineral rights (Sebastain, 2008, p.118).

Thus, if in future both the countries want to see a prosperous relationship, the delimitation of the border should be taken up seriously and the existing confusion should resolve. The population that has been earlier displaced from these regions has also started reclaiming their lost lands. If the South African government wants to resolve these issues it should propose a speedy resolution to this dispute through a joint committee. No matter how stable the relationship between South Africa and Namibia has been since the last two decades, the relationship is not that of equals. South Africa as a country not only has a huge population as compared to Namibia, but also has enough resources that has given it a much stronger position on the international platform.

Finally, the important role that South Africa plays in almost all the regional organizations in Africa like South African Development Community (SADC), Common Market for Eastern and Southern Africa (COMESA), Southern African Customs Union (SACU) and its involvement in global regional groupings like Brazil Russia India China South Africa (BRICS), has brought South Africa to a much important position not only in the African continent but around the whole world. It is also certain that the future of Namibia will also remain tied to that of South Africa and it would be in the best interest if both nations keep this relationship as cordial as possible. Therefore, it is also less likely that the Orange River Boundary conflict will become an active border conflict in near future.

End Notes

1. Thalweg is a German word that translates to mean 'the channel continuously used for navigation', and is a general area, not a specified line; and is used under international law to demarcate navigable rivers that are also boundary rivers.

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