All Illegal Fences In Namibia Must Fall

Opinions - Columns | 2018-02-23

THE PRACTICE of erecting fences in Namibia's communal areas dates back to the 1970s. The fencing of communal areas was initially reported mainly in the northern and central regions of Namibia, which today are the Omusati, Ohangwena, Oshikoto and Omaheke regions.

After independence in 1990, the practice spread rapidly, probably due to the absence of relevant legislation controlling the fencing of communal land. Since then, the practice has also spread into the Otjozondjupa and Kavango West and East regions. Section 18 of the Communal Land Reform Act (Act 5 of 2002) (CLRA) (enacted in 2003) takes a strong position against the erection of fences on communal lands.

The act states that no new fences may be erected without proper authorisation obtained in line with the act. Fences which existed before 1 March 2003 also have to come down, unless the people who erected them apply for and are given permission to keep them on the land.

Despite the act's good intentions, it has been to a larger extent unsuccessful in addressing the problem of illegal fencing. The inability of the act to deal with the issues raised concerns the political will of government to ensure the effective implementation of the act.

It also casts doubt on the effectiveness of the legislation itself. Lack of action in dealing with these concerns prompted some community members to take the law into their own hands. Various reports pointed to sporadic events which took place in some areas around the country, where community members physically removed fences, and others threatened to do so if government did not intervene on time.

This was reported in certain communal areas in the Ohangwena, Omusati, Otjozondjupa and Omaheke regions.

It is common knowledge that the majority of Namibians who live on communal land survive on the resources found on the commonage. For many people in the communal areas, the commonage and its resources remain a "safety net" where they cultivate crops, raise livestock, obtain bush food, medicine, wood, building materials and other forest products.

In most cases, the non-consultative practice of setting up enclosures interferes with the use and enjoyment of the commonage by deserving community members. These fences often limit access to grazing normally used by the livestock of resident community members.

As a result, grazing is then reduced to small corridors between fenced areas. This leads to environmental degradation because of overgrazing. This competition for scarce resources leads to resource conflicts. Communal resources such as water sources (including public boreholes) are in some cases enclosed and privatised by fence owners. Roads and paths to important destinations are also blocked without notice or consent. Fencing is a very expensive undertaking, and research shows that some individuals have fenced up areas of up to 10 000 hectares. Many reports on the matter are consistent in stating that those responsible for such undertakings are people with adequate financial resources, such as the elite and other politically-connected individuals.

There are various reasons why people engage in illegal fencing. Before independence, some people felt that since they did

not have access to the commercial land (because of the inherent skewed land distribution pattern), commercialising communal land was a justifiable option.

Many others simply indulged in their opportunistic nature (often motivated by selfishness), and took advantage of the more than a decade-long legal vacuum. Many other people have blamed the slow pace of land redistribution (in particula the willing buyer-willing seller principle) for their illegal actions. In recent years, a new trend emerged called "defensive fencing", where "law-abiding" community members or individuals (who feel justified to break the law) decide to fence the commonage to protect it from privatisation. In theory, there is political will to address the problem of illegal fences, datin back to the resolutions of the 1991 land conference. The envisaged second national land conference, which is planned fo this year, is expected to look into this issue of illegal fences in communal areas. The state, communal land boards (CLB) and particularly the traditional authorities have an obligation under the CLRA to protect and promote the sustainable utilisation of resources in communal land (section 17).

Furthermore, the act is clear about the procedures to be followed when dealing with illegal fences (Section 29). The act actually makes the setting up of unauthorised fences a criminal offence, and people can consequently be arrested, prosecuted and fined.

However, this authority is underutilised (and sometimes abused) by relevant bodies such as traditional authorities and CLBs due to the fear of social and political victimisation. Sometimes, individuals in those bodies are implicated in such illegal allocations/approvals through accepting bribes.

The relevant bodies must be empowered continually to implement the act effectively. Training ordinary community members on the provisions of the CLRA has proven to be effective as they are provided with tools to hold their leaders accountable.

Another possibility to consider is giving relevant ministry of Land Reform officials or communal land boards similar powers conferred on the forest inspectors by the Forest Act, 2001 (Act No.12 of 2001) to demand a permit or authorisation from the suspect on the spot.

The increasing boldness by some communal land boards in recent years to initiate the removal of some fences is a step i the right direction (e.g. in Omusati and Otjozondjupa), but more still needs to be done. The 2017 court order given in the N#a Jaqna conservancy case, in which over 20 respondents were ordered to remove their fences in the Tsumkwe West constituency, is a welcome breakthrough which is likely to set a positive precedence and restore confidence in the act.

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