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**The Elephant Shooting – Inconsistencies of Colonial Law  
and Indirect Rule in Kaoko (North-Western Namibia)  
in the 1920s and 1930s**

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## **The Elephant Shooting – Inconsistencies of Colonial Law and Indirect Rule in Kaoko (North-Western Namibia) in the 1920s and 1930s<sup>1</sup>**

Lorena Rizzo  
(University of Basel & Zurich, Switzerland)

February 2006

*Draft – do not quote without author’s permission*

In December 1934 C.H.L. Hahn, the ‘native commissioner’ of Ovamboland and Kaokoveld, informed the secretary of then South West Africa on the investigation of an elephant shooting in late 1929 and the disappearance and killing of a witness in 1930 at Kaoko Otavi. In his report, the commissioner announced what he thought of as “one of the biggest murder trials ever held under our administration”.<sup>2</sup> Just a few weeks before the two main accused in the trial, Thomas Mutate<sup>3</sup>, one of the most powerful headmen in the region, and Thomas Aishama had been arrested and brought to the nearest magistrate court in Outjo for a preliminary examination of the case.<sup>4</sup> At first the elephant shooting had been settled; and Thomas Mutate, as the local headman being held responsible for the transgression, had been fined 35 head of cattle to be paid to the administration.<sup>5</sup> Yet, in view of the disappearance of Petrus Kakuyu, one of the numerous witnesses in the elephant shooting case, and due to rumours of further illegal elephant hunting in and around Kaoko Otavi, Hahn re-opened investigations shortly after. The elephant case was turned into a murder case, and both the South African administration in the north-west and the political elite in Kaoko became involved in a long series of negotiations, hearings and trials covering a period of several years. Eventually, Thomas Mutate was sentenced to forced labour and imprisonment. Aishama too, was sent to prison, yet for a much shorter period. But there was a third convict, who had been gradually drawn into the case, and was sentenced to several years of imprisonment, namely Vita Tom, the region’s most powerful and only chief.<sup>6</sup>

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<sup>1</sup> I would like to thank Patrick Harries, Patricia Hayes, Dag Henrichsen and Giorgio Miescher for their critical comments on this essay. Funding for research done in Kaoko and in the National Archives of Namibia in Windhoek has been granted by the Swiss National Fund and by the University of Basel.

<sup>2</sup> SWAA 2069 – A/454/171, 14.12.1934. All archival documents used for this paper are from the National Archives of Namibia in Windhoek.

<sup>3</sup> Thomas Mutate is the name used by the South African administration. In the region Thomas Mutate was known as Katjitoha Thomas Humu. Humu is the surname used in north-western Namibia, while Mutate is the corresponding surname in central Namibia.

<sup>4</sup> LOU 1/2/2 – No. 23 and No. 24.

<sup>5</sup> LOU 1/2/2 – No. 23, statement given by C.H.L. Hahn, magistrate Outjo, 1.2.1935.

<sup>6</sup> All men were eventually sentenced by the Circuit Court for the northern Districts, held at Otjiwarongo, in 1935. See SCW 1/1/78, 23/1935 and 24/1935.

This paper is concerned with the emergence and making of a criminal case in Kaoko between 1929 and 1935<sup>7</sup> and its bearing on the development of colonial native administration in the territory. I first heard of the ‘elephant case’ in interviews I did with residents of Kaoko Otavi and nearby villages in 2001/2002.<sup>8</sup> The elephant shooting and the alleged murder of Petrus Kakuyu had not been an issue in my research in the beginning, but had been actively raised by some of the men I interviewed, as an instance of significant political conflict.<sup>9</sup> Only after recording their accounts, I went to the National Archives in Windhoek to look for archival information on the case and was immediately captured by the amount of documentation the South African administration had produced in the course of their inquiry.<sup>10</sup> What was particular, both with contemporary oral information and with the archival sources, was a strong ambivalence and contradiction, the fragmented and inconsistent nature of knowledge about what had happened and who had been involved in the case. As a matter of fact, the administration’s search for evidence remained unsuccessful and neither the remains of the elephant nor Petrus Kakuyu were ever found.<sup>11</sup> Nevertheless, there was a case, a huge number of witnesses were interrogated and people were prosecuted, charged and sent to prison. Beyond this, the ‘elephant case’ and its aftermath remained an issue of vivid debate among residents of Kaoko Otavi and one of the central tropes in male oral accounts of the region’s past.

For sure, the incident of the elephant shooting and the alleged murder generated a great deal of archival material. Beyond this, the issues debated and the relations negotiated during the investigation and prosecution, and the changes the case triggered with regard to the social and political landscape in Kaoko were significant for later developments in the region. In what follows, I will concentrate on two aspects. Firstly, on the archival sources, and the selective biases, which determined their production. What kind of representations are the records and reports produced in the cases? What kind of narratives do they constitute? What

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<sup>7</sup> I am not reconstructing events in order to answer the question of what happened in terms of a criminal investigation, i.e. if there was a murder and who had been the culprit. I agree with Richard Rathbone’s scepticism about the historian’s competence to make post hoc judgements on guilt and innocence. See Rathbone, Richard, “A Murder in the Colonial Gold Coast: Law and Politics in the 1940s”, the *Journal of African History*, Vol. 30, No. 3, 1989, pp. 445-461.

<sup>8</sup> I have done all interviews together with Giorgio Miescher. My particular thanks go to Salatiel Muharukua, who translated the interviews in Kaoko Otavi and surroundings, and to Sylvia Katjepunda, who did the written transcription of the interviews in Windhoek.

<sup>9</sup> Interview with Mbatambauka Rutjindo Tjavara, 10.1.2002, Onjette/Kaoko Otavi, Interview with Uetjipuraije Hiatjivi, 9.1.2002, Onjette/Kaoko Otavi.

<sup>10</sup> The growth in documentation mirrored an increased administrative activity and state consolidation in the northern areas from the late 1920s onwards. See Silvester, Jeremy, Wallace, Marion & Hayes, Patricia “‘Trees Never Meet’. Mobility and Containment: An Overview 1915-46”, In: Hayes, Patricia, Silvester, Jeremy, Wallace, Marion & Hartmann, Wolfram (eds), “Namibia under South African Rule. Mobility and Containment 1915-46”, Oxford etc., 1998, pp. 22ff., and Emmett, Tony, “Popular Resistance and the Roots of Nationalism in Namibia, 1915-1966”, Basel, 1999, pp. 95ff.

<sup>11</sup> LOU 1/2/1 – No. 23, statement by police officer G.A. Schoombee.

stories do they enclose and by which processes were some stories questioned or discredited, while others were inscribed as evidence and truth?<sup>12</sup> Indeed, one of the main challenges lies in a historical contextualisation of the information produced on the case, reflecting on its emergence as evidence in the investigation and, eventually, its constitution as historical evidence in the archive.<sup>13</sup> The question of evidence reminds us of the difficulties in writing about African societies without reproducing the narratives of the colonial archive, but instead using its ambivalences, contradictions and limits as a ground for historical interpretation.<sup>14</sup> Secondly, on the question of the contents and contexts we can establish with regard to fractured, controversial and diverging stories about an event.<sup>15</sup> Why did this case come to the attention of the administration (while others did less or not at all),<sup>16</sup> what were the complaints and disputes involved, how were they raised and interpreted, and last, were they ‘solved’ and how? But let me begin with the story about the elephant and the killing of a witness.

### **The elephant shooting case**

From its very beginning, the reconstruction of the events by the administrative personnel involved, most prominently C.H.L. Hahn, proved to be problematic and produced contradictory versions of what had happened. Unanimity only existed with regard to how things had started. Rumours about an alleged shooting of an elephant first reached the administration in mid 1929, when Upani Hiamauva,<sup>17</sup> a resident of Kaoko Otavi, reported the case

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<sup>12</sup> Stoler, Ann Laura, “In Cold Blood: Hierarchies of Credibility and the Politics of Colonial Narratives”, *Representations*, No. 37, special issue on Imperial Fantasies and Postcolonial Histories, winter, 1992, pp. 151-189.

<sup>13</sup> See the discussion in Lalu, Premesh, “The Grammar of Domination and the Subjection of Agency: Colonial Texts and Modes of Evidence”, *History & Theory*, Vol. 39, No. 4, Theme Issue 39: “Not Telling”: Secrecy, Lies, and History (Dec., 2000), pp. 45-68, here p. 52.

<sup>14</sup> There are various debates on the modes of knowledge production of colonial archives, among them most prominently the discussions inspired by the Subaltern Studies. See e.g. Prakash, Gyan, “Subaltern Studies and Postcolonial Criticism”, *American Historical Review*, December, 1995, pp. 1475-1490. Hamilton, Carolyn, Harris, Verne, Taylor, Jane, Pickover, Michele, Reid, Graeme & Saleh, Razia (eds), “Refiguring the Archive”, Cape Town, 2002, draws from these debates, too. I owe special thanks to my colleagues at the history department of the University of the Western Cape, particularly to Premesh Lalu, Ciraj Rassool and Leslie Witz, who have been raising these issues on many occasions.

<sup>15</sup> The various and sometimes contradicting versions of what happened are not to be seen in terms of true and false, but rather as mirroring the context in which they emerged. For a broader discussion of this argument, see White, Louise, Introduction to “Speaking with Vampires. Rumour and History in Colonial Africa”, Berkeley etc., 2000.

<sup>16</sup> Generally, the administration’s consideration of violence in the reserves was very biased and depended among other things on if it was seen to be a threat to the colonial state or not. For a general discussion, see Killingray, David, “The Maintenance of Law and Order in British Colonial Africa”, *African Affairs*, Vol. 85, No. 340, July 1985, pp. 411-437. I will come back to this point later on.

<sup>17</sup> Upani (Oupani) Hiamauva is the name used in the written archival documents. Interviewees too used this name, while sometimes calling him Tjitjapia (e.g. Interview with Mbatambauka Rutjindo Tjavara, Onjette, 10.1.2002). Upani was an important character in local politics and would make his political career within colonial administration in the late 1930s and early 1940s.

to the police stationed at Tshimhaka on the northern Kunene border river.<sup>18</sup> Violations of the game protection legislation and poaching in particular were considered to be severe crimes and required intervention. Hence, after a first phase of general inquiry, in-depth investigations were taken up a year later. Hahn commissioned his police officers stationed in Kaoko to interrogate men and women in Kaoko Otavi and surroundings on what had happened, to find out who the culprits were and to trace the animal's remains, particularly the tusks. Based on statements given by witnesses and recorded by the colonial officers, an elephant was said to have approached the spring at Kaoko Otavi.<sup>19</sup> It was the dry season and several residents, among them some women who had been busy watering their gardens, had seen the animal roaming around the place. At first they had apparently taken little notice of the animal and had kept their distance. Yet, as they noticed that the elephant had been injured and that it had a wound in its foreleg, the community gathered in the vicinity of the spring.<sup>20</sup> A quick decision had to be taken, as the wounded animal was a risk to people's safety and, in view of the laws in force, it meant trouble to end up with a dead elephant. Apparently, the local headman, Thomas Mutate, advised some of the men present, among them Upani, to get rid of the animal by chasing it into the bush.<sup>21</sup> At this stage, various contradictory accounts of what happened emerged. While Upani and those men involved in the chase claimed to have left the animal, still alive, somewhere in the bush, and that it had later been shot by the headman himself or at least on his order,<sup>22</sup> Thomas Mutate and others accused Upani to have killed the animal.<sup>23</sup> In the course of the investigation it became clear that the two men accusing each other mutually were political rivals, and that their rivalry had deeper roots.<sup>24</sup> Their antagonism seemed to divide residents in Kaoko Otavi, and the more people got involved as witnesses in the case, the more their accounts seemed to fit into the dichotomies of the men's power play. Things got worse with the involvement of Kaoko's most powerful and only chief at that time, Vita Tom<sup>25</sup>, who did not reside in the area, but who had taken an active part in the case as a prominent supporter of Mutate and Aishama. Not surprisingly, the native commissioner anticipated

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<sup>18</sup> NAO 28 – 24/1/1, recorded statement of Upani, interrogated by Hahn, Kaoko Otavi, 3.9.1930,

<sup>19</sup> See NAO 28 – 24/1/1, e.g. recorded statement of Jakob Kakwatauhora, taken by Sgt. du Buisson, Kaoko Otavi, 22.5.1930, recorded statement of Lumingo Kamahoto, taken by Hahn, Kaoko Otavi, 3.9.1930.

<sup>20</sup> NAO 28 – 24/1/1, recorded statement of Lumingo Kamahoto, taken by Hahn, Kaoko Otavi, 3.9.1930, recorded statement of Upani, taken by Hahn, Kaoko Otavi, 3.9.1930.

<sup>21</sup> *ibid.*

<sup>22</sup> NAO 28 – 24/1/1, recorded statement of Upani, taken by Hahn, Kaoko Otavi, 3.9.1930.

<sup>23</sup> NAO 28 – 24/1/1, recorded statement of Tshinjinda, taken by Hahn, Kaoko Otavi, 3.9.1930 and NAO 20 – 24/1/4, recorded statement of Thomas Mutate, taken by Hahn (probably at Ondangua), n.d., NAO 28 – 24/1/4, statement of Karukururume, taken by Hahn, 3.9.1930.

<sup>24</sup> See e.g. NAO 19, NC Ovamboland, monthly report for December, 8.1.1935. This has been confirmed in interviews made at Kaoko Otavi and Onjette. Interview with David Humu, Kaoko Otavi, 12.1.2002, interview with Uetjipuraije Hiatjivi, Onjette/Kaoko Otavi, 9.1.2002.

<sup>25</sup> Vita Tom is locally referred to as Harunga. He is also known under his Afrikaans name Oorlog.

that the significance of an elephant killing went far beyond issues of game hunting,<sup>26</sup> yet his interest still focused on the dead animal and its tusks. As if to increase the confusion, at a certain stage of the investigation several pairs of elephant tusks were produced, either because they had been handed over at some police-post<sup>27</sup> or because they had been found with a group of women in Kaoko Otavi itself.<sup>28</sup> But, which pair of tusks belonged to the animal shot and who was responsible for its demise? What seemed obvious by then was that shooting big game to get access to ivory and meat was far from exceptional, yet usually occurred beyond the administration's knowledge and control. But for whatever reason, in this particular case local residents had deliberately decided to involve the colonial state's representatives. Be it to prevent further complications or to come to grips with a situation that seemed to escalate into an unmanageable and never-ending quarrel, Hahn initially decided to settle things quickly and levy a substantial cattle fine on the local headman, Thomas Mutate, as the person held responsible by the administration.<sup>29</sup> But the case took a new direction when one of the witnesses, Petrus Kakuyu, disappeared.

### **The murder case**

Events seemed to indicate, that the disappearance of Petrus Kakuyu had been the result of manipulation and intent and needed further inquiry.<sup>30</sup> Just as establishing who had killed the elephant(s) had exposed the incomprehension of the administration Petrus Kakuyu's fate again produced incoherent information and rumour. Some of the witnesses interrogated accused headman Thomas Mutate, stating that he had at least ordered the killing of Kakuyu.<sup>31</sup> According to this version, the investigation of the elephant shooting led by Hahn had put the community of Kaoko Otavi under pressure. Thomas Mutate faced difficulties in controlling information and in enforcing a coherent handling of the case by his subjects.<sup>32</sup> Seemingly, Kakuyu had questioned the headman's authority and threatened to provide Hahn and his

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<sup>26</sup> At least that is how he recalled matters later in front of the magistrate Outjo. LOU 1/2/1, statement of C.H.L. Hahn, 11.2.1935.

<sup>27</sup> LOU 1/2/2 – No. 23, statement of Twamumu, magistrate Outjo, 9.1.1935.

<sup>28</sup> NAO 28 – 24/1/1, recorded statement of Juliana, taken by Hahn, 3.9.1930 and statement of Karinana, taken by Hahn, 3.9.1930. The women's involvement in the emergence of several elephant tusks was confirmed in interviews with Uetjipuraije Hiatjivi, Onjette/Kaoko Otavi, 9.1.2002 and Mbatambauka Rutjindo Tjavara, Onjette/Kaoko Otavi, 10.1.2002.

<sup>29</sup> NAO 28 – 24/1/1, Hahn to the Secretary for SWA, 23.11.1935.

<sup>30</sup> NAO 28 – 24/1/1, Hahn to police station Tshimhaka, 7.11.1934.

<sup>31</sup> E.g. NAO 28 – 24/1/1, statement of Upani, given to Sgt. Cogill, translated by Willem Hartley, (November 1934), and statement of Hiakatondo Kututa, translated by Willem Hartley, recorded by Sgt. Cogill, (November 1934).

<sup>32</sup> NAO 28 – 24/1/1, statement of Willem Hartley, recorded by Sgt. Cogill, Ondangwa, 21<sup>st</sup> (November, 1934).

policemen with information on who had indeed shot the elephant.<sup>33</sup> In view of his being challenged, Mutate had involved Vita Tom, and other political dignitaries in the region, to prevent a serious escalation of the case.<sup>34</sup> They were said to have removed Kakuyu from Kaoko Otavi for the period of Hahn's investigation. Such a measure seems to have been accepted by most (male) members of the community, at least there was no substantial opposition to it.<sup>35</sup> Eventually, when Mutate and some of his subjects, among them Aishama, who was later to be the second accused, led Kakuyu into the bush, things deteriorated and the headman was said to have stabbed the victim with a knife.<sup>36</sup> Hence, the motif for the murder was seemingly rooted in the victim's refusal to be loyal and to accept the way the headman had intended to solve the elephant problem, i.e. to eliminate all evidence and to prevent the colonial authorities to prosecute the culprits.

Yet, others laid out Kakuyu's disappearance rather differently and accused the police officers in charge of the interrogations. Some of the witnesses, among them the victim's wife, thought Sergeant du Buisson, who had been entrusted with the preliminary investigation of the elephant case by Hahn, to be responsible for Kakuyu's fate.<sup>37</sup> Apparently the policeman had continuously harassed inhabitants of Kaoko Otavi, threatening them with prosecution in case they refused to collaborate, and applying drastic measures, including corporal punishment, to reach his goals.<sup>38</sup> As a matter of fact, at a certain stage in the inquiry, Hahn had preferred to move temporarily to the place and to do the questioning of witnesses himself, not least because rumours of misbehaviour by his officers had cropped up.<sup>39</sup>

No more contradictory could the different versions of what had happened have been, and neither the native commissioner nor the witnesses accusing the headman managed to find Kakuyu's remains. The victim's body was said to have been burnt, and goulish accounts of

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<sup>33</sup> LOU 1/2/2 – No. 23, statement of Ventuura Nejanena, n.d. and statement of Japapo Jacob, n.d.

<sup>34</sup> LOU 1/2/2 – No. 23, statement of Willem Hartley, n.d.

<sup>35</sup> See statements mentioned in note 31 and 32.

<sup>36</sup> This version dominates in oral accounts on the disappearance of Petrus Kakuyu, too.

<sup>37</sup> NAO 28 – 24/1/1, statement of Josephine, recorded by Hahn at Kaoko Otavi, 3. 9.1930. Later, in front of the magistrate, Josephine Mavere would revise her statement and accuse Thomas Mutate. She would then be supported by a number of other women. Ironically du Buisson himself confirmed that he had at least menaced Kakuyu, see LOU 1/2/2 – No. 23, statement of P.G. du Buisson.

<sup>38</sup> NAO 28 24/1/1, translation of a letter by Oorlog to Hahn, 14.6.1930; recorded statement of Thomas Mutate, recorded by Hahn, n.d.; Policemen and the native commissioner using violence during the investigation has been confirmed in interviews (Interview with Uetjipuraije Hiatjivi, Onjette, 7.5.2002 and with David Humu, Kaoko Otavi, 12.1.2002).

<sup>39</sup> While the chronologies of the documents suggest Hahn's temporary movement to Kaoko Otavi, there is no particular document in the archive which dates his decision precisely. Interviewees liked to make jokes about Hahn building a temporary hut in a tree, where the native commissioner used to spend the night (Interview with David Humu, Kaoko Otavi, 12.1.2002).



what might have happened in order to eliminate him and all evidence for the murder emerged.<sup>40</sup>

Whatever version would have prevailed, the elephant case had turned into a murder case. The colonial authorities ended up in a rather messy situation: the investigation took more time than suitable, witnesses were either reluctant to collaborate or regularly undermined the native commissioner's attempt to be provided with unambiguous evidence.<sup>41</sup> Beyond that, the administration's political counterparts in the area, the chief and the headmen, apparently lacked the authority and power to implement colonial legislation or to force their subjects to obey its tortuous logic. Although the cases had produced a total lack of evidence and some rather dubious modes of investigation, Thomas Mutate and Thomas Aishama were found guilty and sentenced to prison.<sup>42</sup> Chief Vita Tom, who in the end was held responsible by the administration for all the trouble that had arisen in Kaoko Otavi, could not be connected directly to the alleged murder, yet was found guilty of hindering the investigation, forcing witnesses to make false statements and was likewise sent to prison.<sup>43</sup>

### **Colonial narratives – the case records and the problem of indigenous voices**

Colonial court records and related archival materials have not been used widely in African social history.<sup>44</sup> Indeed, the paradox of these sources lies in the tension between their emerging from a context in which, on the one hand, Africans prominently acted and spoke as litigants or witnesses, yet in which, on the other hand, their voices and acts were “profoundly shaped by the procedures of the court and by the circumstances surrounding the

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<sup>40</sup> The archival documents are rather short with regard to the alleged burning of the human remains (LOU 1/2/1, M. van Niekerk, district surgeon, in front of the magistrate Outjo, no date). In contrast, some interviewees extensively told bloody stories about it (Interview with Uetjipuraije Hiattjivi, Onjette, 7.5.2002 and with Mbatambauka Rutjindo Tjavara, Onjette, 7.5.2002).

<sup>41</sup> Both Hahn and Sgt. Cogill, another policeman involved in the investigation, complained about the fact that no one was prepared to provide knowledge and evidence on Kakuyu's fate. NAO 28 – 24/1/1. Cogill to Hahn, 5.2.1934 and Hahn to the Secretary for SWA, 10.11.1934. The contradictions about Kakuyu's disappearance were seemingly eliminated by the day the court case was finally dealt with at Otjiwarongo (SCW 1/1/78 – 23/1935 and 24/1935). By then, accusations against policemen raised in an early stage of investigation were classified as “lies” initiated by Mutate and Tom.

<sup>42</sup> LOU 1/2/2 – No. 23, preparatory examination Thomas Mutate and Thomas Aishama (case against), 13.3.1935.

<sup>43</sup> LOU 1/2/2 – No. 24, preparatory examination on Chief Oorlog (case against), 15.5.1935.

<sup>44</sup> For a bibliographical discussion, see Dickerman, C., “Court Records in Africana Research”, *History in Africa*, Vol. 17, 1990, pp. 305-318. Pioneering examples have been Hay, Margaret Jean & Wright, Marcia (eds), “African Women and the Law”, Boston, 1982, and Penn, Nigel, “Rogues, Rebels and Runaways. Eighteenth-century Cape Characters”, Cape Town, 1999. Martin Chanock's “Law, Custom and Social Order. The Colonial Experience in Malawi and Zambia”, Portsmouth, 1998 and his “The Making of South African Legal Culture 1902-1936. Fear, Favour and Prejudice”, Cambridge, 2001 have a stronger focus on legal history. Historical and anthropological scholarship on so-called customary law has been much more extensive.

transformation of testimony into text".<sup>45</sup> Beyond the specific instance of the court, the colonial setting has led further to widespread scepticism by historians of documents produced in contexts controlled and determined by agents of the state.<sup>46</sup> The narrative of colonial court records is often considered particularly biased and distorted and their value for the reconstruction and interpretation of historical situations, let alone for the 'recovering' of subaltern voices and actions, is seen to be problematic, if not questionable.<sup>47</sup> Although these concerns obviously have their validity, they have nevertheless remained theoretically and methodologically rather unsophisticated.<sup>48</sup> The challenges emerging from the use of court records for historical interpretation have been addressed in various (non-African) contexts; most prominently by Natalie Zemon Davis in her *Fiction in the Archives*<sup>49</sup> and by Carlo Ginzburg in his *The Judge and the Historian*.<sup>50</sup> While Zemon Davis used 16<sup>th</sup> century pardon letters to the French king to open up methodological perspectives on how court records reflect the crafting of narratives and how they emerged as mixed genres, with multiple authorship, she most significantly identified them as the outcome of a complex translation of oral accounts into written texts. In reflecting on the constraints set by the court and legal, as well as by the redemption context to the way men and women would recount the story of an event, she vividly exemplified how these narratives aimed at presenting an account as true, real and meaningful to a contemporary audience, be it the notaries, the judges or the French king. Ginzburg's concern, in contrast, is precisely directed to representatives of (state) legal institutions, namely the judges. Based on his work on 16<sup>th</sup> century Inquisition trials and focused on a law case in Italy in the late 1980s, he meticulously investigates tensions and correspondences between the judge's *and* the historian's search for truth and evidence. Yet, while he suggests that both eventually want to establish who has done what, he identifies diverging concepts of truth and different ways of contextualising acts and events in the past. There is, and – according to Ginzburg – has to be, *one* truth in court, yet there are *potential* and *possible* truths in historical interpretation.

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<sup>45</sup> Roberts, Richard, "Text and Testimony in the Tribunal de Première Instance, Dakar, during the Early Twentieth Century", *The Journal of African History*, Vol. 31, No. 3, 1990, pp. 447-463, here p. 450.

<sup>46</sup> Natalie Zemon Davis makes this point beyond the colonial context. See Zemon Davis, Natalie, "Fiction in the Archives. Pardon Tales and their Tellers in 16<sup>th</sup> Century France", Stanford, 1987, p. 18.

<sup>47</sup> See e.g. Rathbone, 1989, p. 450.

<sup>48</sup> An exception is the work of Anne Laura Stoler on colonial archives, see e.g. Stoler, 1992, pp. 151-189 and of Marcia Wright on court records from colonial north-eastern Rhodesia in the late 19<sup>th</sup> and early 20<sup>th</sup> century, see Wright, Marcia, "Justice, Women and the Social Order in Abercorn, north-eastern Rhodesia, 1897-1903", In: Hay & Wright (eds), 1982, pp. 33-50.

<sup>49</sup> See note 46.

<sup>50</sup> Ginzburg, Carlo, "The Judge and the Historian: Marginal Notes on a Late-Twentieth-Century Miscarriage of Justice", London, New York, 2002. In my paper I am using the German translation "Der Richter und der Historiker. Überlegungen zum Fall Sofri", Berlin, 1991.

Zemon Davis' and Ginzburg's methodological and historiographical reflections provide the frame to my analysis of the archival material concerning the elephant shooting and murder case in colonial Kaoko. The documents include various types of texts, ranging from correspondence between the colonial officers involved, police reports, recorded statements and a few letters written by some of the accused.<sup>51</sup> This variety depends both on the way administrative procedures were to be documented and on the place and moment they were produced at. As the cases evolved over a period of several years, there were different stages of reporting, documenting and assessing, and different people involved, be it policemen in the area or the magistrate based outside the reserve. In fact, most of the inquiry took place outside the actual courtroom, i.e. the circuit court in Otjiwarongo, where it was eventually settled in 1935. The preliminary investigation of the murder case was the period, which saw the production of most of the recorded statements by witnesses, in Kaoko Otavi and surroundings itself and, additionally, at the native commissioner's headquarters in Ondangua and the magistrate's office in Outjo. It is this particular text I am concerned with, its nature and characteristics, the patterns which shaped the (hi)stories the recorded statements 'enclose', and the ways they raise questions about the place of African voices and narrativity in colonial archives. I do not consider these statements to constitute 'oral information' from the past, let alone that they make African voices accessible *per se* and *unmediated* to the contemporary historian.<sup>52</sup> Court cases provide an incomplete and fractured view of the context in which things happened, and their representation of social relationships linking the accused to victims and witnesses remain rudimentary.<sup>53</sup> Beyond this, oral testimony had to be transformed, as I said, into suitable written information and the narrative of the recorded statements was indeed crafted in very specific ways. Nevertheless, this case study is an example of an African community engaging with a colonial institution, using the colonial legal arena as a site for negotiation, for social friction and dispute.<sup>54</sup> But rather than recovering vestiges of individual African voice and practice, I will suggest a reading and interpretation of these archival materials which approaches agency as embedded in narrativity.<sup>55</sup> What I am concerned with, hence, are the ways in which experiences and concerns of African men and women have been

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<sup>51</sup> Usually in Otjiherero, less in Afrikaans. Some of the letters have been translated into English or Afrikaans by the colonial officers involved in the cases, while others were summarised.

<sup>52</sup> My point here is to suggest a direction other than the one engaged with by e.g. Nigel Penn who, while remaining cautious, insists: "Despite certain problems the court records of the VOC constitute an invaluable body of evidence. Nowhere else are the voices of the oppressed and vanquished – distorted though they might be – heard so clearly", Penn, 1999, pp. 5-6.

<sup>53</sup> Roberts, 1990, p. 461.

<sup>54</sup> Rathbone, 1989, p. 457.

<sup>55</sup> For a much more elaborated discussion of shifting concepts of agency in African historiography, see Lulu, 2000, p. 48.

organised into accounts serving above all the colonial need for truth and evidence. Yet, the narrative remained infused by the very specific context, in which its terms and parameters were negotiated.

*Recorded statements – exploring the legal narrative*

The archival documents on the elephant shooting and murder case emerged from an extended investigation undertaken by various representatives of the colonial state. These particular cases bothered the South African administration in Kaoko because they involved transgressions that were considered severe offences. Both poaching, particularly of big game, and manslaughter and murder<sup>56</sup> were at the time classified as such and consequently fell under the administration's direct jurisdiction, and not – as would be the case with minor litigations over e.g. theft, contested inheritance or adultery – under customary law applied by local authorities.<sup>57</sup> In theory, this meant that the native commissioner, assisted by the police, would take up investigation, then, if necessary involve the magistrate concerned and, worst case given, the offenders would be taken to the circuit court. Yet, on the ground, these regulations and their implementation varied.<sup>58</sup> The strategies chosen by the native commissioner and other colonial officers were seemingly decided upon from case to case.<sup>59</sup> While cattle fees and other penalties often proved effective, the application of further sanctions depended on how events developed. Murder was handled in colonial and traditional courts, provided the offender's and the victim's identity had been established. The administration could hardly control if and how perpetrators, witnesses and others would uncover knowledge and traces of crimes, and if they would decide to deal with their disputes by involving the colonial authorities.<sup>60</sup> The number of police and colonial officers stationed in Kaoko in the 1920s and 30s was very low<sup>61</sup> and the few men were not in a condition to

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<sup>56</sup> On the claim to jurisdiction by colonial authorities with regard to murder cases, see Wright in Hay & Wright (eds), 1982, p. 39.

<sup>57</sup> The hierarchies of legal institutions and competence was thoroughly assessed by C.H.L. Hahn, who considered himself to be the only one entitled to investigate the cases in Kaoko Otavi. See e.g. NAO 28 – 24/1/1, Hahn to the Post Commander SWA Police, Ondangua, 11.7.1930. For a general discussion of legal institutions and procedures in colonial Namibia, see Sippel, Harald, "Rechtsrezeption in Namibia. Prozesse direkter und indirekter Rezeption deutschen und südafrikanischen Rechts", *Recht in Afrika*, 2003, pp. 69-89.

<sup>58</sup> Meredith McKittrick states that in colonial northern Namibia, then Owamboland, most murder cases were dealt within native tribunals. See McKittrick, Meredith, "Faithful Daughter, Murdering Mother: Transgression and Social Control in Colonial Namibia", *Journal of African History*, 40 (1999), pp. 265-283, here p. 266.

<sup>59</sup> This assessment is based on my general knowledge of the archival material on colonial Kaoko. I have not done a quantitative analysis of all cases concerning Kaoko and their respective handling in customary and colonial courts.

<sup>60</sup> Stoler, 1992, pp. 167-168 and Roberts, 1990, p. 457.

<sup>61</sup> Two policemen, du Buisson and Cogill, and 1-3 so-called native constables. See PJT 1 4/R, monthly reports police post Tshimhaka. Besides Tshimhaka, which had been opened in 1926 on the northern Kunene river, there was a temporary police post in southern Kaoko at Otjitundua, which was closed down in 1934.

investigate activities in the reserve considered to be illegal or criminal.<sup>62</sup> They were forced to rely on information actively delivered by residents, be it civilians or headmen and chiefs.

The elephant case had been taken, as I said, to the police by a local resident, Upani, and the policemen stationed in Kaoko, Sgt. du Buisson and Sgt. Cogill, were charged with the preliminary investigation. Only later did the native commissioner Hahn take over. They questioned people at their places of residence and, exceptionally, in the commissioner's and the magistrate's office in Ondangwa and Outjo respectively. A complex process began, of translation into written texts to be used later in the prosecution. In the archives the final product of this process, the recorded statement, has been preserved. Most information however, on how precisely this transformation was shaped and who participated in the process, is absent or has perhaps been suppressed.<sup>63</sup> Interrogations were done in various languages, depending on language competences – both of the officers and of the people interrogated – and the availability of translators, who were only exceptionally mentioned.<sup>64</sup> Most interrogations were seemingly first recorded in notes, some of which entered the archive, and were later transcribed and translated into English, the native commissioner's preferred official language.

One of the statements given by Willem Hartley is an example of the specific narrative and genre emerging in the context of this criminal investigation:

*“Copy://Case Disappearance Petrus Kakuyu//Statement Willem Hartley//Adult male – Coloured.// Willem Hartley states:// I reside at Oruwandjai in the Kaokoveldt. In 1930 the Native Commissioner of Ovamboland had a case against Thomas Mutate for Elephant shooting in which one Petrus Kakuyu figured.//This Petrus Kakuyu disappeared since under the following circumstances: On the very first visit to Ombombo in May (the 30<sup>th</sup>) we had been discussing the matter with Thomas Mutate on the road when he told me he would like to kill Petrus Kakuyu to do away with him as he is only going to give away other things, put him in trouble and also for the reason that he Petrus Kakuyu has stated that he Thomas Mutate shot the elephant on a certain day towards sunset.//I Willem Hartley said if you do that I shall report you, after this I went home to Oruwandjai.//The(n) came a period that Thomas Mutate and Oorlog made out that Petrus Kakuyu is mad and one day in my presence Oorlog and Thomas taught him to make a statement to Sgt. Cogill that he was dying owing to a hit he received from*

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<sup>62</sup> The lack of sufficient administrative personnel in Kaoko was one of the tropes in Hahn's reporting on the area. The native commissioner, who was based in Ondangwa in then Owamboland, only rarely went on trips to the north-western area.

<sup>63</sup> This has been confirmed for archival documentation on a criminal case in Owambo in the late 1930s discussed in McKittrick, 1999, p. 276.

<sup>64</sup> The main translator was Willem Hartley, himself residing close to Kaoko Otavi at Oruwandjai, and involved in both cases as witness. Hartley would emerge as one of the key figures in this period.

*Sgt. du Buisson. This was done. The day before Mr. Hahn visited Kaokoveldt (Kaoko-Otavi) Petrus Kakuyu, I heard, had disappeared into the bush.//The Native Commissioner left for Ondonga and 8 days later Native Embura visited my place and he told me that he overheard a conversation between Thomas Mutate and Ludwig Tjitambo whilst at Kaoko-Otavi where he resides.//Ludwig was telling Thomas saying the big wrong you have done; the thing is just lying in the open for he Ludwig had found the body of Petrus Kakuyu lying in the bush whilst searching for donkeys. Then Thomas Mutate took one Karirondua with a gallon of paraffin and went to carcass (carcass?). Embura could however not tell what they went for.//On hearing this I told my father that I wish to approach Thomas Mutate on this subject, I went with Fritz, Japuapo and Kamaruru to Kaoko-Otavi, there I spoke with Thomas Mutate saying, I heard that you killed Petrus Kakuyu, so tell me what (it) is about. He Thomas Mutate replied, that is not true. He can swear he knows nothing about Petrus Kakuyu. After this I told Oorlog about this who was also at that time at Kaoko-Otavi. Oorlog said nothing to this.// On a later date in 1932 in Jan. I proceeded to Tshimhaka to buy a wagon when I found Native Vetuura (Tjongoha's son) at Ombathu, I asked him where do you stay now? For what reason did you leave Kaoko-Otavi; He Vetuura told me that Thomas Mutate forces his father to pay 20 head of cattle for the elephant that died at Kaoko-Otavi. This Tjongoha refused and Thomas Mutate stated a new thing accusing him (Vetuura) having slept with one of his wives and wanting him to pay 20 head of cattle. Vetuura told me that this fine for the do with the woman was just to get the cattle from them, and later to state to the authorities that the cattle were paid for the elephant.(...)//Vetuura further said, he very much like to report Thomas Mutate for having killed Petrus Kakuyu. On this (I) asked Vetuura, so that you know that Kakuyu is killed, He said yes, He was present. He told me it was him, Thomas Mutate, Anton, Kamunika, Karirondua, Itjama and Witboy who went out with Petrus Kakuyu to the Bush and killed him (Petrus Kakuyu) Petrus Kakuyu they killed north of Omutumbangue, a place west from the Kaoko-Otavi water. Vetuura told me that Petrus Kakuyu was killed with a Catana (big knife). His neck was chopped off.//At a later date, on or about the 24<sup>th</sup> August, 1934, I again interrogated Vetuura, profiting from his passage through Oruwandjai, and he told me again the same as before. My father George Hartley was my witness. I told Vetuura to stay with me, but he said he is taking 3 sheep to Kamanjab and when he returns he will do so for he is keen to see Mr. Hahn because it is through Thomas Mutate that his father went away from Kaoko-Otavi, which by right belongs to my father Tjongoha, for his father's father was born there.//(...) The reason why I have never reported the matter properly to the Sgt. at Tshimhaka is that Mr. Hahn has written to Oorlog on various occasions to search and investigate the matter first; at one of this occasions when Oorlog received a letter I told Oorlog to come out with the thing and make a clear breast of it at the same time telling him what Vetuura has told me. This was at Ehomba. Oorlog said that Mr. Hahn should come out himself and show Oorlog where Petrus Kakuyu is. He Oorlog does not*

*know. Oorlog wrote to Mr. Hahn a letter to this effect.//At another occasion, when Oorlog visited Ondonga I told him to make a clear breast of the question but Oorlog gave me evasive answers and the matter stayed at that. When we returned Oorlog only told Thomas about this and the result was that on Thomas Mutate's instigation Oorlog wrote a letter to Mr. Hahn to send me out of the Kaoko-Veldt. But before they wrote the letter at Otjijandjasemo Thomas Mutate asked for my life and wanted to kill me.//The witnesses concerned further in this case who may give light are (...)//This is all I know.//W. Hartley.//Translated by self, statement taken F.C.Cogill I/sergt. 407//Ondonga 21<sup>st</sup>."*<sup>65</sup>

I will discuss the issues raised in this statement later on, whereas my main interest here is the text as originating from a speech, probably a dialogue. The statement of Willem Hartley very much exemplifies the scale of formalism and fabrication of the narrative. It was reached through a process, which involved several authors,<sup>66</sup> the person questioned, the policeman, native commissioner or magistrate in charge of the investigation, and a translator. First, the statement was translated from a local language, usually but not exclusively Otjiherero, into English or Afrikaans. This translation is most visible in shifting uses of first and third person, of names of people and places, i.e. the continuous classification of people as 'native' and the adaptation of individual names to administrative knowledge.<sup>67</sup> In general, it had to be framed in terms of the requirements of a criminal investigation, with its need to structure events in particular ways, to establish *the* truth and to provide unambiguous evidence for what had happened.<sup>68</sup> All statements followed a simple scheme:<sup>69</sup> they would start with the person's name (often the first name only), followed by the gendered ethnic classification,<sup>70</sup> the place of residence and the social relation linking the speaker to the accused or the victim. The subsequent part would ideally contain a chronological account of events, places and persons

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<sup>65</sup> NAO 28 – 24/1/1, n.d. (1934). The spelling is in the original.

<sup>66</sup> Zemon Davis, 1987, pp. 15ff. In contrast to Zemon Davis' claim that the petitioner asking for the king's pardon was the main author, the colonial documents I am concerned with here do not allow for a hierarchy of influences on the text. In fact, I am more interested in the text and in issues raised therein rather than on the question of who exactly was speaking/writing.

<sup>67</sup> E.g. Oorlog instead of Vita Tom or Harunga, the name he was known by locally, or Thomas Mutate instead of Katjitoha.

<sup>68</sup> See on this point Ginzburg, 1991, pp. 28ff.

<sup>69</sup> I do not know if there were any schedules or forms the questionings of witnesses were based on, or if methods of criminal investigation had been part of the professional training of policemen stationed in Kaoko in this period. Due to the conformity of language of most statements in the cases dealt with I suspect C.H.L. Hahn to have been the final editor of them. Both policemen, Sgt. Cogill and Sgt. du Buisson were limited in their English writing.

<sup>70</sup> Men were always labelled "native", while women always as "native woman". On the use of gendered categories in "native policies", see Manicom, Linzi, "Ruling Relations: Rethinking State and Gender in South African History", *The Journal of African History*, Vol. 33, No. 3, 1992, pp. 441-465, here p. 456.

involved, perpetrators and victims, eye-witness or hearsay information.<sup>71</sup> Often, the flow of narrative was extended and fractured by references to events, people, social relations, transactions and frictions which lay beyond the realm of the case as such, yet were not eliminated in the course of the textual transformation. These extensions make the recorded statements appear as mixed genres, floating between crude listings of alleged facts, judicial assessments and socio-political and historical representations.<sup>72</sup> Finally, all the statements had a formalised closure, which underlined the witness' reliability and credibility – formulated as “That's all I know” or “I do not know more about it” – followed by the signature of the authors involved<sup>73</sup>, and the place and date of the recording. While all statements corresponded to the general formal structure, they varied substantially in length, contents and the construction of narrative competence. These differences<sup>74</sup> depended most of all on gender,<sup>74</sup> resulting in statements by women usually being very short and limited with regard to the cases, but also to information given on social and political issues. Furthermore, the social status of the person questioned and his or her involvement with the colonial administration substantially determined the latitude given to witnesses to tell their accounts fully and in depth.<sup>75</sup> Consequently, the statements attributed to men such as Vita Tom, Thomas Mutate and Willem Hartley produced information on a wide range of issues and concerns, while the statements given by Kakuyu's wife and other women, remained, as we shall see, comparatively contourless and flat.

The gendered nature of the recorded statements mirrored prescribed colonial readings of the role and knowledge African men and women had or were to have in society and politics in general, regardless of the narrative's emergence in the very specific context of a criminal investigation. What eventually made for the statements' relevance and reliability in view of the court and the prosecution of Mutate and Tom was less the question of who spoke and how, but that they were merged into a single corpus of evidence and truth, allowing the administration to *have* a case and to identify transgressions and perpetrators.<sup>76</sup> It was indeed less the quality of the statements, both legally and narratively, but rather the quantity and the

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<sup>71</sup> I am referring here to the necessity of translating every-day experience into the categories of legal discourses. See on this point Mertz, Elizabeth, “Legal Language. Pragmatics, Poetics, and Social Power”, *Annual Review of Anthropology*, Vol. 23, 1994, pp. 435-455.

<sup>72</sup> The concept of the mixed genre is again based on Zemon Davis' discussion of letters of redemption.

<sup>73</sup> Unless the hand-written notes are kept in the archive, with the original signatures or marks, most transcriptions of the statements lack the original signature.

<sup>74</sup> See Zemon Davis, 1987, p. 101 and Mertz, 1994, p. 443.

<sup>75</sup> Zemon Davis hints at the compression of legal narratives, confining witnesses to tell what they have seen or heard about a crime only. Zemon Davis, 1987, p. 5.

<sup>76</sup> Premesh Lalu has discussed the colonial concept of evidence in terms of what he calls “legitimation through knowledge”. Lalu, 2000, p. 60. My argument here heads into a similar direction.



fact that they were all organised around the question of a particular act – the killing of an elephant and of a witness – and its initiator – Thomas Mutate – which became significant.

### **Negotiating Gender**

Let me come back to the question of content and context raised at the beginning. Neither of the parties involved engaged coherently with the cases, and tensions within the community became obvious. The frame of the legal investigation tends to isolate the events debated from longer patterns of interaction. The parties involved knew each other, they had been members of the same community over decades and they would continue to be after the closing of the cases. While Hahn and his helpers searched for evidence, the residents of Kaoko Otavi negotiated their social relationships, norms and values, and their very place within society. It is these social relations which shaped their actions and arguments, and which gave meaning to them. Rather than suggesting that the colonial narrative and the local one developed separately, that there would have been a colonial reading in contrast to an indigenous one, I would argue that various interwoven narratives constituted ambiguous contexts of action and speech, in which all developed the strategies most sensible to them.<sup>77</sup> To open up possible historical readings and interpretations of the elephant and the murder case I will try, in what follows, to sketch these contexts by investigating the ways in which concepts of gender shaped the narratives evolving around the killing of an elephant and later of a witness. Furthermore, as we shall see, the elephant and murder cases signified both shifts in the definition and constitution of power and authority, and they echoed concerns with resistance to male claims to overrule in the region.<sup>78</sup>

#### *Challenges to male authority*

The three main protagonists involved in the cases were Thomas Mutate, Vita Tom and C.H.L. Hahn. The formal settlement of the elephant and murder case in the mid 1930s had seen Hahn emerging as the strengthened administrative key figure, while Mutate and Tom were sent to prison. The political vacuum they left proved an opportunity to a number of younger men in central Kaoko, who now saw the chance to establish themselves as agents in a changed political landscape. The dramatic outcome marked the end of decades of shifting relationships, which had linked the main protagonists to each other as members of an emerging colonial elite in Kaoko. While the narratives of the legal cases were orchestrated

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<sup>77</sup> On the colonial and local narratives mutually constituting each other, see Moore, H. L. & Vaughan, M., "Cutting Down Trees. Gender, Nutrition, and Agricultural Change in the Northern Province of Zambia, 1890-1990", Portsmouth etc, 1994, p. xxi.

<sup>78</sup> Roberts, 1990, p. 461.

around the question of the felonies and the perpetrators, what had indeed been negotiated between them were issues of political authority and of control, over people and resources and, as I will argue, over violence and knowledge.

In the beginning, the conflict evolved around the question of poaching, namely the shooting of an elephant and the hiding of the tusks. Three men were involved in this early litigation, Thomas Mutate, Upani and Hahn. Although they ended up being fierce opponents, their rivalry concerned a variety of issues stretching beyond the case. In his recorded statement Upani accused Thomas Mutate of killing the elephant; his statement also raised some of the underlying friction between the two men:

*“Native Opani X Examined by Mr Hahn states: -// I reported the shooting of the elephant because I was afraid and partly because I am being treated unfairly by Headman Thomas: He wants me to pay a debt which was settled long ago. It was settled by the Magistrate. It was about sheep. I handed in the rifles (muzzle loaders) because I was afraid of becoming involved in the shooting of the elephant. I know that Thomas would do me harm. He would kill me if it were not for Chief Oorlog’s protection. I left Kaoko-Otavi to live at Omuhiba because of Thomas (...)// My son Tshikundu told me later that the elephant was dead. He also told me that he had seen the tusks at Kambonde’s house. Kambonde is Thomas’ brother and lives next door to him.// I handed over the rifles to the Sergeant at Tshimhaka because I was afraid that I would be drawn into this case. The guns came into my possession through Thomas. Major Manning had just been to the Kaokoveld to disarm all the natives and when he left I was ordered by Thomas to collect any rifle which had not yet been handed in.. (...)// I know that Thomas has a Government rifle but there are one or two others. I have seen a short rifle (carbine) with Thomas’s herd(er) Kamunika. The latter carries it when he goes out with Thomas’ stock. I have heard that Kambonde also owns a rifle. It is a muzzle loader. It was bought from an Ovambo in the year of the locusts (1925) by native Hiakathorowa of Kaoko-Otavi. A sheep and a goat were paid for it. (...)// He was my Headman. He has taken my property and that is why I have gone against him. No one advised me to take this step. (...)// Native Opani/His X Mark// Read over interpreted and assented to before me at Kaoko Otavi this date 3/9/30//(Sgd) C. Hugo Hahn.// O/C, Native Affairs, Ovamboland.”*

The background to the conflict between Upani and Mutate, which was referred to in the statement, had been part and parcel of shifting colonial interpretations of the political landscape of Kaoko since the mid 1910s. From a colonial perspective it was an expression of political tensions, framed in tribal terms, which were seen as the core challenge to a successful administration of the area. It already determined the very first intervention in Kaoko by

Major Charles Manning, who led two military expeditions to the region in 1917 and 1919, with the aim to disarm people and to stop smuggling from and into neighbouring areas.<sup>79</sup> The narrative initiated by Manning and recycled by Hahn in the early 1920s had led to the emergence and consolidation of Vita Tom and some followers, among them Thomas Mutate, as the main political leaders in the region. As representatives of a Herero society, perceived to be powerful, wealthy and modernised in terms of culture and education, they were favoured over Ovatjimba, their ‘uncivilised’ counterparts.<sup>80</sup> In Kaoko Otavi this policy coincided with changing local power constellations. The 1910s had seen several immigrations of groups of people and their herds from southern Angola into Kaoko.<sup>81</sup> The new arrivals met a population, which had lost most of their possessions in a period of intense cattle raiding,<sup>82</sup> yet was gradually rebuilding herds of stock.<sup>83</sup> Hence, the immigrants’ arrival and their claim to residential and political supremacy didn’t remain uncontested. Thomas Mutate crossed the Kunene into Kaoko around 1916.<sup>84</sup> Archival documents give no information on why he settled at Kaoko Otavi.<sup>85</sup> In contrast, oral information identified family networks to be the reason for Mutate’s trajectory.<sup>86</sup> In the beginning, the immigrants’ settlement at Kaoko Otavi had been negotiated in such a way as to be accepted by the local community. Yet, Mutate’s personal political interests and ambitions, his alliance with Tom and the latter’s successful

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<sup>79</sup> ADM 156 W32, General Kaokoveld Report by Major C.N. Manning, Resident Commissioner Ovamboland, November 1917 and SWAA 2516, Report by Major C.N. Manning re Second Tour Kaokoveld; Disarmament; General, 25.8.1919.

<sup>80</sup> There are a number of authors which produced and reproduced this cultural hierarchy between Herero, Ovatjimba and Ovatjimba in Kaoko, most prominently among them Vedder, Heinrich, “The Ovaherero”, In: Fourie, L., Hahn, C.H.L., Vedder, H., “The Native Tribes of SWA”, Cape Town, 1928, pp. 153-211, and J XII b5, Vedder, Heinrich, “Reisebericht des Missionars Vedder and den Bezirksamtman von Zastrow”, *Geographische und ethnographische Forschungen im Kaokoveld 1900-1914*, (1914).

<sup>81</sup> Bollig, Michael, “Power and Trade in Precolonial and Early Colonial Northern Kaokoland 1860s-1940s”, In: Hayes et al, 1998, p. 184.

<sup>82</sup> J XII b5, Vedder to von Zastrow, (1914), Dütman, E. “Kurze Reiseerinnerungen aus dem Nordwesten Deutsch-Südwestafrikas und dem südlichen Angola”, *Beiträge zur Kolonialpolitik und Kolonialwirtschaft*, 1900/1901, pp. 612-616, here p. 613, Bollig in Hayes et al, 1998, p. 176.

<sup>83</sup> Bollig in Hayes et al, 1998, p. 185, Hartmann, G., “Meine Expedition 1900 ins nördliche Kaokofeld und 1901 durch das Amboland”, *Beiträge zur Kolonialpolitik und Kolonialwirtschaft*, 4, 1902-03, Interview with Ngakurupe Koviti, Kaoko Otavi, 2002.

<sup>84</sup> NAO 31 – 24/13, Officer in Charge Opuwo to Chief Native Commissioner Windhoek, 25.6.1941, Green, Lawrence, “Lords of the Last Frontier”, Parow, 1952, p. 50; Interview with David Humu, Kaoko Otavi, 12.1.2002, David Humu dated his father’s coming to Kaoko Otavi around 1917/18, yet he settled there permanently a little later.

<sup>85</sup> In the archive the earliest reports of the administration mention Thomas Mutate as one of Vita Tom’s headmen but they make no indication on his place of residence, see NAO 18, monthly and annual reports of the native commissioner Ondangua, 1924 and 1925. In 1926 Colonel Denys Reitz apparently met Mutate in Kaoko Otavi, see Green, 1952, p. 50.

<sup>86</sup> In oral information Thomas Mutate was said to have been given a place to stay at Kaoko Otavi by Tjongoha, the local headman and a maternal uncle to Mutate. Seemingly, it soon came to a serious power play between them, which led to Tjongoha’s and his followers’ expulsion from the place. Interviews with Uetjipuraije Hiattjivi, Onjette, 7.5.2002, and with Mbatambauka Rutjindo Tjavara, Onjette, 10.1.2002.

career, soon enabled him to establish himself as the leading headman, supported by a colonial administration-in-the-making.<sup>87</sup>

In the first decade of South African rule Tom and Mutate had been the wooded counterparts of a colonial administration, which lacked the means and personnel to establish direct control in Kaoko.<sup>88</sup> By the late 1920s however, Hahn's perception of both of them had changed. Thomas Mutate had proved to be an unaccommodating figure for the native commissioner, as he continuously challenged regulations and undermined the officer's authority.<sup>89</sup> The elephant shooting case confirmed anew, in Hahn's revised view, Mutate's inherent 'stubbornness'. Game protection and management had been a site of contestation from the very beginning of capitalist colonial intervention in Kaoko, not least because it signified pre-colonial trans-regional African social and economic activities.<sup>90</sup> In the 1920s and 30s the commercial exploitation and the cultural appropriation of game continued to be one of the arenas in which male rivalries unfolded. What Hahn, Mutate, Tom and Upani in fact negotiated, and what remained contested within the community itself, was the question of who had the legitimacy to shoot game, and, implicitly, to own guns, and who had not. The linkage of hunting and the possession of arms was crucial, hence its prominence as an issue in Upani's statement. In an administrative understanding things were clear: game shooting, and particularly the killing of big game, was illegal and prosecuted, and it was neither allowed to African residents, nor to South African officers stationed in the reserve, or settlers and traders who entered Kaoko to shoot game.<sup>91</sup> Exceptional permits given out by the administration, usually to the native commissioner himself or other high ranking colonial officers, or to a few members of the settler elite, were the formal *sine qua non* of legal hunting activity in the north-western area.<sup>92</sup> Access to guns and ammunition was restricted to the chief, Tom, and a

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<sup>87</sup> In the archival sources Tjongoha's, and with him Upani's 'removal' from Kaoko Otavi, happened around 1918, without specifying what the context to their leaving the place was. See NAO 28 – 24/1/1, statement of Thomas Mutate, 30.9.1930 and LOU 1/2/2 – No. 23, second statement of Ventuura Nejanena, n.d.

<sup>88</sup> Meredith McKittrick has made a similar point for administrative policies in Owambo in the early decades of South African rule. See McKittrick, Meredith, "Forsaking Their Fathers? Colonialism, Christianity, and Coming of Age in Ovamboland, Northern Namibia", In: Lindsay, L.A. & Miescher, S.F. (eds), "Men and Masculinities in Modern Africa", Portsmouth, 2003, pp. 33-51, here p. 46.

<sup>89</sup> NAO 28 – 24/1/1, Hahn to the Secretary for South West Africa 12.1.1934, NAO 19, Hahn, monthly report January & February 1935, There had been several cases against Thomas Mutate earlier (see NAO 28 – Vol. 3, Hahn on cases against Thomas Mutate, 3.5. & 25.9.1934), the one mentioned in the statement of Upani was about a transaction of sheep in 1919/1920, see NAO 28 – 24/1/1, Hahn to the Magistrate Outjo, 28.9.1930.

<sup>90</sup> For a discussion of pre-colonial, 19<sup>th</sup> century trade of game and luxury items such as ivory and ostrich feathers, see Bollig in Hayes et al, 1998, pp. 175-193.

<sup>91</sup> Kaoko had been part of a game reserve since 1907, i.e. since the German colonial period. The "Verordnung des Gouverneurs von Deutsch-Südwestafrika betreffend Bildung von Wildreservaten in dem südwestafrikanischen Schutzgebiete" of 1907 (March 22<sup>nd</sup> 1907, No. 88) prohibited all shooting of big game. Game protection laws were generally taken over by the South African administration in 1916, see Game Law of 6. January 1916.

<sup>92</sup> See e.g. SWAA 2513 additional NC SWA to Chief NC, 26.4.1939 on permits to residents in Kaoko. Most travellers, missionaries, scientists and members of the settler society who ventured into Kaoko in the early

few headmen, such as Mutate, and it was based on permits given out by the Chief Native Commissioner in Windhoek. But, these men had apparently used their status in order to manage and control access to, and the circulation of, arms to the benefit of their own political and economic interests.<sup>93</sup> Nevertheless, Hahn preferred to leave things as they were and settled the elephant case by imposing a fee. Upani's strategy, to use illicit game hunting and the involvement of the police and the native commissioner to challenge Mutate's hegemonic claim and to gain amends, remained without success. While Mutate failed in his original attempt to solve the conflict within the community by disregarding the native commissioner's claim to jurisdictional authority,<sup>94</sup> his position as a headman sustained by the colonial government was, temporarily at least, reconfirmed if not strengthened.

Things changed, as we saw, when a witness, Petrus Kakuyu, disappeared and was allegedly killed. What was officially framed in terms of murder in accordance with the rule of colonial law, continued to mirror the male rivalry.

There were numerous statements recounting the killing of Petrus Kakuyu and accusing Mutate and Tom of various forms of violence and intimidation towards their subjects, among them one attributed to Hiakatondo Katuta:

*“Petrus Kakuyu’s disappearance was planned by both Oorlog and mostly Thomas Mutate, as will be seen out of the conversation I overheard and other circumstances.//Firstly: on a certain date Thomas Mutate, Oorlog, Willem Hartley, myself and a party visited Sgt. Cogill at Ombombo, where we encountered Sgt. du Buisson. This was in 1930 about. On our Return journey I heard Thomas Mutate telling Willem Hartley that he would very much like to kill Petrus Kakuyu, but for Chief Oorlog. (...)// After our arrival at Kaoko-Otavi where I had been residing then, Willem Hartley went home to Oruwandjai. Then on a certain evening I heard Thomas Mutate asking Oorlog for permission to kill Petrus Kakuyu, but Oorlog refused (...)//Thomas Mutate called me aside one day and told me, that I myself, Karirondua and Vetuura must take Petrus Kakuyu to the bush, to kill and hide him. But however it was found that I was related to P. Kakuyu, and I was told to go to the Cattle Post instead, and Kamunika had to come in my place. Oorlog was all the time at Kaoko-Otavi when these things went on. // I went to the Cattle Post and the next thing I hear is from my wife who had remained at Kaoko-Otavi that P. Kakuyu has disappeared. A dance was given and two oxen killed according to Herero custom, to celebrate the death of the enemy Petrus Kakuyu (The so-called outoni cattle).*

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decades of the 20<sup>th</sup> century often used the occasion for hunting activities. See Rizzo, L., “A Glance into the Camera: Gendered Visions of Colonial Photographs from Kaoko”, *Special Issue Gender & History* (forthcoming).

<sup>93</sup> SWAA 493 – A 50/256/4, Hahn to the Secretary for South West Africa, 18.3.1938.

<sup>94</sup> LOU 1/2/2 – No. 23, further statement of Ventuura Nejanena, n.d.

*// My wife Wapuka has since been forced away from me, by Thomas Mutate, less she gives out some information, to me, and to other people of authority. She as well as one Embura who has been in Thomas' Kraal all the time, when this things went on, Maaveereije Kakuyu's wife, Mavereruijani her sister and Twamunu Kakuyu's father in Law, are kept in custody by Thomas who watches their movements, afraid they will give away information. (...)"<sup>95</sup>*

The performance, control and management of violence were integral in early colonial Kaoko. Experiences of violence had indeed shaped the biographies of men such as Tom, Mutate *and* Hahn. Mutate and Tom had acted as policemen and mercenaries in southern Angola, supporting the Portuguese authorities in their suppression of local resistance.<sup>96</sup> Later, their immigration and settlement in Kaoko apparently continued to draw them into raids, fighting and lootings.<sup>97</sup> Hahn too had received his training in arms and intelligence in the northern areas of the colony under the aegis of Major Manning, the first South African resident commissioner in the north.<sup>98</sup> The experience of armed intervention and conflict and, after 1917, an expanding colonial discourse of disarmament, patterned the way in which these men negotiated the parameters of rule and control in Kaoko. The colonial stand on the question of arms and, linked to it, of exercising violence, was ambiguous. On the one hand, arms, uniforms and similar insignia signified power and status,<sup>99</sup> and martial symbols as part of strong masculinities were continuously reproduced, be it in intelligence reports by military officers<sup>100</sup> or in photographic portraiture.<sup>101</sup> Indeed, the administration tended to support the headmen's exercise of power and application of controlled violence against their subjects, as long as it remained useful to the general project of colonial administration.<sup>102</sup> On the other hand, the discourse of pacification and the ideology of colonial law and order legitimised the

<sup>95</sup> NAO 20 – 24/1/1, statement of Hiakatondo Kututa, interpreted by Willem Hartley, recorded by Sgt. Cogill, Otjondjorese, 18.11.1934. The spelling is from the original.

<sup>96</sup> Stals, E.L.P. & Otto, Antje, "Oorlog en Vrede aan die Kunene", Windhoek, 1999, pp. 29ff., Bollig in Hayes et al, 1998, pp. 180ff.

<sup>97</sup> Interview with Jiraewa Tjihoto, Kaoko Otavi, 6.5.2002, interview with Ngakurupe Koviti, Kaoko Otavi, 8.5.2002, interview with Mariri Koviti Tjihurua, Kaoko Otavi, 9.5.2002. The archival documentation on these alleged raids are numerous, see e.g. SWAA 2379 – A 518/4/3, Kaokoveld Native Unrest, 1916-48.

<sup>98</sup> See Hayes, Patricia, "Northern Exposures: the photography of C.H.L. Hahn, Native Commissioner of Ovamboland 1915-1946", In: Hartmann, Wolfram, Silvester, Jeremy & Hayes, Patricia (eds), "The Colonising Camera. Photographs in the Making of Namibian History", Cape Town, 1998, pp. 171-187, here pp. 172-173.

<sup>99</sup> Both sustained in local African societies as well as in a colonial understanding.

<sup>100</sup> Such as in the reports by Major Manning (see note 69) and Hahn's descriptions in his Diary of 1924, see Accession 450 – 23D. 14, Kaokoveld Journey.

<sup>101</sup> Particularly photographs of Vita Tom and his rivals such as Muhona Katiti followed this paradigm. See Rizzo, (forthcoming).

<sup>102</sup> There were continuous debates on the question of corporal punishment and the ways chiefs and headmen ruled over their subjects. See e.g. NAO 20, annual and monthly reports, Hahn, annual report 1937, 18.1.1938 and NAO 29 – 24/2, Hahn to du Buisson, 17.9.1936, also the reports by the police stationed at Tshimhaka, between 1926 and 1931, filed under PTJ 1 4/R. For a comparison with Owambo, see McKittrick, 1999, p. 275.

colonizing project as an enterprise that would, at least partly, benefit ordinary Africans.<sup>103</sup> This ambiguity gave meaning to the dualism of customary and colonial law and enabled the native commissioner to classify acts of violence predominantly in terms of their impact on colonial power and hegemony.<sup>104</sup> Hence, the significance of the murder case lay less in the need to prosecute a murderer, than in the instance that Mutate, Tom and Hahn linked Petrus Kakuyu's killing to the question of the legitimacy of violence, its initiators, its place and its means.<sup>105</sup>

The enforcement of a colonial legal culture by the native commissioner proved, as we saw, difficult. It depended on how successful Hahn and his police officers would be in generating evidence for what had happened. In the realm of the law, the production, availability and circulation of information and knowledge emerged as a characteristic bone of contention. A letter written to Hahn by one of his police officers entrusted with the inquiry revealed the difficulties faced with.

*“In the whole my investigations, are being hampered very much, and I cannot get any information that lead to a definite statement. But I would like to suggest the following scheme to be adopted, to try and get at the bottom of the Affair.// There is still present the Wife of P Kakuyu, her sister, Natives Embura, and another by the name of Vetuura who can give a light on the case. Especially the native Vetuura. If these natives could be arrested when you next visit the Kaoko-veldt, and taken to a isolated place, say Okorosave and there be interrogated by you, if possible in my presence the matter will come to light. // I am aware that the Native Vetuura knows quite a lot, for he was one of Thomas Mutates Chief Servants at the time. I have as a matter of fact, at an earlier date tried to get some information from him and the result was that Oorlog sent for him and he is now residing with Oorlog simply loafing about at Otijandjasemo, and I have the impression that his movements are being watched very much.(...) // My attempts to approach the woman of late P Kakuyu and her Sister have been frustrated, at many occasions I have even noted that my movements, when I visited Kaoko-Otavi, have been watched(...)”<sup>106</sup>*

The criminal investigation proved to be a particular arena, in which the ability to determine the crafting of a narrative about a past event and its protagonists challenged all men involved. The control of knowledge and information, its production and circulation, and the

<sup>103</sup> Silvester et al In: Hayes et al, 1998, p. 20.

<sup>104</sup> See e.g. NAO 19, annual and monthly reports 1932-36, Hahn, annual report 1936, 16.1.1937 and NAO 20, annual and monthly reports, 1937-42, Hahn, monthly report February and March 1938, 30.3.1938.

<sup>105</sup> Stoler, 1992, p. 182.

<sup>106</sup> NAO 28 – 24/1/1, Sgt. Cogill to Hahn, “Confidential. Re: Disappearance. Petrus Kakuyu”, 5.2.1934. The spelling is from the original.

way it was arranged into a body of evidence became the site of power.<sup>107</sup> To both Hahn and his policemen on the one hand, and Mutate, Tom and their adversaries on the other, the cases reinforced male spheres of action and speech, of politics and social expertise. Thomas Mutate and Vita Tom had been well aware of this from the very beginning of the investigation: they had approached the native commissioner and the police, they had written letters and given numerous, long statements and they were suspected of having manipulated the testimony of witnesses. Eventually they failed and it was precisely the manipulation of knowledge, which led to Vita Tom's prosecution. The significance of influencing and controlling the narrative about an event under investigation, particularly when it was dealt with through the involvement of the legal bodies of the colonial state, revealed itself to the rivals of Tom and Mutate alike. Upani, who had accused the headman of misuse and repression, failed in his attempt to restore the political balance of power, which had predated Mutate's rule in Kaoko Otavi. Hahn continued to consider him as an unreliable candidate for future administration.<sup>108</sup> In contrast, Willem Hartley, another rival, skilfully used his multiple involvements as witness, translator and mediator to establish himself, as we shall see, as a significant local figure far beyond the elephant and murder case.

### *Marginalising female agency*

Legal prosecution of crimes considered as serious, i.e. murder and poaching in colonial Kaoko in the early decades of South African rule exclusively affected men, and never women.<sup>109</sup> If women engaged with or were drawn into the legal sphere, it was for other reasons, such as property issues, adultery and questions of residence.<sup>110</sup> Their roles were relational and linked to the sphere of the private, the family and the household. Hence they appeared as – guilty or innocent – widows, wives and mothers raising accusations, defending property and claiming rights.<sup>111</sup> It was no different in the elephant and murder cases, where

<sup>107</sup> See for a discussion of the significance of knowledge in the exercise of colonial power Lalu, 2000, pp. 54ff.

<sup>108</sup> In fact Upani would be no candidate for the headmen council, which would be introduced in Kaoko in the late 1930s/early 1940s, shortly after the removal of Mutate and Tom. From the mid 1940s onwards Upani was continuously involved in conflicts with the administration.

<sup>109</sup> There is an "empirical gap" (Silvester et al in Hayes et al 1998, pp. 13-14) here. The absence of women charged for offences considered to be serious mirrors the complexities of criminal classification in colonial Kaoko and a reluctance to consider violent acts by women in terms of murder or manslaughter. McKittrick discusses the only case of a woman from Owambo tried in a colonial court for murder between 1915 and 1955, although she was seemingly not the only accused murderess. See McKittrick, 1999, p. 274.

<sup>110</sup> E.g. the case of a woman called Onderangandja against her husband filed under NAO 26, miscellaneous 1916-46, 29.9.1929, or in 1935 a case of a woman called Teresa, again in a conflict with the husband over stock, mistreatment and residence, filed under NAO 28, Kaokoveld general.

<sup>111</sup> Marcia Wright made a similar point for legal procedures in colonial Zambia at a magistrate's court, where "women usually, but not always, figured as complainants in civil cases and as victims in criminal cases", see Wright in Hay & Wright (eds), 1982, p. 43.



men were conceived of as the actors, and therefore threatened with prosecution, while the role of women was confined to their testimonies as witnesses. Two general problems of interpretation emerge with respect to women's agency in the debate staged in the archive:<sup>112</sup> firstly, women constituted a much smaller group than the men involved, and secondly, female possibilities for speech and action were limited and were constrained by the conception of the political and the legal sphere as being male ones.<sup>113</sup> The roles and actions of the women involved in the elephant and murder cases become therefore even more elusive and fragmented than those of the men. The statements attributed to them are short, they suggest narrative incompetence and social and political marginality, if not irrelevance.<sup>114</sup> The questioning of a woman called Karinana is illustrative:

*“Native Woman Karinana X examined by Mr. Hahn states://I saw the elephant at the water. It was the same elephant that was subsequently killed. Opani and three other natives Tshikundu, Katutenge and Kamburupuru chased it. They persued it with assegais. Opani was here on a visit. His home is at Omuhiba. Thomas was away at Ombombo when I first saw the elephant at the water. This is some time ago. I do not know how many months. I do not know what happened to the bones of the elephant. I heard that it was killed close to Kaoko-Otavi. I did not see that it was wounded. I saw it standing at the drinking place but I could not see whether it was wounded or not. Petrus is the man who came to Kambonde's kraal to ask for the tusks. He is Josephina's husband. I understood that he wished to hide them. Later I assisted him to hide them. Juliana is the one who suggested that the tusks must be hidden. She lives next door to Thomas. Thomas was away at Tshimhaka at the time. I do not know what he was doing there. Kambonde, Thomas' brother was away with him. I have not heard that Thomas is accused of having shot the elephant. I do not know whether Opani is responsible for its death. He told me that he had driven it away from the water and that he had assegais with which he had stabbed it. I do not know who killed it. I can tell nothing more about it. I do not know who killed it. I can tell nothing more about it. I have spoken the truth./ Native Woman Karinana// Her Mark// Read over and interpreted and assented to before me this date at Kaoko-Otavi 3/9/30// (Sgd) C. Hugo Hahn//O/C, Native Affairs, Ovamboland”<sup>115</sup>*

As we have seen, the elephant and the murder case emerged in a situation of increased insecurity and pressure in the region. In the context of a social crisis the women, like the men,

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<sup>112</sup> Prakash, 1994, p. 1487.

<sup>113</sup> For a similar argument, see Hayes, Patricia, “The ‘Famine of the Dams’. Gender, Labour and Politics in Colonial Ovamboland 1929-1930”, In. Hayes et al, 1998, pp. 117-146, here p. 117.

<sup>114</sup> This is most evidently expressed in the fact that women were exclusively identified with their first names.

<sup>115</sup> NAO 28 – 24/1/1, statement of Karinana, Kaoko Otavi, 3.9.1930.

chose different dispute practices.<sup>116</sup> According to the statements, they hid what would be seen as the main piece of evidence – the tusks – and thereby sought to prevent prosecution by the colonial authorities. The management of game, as contested as it might have been within the community or among men such as Upani and Mutate, was apparently not an issue they would address in terms of transgressions of game legislation. None of the women questioned on the elephant shooting accused someone else of being the poacher or the one responsible for its killing. Lack of knowledge or information, hearsay and rumour, which framed the account of Karinana, became an active strategy in facing the investigation, not only for women. Covering or eliminating the traces of a crime was seemingly a further option. While Hahn considered the women's alleged hiding of the tusks as an act of hindering investigation, it mirrored the spaces and options available to them in a situation of threatening prosecution. The fact that African women and female social spaces were much less accessible to male colonial personnel than African men and their social world,<sup>117</sup> enabled them to play a part in the management of valuables and objects of contraband. The administration's perception of game management in particular, and resource management in general as predominantly male spheres of action prevented a contextual reading of the reasons for the women's active involvement.<sup>118</sup> Hahn and his policemen did not follow this trace, nor did the hiding of the tusks lead to any prosecution of Karinana and other women mentioned in the above statement and questioned alike. Yet, what it caused was an increased attention given by the native commissioner to those members of the community who had seemingly remained on the margins of events but proved to be potential witnesses for the prosecution.

Indeed, the pressure on women and their assessments changed when one member of the community, Petrus Kakuyu, disappeared and was seemingly killed. While the group of women, whose statements were recorded, remained small,<sup>119</sup> their questioning became more intense. Nevertheless, their accounts continued to subvert Hahn's search for evidence, as the narrative was framed less around the question of who had killed Kakuyu and how, than around wider concerns about violent acts. Domestic violence, sexual harassment and male

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<sup>116</sup> On alternative means for resolving disputes in another African colonial context, see Dickerman, Carol, "The Use of Court Records as Sources for African History: Some Examples from Bujumbura, Burundi", *History in Africa*, Vol. 11, 1984, pp. 69-81. On the deterioration of conflict management for women under colonialism, see Krüger, Gesine and Henrichsen, Dag, "'We have been Captives long enough. We want to be free.' Land, Uniforms and Politics in the History of the Herero in the Interwar Period", In: Hayes et al, 1998, pp. 149-174, here p. 167.

<sup>117</sup> NAO 28 – 24/1/1, Sgt. Cogill confirmed the difficulties of approaching women, Cogill to Hahn, 5.2.1934.

<sup>118</sup> Ginzburg discusses the selective biases in considering evidence in criminal contexts both for 16<sup>th</sup> Inquisition trials and 20<sup>th</sup> century criminal cases (Ginzburg, 1991).

<sup>119</sup> By the time the murder was investigated three women, among them Kakuyu's wife, were questioned repeatedly.

tutelage are issues, which exclusively figured in the statements attributed to women.<sup>120</sup> In contrast to the men, the women seemingly refused to address Kakuyu's forceful removal in terms of a rivalry between the headman and chief on one hand and the native commissioner on the other. In the inquiry, women particularly had been faced with various forms of violence, performed both by the men involved as perpetrators as well as by the colonial personnel.<sup>121</sup> These manifold experiences of increasing threats to individual and social security might be the context to the women's growing engagement with the cases, i.e. with the law as a powerful colonial institution in order to seek an outcome consistent with their sense of wrong.<sup>122</sup> Josefina Mavere addressed these issues unequivocally in her account:

*“Accused No. 1 [Thomas Mutate] took an ox from Petrus’ herd, while all his other animals were taken by Oorlog. After Petrus had disappeared, accused No. 1 asked me to sleep with him but I refused. (...) Petrus and I have been living together for a long time. I knew him very well. Years ago he had an infected wound but he was treated in a hospital and recovered. After that he was never sick again. Petrus was a good man, for me and for my father. We lived together very well. He never complained about a weak heart. He had no grey hair. His head was still black. He wasn’t old. I have never seen him treating anybody in a bad way.”*<sup>123</sup>

How can we make sense of the women's involvement as witnesses for the prosecution in the murder case, although or precisely because their roles remain elusive and fractured? The case documents' focus on acts and interactions that took place in a short period of time and were considered to be relevant judicially as such, deprives women's agency of its meaning. But most of all, it embodies the colonial state's ignorance when it came to female action and attitudes. Indeed, the causes and considerations which drew the women into the investigation were diverse and multiple, but they were decisively linked to the implications of colonialism and the changes of political power and social control.

The first two decades of South African colonial rule in Kaoko had led, as we saw, to shifts in the constitution of status and power of individual men such as Vita Tom and Thomas Mutate. On the one hand these men had successfully reframed the sources of power and had negotiated their roles within the colonial administration. They had benefited from a process

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<sup>120</sup> For a comparison with colonial Owambo, see McKittrick, 1999.

<sup>121</sup> I have already mentioned allegations against du Buisson beating people. Hahn is said to have beaten and tortured women, who refused to make statements about the cases. As a particularly brutal instance interviewees recalled the native commissioner forcing women to stand in the sun and have their skin burnt until they would agree to testify. Interview with Uetjipuraije Hiatjivi, Onjette, 9.1.2002.

<sup>122</sup> For the same argument in a different context, see Roberts, 1990.

<sup>123</sup> LOU 1/2/1 – No. 23, statement of Josefina Mavere, at the circuit court of Otjiwarongo, given in Otjiherero, translated into Afrikaans, 7.1.1935 (my English translation).

through which power and wealth were increasingly concentrated in a limited number of male potentates, as long as they remained on friendly terms with the colonial representatives. Not unexpectedly, rivalries emerged and opposition grew, particularly from those who had been deprived and excluded, such as Upani Hiamauva.<sup>124</sup> Women's experiences of the centralization of power and the accumulation of wealth reflected the deterioration of social security and the gender imbalances caused by the colonial transformation.<sup>125</sup> In this context, colonial law could prove an additional field of social action and debate, enabling women, if not to influence the aims and outcomes of a trial, i.e. the prosecution and removal of Thomas Mutate and Vita Tom, then at least to raise concerns about power, violence, justice and social order.<sup>126</sup>

## Conclusion

The narrative of this essay has been following two lines of argument, which are to be read as interdependent and mutually constitutive. On the one hand, my reflections have concerned the character and nature of colonial archival material on north-western Namibia. The main source discussed have been the recorded statements, products of a complex process of transcription and translation of oral accounts by men and women residing in Kaoko into formalised texts to be used in a criminal investigation by a colonial legal institution. Historically, these statements emerged as part of a criminal narrative underpinning colonial efforts to establish and sustain administrative rule and order. The context of the legal prosecution and the strong influence colonial officers had on the framing of the statements no doubt left its imprint on these representations. The resulting distortion entails methodological problems with regard to authorship and agency, as it makes the attribution of a particular statement to an individual man or woman in terms of speech and action problematic, if not questionable. The entanglement of official, i.e. colonial, and subaltern, African authorship in written accounts attributed to representatives of the colonial state has been addressed on various

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<sup>124</sup> On conflict resulting from colonial intervention and shifts in the construction of male status and power, see McKittrick, Meredith, "Generational struggle and Social Mobility in Western Ovambo Communities 1915-1954", In: Hayes et al, 1998, pp. 241-262, here pp. 248-249.

<sup>125</sup> See e.g. Wallace, Marion, "Health, Power and Politics in Windhoek, Namibia, 1915-45", Basel, 2002 and Moore & Vaughan, 1994 (particularly chapter 3). Female interviewees stressed problems resulting precisely from the emergence of powerful men such as Tom and Mutate, interview with Mariro Koviti Tjihuhura, Kaoko Otavi, 4.1.2002, with Kainaa Menjengua Tjihero, Kaoko Otavi, 8.1.2002, and with Emily Kazombaruru Kavari, Kaoko Otavi, 9.1.2002.

<sup>126</sup> On the significance of colonial law for women for the sanctioning of violence, see Merry, Sally Engle, "The Articulation of Legal Spheres", In Hay & Wright (eds), 1982, pp. 68-89, here p. 87.

occasions.<sup>127</sup> But, I would argue, the question of voice and action is worth further discussion, and Zemon Davis' work on 16<sup>th</sup> century French pardon letters unintentionally hints at the specificity of imbalanced power relations under colonial rule. In the elephant and murder case, even though or precisely because the legal narrative claimed to provide evidence for "who had done (and said) what" – to re-phrase Ginzburg – the reconstruction of the past – both in judicial and in historical terms – generated inconsistencies, fractured knowledge and multiple versions. But, as I have tried to show, there is a point in using these documents for a historical interpretation, provided their form and nature is considered to be historically meaningful, as constitutive to the story to be told. In other words, using the statements from the elephant and murder cases has aimed at re-inscribing the archive into Kaoko's history, not as the dominant narrative, but as an identified element of order, with its limits, its contradictions and its niches for more balanced representations of African actors and actions in the past.

One way to blur the constraints of the archival narrative and the logics of the legal prosecution has been a concern with gender and with the ways in which the colonial discourse conceived female agency as marginal and inconsequential.<sup>128</sup> The South African administration perceived and conceptualised African women *and* men often generically, *en masse*, rather than individually.<sup>129</sup> What makes the elephant and murder cases so interesting historically, I would argue, was that contrary to the prevailing policy of generalisation and anonymisation in the colony's reserves, the criminal investigation made it – at least in theory – a condition *sine qua non* to identify individual actors and to reconstruct their motifs, aims and strategies. Yet, the colonial stand remained ambiguous, and the case of Thomas Mutate and Vita Tom is exemplary for colonial inconsistencies in handling and applying the law. The contradictions were rooted in the administration's classification of Africans and African agency, which on the one hand perceived some of the colonized as capable to act, while on the other hand it relegated many to the status of objects of colonial rule.<sup>130</sup> Though Mutate and Tom were sent to prison, the period they eventually spent there was rather short. Apparently, the fact that the victim, Petrus Kakuyu, was an African – and not a European – significantly attenuated the gravity of the offence. What has been of greater interest here nevertheless, was that Mutate and Tom were prosecuted as representatives of a group rather than as individual subjects.

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<sup>127</sup> See e.g. White, Louise, Miescher, Stepahn & Cohen, David William (eds), "African Words, African Voices. Critical Practices in Oral History", Bloomington etc., 2001 (particularly the introduction), Moore & Vaughan, 1994, p. xiii, and Comaroff, Jean & Comaroff, John, "Of Revelation and Revolution. The Dialectics of Modernity on a South African Frontier", Chicago and London, 1997.

<sup>128</sup> Lalu, 2000, pp. 50-51.

<sup>129</sup> Wallace, 2002, p. 12. Wallace makes her point following Megan Vaughan.

<sup>130</sup> Lalu, 2000, p. 53.

While this entailed the inevitability of a legal conviction, it concurrently transformed the verdict into a representative disciplinary sanction.

The fact that Mutate and Tom were made responsible for what had happened was linked to the gendered narrative presupposing male speech and action predominantly to be determinant to the realm of politics and law. The elephant and murder cases indeed read as re-inscriptions and re-enforcements of male claims to those domains in society considered to be significant, in particular for the region's elite. Women were reduced to a residual, an if at all the roles assigned to them – on the margins of society – no less nurtured the terms of the colonial order. Nevertheless, colonial law and the ways it was handled provided not least women in Kaoko with an alternative sphere of conflict resolution, particularly when it was the political leadership being challenged and local strategies, such as those prescribed by “customary law” seemed less acceptable. Yet, engaging with the colonial state entailed risks and, eventually the elephant and murder cases took its toll.

## Epilogue

As suggested above, the elephant and murder cases aimed less at applying colonial law in order to prosecute those guilty of or responsible for the killing of an elephant and the death of a man.<sup>131</sup> While this might have been the case in mid 1929, when Upani handed over a pair of tusks to the police at Tshimhaka and raised accusations against Thomas Mutate, the legal concerns soon lost their relevance. The longer the case went on the more it became a tool and strategy for Hahn to deal with a situation, which had increasingly undermined his authority as native commissioner.<sup>132</sup> Thomas Mutate and Vita Tom had repeatedly challenged him, long before the elephant case had come up.<sup>133</sup> While on the ground Hahn oscillated between relying on them as allies of the administration, and threatening them with fining, prosecution or removal,<sup>134</sup> in his reports to the central authorities in Windhoek, the native commissioner launched a debate about the sensitivity and shortcomings of native administration in the northern territories, and particularly on the question of privileging an administration based on

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<sup>131</sup> The function of criminal cases as means to maintain a particular order, rather than prosecuting perpetrators is sustained by Wright in Hay & Wright (eds), 1982, p. 44.

<sup>132</sup> This argument is based on Martin Chanock's conception of colonial law used to define and perpetuate positions of power, see Chanock, Martin, “Making Customary Law. Men, Women and Courts in Colonial Northern Rhodesia”, In: Hay & Wright (eds), 1982, pp. 53-67, here p. 56.

<sup>133</sup> For Vita Tom, see e.g. SWAA 2516, with correspondence on charges against Tom concerning poaching and cattle theft, e.g. Hahn to the secretary for SWA, 2.5.1924. Thomas Mutate was involved in similar conflicts, see e.g. NAO 20, Vol. II, with various letters by Mutate to Hahn in the early 1930s.

<sup>134</sup> See note 110.

headmen councils rather than on a few powerful chiefs and headmen.<sup>135</sup> These reflections were intensified through the period of the investigation. When the prosecution of Mutate and Tom became plausible and probable, Hahn left no doubt about his intentions and exposed them in a letter to the secretary of the administration:

*“The Kaoko Otavi Hereros are an artful lot of schemers. This place has, during the last two or three years become a hotbed for intrigue and corruption. As already stated I intend breaking up this clique and placing them elsewhere... Chief Oorlog again appears to be shielding Thomas, Kambonde and their followers. If it is found that this is correct I would suggest that his authority in the Kaokoveld be considerably curtailed.”*<sup>136</sup>

Indeed, the chief was found guilty and sent to prison for a short period. With Vita Tom's and with Mutate's removal the administration faced a political vacuum, which had to be addressed. While the secretary's reactions to Hahn's visions for Kaoko had remained unconsidered up to then, they now gained some urgency. Negotiations began and some uncertainty emerged when Tom was released from prison and made known his intention to resettle in Kaoko. Yet imprisonment had left its traces and Tom's health deteriorated. He spent some time in hospital, first in Ondangwa and then in Windhoek, but was soon released in view of the gravity of his sickness.<sup>137</sup> He passed away on his way back to Kaoko in 1937.<sup>138</sup> Facing the chief's death and claiming his potential followers to lack the strength and character to succeed him, Hahn could eventually set the course for the introduction of a new system of colonial administration in Kaoko: the establishment of a council of headmen.<sup>139</sup> One of those who benefited from this administrative shift was Willem Hartley, the translator and witness in the elephant and murder cases. His professional and political career started in the context of the changes in colonial administration after 1939.<sup>140</sup> Thomas Mutate, in

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<sup>135</sup> To follow this debate, see documents filed under NAO 29 – 24/2, Kaokoveld chiefs and headmen, which begin in 1924. There are two very similar cases involving Hahn, which lead to the removal of powerful men in northern Namibia, i.e. the killing of the Kwanyama king Mandume ya Ndemufayo in 1917 and the removal of the ruler of Oukwambi, Iipumbu ya Tshilongo, in 1923. I thank Patricia Hayes for indicating this broader context of colonial policies in the northern reserves.

<sup>136</sup> NAO 28 – 24/1/1, Hahn to the secretary for South West Africa, 12. 1. 1934.

<sup>137</sup> See NAO 29 – 24/2, Hahn to the secretary for SWA, 12.4.1937.

<sup>138</sup> As Tom died in Uukwaluudhi, in then Ovamboland, he was buried there. His remains have been taken to Kaoko only in 1985, see Stahls & Otto-Reiner, 1999, pp. 72-73.

<sup>139</sup> My argument to link of the elephant and murder case to the changes in administration, which resulted in the establishment of the headmen council, significantly dissents with earlier interpretations, particularly the one by van Warmelo, N. J., “Notes on the Kaokoveld (South West Africa) and its People”, Pretoria, 1951 and Stahls & Otto-Reiner, 1999. For a more general discussion of legal processes as elements of colonial state formation, see Manicom, 1992, p. 460.

<sup>140</sup> Willem Hartley was first employed as policeman and did his duty all over Kaoko. In 1939 his father George Hartley had first been appointed as one of the headmen in the headmen council, in 1948 Willem would then

contrast, returned to Kaoko in 1938 after 3 years of imprisonment and forced labour.<sup>141</sup> Hahn repeatedly tried to have him removed to another reserve,<sup>142</sup> yet these plans failed. Mutate apparently regained economic wealth and social status as a resident of Kaoko Otavi.<sup>143</sup> Nevertheless, he was never again considered as candidate for a headman post in the administration.<sup>144</sup>

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succeed his father. See SWAA 1/2/54 – S 6/132/2, on “native staff” in Kaoko, and SWAA 2085 – A 460/24, “native chiefs and headmen in Kaoko, 1939-54”.

<sup>141</sup> Interview with David Humu, Kaoko Otavi, 12.1.2002.

<sup>142</sup> SWAA 2069 – A 454/171, Hahn to the secretary for SWA, 10.1.1938.

<sup>143</sup> Mutate returned to Kaoko Otavi, where he could stay for a short time only, as Hahn forced him to move to Omabthu in southern Kaoko, see NAO 20, Hahn, monthly report February and March 1938, 30.3.1938. Mutate’s continuous economic wealth was confirmed by interviewees, e.g. interview with David Humu, Kaoko Otavi, 12.1.2002. Lawrence Green too noted that Mutate was one of the wealthiest men in Kaoko Otavi, see Green, 1952, p. 51.

<sup>144</sup> Mutate passed away in August 1956. See BOP 8 – 1/15/61, officer in charge Opuwo to chief native commissioner, 19.1.1957.