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Recordkeeping and Missing "Native Estate" Records in Namibia: An Investigation of Colonial Gaps in a Post-colonial National Archive.

1. Introduction

National Archives are supposed to reflect what the name implies: the entire nation. But what if they reflect only a section of the population, and if that section is just a minority group? How can such an institution be called "national"?

These questions occupied my mind when, a number of years ago, I served as the Director of Library and Archives Services in the Ministry of Education in Namibia. Although I was not directly involved in the day-to-day work of the Archives, it came to my knowledge that there were problems in the Archives' user services. Both the staff and clients reported that requests by Black Namibians for person-related records such as divorce orders, adoption records, and deceased estate records from the colonial period in Namibia could not be served at the national institution. While such records from the White minority could be retrieved without problems, the corresponding Black records seemed not to exist at all.

The issue still bothered me when I had moved to the University of Namibia. If a disparity along racial lines is observed, the obvious conclusion is that its origin must be found in racial discrimination. This is all the more obvious if the country has been ruled a colony for hundred years under discriminatory laws. From 1884-1990, Namibia was ruled first by Germany and then by South

Africa. Until independence on 21 March 1990, racial discrimination was legally entrenched; from 1950 onwards under the particularly vicious policy of apartheid.

Assuming that a discriminatory treatment of person-related records between white and black, between coloniser and colonised, could be a widespread colonial phenomenon, I researched the archival and historical literature to find comparative references, and found virtually nothing. After all efforts to find the phenomenon explained in the existing archival literature failed to provide an answer, I decided to make this research gap the topic for my PhD thesis.

I limited the research to the subject of deceased estate files, which are a popular source in family history and genealogical investigations, and retain a long-term administrative value in settling inheritance disputes among descendants. To find an answer, it was necessary to look into historical legal provisions, administrative structures and processes, the role of the archives in retention, destruction, and transfer of records, and the production of discovery tools.

2. Research questions

To establish the reasons for the apparent absence of estate file of Black persons from colonial Namibia, three main research questions had to be answered.

How did the legislation deal with the creation of deceased estate records for persons previously classified as "Natives" in Namibia under colonial and apartheid rule?

How was the legal framework implemented, did it lead to "Native" estate records being registered/created, managed and archived?

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To what extent were the “Native” estate records processed and indexed by the Archives?

3. The legal background

The first research question, about the legal background had to look into two different sets of legislation – the German law which was applicable between 1884-1915, and the South African law which was applicable from 1915-1990.

The German inheritance law, which was regulated by the Civil Code (*Bürgerliches Gesetzbuch*), did not prescribe any discrimination according to race. However, under the construction of German colonialism which was originally based on so-called “protection treaties” with indigenous communities, legal matters among the members of those communities were in the beginning not falling under the German courts. Therefore one could not expect any estate files in the early German colonial records.

After the colonial war of 1904-1908, also known as the Herero and Nama genocide, the Germans considered the protection treaties of the involved communities as invalid, and therefore all legal matters now fell under the German authorities. However, the wholesale expropriation of land and cattle of the “Natives” by the German Government left the Natives with basically no property to be inherited, making the issue of estates for them an academic issue of no consequence.

When the South African armed forces occupied the German colony in 1915 during the First World War, they brought along racially discriminating legislation. Section (3) (1) (d) of the Administration of Estate Act, no 24 of 1913, which was made applicable in the territory of SWA, specifically excluded “Natives”.

The estates of “Natives” were regulated in separate legislation, as one of many issues in the “Native Administration Proclamation”. There are two key differences between the two sets of legislation:

Firstly, the provisions for Natives were much less detailed than those for “Whites”; and Secondly, while the Estates of Whites were dealt with centrally by the Master of the High Court, the Estates of Natives were the responsibility of local Magistrates or Native Commissioners and or their representatives. While Native Commissioners (employed by the Department of Native Affairs) were only appointed in a few districts, in most cases

the Magistrates (employed by the Department of Justice) were acting as Native Commissioners as part of their job. But provision for the Administration of estates of Black persons was made.

4. Administrative processes

I then went into the detail of the administrative processes involved in creating a native estate record. This was possible through two main sources.

One was the subsidiary legislation. While the primary legislation provided only the framework, the regulations and administrative circulars provided the detailed instructions to Magistrates and Native Commissioners.

The emerging picture must at the time have appeared as complex and involved to the contemporary actors, as it was now to the researcher. They had to follow the not always congruent and frequently changing instructions of two different South African government departments – the Department of Justice and the Department of Native Affairs. They had to keep track of those by reading all circulars and had to painstakingly amend the instructions in their handbooks by handwritten notes or pasting them over with new versions, which soon made them confusing and difficult to follow.

Moreover, while the Master of the High Court had adequate human and financial resources to process and preserve the White estates, which was one of his main tasks, the Magistrates and Native Commissioners had to deal with Native estates as one of many judicial and administrative tasks, with contradictory instructions, without adequate time, without adequate storage space and other resources. This had serious practical consequences. The surviving Native estate records clearly show the tell-tale signs of administrative neglect.

One particular problem was that the South African apartheid and its racial classification system (like all such systems aimed at dividing humanity) is a purely ideological construct without any scientific basis. Its definitions were constantly changing according to political expediency. As the legal situation provided for different treatment according to the three main groupings in the race classification as “White”, “Native”, and “Coloured”, the fluid definitions and re-definitions and exceptions of these concepts created confusion as to how certain estates were to be treated.

The level of confusion and arbitrariness may be summed up by a definition from the cornerstone of apartheid, the Population Registration Act of 1950:

A white person is defined as “*a person who in appearance obviously is, or who is generally accepted as a white person, but does not include a person who, although in appearance obviously a white person, is generally accepted as a coloured person*”.

5. The actual creation of Native estates

The second research question asked: How was the legal framework implemented, did it lead to Native estate records being registered/created, managed and archived?

Various search strategies led me to the discovery of a substantial amount of Native estate records in the National Archives, scattered among the files of various Magistrates, Native Commissioners, central and local government, as well as the National Archives' correspondence with these offices.

This finding allowed to research the administrative processes by following the trail of correspondence in the discovered Native estate files. What transpired from this research is that many instances were involved in administering a Native Estate, but no focal point to collect and preserve all documentation of a single case existed, unlike the Master of the High Court for the White estates.

In some instances several case files for the same person were found in different record groups, and important documents such as death notices and inventories are scattered between those files. A case could easily involve up to nine institutions in the correspondence. All of these instances could have key information in their own file, which was missing elsewhere. A statistical evaluation of the presence of certain types of documents in the Native estate files of the Chief Native Commissioner indicates that even death notices - the first and most important document to open an estate file - are not always present.

In conclusion, one can state that a chaotic state of affairs prevented the Native Estates being as efficiently managed as the White estates. This is one of the reasons contributing to the impression that estate records of Black persons are not held by the National Archives.

6. Destructions

According to the Archives Act, the destruction of records requires prior permission by the Archives and has to be reported. There was clear evidence of several instances where destruction of Native estate files took place, both at the creating offices and, after transfer, at the Archives. One case concerned the estates from the district Bethanie between 1920-1930, which had already been transferred to the Archives. The Archivist in Windhoek wrote to his superior in Pretoria:

The file contains administrative correspondence concerning a number of Non-white estates. The file does not deal with policy matters and the file has little research value and no functional value (in brackets: Destroy). [National Archives of Namibia: ARG [18] 10/1/2/49. Beskikking oor argiewe. Argiefdiens]

How the Archivist arrived at this conclusion is not explained, but the Director of Archives in Pretoria approved the destruction.

7. Surviving “Native estate” records

In the course of my research, it became however clear that there were indeed many more Native estate records at the National Archives of Namibia than previously expected, although they were apparently hidden from view. I conducted a systematic search for such records in all archival record groups where they might be suspected. The result was an unexpected amount of over 11,000 “Native estate” files actually present. Over 80 percent of those case files were entirely undiscoverable in the finding aids of the National Archives.

More than half of those undiscoverable records were found in a record group labelled NES – Native Estates. This record group had been entirely forgotten in the Archives' vaults until it had been re-discovered during a stocktaking exercise in 2003.

These records had almost been destroyed in 1974 when the Director of Archives (Pretoria) wrote: “*The only value of these files lies in the presence of form NA 16 SWA*” [National Archives of Namibia: ARG [17] 10/1/2B SWA Argief. Rekordbeheer. Keuring van boedelrekords]

Form NA 16 SWA is the death notice. The archivist in Windhoek found out that no other registration of deaths of Black persons in Namibia existed, and that saved these 6,000 files from destruction,

although the rest of their contents was considered to be of no value.

This and similar remarks point to the core of the observed total neglect of “Native Estate” records in the archives: the underlying apartheid assumption that only White lives matter and are worthy of research, while the content of the Native estate files which allows a glimpse into the lives and deaths and social conditions of Blacks was considered irrelevant. It explains why Native estates records were allowed to deteriorate, to be actively destroyed, to be forgotten, and to remain unregistered. A chronological overview table of discovered native estate files in archival groups where they should be expected reveals huge gaps in coverage, without a clear pattern of survival versus destruction.

8. Neglect and amnesia

Even of those Black estate files that are present in the archives, 80 percent cannot be discovered at all through the various discovery tools. In comparison, all White estates are easy to find in the electronic index by searching the name. The database index reveals their full names, including the names of surviving spouses, and immediately leads to the right file.

The comparison of the painstaking indexing of the White estates records with the total neglect and even amnesia regarding the Native estates records is so striking that it is difficult to explain with anything but a preconceived attitude that the “Natives” were not important. It must be assumed that the Native estates were simply not on the “radar” of the archivists who prepared finding aids and databases. They could not imagine that the researchers, which before independence were almost exclusively White, would ask for the Native estate records.

9. Conclusions

One could ask, apart from finding out why the native estates are so difficult to find in the National Archives of Namibia, what does this research contribute?

One reason I consider it worthwhile to have undertaken this study is the almost complete lack of such case studies in the archives of decolonised countries. Have they decolonised their archives? What does decolonising archives mean?

I think, decolonising the colonial archives means getting rid of the barriers that inhibit their use, and unlocking their potential for “reading against the grain”, re-interpreting and re-appropriating the colonial history. What is gone is gone, but one-sided, faulty and riddled with gaps as they may be, the colonial archives remain an indispensable source and treasure trove of information. What needs to be done is to make their content more accessible.

And this is a task that remains to be taken more serious in the archives of de-colonised nations. I hope that this investigation can spark related research in other countries and archives as well.

The discovery of the surviving “Native estates” also led to the discovery that they are valuable research resources, not only for genealogy but was well for social history, in particular of migrant labour. The formal limitations of a doctoral dissertation prevented an inquiry into this topic, but this will certainly lead to further relevant studies.

Recommendations emerging from this study include the widening of research into other important person-related records in the colonial archives, in Namibia as well as in other de-colonised nations. They also include recommendations for archival management, such as a Register of unsuccessful user queries, closing the gaps in discovery tools, closing the gaps in records, and addressing language issues.

A recent fact that is not yet mentioned in the submitted thesis may be added. During July 2015, the National Archives of Namibia has begun to catalogue the previously “forgotten” NES fonds, and the first eight boxes with 1,137 estate records have been entered into the database and are now already accessible to the public. This is a small but promising beginning, and hopefully the institution which like many archives world-wide is struggling with inadequate space and staffing can keep the momentum in decolonising their precious holdings.

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