

# From colonial land dispossession to the Etosha and Mangetti West land claim – Hai||om struggles in independent Namibia

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## 1 Introduction

Since time immemorial, north-central Namibia, including the eastern part of Etosha National Park (ENP),<sup>1</sup> has been the home of the Hai||om – a subgroup of San who survived there by hunting and gathering. The land south of the ENP had been increasingly occupied by white settlers during the first half of the 20<sup>th</sup> century, and the Hai||om were evicted from ENP in the 1950s without any consultation. At the time of the Namibia's independence in 1990, and in contrast to other ethnic groups in Namibia, the Hai||om found themselves to be altogether dispossessed of their land, with no access to communal lands at all.

Nowadays, around 10 000 Hai||om are living mostly in the Kunene and Oshikoto regions of Namibia, and to a lesser degree in the Ohangwena and Oshana regions.<sup>2</sup> They speak a variety of Khoekhoe gowab, as do Namas, Damaras and some other San groups in Namibia. Hai||om in all regions share a high level of marginalisation and poverty, though there are some variations depending on sites and available

1 The area west of the Etosha pan lacked permanent water and might have been used temporarily by different groups before the boreholes were drilled from the 1950s.

2 For more detailed information on the number of Hai||om, see 'Affidavit of Ute Dieckmann' in *Jan Tsumib and Others v Government of the Republic of Namibia and Others*, Case Number A206/2015 (Founding Affidavit), at paras 15–35.

livelihood options.<sup>3</sup> Due to the large-scale dispossession of their land, which will be discussed below, neither traditional livelihood strategies (hunting and gathering) nor agriculture can play a significant role in sustaining livelihoods. Formal employment opportunities are rare, and dependence on welfare support provided by the state is high; educational levels are generally low.<sup>4</sup>

Furthermore, Hai||om feel highly discriminated against by other ethnic groups and disadvantaged in comparison to others, for example with respect to access to land and employment and wages, so much so that the experience of marginalisation has become an integral part of a shared Hai||om identity.<sup>5</sup>

Although it is nowadays widely acknowledged that the ENP area was once the ancestral land of the Hai||om and that they have a right to “some” land, ideas regarding how to address these admissions differ. Around 2007, the time of the centenary celebrations of ENP, the Government of the Republic of Namibia (GRN) commenced with some efforts to “compensate” Hai||om for the loss of their land during colonial times by purchasing a number of farms for them in the vicinity of ENP. Sometime later, being dissatisfied with this approach, Hai||om launched a legal claim to the ENP and Mangetti West areas.

After a brief outline of the history of their land dispossession and issues regarding representation, this contribution analyses these developments and provides the context for the Hai||om litigation, which is dealt with in more detail in Chapter 6 of Odendaal, Gilbert and Vermeulen.

## 2 The colonial land dispossession of the Hai||om and its aftermath

At the onset of the colonial period, Hai||om lived in north-central Namibia, in an area stretching from Ovamboland, Etosha, Grootfontein, Tsumeb, Otavi and Outjo, in the north, to Otjiwarongo in the south. They lived mainly from hunting and gathering, but were part of an elaborate trade network with their Oshiwambo-, Otjiherero- and Khoekhoegowab-speaking neighbours.<sup>6</sup> At times, they shared areas of land and resources with neighbouring groups.<sup>7</sup>

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3 Dieckmann, Ute, ‘Kunene, Oshana and Oshikoto Regions’ in Dieckmann, Ute, Maarit Thiem, Erik Dirckx & Jennifer Hays (eds), *“Scraping the Pot”: San in Namibia Two Decades After Independence*, Legal Assistance Centre and Desert Research Foundation of Namibia, Windhoek, 2014, pp. 173–232.

4 Ibid.

5 Dieckmann, Ute, *Hai||om in the Etosha region: A history of colonial settlement, ethnicity and nature conservation*, Basler Afrika Bibliographien, Basel, 2007, pp. 296–299.

6 Ibid., pp. 44–50.

7 Widlok, Thomas, ‘The Needy, the Greedy, and the State: Dividing Hai||om Land in the Oshikoto Region’, in Hohmann, Thekla (ed.), *San and the State: Contesting Land, Development, Identity and Representation*, Rüdiger Köppe Verlag, Cologne, 2003, pp. 87–119.

Namibia became a German colony in 1884. In 1898, the German colonial government concluded a treaty with a Hai||om man, Captain Aribib. In terms of this “protection treaty”, the “Bushmen” ceded a huge area from Outjo to Grootfontein with the northern limit of the Etosha Pan to the German colonial government. In return, the Germans promised to provide “Bushmen” with “security and protection from everyone”,<sup>8</sup> and Aribib was assured of an annual allowance of 500 marks, if he fulfilled his obligations.<sup>9</sup> From a Hai||om perspective, Aribib could not have signed such a contract because it contravened the Hai||om social system. According to Hai||om customs at the time, only respected elderly men or women could hold responsibility in the small areas and the family groups to which they were closely connected; there was no hierarchical leadership structure beyond this level. In the memory of the Hai||om, Aribib was not an overall Hai||om leader. Only in recent years, a group of Hai||om in Outjo claimed to have discovered their genealogical links to Aribib and use this in correspondence with the GRN in support of their land claims.

In 1907, Governor von Lindequist proclaimed the Etosha region as one of three game reserves. The explicit reason for the establishment of game reserves was to protect game in specific areas, since it had become scarce in the territory due to the hunting activities of European travellers and traders.<sup>10</sup> Economic motivations were clearly the underlying motive for the establishment of the game reserves. The proclaimed Game Reserve No. 2 included today’s ENP, as well as Kaokoland from the Kunene River to the Hoarusib River, an area of 93 240 km<sup>2</sup>.<sup>11</sup> Following its proclamation, Game Reserve No. 2 underwent several boundary alterations under the South African administration.<sup>12</sup>

For almost fifty years after the proclamation, the Hai||om were accepted as inhabitants of the game reserve, while white settlers increasingly occupied the surrounding area. The game reserve became the last refuge where the Hai||om could still practise a hunting and gathering lifestyle, and up to the 1940s, the Hai||om were regarded as “part and parcel” of it. Between a few hundred and 1 000 Hai||om lived in the park, mainly inhabiting the southern part of Etosha Pan. Lebzelter even estimated that 1 500 Hai||om lived around Etosha Pan in the 1920s.<sup>13</sup> The Hai||om

8 Gordon, Robert, ‘Can Namibian San Stop Dispossession of Their Land?’, in Wilmsen, Edwin N. (ed.), *We are Here: Politics of Aboriginal Land Tenure*, University of California Press, Berkeley, Los Angeles, 1989, pp. 138–154.

9 Ibid.; Friedrich, Reinhard, *Verjagt... vergessen... verweht... Die Hai||om und das Etoscha Gebiet*, Macmillan Education Namibia, Windhoek, 2009.

10 Gordon, Robert, *The Bushman Myth: The Making of a Namibian Underclass*, Westview Press, Boulder, San Francisco, Oxford, 1992, p. 34.

11 De la Bat, Bernabé, ‘Etosha 75 Years’, in *South West Africa Annual*, 1982, p. 12.

12 Berry, Hugh, ‘Historical review of the Etosha Region and its subsequent administration as a National Park’, *MADOQUA*, 20(1), 1997, p. 4.

13 Lebzelter, Viktor, *Eingeborenenkulturen in Südwest- und Südafrika*, Verlag Karl W. Hirsemann, Leipzig, 1934, p. 83.

staying in the park lived predominantly from hunting and gathering; in addition, many families had livestock, especially goats, but also a few head of cattle and donkeys.<sup>14</sup> Furthermore, Hai||om men in particular had several opportunities for seasonal or regular work, either inside or outside Etosha, on farms, in mines, in road construction or at the police stations of Okaukuejo and Namutoni.

In 1949, the Commission for the Preservation of Bushmen was appointed to investigate the “Bushman question” in South West Africa. The Commission was asked to make recommendations primarily on the question of whether “Bushman reserves” were advisable or not. In the commission’s final report, the Hai||om were not regarded as sufficiently “Bushman-like” as “the process of assimilation has proceeded too far [for the Hai||om] to be preserved”.<sup>15</sup> It was recommended that the Hai||om be removed from Etosha to work on farms or to settle in Ovamboland. In the beginning of 1954, the Native Commissioner of Ovamboland convened a series of meetings in Etosha with the Hai||om to reveal the decision to expel them from the game reserve. All Hai||om, with the exception of 12 families who were employed in the park, had to leave.<sup>16</sup> Although the game reserve still had a way to go in order to become ENP, by the 1950s, the “national park ideal”<sup>17</sup> had emerged as the underlying concept for further development: “nature” and “culture” had to be physically separated, and in terms of the evolutionary paradigm, the Hai||om were not considered to be “pure” enough to count as “nature” and therefore, “nature” had to be “purified” from the Hai||om.

After 1954, at least some Hai||om could stay in the park, although no longer at the various waterholes, but at the rest camps at Okaukuejo and Namutoni and near the two gates, Lindequist and Ombika. In 1958, Game Reserve No. 2 became the Etosha Game Park. In 1967, it received the status of a national park. Fencing its perimeter became an important and labour-intensive task, and this allowed some Hai||om to return to Etosha in order to work there. The fencing was only completed in 1973.<sup>18</sup>

Those who could not or did not want to return to Etosha in order to work there joined the legions of landless generational farm labourers eking out a living on the farms on Etosha’s borders, where their labour sustained an uneconomic and heavily subsidised white-owned commercial agricultural sector before independence. In

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14 Peters, Joris, Ute Dieckmann & Ralf Vogelsang, ‘Losing the spoor: Hai||om animal exploitation in the Etosha region’, in Grupe, Gisela, George McGlynn & Joris Peters (eds), *Tracking down the past: Ethnohistory meets archaeozoology, Documenta Archaeobiologiae*, Vol. 7, pp. 103–185, Verlag Marie Leidorf, Rahden/Westfalen, 2009.

15 Namibian National Archives, SWAA A627/11/1, 1956 Native Affairs: Bushmen reserve.

16 Dieckmann, Ute, ‘“The Vast White Place”: A History of the Etosha National Park and the Hai||om Nomadic People’, *Nomadic Peoples*, 5(2), 2001, pp. 125–153.

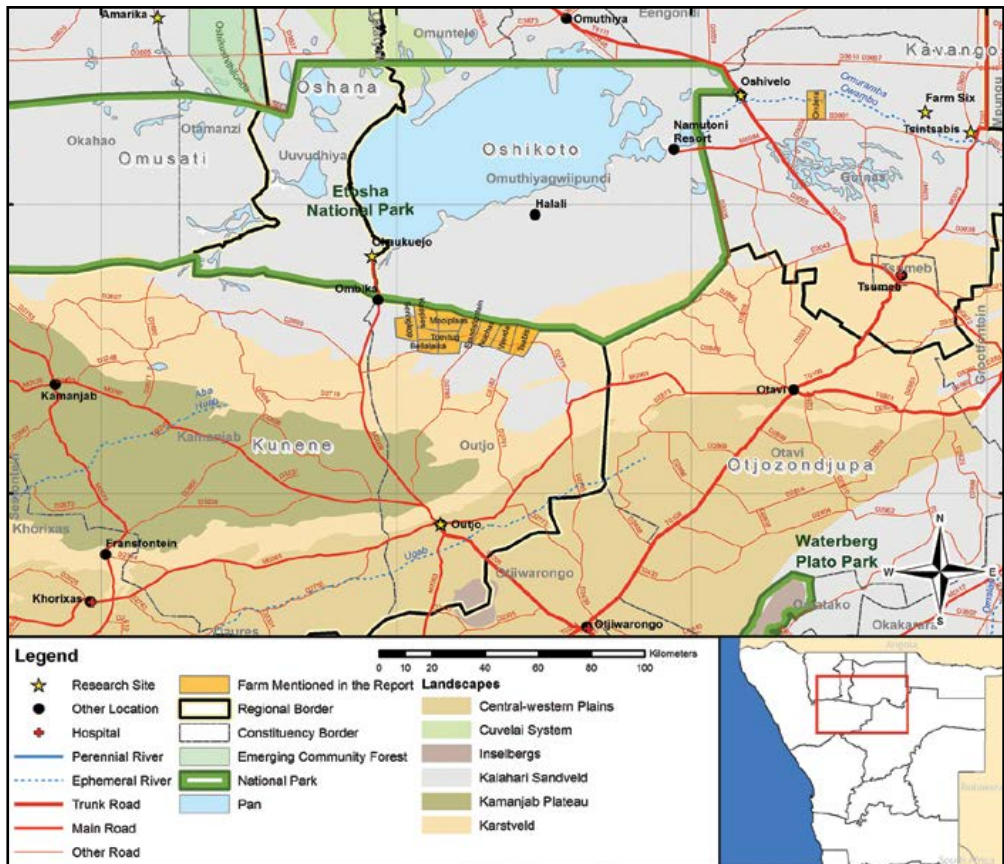
17 Neumann, Roderick P., ‘Imposing wilderness: Struggles over livelihood and nature preservation in Africa’, *California Studies in Critical Human Geography*, Vol. 4, University of California Press, Berkeley C.A., 2002 [1998].

18 Berry, Hugh, *Final Report: Ecology, Behaviour and Population Dynamics of the Blue Wildebeest at the Etosha National Park*, Okaukuejo, 1980.

1984, 244 Hai||om lived in the park at Okaukuejo, Halali, Namutoni and the two gates.<sup>19</sup>

Most Hai||om who had traditionally lived south and east of Etosha had already become farm labourers during the first half of the 20<sup>th</sup> century. Life on the farms was very insecure, depending entirely on the farmers' discretion. Only a few Hai||om stayed at one farm for the rest of their lives; the majority moved from one farm to another, and some of them worked on more than twenty farms in the region around Outjo and Otavi.<sup>20</sup>

Figure 1: Area in north-central Namibia inhabited by Hai||om



The Mangetti lands north-east of Etosha, which till then had been a regular seasonal dwelling place for Hai||om with only occasional visits from neighbouring groups or Europeans,<sup>21</sup> developed into an important settlement area. The Mangetti

19 Marais, Francois, *Ondersoek na die Boesmanbevolkingsgroup in S.W.A.*, Windhoek, 1984, p. 37.

20 cf. note 5, pp. 217–223.

21 Widlok, Thomas, *Living on Mangetti*, Oxford University Press, Oxford U.K., 1999, pp. 3–4.

West Block is an area of about 80 000 ha, 50km to the north-west of Tsintsabis. It was originally acquired by the South African administration as a quarantine camp for livestock moving from the northern communal areas into the commercial farmlands to the south. After 1970, water-pumps and permanent enclosures were established on the Mangetti lands for the livestock of white farmers. Hai||om provided occasional labour and exchanged bush products with farm employees at these newly established cattle posts. By 1979, there were over 300 Hai||om living on the Mangetti lands (on “Farm Six”).<sup>22</sup> Today, the Namibian Development Corporation leases the Mangetti West Block from the GRN.

### 3 Current land situation

Following Namibia’s independence in March 1990 and the first National Conference on Land Reform and the Land Question in 1991, the GRN took measures to redistribute the country’s land and facilitate land reform. Though the GRN made some attempts in the 1990s and early years of the new millennium to address the landlessness of the San, including the Hai||om, these have not made a fundamental difference to their situation. Worse still, and though the GRN denies it,<sup>23</sup> it has failed to protect Hai||om who still had *de facto* land rights (e.g. those living in Mangetti West) from encroachment by other ethnic groups.

Concerning the various land-tenure systems under which Hai||om are living, the situation of Hai||om regarding land can be outlined as follows:

- The Hai||om in the Etosha National Park have no *de jure* land rights.
- Hai||om who live and work on commercial farms have no rights to such land at all; Hai||om whose farm employment ceases have no land to call their own, and usually end up in informal settlements in towns in the vicinity, or with family on resettlement farms (many of which are already overpopulated). Most of the Hai||om in urban areas (e.g. in Outjo, Otjiwarongo or Tsumeb) have no tenure security, and are living in informal settlements where residents are regularly threatened with eviction. The communal land in the north where Hai||om are living as a minority among the large majority of Oshivambo-speaking residents falls under the traditional authorities (TAs) of the respective Oshivambo-speaking groups.<sup>24</sup>

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<sup>22</sup> Ibid., p. 4.

<sup>23</sup> United Nations Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the Convention Thirteenth to fifteenth periodic reports of States parties due in 2012 Namibia*, 2015.

<sup>24</sup> Dieckmann, Ute & Erik Dirx, ‘Access to land’, in Dieckmann, Ute, Maarit Thiem, Eric Dirx & Jennifer Hays (eds), *“Scraping the Pot”: San in Namibia Two Decades after Independence*, Legal Assistance Centre and Desert Research Foundation of Namibia, Windhoek, 2014, pp. 437–464.

- Some Hai||om were resettled under the national resettlement programme by the Ministry of Land Reform (MLR) on group resettlement farms in the first 15 years after independence.<sup>25</sup> From the approximately 55 group resettlement farms, about seven of them (Exelsior, Oerwoud, Tsintsabis, Kleinhuis, Namatanga, Queen Sofia and Stilte) have considerable numbers of Hai||om beneficiaries. However, a high level of dependency on GRN support exists on these farms, and self-sufficiency is unlikely to be achieved in the near future.<sup>26</sup> Furthermore, it is unlikely that any of the resettled Hai||om beneficiaries have ever received any title deed in their individual names.
- The Hai||om community of Farm Six in the Mangetti West Block face even worse problems regarding access to land.<sup>27</sup> For a long time, they had *de facto* land rights and could hunt and, even more so, gather bushfood in the area. These activities came under pressure when the Namibian Development Corporation made four farms in the Mangetti area available for the relocation of Oshiwambo-speaking cattle owners who had lost a court battle regarding their illegal cattle grazing activities in western Kavango Region. Although this was meant to be a temporary solution, in 2010 the Owambo farmers' stay was extended. Even though not all the 57 cattle owners moved to this area, the number of cattle has continued to increase, putting heavy strain on the water resources.<sup>28</sup> The Owambo farmers' cattle are grazing in the area where Hai||om used to have temporary camps to hunt and gather bush food.

## 4 The issue of community representation

Given this shared experience of land dispossession and marginalisation, Hai||om see an urgent need to have a “representative” to negotiate on behalf of the Hai||om with the state. In this regard, the most powerful institution is currently the TA, provided for by the Traditional Authorities Act (No. 25 of 2000). The main functions of all of Namibia's TAs, as established by the act, are: to cooperate with and assist the GRN; to supervise and ensure the observance of customary law; to give support and advice, and disseminate information; and to promote the welfare and peace of rural communities.

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25 Note that this was another scheme, namely the Land Reform Programme, and Hai||om were resettled amongst others; this was different to the scheme under the San Development Programme, through which farms were explicitly handed over to the Hai||om – described in detail further on in this chapter.

26 Republic of Namibia, *Report on the Review of Post-Resettlement Support to Group Resettlement Projects/Farms 1991–2009*, Republic of Namibia, Windhoek, 2010.

27 National Planning Commission, *Oshikoto Regional Poverty Profile*, Windhoek, 2007, p. 39.

28 Shivute, Oswald, 'Oshiwambo farmers have their Mangetti stay extended', *The Namibian*, 2 August 2010.

It is noteworthy that in the past, the traditional social organisation of Hai||om (and other San groups) was generally “egalitarian”, and made no provision for a single traditional leader. On the contrary, levelling mechanisms were in place that countered the establishment of powerful authorities.<sup>29</sup> Headmen of smaller family groups had certain responsibilities, especially in the context of managing natural resources, but decisions were made rather by consensus, than by one individual.<sup>30</sup> However, the Traditional Authorities Act in essence applies the traditional system of Oshiwambo-speaking groups (who constitute over 50% of the Namibian population) as a model, and this model is characterised by a hierarchical authority structure with a single representative leader for a large group. This model does not work well for all leadership structures in the country, and San communities, in particular, find it difficult to use this institution for their own benefit.<sup>31</sup> Nevertheless, Hai||om perceive the institution as being an important tool for making their voices heard.

The official Hai||om TA under Chief David ||Khamuxab was recognised by the GRN on 29 July 2004. Already then, other local Hai||om groups immediately rejected the recognition claiming that the “so-called Traditional Authority was nothing but a SWAPO structure”<sup>32</sup> and that the TA had not been elected by the Hai||om community. During the following years, most of the development targeting the Hai||om was channelled through the Hai||om TA. Currently, dissatisfaction with the chief is evident in most Hai||om communities, and there is a division amongst the Hai||om between supporters of the chief (whose numbers continue to decline) and opponents of the chief.<sup>33</sup> Major concerns include the absence of proper elections to appoint the chief, a lack of information and transparency, corruption and favouritism, and therefore a general lack of representation of Hai||om community interests. This conflict is a major impediment to development.<sup>34</sup> In recent years, the GRN has become increasingly aware of this challenging situation, and of the complexities regarding the role Chief ||Khamuxab plays in community development efforts.<sup>35</sup>

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29 Guenther, Mathias, *Tricksters and Trancers: Bushman Religion and Society*, University Press, Bloomington and Indianapolis, 1999, pp. 33–34.

30 *Ibid.*, p. 45.

31 Dieckmann, Ute, Maarit Thiem & Jennifer Hays, ‘Introduction’ in Dieckmann, Ute, Maarit Thiem, Erik Dirx & Jennifer Hays (eds), *“Scraping the Pot”: San in Namibia Two Decades After Independence*, Legal Assistance Centre and Desert Research Foundation of Namibia, Windhoek, 2014.

32 Amupadhi, Tangeni, ‘New Hai||om Traditional Authority eyes Etosha’, *The Namibian*, 29 July 2004.

33 Oreseb, Costa, Reader’s Letter: ‘All is not well with the Hai//om’, *New Era*, 24 June 2011.

34 See also Koot, Stasja & Robert Hitchcock, ‘In the way: perpetuating land dispossession of the indigenous Hai||om and the collective action law suit for Etosha National Park and Mangetti West, Namibia’, *Nomadic Peoples*, 23(1), pp. 55–77.

35 Collinson, Roger & Willem Odendaal, personal communication, Outjo, 2019.



These issues can be understood as a conflict between the traditional structures and processes of the Hai||om and those defined by the Traditional Authorities Act. The Act stipulates that TAs should be designated in accordance with the customary law of the applicable traditional community. However, unlike the customary laws of many other traditional communities in Namibia, the customary law of the Hai||om (like that of most San communities) does not make any provision for the establishment of overall authorities.<sup>36</sup> Furthermore, whereas local and national political leaders come to power through elections, traditional leaders are appointed, and there is little transparency in the appointment process, so the system is open to abuse. In some cases, the process through which a TA comes to power is very obscure, and it is often said that party politics have played a role. Furthermore, the lack of powerful individual leaders in “traditional” Hai||om society means that the TAs lack internal role models to emulate in their own leadership positions. In general, training for Namibian TAs, monitoring of their performance, and the requirement of accountability are virtually non-existent, and the GRN does not provide support or training to help TAs to acquire the necessary competencies to fulfil their roles as community leaders. Another difficulty is posed by the fact that all TAs in Namibia receive monthly remuneration, as well as a 4X4 vehicle and other provisions from the government. For many reasons, this access to money, transportation and other benefits is the source of conflict in a community whose traditional values were strongly egalitarian.

Over the years, Hai||om have also attempted to establish several other community-based organisations to represent either segments of the Hai||om community or the overall community independently of the TA. None of these organisations proved capable of providing the Hai||om with a powerful common political voice. As with the TAs, one of the biggest obstacles in the path of any overall Hai||om organisation is that the former egalitarian structures do not provide for any kind of formal “authority” that is empowered to speak on behalf of the Hai||om on the whole. Furthermore, the legacies of the colonial history, above all land dispossession (resulting in a lack of communication and transport) and marginalisation (implying low levels of education and the lack of money and transport), are additional challenges.<sup>37</sup>

Most importantly, however, the GRN is hesitant to accept any other structures than the TA for indigenous communities to negotiate with.<sup>38</sup>

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36 See also Dieckmann, Ute & Erik Dirks, ‘Culture, Discrimination and Development’, in Dieckmann, Ute, Maarit Thiem, Eric Dirks & Jennifer Hays (eds), *“Scraping the Pot”: San in Namibia Two Decades after Independence*, Legal Assistance Centre and Desert Research Foundation of Namibia, Windhoek, 2014, pp. 509–512.

37 Dieckmann, Ute & Ben Begbie-Clench, ‘Consultation, Participation and Representation’, in Dieckmann, Ute, Maarit Thiem, Erik Dirks & Jennifer Hays (eds), *“Scraping the Pot”*, pp. 604–606.

38 *Ibid.*, p. 608.

## 5 The strategy of the Namibian government: Resettlement

The establishment of the San Development Programme (SDP) resorting under the Office of the Prime Minister (OPM) in 2005 helped to raise awareness of the marginalised situation of the San in Namibia. The aim of the SDP was to ensure the integration of San in the mainstream of Namibia's economy. In 2007, the programme was extended to cover other marginalised communities such as the Ovaherero, Ovatombe and Ovahimba. In 2009, the programme was transformed into the Division of San Development (DSD), still resorting under the OPM. In 2015, the DSD was renamed the Marginalised Communities' Division (MCD) and shifted to the Office of the Vice-President (OVP). The urgent issues acknowledged under the SDP/DSD/MCD included the impact of colonial land dispossession on the San, the current landlessness of San communities, education, and unemployment. The SDP/DSD/MCD responded to the land issue of the San by donating resettlement farms to San communities in various regions. Despite the well-known challenges associated with group resettlement, this model was employed for San resettlement.

Some of these resettlement farms were earmarked specifically for the Hai||om. This was also related to the centenary celebrations of ENP in 2007: the GRN could not ignore the fact that the Hai||om had lost their land due to the establishment and development of the ENP, and that the centenary was therefore not an event to celebrate for them.<sup>39</sup>

Prior to 2007, the MLR had already carried out farm assessments and identified potential farms for purchase. In 2007, a professional consultant was contracted to conduct research on behalf of the Ministry of Environment and Tourism (MET), and this resulted in a project implementation plan for the resettlement of the Hai||om and the establishment of conservancy-like institutions.<sup>40</sup>

Originally, the primary target group for resettlement was the Hai||om still residing within ENP, of whom only a minority were employed by the MET and Namibia Wildlife Resorts (NWR)<sup>41</sup> while the rest were retired or unemployed, and staying with their employed relatives. Another target group for resettlement were the Hai||om staying in Oshivelo, a settlement at the eastern side of ENP.<sup>42</sup> The plans envisaged that farms be bought for resettlement by the MLR on the eastern side of the park (close to Oshivelo) and at the southern border of the park (close to the Anderson gate and Ombika). The resettled Hai||om should be assisted to develop

39 Weidlich, Brigitte, 'Hai||om settled near former Etosha home', *The Namibian*, 17 November 2008.

40 Ministry of Environment and Tourism, *Hai||om San Socio-economic Development Adjacent to the Etosha National Park: Project Information Document*, MET, Windhoek, 2007.

41 NWR is a state-owned enterprise, mandated to run the tourism facilities within the protected areas of Namibia.

42 Shigwedha, Absalom, 'San to get land near Etosha', *The Namibian*, 26 March 2007.

sustainable livelihoods on the redistributed land through a variety of strategies and land uses, involving the utilisation of wildlife, tourism, and, as in the case of communal areas, the creation of conservancies. There were also discussions about the Hai||om getting access in the form of concessional rights over specific sites in ENP which were of particular cultural importance to them.<sup>43</sup> It is noteworthy that in his report the consultant stressed that there was a considerable need for proper planning at different stages of the project, including a need to carry out certain feasibility studies before some of the proposed activities could be initiated. Moreover, he warned that if the project moved too quickly, simply in order to get results on the ground, then the Hai||om community would not properly benefit from the project. Additionally, the necessity to provide sound capacity-building programmes was stressed. It was anticipated that the project would require commitment from the GRN and donors over a period of at least ten years so as to provide the Hai||om with sustainable livelihoods based on sound land management, the development of productive businesses and partnerships, and good governance.

In November 2008, the first farms (Seringkop and part of Koppies, with a total area of 7 968 ha on the southern border of ENP) were officially handed over to the Hai||om TA. It was the first time in the country's post-colonial resettlement history that a resettlement farm had been handed over to a particular ethnic group.<sup>44</sup> On the one hand, this could be interpreted as a deviation from relevant national policies on land and resettlement, but on the other hand, the Hai||om are recognised as a primary target group of the Resettlement Programme.

Since 2008, the GRN has purchased five more farms close the southern border of ENP specifically for the Hai||om: Bellalaika (3 528 ha), Mooiplaas (6 539 ha), Werda (6 414 ha), Nuchas (6 361 ha) and Toevlug (6 218 ha); and in early 2013, Ondera/Kumewa (7 148 ha), a combined farming unit around 30 km east of Oshivelo (see Figure 1).

Most of the Hai||om residents in ENP initially resisted their relocation, fearing that they would lose all access to the park once they had agreed to be resettled on the farms, while their priority was to get employment in the park and to stay there. Since 2012, though, a small number of Hai||om from ENP have agreed to move to the farms, as the MET promised to provide them with housing and other support.<sup>45</sup>

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43 For more detail, see Dieckmann, Ute, 'The Hai||om and Etosha: a case study of resettlement in Namibia', in Helliker, Kirk & Tendai Murisa (eds), *Land struggles and civil society in Southern Africa*, Africa World Press, New Jersey, 2011, pp. 155–189.

44 Another farm of 6 389 hectares (data provided by MAWF) had already been handed over to San communities in February 2008. However, this farm was handed to "San" belonging to several of the six different San groups. As the six different San groups do not identify themselves as one overarching ethnic group, this resettlement project was – strictly speaking – not a resettlement project based on ethnic criteria.

45 Lawry, Steven, Ben Begbie-Clench & Robert K. Hitchcock, *Hai||om Resettlement Farms Strategy and Action Plan*, Windhoek, 2012, p. 9.

The MET saw an opportunity for an innovative public–private partnership between current landowners, the GRN and the Hai||om community at Oshivelo to the east of ENP. A Hai||om community trust (the Namutoni Hai||om Trust), with a focus on the Hai||om around Oshivelo, had been developed as an initiative of the private land owners, and an agreement had been reached to create a conservancy-like institution with the Trust and the private landowners as partners. Apparently, however, the negotiations between the GRN and the private landowners did not work out as anticipated. For many years, no development whatsoever for the Hai||om at Oshivelo materialised. Only in 2013 were the farms Ondera/Kumewa handed over to the Hai||om TA. Notably, Ondera/Kumewa had been a commercial farm with agricultural infrastructure in place. Subsequently, Hai||om from Oshivelo surrounding commercial farms and other resettlement farms have started moving there.<sup>46</sup>

By September 2012, around 690 Hai||om were living on the seven resettlement farms south of Etosha, including the chief. The fact, that a Land Use Plan and Livelihood Support Strategy,<sup>47</sup> followed by a Strategy and Action Plan, was only released in 2012 is an indication that there has been very little coordinated planning beyond land purchases in the early stages, and stands in stark contrast to the measures proposed in the initial consultant’s report. The reports mentioned above had been commissioned by Millennium Challenge Account – Namibia (MCA-N) as response to a request from the MET for planning assistance. Access to the resettlement farms was managed by the Hai||om TA. The chief received resettlement requests from local Hai||om people and then provided them with places on the resettlement farms once the farms had been purchased and handed over to the TA. This was a matter of concern for many Hai||om, who felt that many of those people first resettled were family of the chief, or closely connected to him.

Pension money and food aid were the main livelihood strategies on the farms for the majority of farm residents. Transport to Outjo, which is at least 90 km away, mostly by gravel road, in order to access the pension money was a problem. Livestock was an important source of subsistence and income for only a minority of the Hai||om, as only 14.73 % of the Hai||om on the farms actually owned livestock. Livestock production was constrained by the limited access to water at some parts of the farms, uneven grazing conditions, disease and predation. Income-generating activities included the exploitation of natural resources such as firewood, mopane worms and medicinal plants, and the production of crafts, but were relatively undeveloped. Communal gardens were established on two farms, but they were not very successful, and resettlement beneficiaries indicated that they would

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46 *Jan Tsumib and Others v Government of the Republic of Namibia and Others*, Case Number A206/2015 at para 78 (Founding Affidavit of Jan Tsumib).

47 Lawry, Steven & Robert K. Hitchcock, *Hai||om Resettlement Farms: Land Use Plan and Livelihood Support Strategy*, Windhoek, 2012.

prefer individual gardens. Few of the Hai||om had backyard gardens that were irrigated. The limited availability of water was a major constraint in this regard. The resettlement farms received support through a variety of GRN agencies (e.g. in terms of infrastructure, financial and technical support) and the Namibian–German Special Initiative Programme.

It was additionally envisaged since the early stages of planning that the Hai||om on the resettlement farms should be enabled to gain additional income through the granting of a tourism concession to the specific area around the waterhole !Gobaub in ENP, and in 2011, a feasibility study was conducted to assess this option.<sup>48</sup> Extensive debate took place between the MET and MCA-N during 2011 and 2012 regarding the type of legal entity such a concession could be granted to, with the latter emphasising the need to have a democratic institution in place. It was most probably the involvement of MCA-N, whose representatives were aware of the internal conflicts around the TA and understood that the community therefore had no single representative body, which led to the establishment of an association to operate as “the concessionaire” instead of the Hai||om TA.<sup>49</sup> Eventually, in September 2012, the !Gobaub Community Association was established to oversee the wildlife tourism concession around the !Gobaub area. The constitution of the association was drawn up by lawyers in Windhoek without proper consultation or participation of the potential members and without taking the realities on the ground into account.

Contrary to the recommendations made in another consultancy report which recommended a broader approach, the MET decided that benefits from the concession should only be available to Hai||om residents on the resettlement farms. This meant that the people who decided to stay in Etosha, as well as other Hai||om who had lost land during the colonial period but did not stay on the resettlement farms, were excluded from any benefits arising from the !Gobaub concession, whereas the *Report on the Strategy and Action Plan for the Hai||om Resettlement Farms* compiled in September 2012 had concluded: “We believe that there is considerable merit in including the Etosha Hai||om in the membership of the !Gobaub Community Association.” Shortly after the association was established, the concession agreement was signed between the MET and the !Gobaub Community Association.<sup>50</sup> Despite the contract’s statement that the Hai||om community would be the concessionaire, the reality was that only people from the resettlement farms, as members of the association, would become beneficiaries of the concession. There had been no thorough consultations or participation by the members of the association or

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48 Collinson, Roger, ‘Feasibility Study: Exclusive access tourism concession inside Etosha National Park for direct award to the Hai||om Community’, Windhoek, 2011.

49 Jones, Brian & Lara Diez, ‘Report to Define Potential MCA-N Tourism Project Support to the Hai||om’, Windhoek, 2011.

50 Ministry of Environment and Tourism, ‘Head Concession Contract for the Etosha South Activity Concession – Etosha National Park’, 2012.

with the rest of the Hai||om. Furthermore, the rights for the concessionaire were very limited, and it is questionable whether the Hai||om would receive any kind of sustainable benefit based on the contract. It should be noted that the idea of building a lodge at !Gobaub for the exclusive benefit of the Hai||om was originally developed by the residents in ENP (see next section).

Currently, the MCD in the OVP coordinates and leads the post-resettlement support, and OVP employees are paying regular visits to the resettlement farms. However, the residents do not see the desired changes. Residents who moved to the farms from ENP complained about the lack of job opportunities on the farms and considered moving back to Okaukuejo.<sup>51</sup>

Some residents received livestock through the Namibian–German Special Initiative Programme, which ended in 2014. It was stated that ongoing and sufficient post-donation support was lacking. Furthermore, predators preying on livestock, especially hyenas and lions breaking through the ENP fences, remained a problem. Some residents collected firewood or produced charcoal for sale, while a few women received sporadic payments from working in a gardening project which is managed by the MCD.

The residents reported not having any papers testifying to their rights to land, and not feeling secure with regard to their right to stay on and use the land.<sup>52</sup>

In short, land acquisition and resettlement planning and strategy on the resettlement farms south of Etosha were of a piecemeal nature, and the resettlement of the Hai||om was anything but a well-planned and coordinated process. The crucial question of livelihood sustainability was not adequately addressed. Although resettlement had already begun in 2008, 11 years later the Hai||om remain unable to sustain themselves on these farms. Due to the remoteness of the farms, employment opportunities, piece work options and options to engage in small businesses were more limited than in larger settlements and towns such as Okaukuejo, Outjo or Otavi. At Ballalaika, the garden project was not self-sustainable, and few Hai||om actually kept livestock there. It appears that the Hai||om became even more dependent on GRN aid on the resettlement farms than they had been beforehand during the times when they lived in towns or in ENP. Furthermore, GRN participation and consultation initiatives were mainly facilitated through the Hai||om TA, which, as it turned out, complicated issues further and led to more divisions amongst the community.

With regard to the tourism concession, it also appears that no substantial progress has been made. This is also due to internal disagreements regarding who should negotiate on behalf of the Hai||om. While the chief would apparently like to take a leading role in this, both the MET and the !Gobaub Community Association

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51 The Legal Assistance Centre visited the resettlement farms of Ballalaika and Nuchas in June 2019 in order to talk to Hai||om residents there about their living conditions.

52 Ballalaika community, resettlement farms, Ballalaika, 2019.

persist in making the association the sole concessionaire. Apparently, this is hampering negotiations with several lodge-owners who have expressed an interest in investing and building a lodge at the farm Nuchas. As a result, no benefits have yet been derived from the concession for “the Hai||om community”.

At first sight, it appears that the situation on Ondera, the farm to the east of ENP that was handed over to the Hai||om in 2013, is better than that on the farms south of ENP. In 2016, a reporter from *The Namibian* newspaper even referred to Ondera as “Namibia’s resettlement jewel”.<sup>53</sup>

The number of households on Ondera has grown considerably since the early stages of resettlement. In 2016, around 120 households were reported to be living there;<sup>54</sup> by 2018, the Deputy Minister of Marginalised Communities, Royal /Ui/o/oo, mentioned 430 households,<sup>55</sup> and speaking to the Legal Assistance Centre (LAC) team in 2019, a resident estimated around 460 households to be living there.<sup>56</sup>

At the time when the farm became a resettlement project, it had fully operational dry and irrigation farming systems in place, and the agricultural activities were ongoing. The income from sales was kept in a trust account, and the people involved in the project were getting a monthly allowance of N\$1 200 each from the MCD.

In terms of a 2014 agreement between Namsov Fishing Enterprises (Pty) Ltd. and the OVP, the Namsov Community Trust made several donations to the Hai||om at Ondera, although this support ended in 2018. In 2016, it was reported that the Namsov Community Trust had donated 212 cattle to the community, and that 10 herders were paid a monthly allowance of N\$700 each. In 2018, Ondera received another major donation of 205 cattle, a new double-cab utility vehicle, a tractor and a variety of farming implements worth a combined N\$7 million from Namsov.

In 2019, the main sources of income at Ondera were pension money and the garden project. However, pensioners without a “smart card” still need to travel to Tsumeb to receive their pensions. A regular electricity supply is a major challenge at the farm and also hampers the cultivation of crops. Residents would also prefer to have individual plots, rather than the community cultivation project. The allowances paid by the MCD were reported to be irregular. The drought aid (including mealie-meal, tinned fish and cooking oil) supplied by the GRN was insufficient and irregular. Residents were told that the carrying capacity of the farm for all types of livestock was 400. With 460 households living at Ondera, this would amount to less than one head of livestock per household, which cannot possibly represent a significant source of income or food.

The nearest clinic is at Oshivelo, about 45km away; there are hospitals at Tsumeb and Oshivelo, and two health workers are working at Ondera. Food is also mainly

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53 Itamalo, Marx, ‘Ondera is Namibia’s resettlement jewel’, *The Namibian*, 29 July 2016.

54 Ibid.

55 Staff reporter, ‘Hai//om San receive N\$7m farming boost’, *The Namibian*, 1 October 2018.

56 Ondera community, resettlement farm, Ondera, 2019.

bought at Oshivelo or Tsumeb. An Early Childhood Development Centre and a primary school, reportedly attended by 350 – 400 children, are at Ondera. Secondary schools are located at Ombili, Oshivelo and Tsumeb. Residents mentioned the lack of job opportunities as a major stumbling block preventing the completion of schooling, mainly because people are pessimistic about finding work after doing so.

Irregular electricity supply and transport appear to be major problems at Ondera, and residents complained that the MCD did not always react and assist when problems, e.g. concerning electricity, were reported. Residents felt insecure with regards to land rights, and reported that GRN officials had told them to leave when they were not willing to work on the farm.

In sum, compared to the farms south of ENP, Ondera would at first sight seem to have better prospects for development. Considering the fact that 460 households (estimations of the total population are as high as 2 000) already reside at the farm, however, farming activities (livestock and cultivation) can hardly meet the needs of the inhabitants. The distance to the nearest towns are major obstacles that limit other income generating activities.

To date, Hai||om have been resettled on eight farms with about 44 206 ha of land under the OPM/OVP. Dependency on GRN support is high, and opportunities to develop self-sustainable livelihoods on these farms seem to be low in the absence of strong and coordinated efforts to establish diversified livelihood options moving beyond small-scale gardening and small-scale livestock production.

## **6 Legal action by the Hai||om: Reclaiming Etosha and Mangetti West**

A group of Hai||om within Etosha, the Okaukuejo Hai||om Community Group, became increasingly unsettled with the developments regarding the resettlement farms south of Etosha after the first farms were handed over to the chief.<sup>57</sup> They were reminded of the eviction of the Hai||om in the 1950s and feared that the remaining Hai||om still living in ENP would now also be expelled from their ancestral land. Furthermore, having lived and worked in Etosha for most of their lives, they had hardly any experience in farming and no spiritual connection to the land outside the park. Living on a resettlement farm did not seem like a viable option to them. In 2010, they held a meeting with the Prime Minister to raise their concerns.<sup>58</sup>

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57 Due to my previous research and my work at the LAC (2008–2015), I was kept updated on developments. The Hai||om Community Group, and later the Etosha Hai||om Association (EHA) regularly consulted the lawyers at the LAC and forwarded the letters they had sent to government officials to the LAC.

58 Komob, Bandu, 'Letter to the Minister of MET on behalf of the Hai||om Community Group', Okaukuejo, 2010.



The Prime Minister referred them to the Minister of the MET, Netumbo Nandi-Ndaitwah, to discuss the matter. Her opinion was that it was in the Hai||om's best interests to move out of Etosha.<sup>59</sup> She also visited Okaukuejo to present the GRN's plans regarding resettlement and possibly a concession.

The Okaukuejo Hai||om Community Group felt that their concerns and demands were not being taken seriously, and continued writing letters to the Minister of Environment and Tourism. They clarified that they didn't recognise Chief David ||Khamuxab as their chief because he had not been democratically elected by the Hai||om and was not working on their behalf, and asked for new elections to appoint a Hai||om TA. They wanted the GRN to recognise that the Hai||om are the indigenous inhabitants of ENP and for respect of their cultural heritage there. They therefore wanted to be consulted and to take part in decision-making processes regarding the development of ENP. They noted that they did not want to be resettled on farms and that they had never requested resettlement farms. They further requested that the GRN should hand over !Gobaub as a cultural heritage site to the Hai||om. As second option instead of !Gobaub as a cultural heritage site, they asked for the Okaukuejo location to be declared a Hai||om heritage site, referring to the plans of the government (with MCA-N) to build staff quarters for MET employees at Ombika Gate (the southern entrance to ENP).<sup>60</sup> Furthermore, they asked the GRN to take affirmative action to address the high level of unemployment amongst Hai||om youths within the park, pointing out that members from other ethnic groups, originating from other areas, would nowadays get preferential employment in the park.

A letter addressed to the Minister of Minister of Environment and Tourism, written on the 7th July 2010, stated:

Our hearts are in Etosha and we don't want to be resettled on farms without any acknowledgement that we are the original inhabitants of Etosha. We don't want our rich cultural heritage to be forgotten and we strongly believe that the Government can benefit in providing space for our rich cultural heritage within the Etosha National Park. Tourists will also appreciate it and the image of the Park will be improved. After having lost the land long time ago and with it our livelihoods, we ask to start to benefit from the Etosha National Park. We hope to start negotiations with the Namibian Government in order to find solutions for all of us.

The MET did not react to the letter, and the Okaukuejo Community Group decided to ask the LAC for legal assistance with respect to "taking government to court".<sup>61</sup>

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59 Ibid.

60 They apparently envisaged that all MET employees would move to the new staff quarters at the gate and that the location which was used as so-called junior staff quarters would become a Hai||om heritage site.

61 Komob, Bandu, 'Letter to LAC: Okaukuejo Hai||om are ready to take the Namibia Government to court', 2010.

During the following months, on advice of the LAC, the Etosha Hai||om Association (EHA) was established in order to have a legally recognised voice which could act independently of the TA, which was at that time the only voice of the Hai||om officially recognised by the GRN. The main objectives of the EHA was to promote the general welfare of all the Hai||om and to secure for themselves and their descendants security of tenure within or in connection with ENP, and to secure their legal rights within Namibia. Importantly, the membership was open, subject to certain conditions, for any person who shared a common cultural identity with the Hai||om people or the Hai||om traditional community. The founders of the association travelled to other Hai||om communities to introduce the organisation and its aims, to secure support for it, and to extend the membership to Hai||om living outside ENP.

In April 2011, the committee of the EHA wrote another letter to the Minister of Environment and Tourism and other stakeholders to call a stakeholder meeting in order to discuss their concerns again with a view to reaching a consensus on the way forward.

In the letter, the EHA explained its mandate, based upon accepted international human rights as set out in the United Nations Declaration on the Rights of Indigenous Peoples, to which Namibia is a signatory:

- (a) To ensure that the relevant land upon which Etosha National Park is situated is openly/formally acknowledged as being Hai||om ancestral land;
- (b) That the area around !Gobaub and Halali be handed back to the Hai||om under a tenure system that is secure for the benefit of future generations; see attached map.
- (c) That Hai||om have exclusive rights to benefit from any tourism development and resources within the aforesaid exclusive area and to enable its members and their families to assert and gain rights to develop tourism accommodation establishments and conduct and operate guided tours within the boundaries of the area;
- (d) That as compensation for dispossession of other land Hai||om are financially remunerated from the tourism operations of the National Park.
- (e) That affirmative action is applied in favour of Hai||om employment opportunities within the National Park.”<sup>62</sup>

The meeting took place on 30 May 2011 and was attended by representatives from the MET, including the Minister, members of the Hai||om TA (including the

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62 EHA committee, ‘Letter EHA to Minister of Environment and Tourism, Honorable Minister Mrs. Netumbo Nandi-Ndaitwah, CC to Ministry of Lands and Resettlement, Millennium Challenge Account, Namibia Wildlife Resorts, Hai||om Traditional Authority, Office of the Prime Minister, San Development Programme, The Legal Assistance Centre’, Windhoek, 2011.

chief), members from MCA-N and several NGOs (Namibian Association of CBNRM Support Organisations, the Nyae Nyae Development Foundation of Namibia, Working Group of Indigenous Minorities in Southern Africa and the LAC). It is worth describing the meeting in some detail, as it might have been a turning point in the Hai||om strategy to get heard.

The Permanent Secretary of the MET introduced the “Hai||om Programme”, mainly the state of affairs and the plans regarding the resettlement farms and explained which GRN bodies and other organisations were involved.

Subsequently, the MCA-N representative, Fanel Dermas, explained the involvement of MCA-N to support the Hai||om.<sup>63</sup> He stressed the importance of the establishment of a legal entity, i.e. the EHA, in order to benefit from MCA-N support, and pointed to a “needs assessment”, which had already been commissioned.

In short, the MET Permanent Secretary, with the additions of the MCA-N representative, outlined a prosperous Hai||om future on the resettlement farms with ample support and development (i.e. agriculture, infrastructure, wildlife). But she also stressed that the Hai||om would need to move out of ENP to the farms, and remarked: “You would still be with the wildlife of Etosha but only on the other side of the fence!”<sup>64</sup>

The EHA attendees were not convinced, and repeated their claims and demands. They also mentioned that the director of the SDP had visited them and told them to just move to the farms. The EHA Chairperson, Kadisen ||Khumub, gave an emotional speech (which was translated), and asked for the recognition of the Hai||om residents in ENP as an integral part of the park. He requested affirmative action for their children and grandchildren regarding employment in the park and thereby the right to stay in ENP. He said that he got the impression that not employing members of other ethnic groups over Hai||om youths in ENP meant “erasing Hai||om blood from Etosha, to remove the original owners from the park”.<sup>65</sup>

When the Permanent Secretary wanted to close the meeting after a brief absence, saying she would need to consult with the Minister, the Minister arrived unexpectedly, telling the audience that she had not read the agenda but got to know that the Hai||om TA was present and thus came to greet. She pointed out that the MET was not responsible for ancestral land claims, and referred the EHA to the MLR. She mentioned that accommodation was needed for those who would move to the resettlement farms, that a tourist concession had already been decided upon, and that a lodge should be built on one of the farms. She further mentioned that the GRN would support the Hai||om on the farms with education and job creation.

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63 Since the idea was initially to establish a conservancy adjoining the Etosha National Park, MCA-N's support ran under its Conservancy Support Programmes.

64 Dieckmann, Ute, ‘Minutes of Meeting EHA with MET’, 2011.

65 Ibid.

The representatives of the EHA came back to the topic of unemployment in ENP and handed the Minister a list of 79 unemployed Hai||om youths in the park. The Minister referred them to the general job creation programme in Namibia, stressing that Hai||om were not the only unemployed people in the country. She referred to the potential for jobs to be created for Hai||om by the operation of a lodge on the resettlement farms. The Minister stressed that she would work with the chief of the Hai||om TA. The representatives of the EHA again clarified that the EHA had been established because they did not recognise the chief, and because the chief neither took the concerns of the community into account nor shared any benefits provided to the Hai||om TA with the community. Shortly thereafter, the Minister closed the meeting.<sup>66</sup>

Whereas the EHA was at that stage open to negotiations, the MET remained inflexible and did not make any effort to accommodate the concerns and claims of the Hai||om represented by the EHA. It is likely that even some minor concessions by the MET concerning the various claims made by EHA would have smoothed the way for further negotiations. However, the meeting left the EHA attendees with the impression that the GRN's sole intention was to remove the Hai||om from ENP to the resettlement farms, and that Hai||om would never be included in any development plans for ENP. Against this background, the EHA asked the LAC to initiate further legal action.<sup>67</sup>

On 31 August 2011, the Minister again came for a meeting at Okaukuejo, where Roger Collinson, the consultant contracted by MCA-N to conduct a feasibility study on a tourist concession to !Gobaub, presented his concept. As was made clear by Kadisen ||Khumub at the meeting, this feasibility study had been undertaken without proper consultation of the Hai||om in ENP. After the presentation, he stressed the significance of !Gobaub as a holy place for the Hai||om. Thus, people who wanted to go to !Gobaub should first ask permission from Hai||om elders like himself to visit the place. He admitted that he had not understood this "concession thing" and expressed his fear that the significance of !Gobaub for him and other Hai||om would not be respected in this initiative.<sup>68</sup>

It is noteworthy that the feasibility study explicitly identified both members of the Hai||om community who had moved to the resettlement farms neighbouring Etosha and members of the Hai||om community who resided within ENP as beneficiaries. Furthermore, the study stated that the "Hai||om community" would need to accept the proposals before any further steps were taken, and that the formation of a legal entity such as a trust or an association of the Hai||om was advisable.

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66 Ibid.

67 Komob, Bandu, 'Minutes EHA community meeting at Okaukuejo', 2011.

68 Komob, Bandu, 'Minutes of the Presentation on the Draft Proposal Tourism Traversing Rights Concession with Hai||om Communities in and out Etosha National Park', 2011.

In September 2011, the EHA sent a letter again to the Minister of the MET demanding that they also be consulted in future planning regarding the concession. The letter, signed by Kadisen ||Khumub as the Chairperson of the EHA, stated the following:

However, we still fear that the Hai||om living within Etosha will not benefit from the unilateral plan for the “upliftment” of the Hai||om unless we agree to resettle outside of the National Park on the resettlement farms under the jurisdiction of the appointed chief, which we do not intend to do that at this time for fear of breaking our link with our ancestral land. We would also like to stress that the Concession Policy requires priority to be given to communities that are resident inside or directly adjacent to protected areas, it is diabolical to exclude certain persons who reside within the protected area to force them to move adjacent to the protected areas. Furthermore the government concession policy seeks to promote the economic empowerment of formerly disadvantaged Namibians and requires affirmative action to be applied to ensure maximum participation of directly affected people. In this instance there is no guarantee that such an affirmative policy has been considered for the Hai||om in regard to the proposed developments in Etosha.

Unfortunately then, this plan has no merit whatsoever if it excludes us because we have never opted to leave our societal culture and our ancestral land. In the circumstances we again urge the Honourable Minister to ensure that we remain part of the planning process and that we have meaningful participation in this process. We look forward to your reply.”<sup>69</sup>

Since there was no reply from the MET, five months later the EHA reiterated the claims in another letter to the MET. They stated that: “In the premises we are left with little option but to assert our rights by way of possible legal action and refuse to be forced out of Etosha. We trust that you will appreciate that you have left us with no other options.”<sup>70</sup>

This time, the MET did react. In a letter to the Chief Executive Officer of MCA-N, the Minister allowed for the inclusion of “the Hai||om groups”, most likely referring to the EHA, in the Trust (the legal entity to be formed).<sup>71</sup> Strangely, though, this decision was not given effect in further developments.

In the meantime, the MET provided transport and building materials for those Hai||om who were willing to move to the resettlement farms, while the LAC asked for assistance from the Legal Resource Centre (LRC) in South Africa in the Hai||om legal matter. Together with lawyers from the LAC, lawyers from the LRC visited Okaukuejo and introduced the option of land claims, providing several examples from South Africa. The community in Okaukuejo decided to follow this route.<sup>72</sup>

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69 Khomob, Kadisen, ‘EHA letter to MET’, 2011.

70 Khomob, Kadisen, ‘EHA letter to MET’, 2012.

71 Ministry of Environment and Tourism, ‘Letter to Chief Executive Officer, MCA-N’, 2012.

72 Komob, Bandu, ‘Minutes Meeting EHA and LAC/LRC’, 2012.

As mentioned above, when the !Gobaub Community Association was eventually constituted in September 2012, only the resettled Hai||om were permitted to be members, and benefits from the concession would therefore only be available to Hai||om residents on the resettlement farms.

It should be mentioned that Hai||om had also tried on another front to get their cultural heritage acknowledged. Since the turn of the millennium, a couple of Hai||om elders had worked closely with an anthropologist and other involved researchers and organisations to document their cultural heritage in ENP. The work, which had started rather informally involving various individuals and organisations, got formalised as the *Xoms /Omis Project* (Etosha Heritage Project), a community trust under the guidance of the LAC. The main objectives of the project were to research, maintain, protect and promote Hai||om heritage associated with ENP and the surrounding areas in order to capitalise on that heritage in the tourism sector, also through capacity-building programmes based on this heritage for Hai||om individuals with genuine interest in the cultural, historical and environmental heritage of the park. Furthermore, the project aimed at designing, creating, supporting and implementing sustainable livelihood projects for Hai||om communities indigenous to, or with strong historical associations with, the park – based on the Hai||om cultural heritage of the Etosha area.

Within the project, maps with Hai||om place names and seasonal mobility patterns, posters about hunting and veld food, postcards, T-Shirts, a tour guide book and a children's book were produced in order to conserve the cultural heritage of the Hai||om and to raise some income for the project.<sup>73</sup> The project had made several attempts to collaborate with NWR with a view to making the products available in the tourist shops in ENP, allowing traditional dancing and generally increasing the visibility of the Hai||om cultural heritage in ENP. All these attempts met with no success. It seemed that NWR had no interest at all in allowing attention to be drawn to the former presence of Hai||om in ENP, and did not consider it to be a potential tourist attraction.

During the same period, Hai||om from different communities had also employed a variety of strategies to bring about new elections for a Hai||om TA. One initiative was a petition filed in 2011 in order to spark new elections.<sup>74</sup> Another was the organisation of Hai||om according to traditional subgroups with individuals representing these subgroups.<sup>75</sup> These efforts too were unsuccessful.

The diplomatic strategies for Hai||om to have their concerns taken seriously and to get recognition as former inhabitants of ENP therefore seemed to be exhausted,

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73 Dieckmann, Ute, *Born in Etosha: Living and Learning in the Wild*, Legal Assistance Centre, Windhoek, 2012; Dieckmann, Ute, *Born in Etosha: Homage to the Cultural Heritage of the Hai||om*, Legal Assistance Centre, Windhoek, 2009.

74 Watson, Peter, personal communication.

75 Naoxab, Erastus, meeting with Hai||om Subgroup Leaders, 2014.

and Hai||om chose legal action as the last resort. During 2013, the LAC and LRC had meetings with Hai||om in Oshivelo and Outjo in order to further assess the possibilities and intricacies of a land claim and to garner further support for the case.

The United Nations Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, made the following recommendations with regard to ENP and the resettlement farms and San TAs in his report based on his mission to Namibia in 2012:

82. Namibia should take measures to reform protected-area laws and policies that now prohibit San people, especially the Khwe in Bwabwata National Park and the Hai//om in Etosha National Park, from securing rights to lands and resources that they have traditionally occupied and used within those parks. The Government should guarantee that San people currently living within the boundaries of national parks are allowed to stay, with secure rights over the lands they occupy.

83. In addition, the Government should take steps to increase the participation of San people in the management of park lands, through concessions or other constructive arrangements, and should minimize any restrictions that prohibit San from carrying out traditional subsistence and cultural activities within these parks.

84. The Government should review its decision not to allow the Hai//om San people to operate a tourism lodge within the boundaries of Etosha National Park under their current tourism concession. Further, management of concessions should not be limited to only those Hai//om groups that opt to move to the resettlement farms.<sup>76</sup>

87. Recognition of the traditional authorities of indigenous peoples in Namibia is an important step in advancing their rights to self-governance and in maintaining their distinct identities. The State should review past decisions denying the recognition of traditional authorities put forth by certain indigenous groups, with a view to promoting the recognition of legitimate authorities *selected in accordance with traditional decision-making processes* [emphasis added].<sup>77</sup>

Without venturing into legal questions in detail, reference should be made to the issue of *locus standi* and the subject of land, which were discussed at length amongst the involved lawyers (see Chapter 6 of this volume, discussing the Hai||om litigation in detail). Being aware of the intricacies of the Central Kalahari Court Case, which originally included 243 applicants, a number which decreased

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76 Anaya, James, *Report of the Special Rapporteur on the rights of indigenous peoples: The situation of indigenous peoples in Namibia* (<http://unsr.jamesanaya.org/docs/countries/2013-report-namibia-a-hrc-24-41-add1-en.pdf>), pp. 19–20.

77 *Ibid.*, p. 20.

to 189 surviving applicants,<sup>78</sup> and being aware of the problematic position of the officially recognised Hai||om chief, and moreover being aware of the problem of representation within former hunter-gatherer groups, it was decided to first launch a class action application on behalf of the Hai||om. Class action lawsuits are not at this stage an option in Namibian law, and the country's law would need to be developed to allow the applicants to pursue the legal action in a representative capacity on behalf of their community.<sup>79</sup> Eight Hai||om are the applicants in this action. Along with the GRN and some others stakeholders, the Hai||om TA is a respondent.

The application was filed in 2015 and after two initial postponements, was heard in November 2018.<sup>80</sup> It was dismissed in a judgment announced on 28 August 2019.<sup>81</sup> The rationale for the dismissal was grounded in the Traditional Authority Act (No. 25 of 2000). The judges held that the competent body to launch such an action would be the Hai||om TA, and that the applicants had not exhausted the internal remedies provided by the act, nor had they challenged the constitutionality of the provisions of the act.<sup>82</sup>

It is likely that the legal team will continue their legal battle.

## 7 Conclusion

During the course of the developments described in this chapter, it became evident that a major challenge of the Hai||om struggle was the institution of the TA, which in the case of San communities is a “neo-traditional” authority. Most of the other San communities face similar challenges, which suggests that the culprits are not particular individuals, but the institution itself. Customary law in traditional San societies made no provision for a single chief to have authority over a very large group; on the contrary, it prevented such centralised authority. However, the Act requires the appointment of such a chief. San chiefs thus lack internal or historic role models. Additionally, during colonial times, the land dispossession and the Hai||om's consequent social fragmentation made the establishment of stable overall leadership structures virtually impossible.

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78 Sapignoli, Maria, 'Dispossession in the Age of Humanity: Human Rights, Citizenship, and Indigeneity in the Central Kalahari', *Anthropological Forum*, 25(3), p. 295; Hitchcock, Robert K., Maria Sapignoli & Wayne A. Babchuk, 'What about our rights? Settlements, subsistence and livelihood security among Central Kalahari San and Bakgalagadi', in *International Journal of Human Rights*, 15(1), p. 80.

79 Menges, Werner, 'High-stakes Etosha land rights hearing starts', *The Namibian*, 27 November 2018.

80 Ibid.

81 Menges, Werner, 'Etosha land rights claim stumbles at first hurdle', *The Namibian*, 29 August 2019.

82 High Court of Namibia (2019). Ruling Case No. A 206/2015.



Although the GRN might have implemented the Traditional Authorities Act in order to accommodate customary law within the postcolonial democratic state, it failed to take the customary law of San communities into account. In its current form, the Act actually leads to more internal fragmentation and conflicts within San communities, and therefore further disrupts the social structure (and customary law) of such communities. It also prevents, or at least constraints, Hai||om and other San groups from finding a common political voice.

At this stage, considering the current judgment, it appears to have impeded them succeeding with any claims to their ancestral land.

This might, of course, be welcomed by the GRN. However, the GRN strategy of only negotiating with the Hai||om TA brings with it its own problems and costs for the GRN.

Firstly, having not ensured the support of the wider Hai||om community in their resettlement plans impeded the GRN plans to resettle the Hai||om from ENP. The initial issue of unemployed Hai||om there has not been solved, as the GRN is loath to involuntarily remove them. Secondly, the development of the concession has also not been taken forward. Thirdly, financial and technical support channelled through the chief does not necessarily reach the wider community, or even all beneficiaries on the resettlement farms, where there are high levels of dependency on GRN aid, and no signs that this might change in the near future. Finally, regarding the court case: The decision to apply for representative action on behalf of the Hai||om in order to pursue a land claim over ENP seemed to have been the last resort in their struggle, because many Hai||om had realised that the TA was not representing the concerns of the wider community. When the Hai||om from Etosha started corresponding with the GRN in 2010, they asked for acknowledgement that they were the former inhabitants of ENP, and wanted as such to be involved in decision making regarding Etosha's future development. They also wanted recognition that their cultural heritage and history is inseparably connected to the ENP lands, and they therefore asked for !Gobaub as a Hai||om cultural heritage site. For those still employed in ENP and their descendants, they demanded that the Hai||om should be given preferential status when it comes to employment opportunities in the park. This would enable them to preserve their connections to their ancestral land and, at least for a small portion of Hai||om, to continue living there. It is noteworthy that at the initial stage of their struggle, no explicit request was made for financial compensation. Considering the estimated market value of the ENP lands being around N\$3.8 billion,<sup>83</sup> these initial requests appear rather modest. However, the GRN was not inclined to accommodate any of the requests, but continued with their resettlement, which in the eyes of most of the Hai||om is an attempt to completely erase the connection of the Hai||om with ENP as their ancestral land. The GRN

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83 'Annexure A, Particulars of Claim', in *Jan Tsumib and Others v Government of the Republic of Namibia and Others*, Case Number A206/2015, at para 32.1.

could have reacted with a rather minor admission in order to circumvent litigation and save costs. Furthermore, although the application was turned down, this might not be the end of litigation, involving more costs for all parties.

The GRN is aware of the problematic role played by the recognised chief, but they blame the individual for his shortcomings and failure to adequately perform the tasks demanded by his position.<sup>84</sup>

But the similarities with other San communities dealing with other TAs as well as problems encountered with the TAs of other groups suggest that blame should not be laid at the door of the individual chief. Rather, it is the institution itself which lies at the heart of the problems. It is time to amend the legislation.



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84 This becomes evident when government officials informally advise Hai||om to sort out the chief or to reconcile with him.