

# Chapter 19

## Consultation, Participation and Representation

By Ute Dieckmann and Ben Begbie-Clench



The San chiefs at the consultative workshop held in Windhoek in September 2008 in preparation for the permanent San Exhibition at the National Museum.

From left: the late **!Xun Chief John Arnold** of Tsumkwe West (N#̣a Jaqna); **Ju|'hoan Chief Frederik Langman** of Omaheke; **Khwe Chief Ben Ngobara** of West Caprivi; **Ju|'hoan Chief Tsamkxao |Oma ('Chief Bobo')** of Tsumkwe East (Nyae Nyae); and **!Xoon Chief Sofia Jacob** who presides over the !Xoon, Naro and 'N|joha in southern Omaheke. Pictured in the inset photo is the sixth San chief, **Hai||om Chief David ||Khamuxab** who presides over the Hai||om in Kunene, Oshikoto and Oshana Regions.



DRFN consultation at Sphoonheid Resettlement Project, Omaheke



LAC consultation with Hai||om elders at Okaukuejo restcamp, Etosha



LAC consultation with Hai||om women at Oshivelo, Oshikoto

## 19.1 Introduction

Consultation, participation and representation are the principles ensuring that citizens have a say in decision-making processes in any democratic country, and these principles are also increasingly perceived as preconditions for successful project planning and implementation. Over the last 15 years – but mostly since the implementation of the San Development Programme (SDP) in 2005 – the Government of Namibia has increased its efforts to guarantee the consultation, participation and representation of the country’s indigenous peoples, primarily through the recognition of their traditional authorities (TAs), this recognition being a necessary precondition for representative indigenous institutions to effectively consult with government on development issues. Yet, as this San Study has shown, there is much more still to be done to achieve the adequate consultation, participation and representation of San communities necessary for them to eventually guide their own development. This applies not only to what the government has yet to do, but also to what all other stakeholders in San development have yet to do (e.g. the NGOs supporting San communities). The most pertinent issue that arose in the study workshop held with San representatives in Windhoek in January 2013, in which we gave feedback on our research and discussed critical issues and recommendations, was that stakeholders still very often act on behalf of the San rather than in collaboration with them. The workshop participants stressed that they often felt left behind in project planning and implementation, and they reiterated that without proper consultation and participation, the San communities would never develop ownership of development projects, and hence responsibility for them, and consequently they would remain beneficiaries or recipients of support, instead of being agents of development. One participant made this very clear in saying, “Don’t pull us, push us,” clearly demanding that the San must stand in front and guide their own development, rather than stakeholders pulling them in directions in which they might not want to go, or are hesitant to go due the outcomes being unclear. The issue of consultation and participation was also raised as a topic in the Namibian San Council’s submission to the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, in September 2012. In expressing their “gravely concern” [sic] about several SDP-related issues, the Council held that there was “[n]o consultation and involvement of San communities in development project (many government official still have paternalistic attitudes towards San people)!” [sic] (Nakuta 2012b: 9).

In this chapter we summarise our study findings on consultation, participation and representation. In doing so, we outline the challenges that emerged and provide suggestions for the way forward. It is clear, however, that the improvement of San consultation, participation and representation will be a problematic process that requires overcoming many obstacles.

## 19.2 Principles of consultation and participation

### **Box 19.1: UN Declaration on the Rights of Indigenous Peoples (UNDRIP)**

**Article 18:** Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

**Article 19:** States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Namibia has voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and has ratified various international treaties, for example the African Charter on Human and Peoples' Rights, the UN Convention on Biological Diversity, and the SADC Protocol on Forestry, under the SADC treaty. It is thus bound, through a number of instruments, to the principles of consultation and participation.

Consultation and participation are the means that enable people (including indigenous peoples) to take decisions about their own destiny. The Ombudsman's *Guide to Indigenous Peoples' Rights in Namibia* states the following:

“The norms of consultation and participation are thus mechanisms aiming to correct the historical prejudiced view of indigenous peoples, as uncivilized and backwards who do not know what is good for them and for whom other [sic] should decide (assimilationist approach). They are means through which indigenous peoples are to gradually regain control over their destiny and secure their rights over lands, to education, employment and equality.” (Office of the Ombudsman 2012: 16)

In the following subsection we provide some orientation to what consultation entails if undertaken in accordance with international standards.

### 19.2.1 Consultation procedures

‘Consultation’ is a broad concept without a single, clear definition – indeed it became clear during our research that different parties understand this concept differently. So how should consultation take place if it is to be a meaningful mechanism for including people in their own development?

The establishment of appropriate and effective mechanisms for the consultation of indigenous and tribal peoples on matters that concern them is the cornerstone of the International Labour Organization's (ILO's) Convention 169, and, as already mentioned, the necessity of consultation and cooperation with indigenous peoples is also expressed very explicitly in UNDRIP and other UN instruments – often characterised as “free, prior and informed consent” (FPIC).<sup>1</sup> The following are the essential principles on which consultation mechanisms must be based if they are to comply with international standards (Office of the Ombudsman 2012: 16):

- Prior consultation.
- Consultation must be done in good faith, through appropriate procedures, through representative institutions of indigenous peoples, and with enough time.
- Consultation must have the objective of agreement or consent, and not just deliver information.
- Consultation should allow the people affected to have their own views taken into account and to compel the authority to get their consent.

Regarding appropriate procedures, the ILO's Senior Specialist on Indigenous and Tribal Peoples' Issues (Working Conditions and Equality Department, ILO, Geneva), Dr Albert Barume, divided the consultation procedures into three interrelated stages, all of which must be ensured for the procedures to comply with ILO standards (Barume, PowerPoint presentation, 1 July 2013):<sup>2</sup>

<sup>1</sup> A number of comprehensive documents on FPIC guidelines are available on UN agency websites, the most recent example being the *Guidelines on Free, Prior and Informed Consent* published by the UN Reducing Emissions from Deforestation and forest Degradation (UN-REDD) Programme, available at [www.unredd.net/index.php?option=com\\_docman&task=doc\\_download&gid=8717&Itemid=53](http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=8717&Itemid=53).

<sup>2</sup> Although Barume referred to state duties specifically, in our context *all* stakeholders in San development should use this as a guideline.

- 1) Designing with the participation of indigenous peoples the consultation and participation framework and mechanism: methodologies, define issues to undertake consultation on, tools, participants, etc. (consultation on consultation).
- 2) Undertaking consultation and participation per se, in accordance with international standards and agreed upon framework.
- 3) Assessing, reviewing and evaluating consultation and participation mechanisms on a regular basis with a view to adjusting the process if necessary.

Thus clearly it does not suffice, for example, to visit a community and inform its members that they will be the recipients of a certain project from which they can generate some income, and then only seek the community's consent to what has already been decided on their behalf, and in their absence. If people have no choice other than to agree to or reject the implementation of a project with a certain potential to generate income or improve livelihoods, it is almost certain that they will agree to it being implemented. However, this approach has led to the failure of many projects.

Instead, it is preferable that:

- community members are able to suggest what kind of projects would be feasible in their given situation;
- economic feasibility studies, social impact assessments and market research are carried out for the suggested projects;
- community members are accurately informed about the possible benefits of a project;
- community members are accurately informed about potential risks of the project;
- information is provided in such a manner *and language* that the community members (some of whom may be illiterate) can understand it;
- community members are offered a choice between various options once they have been informed about the potential benefits and risks of each option; and
- once the community has chosen or agreed to a project, members participate at every stage of its implementation.

Defining who the parties to the consultation process should be is another area of concern: should these be limited to certain stakeholders such as TAs, community-based organisations (CBOs) and other community representatives, or should the *whole* community be involved?<sup>3</sup> This might be the most difficult issue to tackle given the factors outlined in Chapter 15 on culture, discrimination and development, and challenges outlined in this chapter. Ideally, consultation activities would involve the entire community concerned, but in many cases in Namibia, particularly in very remote areas, this ideal is unrealistic due to time and cost constraints. It is debatable whether consultations with San TAs alone would constitute sufficient and satisfactory means to consult/communicate with the intended project beneficiaries/participants, even though the TAs are frequently the main channels for community consultation with the government and other stakeholders in large-scale development. Given the lack of community confidence that some San TAs face today, combined with the fact that the state remunerates them for their work (which causes jealousy), divergent views and conflicts of interest could well arise. Engagement with local representative structures or San CBOs can be undertaken as a compromise between discussions with the TA alone and consultations with the broader community, or can be included alongside TA consultations, to ensure that a wider range of views are represented, but presently many San communities lack representative structures and CBOs. Thus increased support and capacity building of organisational and representative structures is certainly required, first and foremost at local level, but also at regional level and national level.

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<sup>3</sup> Following the guidelines of Dr Albert Barume, one would need to decide on the consultation participants at the first stage of consultation.

Obviously, ensuring adequate consultation – carried out competently, including the requirements of providing sufficient project information and the beneficiaries’ participation – is a time-consuming and costly endeavour, but there is no alternative: projects that fail due to a lack of relevance to the beneficiary community, and/or failure to develop awareness of the specifics of the community’s situation and/or inability to generate a sense of ownership among community members, ultimately waste financial and human resources. Thus consultation has to be integrated into project planning and implementation at all levels, and there is still much for all stakeholders to learn in this regard.

### 19.3 Namibian San and the consultation process

Since the establishment of the SDP in the Office of the Prime Minister (OPM) in 2005, the government has increased its efforts to consult with the San (and other indigenous peoples served by the SDP<sup>4</sup>), but there is still a long way to go to ensure proper and effective consultation of San communities concerning developments that may have an effect on their livelihoods and standards of living.

In the course of our research it became evident that effective consultation processes are generally lacking when it comes to the San. Many participants in our research discussions complained that they were never consulted about the design and implementation of initiatives affecting their lives. For example, allegedly there was no prior consultation of the Hai||om at Farm Six in Oshikoto Region regarding the relocation of Owambo herders into the area which they inhabit. According to the discussion participants at Farm Six, they were informed of this development only after the herders had moved in – and this relocation of the herders and their cattle had detrimental effects on the livelihoods of the Hai||om residents (see Chapter 6, page 209). Another example came from Oshana Region: Hai||om at Okaukuejo reported that they had not been consulted about their relocation to the resettlement farms which were purchased with the intention of moving them out of Etosha. Regarding the San in Kavango Region, it was difficult to determine how well they were consulted about the plans to resettle them at various places.

These are just few examples (some of them discussed in more detail in the regional chapters) of the evident lack of proper consultation with the San on development projects and other activities which have impacted on their lives. Another example is provided in Box 19.2 on the next page.

Although a lack of consultation was reported at many of our research sites, it should be mentioned that after further questioning of discussion participants – and also in the course of stakeholder interviews conducted for this study – it emerged that some of the complaints about the lack of consultation were inaccurate. However, even if San had indeed been consulted (as stakeholders said had been the case sometimes), their contradictory statements are perhaps an indication of the lack of clear communication between stakeholders and community members.<sup>5</sup> It also has to be emphasised that in many cases, the government, especially representatives of the OPM Division of San Development, did consult with the relevant San TAs (in areas where a recognised TA exists). Thus it might also be the case that there is a lack of dialogue between representative structures, such as San TAs, and their respective communities. Additionally, due to the perception in certain San communities that the applicable TAs do not represent those communities’ interests on the whole, at times members of these communities feel that their concerns are neither heard nor represented.

<sup>4</sup> The Ovatie and Ovatjimba communities were included in the programme by Cabinet decision in 2007 – but the programme name remains the same.

<sup>5</sup> This explanation takes into account that at times San tend to exaggerate the bad conditions in which they live, or the injustices done to them, in order to obtain more support.

### **Box 19.2: Relocation of elephants from Nyae Nyae Conservancy**

Another example of the lack of consultation came to light in Nyae Nyae Conservancy after our field research there – although in this case the community was sufficiently organised to mobilise outside support to stop unwanted developments.

In July 2013, the Ministry of Environment and Tourism (MET) issued a permit to Erindi Private Game Reserve to remove 200 elephants from Nyae Nyae Conservancy and the Khaudum National Park and relocate them to the reserve. The permit was issued without any prior consultation of the Ju|’hoan inhabitants of Nyae Nyae or their conservancy committee, and without their participation in the decision-making process. The elephants were to be leased to the reserve at an annual rental fee of N\$70 000, but none of the proceeds would accrue to the conservancy. The Ju|’hoansi of Nyae Nyae were concerned about the effects of the capture and transportation of 200 elephants and their departure from the conservancy: it was feared that not only would this action impact negatively on the remaining resident elephant population, but that the removal of the animals would also reduce the conservancy’s income and directly affect the viability of future hunting operations there (Peter Watson, personal communication, 22 July 2013; see also *Allgemeine Zeitung*, D. Heinrich, 9 July 2013).

In an effort to prevent the proposed relocation, Nyae Nyae Conservancy – with the support of the Nyae Nyae Development Foundation of Namibia (NNDNF) and the Legal Assistance Centre (LAC) – cited the provisions of the amended Nature Conservation Ordinance of 1975 which extends rights over game to communal-area conservancies. This served firstly to assert property rights over the elephants, and secondly to support a course of action – protected by both common law and the Namibian Constitution (i.e. Article 16 on Property) – to halt the removal of the elephants. The MET and Erindi were notified of the proposed action, and at the time of writing, it appears that they will relocate elephants from Khaudum only.

On occasion during our field research, it was reported that adequate consultation did indeed take place. The construction of the desalination plant in Amarika village in Omusati Region was cited as an example of consultation taking place and resulting in a desired and successful development initiative. The Khwe residents of Makaravan informal settlement in Katima Mulilo, Caprivi Region, who were resettled at Kyarecan in Caprivi, were also consulted about where they wanted to settle.

Often, however, the recipients of San development projects were brought into agreement merely by means of government pledging many benefits to secure their support, and some of these benefits never materialised. In other cases, San reported that although they had been consulted, they felt that their inputs were not taken seriously (examples of this are provided in Chapter 8 on Omusati Region), or that they were informed but not consulted about forthcoming developments (examples are provided in the Ohangwena and Omaheke chapters).

In sum, although consultation takes place at times, generally Namibian San feel that they are not adequately consulted about developments that impact on them.

## **19.4 San participation and representation in mainstream politics**

San participation and representation in mainstream politics are two further preconditions to ensure that San take part in decision making. Suzman reported in 2001 that, “Many San are apathetic in respect of mainstream politics, and generally feel that they have little or no real stake

and even less influence in the arena.” (Suzman 2001b: 104) Our study has made clear that this remains the case 12 years later. Most of the San who participated in our research discussions reported that they do vote, but they do not feel that they can make any real difference in Namibian society; they do not see the value of the democratic system and they doubt its ability to protect their interests. Clearly, therefore, many San do not experience the feeling of participating as citizens in a democratic country.

### 19.4.1 National level

It came to light in our research discussions that many San had participated in national elections, but without any expectation of anything changing for them as a result. In the 1999 parliamentary elections, a single San individual, Kxau Royal |Ui|o|oo, a Ju|’hoan SWAPO candidate, won a seat in parliament (1999-2010). Thereafter he became a special advisor in the Division of San Development in the OPM. At the time of writing there is no San representative in parliament.

Suzman commented in 2001 that it was unrealistic to hope that San representation in the National Assembly would ever be substantial due to their demographic status: San constitute a small minority group in Namibia, thus they cannot expect to have more than one or two representatives in this central body.<sup>6</sup> The elected regional and local bodies in areas where San constitute more than a very small minority group represent far more realistic channels for San to achieve better representation (Suzman 2001b: 105). Currently, however, there is only one San regional councillor, namely Fransina Ghauz, a Ju|’hoan woman who represents Tsumkwe Constituency in Otjozondjupa Region.

In 2008, the UN Committee on the Elimination of Racial Discrimination (CERD) noted “with concern the low level of participation in political life and, in particular, the lack of representation in Parliament as well as regional and local public authorities of the indigenous communities, particularly the San community (art. 5(c)).” In this regard:

“The Committee recommends that the State party strengthen its efforts to ensure the full participation of indigenous communities in public affairs at all levels. It encourages the State party to revise its electoral laws with a view to encouraging political parties to broaden their appeal to ethnic minorities and to include a minimum proportion of candidates from these groups.” (CERD 2008: 6-7)

Potential improvements in the representation of the San and other indigenous (minority) groups are not limited to existing Namibian structures, and there are various possibilities with regard to ensuring their representation and/or their influence with regard to parliamentary decisions. In its *Final Study on Indigenous Peoples and the Right to Participate in Decision-making*, the UN General Assembly (UNGA) provided a number of examples of countries all over the world which have created mechanisms that guarantee the representation of indigenous peoples in state parliaments (UNGA 2011a: 12). These should be examined to determine the approach that is best suited to the Namibian context. In New Zealand, for example, the Maori have had guaranteed representation in parliament since 1867. Anyone of Maori descent can choose to be on either the Maori electoral roll or the general electoral roll. Since 1996, the number of Maori seats in the House has varied according to the proportions of Maori registered on the Maori electoral roll and the general electoral roll. In Burundi, the Batwa have permanent seats in the National Assembly, and there is guaranteed

<sup>6</sup> The National Assembly is one of Namibia’s two Houses of Parliament, the other being the National Council. The National Assembly is the principal legislative body. It consists of 72 voting members elected on the basis of proportional representation for a term of five years, plus six non-voting members appointed by the president for a term of five years. The National Council consists of two members of each of Namibia’s regional councils.

Batwa representation in the National Land Commission. UNGA also indicates that proportional representation electoral systems can assist to get indigenous individuals elected to state parliaments (UNGA 2011a: 9-11). The creation of internal bodies to influence parliamentary decision making is another way to improve indigenous people's influence in national politics: "the ability of indigenous people to influence parliamentary decision-making is enhanced when parliaments create internal bodies to address matters of central concern to indigenous peoples, such as the Indigenous Affairs Commission in the Mexican Congress, which can influence the drafting of laws" (UNGA 2011a: 10).

Thus there are a number of ways to ensure San participation in parliament, or at least to ensure that the San can directly influence decisions taken by parliament.

## 19.4.2 Regional and local government

The participation and representation of San at regional and local levels is minimal in most regions and constituencies, as few San are ever elected to regional councils or town or village councils.

As mentioned in the previous subsection, currently only one San person is a regional councillor, namely Mrs Fransina Ghauz (Ju|'hoansi), who replaced Mr Kxao Moses #Oma who died in 2012. Mrs Ghauz hails from the Tsumkwe area, where San are the majority population group, and have, compared to other areas, the most stable structures of participation and representation. (Former MP Kxau Royal |Ui|o|oo also hails from this area.) Although most community members had voted for the Ju|'hoan candidate, participants in our research discussion on the applicable topic complained about the lack of feedback from the regional councillor (and from Hon. |Ui|o|oo during his term as MP), which implies that the community members were uncertain as to whether or not their interests were being properly represented.

In other areas there is no San representation in regional and local government structures. Research discussion participants at several sites (e.g. N#a Jaqna Conservancy and Farm Six) said that their (non-San) regional councillors visited them only at election time, promising significant changes to get votes, but none of the pre-election promises materialised after the elections. The Namibian San Council wrote the following in its submission to the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, in September 2012 (Nakuta 2012b: 12): "The San community is still not adequately represented in political structures and decision-making processes; not in parliament. Yet, in the areas where San are[,] political parties used food and tobacco during elections times to campaign."

San participation and representation on village development committees (VDCs) and constituency development committees (CDCs) varied across the regions. In Omaheke, for example, the Desert Research Foundation of Namibia (DRFN) played a supporting role in facilitating communication between the San and local and regional government structures. The DRFN engaged the regional councillors representing Steinhausen, Kalahari and Otjombinde Constituencies to secure the acknowledgment of the farm management and development committees (FMDCs – composed of San and others elected by the communities) at the Skoonheid, Drimiopsis and Donkerbos-Sonneblom resettlement farms as VDCs within the decentralised structures of the Ministry of Regional and Local Government, Housing and Rural Development, i.e. the Regional Council. The DRFN also successfully negotiated to ensure that, in principle, two VDC members are allowed to attend CDC meetings. Thus opportunities have been created for San participation in local- and constituency-level decision making. It remains to be seen whether practical challenges (e.g. holding regular CDC meetings and transporting VDC members to the constituency office and back) can be overcome.

In Nyae Nyae and Nṙa Jaqna Conservancies, where San are the majority population group, San were represented on VDCs, and in Oshivelo (Oshikoto Region) there were two San representatives on the CDC – however most of the discussion participants were unaware of this body. At many sites, discussion participants did not report that there were any San members of the VDCs or CDCs. The Hai||om in Outjo (Kunene Region) seemed to be more actively involved in community politics: there had been a Hai||om candidate for municipal councillor (although he was not elected) and in 2013 there is a Hai||om mayor. At some sites in Kavango Region, the San felt that the neighbouring ethnic groups did not want them being part of the VDCs, and at one site (i.e. Ndama), there was even a separate VDC for the San. In the Bwabwata National Park (BNP), where the San are the majority population group, the VDCs did have San members, but apparently these bodies were not functional at the time of our research. In Caprivi Region, discussion participants did not report any involvement in VDCs, but a Khwe man from Mulanga village was a member of the Mashi Conservancy Committee. In Amarika village in Omusati Region, where the majority of the residents are San, there were San on the VDC and the CDC. In Ohangwena Region, the only San member of any VDC was a !Xun man from Ekoka Resettlement Project. There was also an FMDC for the San at this project, consisting of Hai||om and !Xun elected by the community. Selected members of this FMDC also represented the community at stakeholder meetings pertaining to San development at regional level.

In general, however, at the sites where the San were represented on decision-making bodies (e.g. VDCs and CDCs), they had little hope that their participation in these bodies would enable them to influence decisions about their development.

### 19.4.3 Political alienation

In general among the San at our research sites, there was a widespread perception that voting or active participation in political processes did/could not make any difference to their lives. Many San across the regions share the feeling that only via the ‘right’ social/political networks could a person achieve something (mainly individual improvement), and that the San, for the most part, have no access to such networks. However, some San try to make their voices heard through political parties (most often the ruling party); for example, a Hai||om man in Okaukuejo was a member of the SWAPO committee and thus could raise San community concerns about local politics and ‘unfair’ allocation of resources (i.e. jobs). In other cases, San had joined political parties specifically to increase San access to services or networks. However, even in these instances, the communities concerned expressed a considerable degree of scepticism as to whether the individuals associated with political parties would really bring any improvements for the community as a whole, or would just increase their individual benefits through these networks.<sup>7</sup>

Discussion participants at many sites characterised their status in Namibia in terms of exclusion from the mainstream, and stated that they felt left behind in national development. Many were very frank in expressing the perception that their lives under the apartheid administration were better than they are today.<sup>8</sup> The reasons provided for this evaluation varied according to circumstances. In the commercial areas, for example, major factors were the former employment of San on the farms, the provision of rations, the possibility of gathering veldfood and hunting (although the latter was limited), and better access to government services. For many San in communal areas,

<sup>7</sup> In this context it is important to reflect on the extent to which San traditional egalitarian structures and levelling mechanisms inform complaints that only individuals would benefit from their own initiatives.

<sup>8</sup> The San in Ohangwena and Omusati regarded the period before Independence as worse for them in terms of their overall quality of life, mainly because of the various restrictions placed on people in the area due to the war between the People’s Liberation Army of Namibia (PLAN) and the South African Defence Force (SADF).

better access to veldfood and game in former times was the main reason for their appraisal. San complaints about their lives today as compared to life before Independence should be understood in relation to their expectations and aspirations two decades after Independence, and not only relative to their status under the colonial administration. Indeed, though they still face numerous challenges, much as improved for the San (e.g. infrastructure and access to services).

Some overall challenges regarding the establishment of representative structures became evident in the course of our research, and these are analysed in the next section. This analysis provides the background for the subsequent section in which we analyse other representative structures and their specific challenges.

## 19.5 The challenges for representative structures outside mainstream politics in San communities

The development of representative structures for San communities at local, regional, national and sub-continental levels is imperative for San to have a proper voice in their own development and to determine the course of such development. In this regard, our study has identified three overall and interconnected challenges:

- 1) Former leadership structures.
- 2) The legacy of colonial politics – chiefly the issues of land dispossession, low levels of education, and marginalisation.
- 3) The lack of a common San identity.

### 19.5.1 Internal leadership structures in the past

As discussed at length in Chapter 15 on culture, discrimination and development, San societies were strongly egalitarian in the past. Thus, until recently, the various San communities lacked a strong internal hierarchical structure with formal leadership roles, as such a model did not accord with their egalitarian values. Hays has pointed out the following in this regard:

“The full impact of such firmly embedded social ideals is often underestimated ... The ways in which a recent tradition of strict equality and related understandings of fairness express themselves in circumstances of increasing inequality, in which a few individuals are promoted above others, can create enormous difficulties as a whole, and in particular for those who are successful. Reactions to such individuals often include jealousy, expressed in resentment, as overt or subtle refusal to cooperate, or as increased pressure to share food or material wealth.” (Hays 2004: 242-243)

In Chapter 15, in describing the nature of the former leadership structures in more detail, we noted that San headmen/women – who Lorna Marshall had observed to be “as thin as the rest” (see page 512) – were held to be ‘first among equals’, but this status was fraught with contradictions. For example, they were supposed to be generous, unassuming, unaggressive, modest and soft-spoken, yet at times their actions had to be strong and decisive. Nowadays, despite some changes in the leadership model (e.g. the introduction of government-recognised TAs), the egalitarian values live on, and still pose conflict in some San communities. For example, official leaders or community representatives may now receive various forms of remuneration (stipends, subsistence and travel (S&T) allowances, reimbursements of travel expenses, etc.) from the government, NGOs and other stakeholders. They therefore sometimes face allegations from their communities, which might believe that their representatives are supposed to share their remuneration with the rest of the community (or their extended kinship network); furthermore they are accused of a range of vices including

self-interest, bribery, corruption and nepotism. This pertains not only to TA office-bearers, but also to other San leaders and community representatives, such as those working for NGOs. In view of such allegations, it is hardly surprising that many San hesitate to become representatives of their communities. The general perception among our study participants was the same as that of the respondent quoted by Marshall in 1976: “all you get is the blame ...” (see Chapter 15 page 512).

A few San do present issues at higher levels such as international fora – for example via the Working Group of Indigenous Minorities in Southern Africa (WIMSA) – but some who undertake such efforts have had to move away from their communities to do be able to do so ‘unfettered’, and this situation brings its own set of challenges (see section 19.7.3, page 611).

### **19.5.2 The legacy of colonial politics, including land dispossession, social fragmentation, low levels of education, and marginalisation**

Some of the challenges originating in former leadership structures were exacerbated by colonial politics, the key challenges being social fragmentation and low levels of education. In the colonial period, the loss of land and the need to provide labour in exchange for a livelihood resulted in the fragmentation of San societies at all levels of organisation, and the loss of freedom of movement and association aggravated this social fragmentation. Following are just three prime examples of what transpired for San in the colonial period:

- a) Many Hai||om, Ju|’hoansi, Naro and !Xoon became commercial farmworkers in what are now Oshikoto, Kunene, Otjozondjupa and Omaheke Regions, and the Hai||om lost their access to Etosha, which was the core area of their ancestral lands.
- b) The land in Ohangwena, Oshana and Omusati Regions (now communal land) where the !Xun and Hai||om used to live was proclaimed as ‘Owamboland’ under the Odendaal Commission, hence the San could not retain collective rights over land in that area (or at least, these were very rare).
- c) The war for independence brought major changes in settlement and subsistence practices for the !Xun, Hai||om and Khwe.

For the San who lived and worked on commercial farms (a), the paternalistic and authoritarian nature of farm life meant that all authority was vested in the white *baas* (boss). In San communities living in the homelands of other ethnic groups (b), egalitarianism and the concept of sharing were emphasised and strengthened. In both of these contrasting situations, individual leadership or advancement was impossible (Suzman 2001b: 108). In short, the various San groups faced significant socio-political change and were forced to confront the challenges of social fragmentation, and this situation did not encourage – indeed it utterly stifled – the establishment of formal representative structures.

Another legacy of colonialism is the prevailing extremely low levels of education among the San elders (discussed in Chapter 16 on education). The younger San have attained higher levels, but these are still relatively low. A certain measure of education facilitates participation and representation in the wider public sphere – in Namibia and in international contexts – but, as Chennells et al. recently observed, elected San leaders are often less charismatic than those assuming key roles in the daily management of the community (often referred to as ‘natural leaders’). “Leaders at times are elected simply because of their high education levels or their membership to certain families.” (Chennells et al. 2009: 184) This observation points to another problem: the (perceived) requirements of official leadership, such as being able to communicate with government officials, NGOs and international donor organisations, and/or being capable of presenting the plight of the San to international fora.

This reasoning regarding requirements for official leadership is clearly reflected in two Hai||om elders' explanation as to why the community elected one of their former chiefs, Mr Willem |Aib, in the 1990s – although the government never formally recognised him: he was proficient in English and knew “how to find offices” (Dieckmann 2007b: 324 ). Leaders have to be mediators between their communities and the wider public, therefore language and a lack of basic understanding of how Namibia operates in the international context might be obstacles for most San who wish to become official leaders, even if they possess personal charisma, wisdom and integrity. For example, Chief Langman, the recognised chief of the Jul'hoansi in Omaheke, pointed out in our interview with him that language differences hamper interaction with high-level officials. This encapsulates a key dilemma for San communities: usually, the role of leader requires social skills and a certain degree of life experience, but in San communities it is often the case that those who possess these attributes lack the level of education deemed necessary for representative or leadership roles, whereas those who have a better level of education lack the life skills needed for effective leadership.

The task of liaising effectively between grassroots communities and international organisations such as the United Nations requires much more than simply being an accepted community leader or having a certain educational background; it requires a set of skills which are found only rarely in any average populace, and even more rarely in San communities due to their social and educational marginalisation. Begbie-Clench has pointed out the following in this regard:

“[Indigenous representative organisations have to possess the skills needed to ensure that representation is] translated from the international to the local, not just in language but also in concepts and culture. [They] must develop two ‘interfaces’, one between the organisation and the community and one between the organisation and third parties critical for representation, hence administering three, in some senses hierarchical, spheres of knowledge, culture and communication – the indigenous populous, external stakeholders holding political and economic resources and that within the organisation.” (Begbie-Clench 2011: 13).

### 19.5.3 Lack of a common San identity

A third issue cannot be ignored as a challenge to the establishment of San representative structures: our research made evident that a common ‘San identity’ is missing at grassroots level. Community members identified themselves as belonging to a specific San language group in a defined area, rather than as simply ‘San’ (a term which many do not like), and the lack of a common language further complicates the issue of identity. However, due to the similarities in the languages, cultures and livelihoods of these different groups, their categorisation as a single group referred to as San, Saan, Bushmen or Basarwa has persisted for centuries. In a development conference in 1993, the San representatives agreed that ‘San’ was the most neutral term for political use (Suzman 2001a: 4), and this was reiterated at WIMSA's first Annual General Meetings in 1996. Organisations such as WIMSA have tried to foster a common San identity – or a kind of ‘indigenous peoples’ identity – in order to approach problems more effectively at national and international levels. Indeed, San individuals involved with NGOs (especially WIMSA), and those directly involved with the OPM's San Development Programme, are observed to identify strongly with being ‘San’ – more so than the average community member.

The OPM does not differentiate between the San groups, and in many instances employs a ‘one-size-fits-all’ approach to “integrate the San into the mainstream of economy”,<sup>9</sup> thereby disregarding the different aspirations and circumstances of the different communities. Still, a strong unifying

<sup>9</sup> See [www.sandevlopment.gov.na](http://www.sandevlopment.gov.na).

‘San’ or ‘indigenous’ identity can certainly help the San to find a common voice and to make it heard. An overall common identity does not evolve overnight, but it might develop over time if the members of the various communities come to recognise the opportunities and benefits connected with an ‘indigenous’ identity, and if they can acquire the capacity necessary for greater political organisation and find ways to achieve such organisation.

## 19.6 Representative structures

### 19.6.1 Traditional authorities (TAs)

Article 66 of the Constitution of Namibia acknowledges that customary law is an original source of Namibian law, thus all customary law institutions are implicitly recognised insofar as they are consistent with the Constitution generally. Article 102 deals with the “Structures of Regional and Local Government”, and Article 102(5) provides for the establishment of a Council of Traditional Leaders, composed of chiefs, headmen and traditional councillors, to advise the President on the control and utilisation of communal land, and on all other matters that the President may refer to it for advice. The Council of Traditional Leaders Act 13 of 1997 was passed to give effect to this constitutional provision, and the Traditional Authorities Act 17 of 1995 (repealed and replaced by the Traditional Authorities Act 25 of 2000), made formal provision for the statutory establishment and recognition of Traditional Authorities (TAs) and chiefs, and specified their powers and duties.

To date the government has recognised five San TAs: the Hai||om TA in Kunene, Oshikoto and Oshana Regions; the !Xun TA in Otjozondjupa Region; the Ju|’hoan TA in Otjozondjupa; the Ju|’hoan TA in northern Omaheke Region; and the !Xoon TA in southern Omaheke. The San in Kavango, Caprivi, Omusati and Ohangwena Regions are still under the jurisdiction of the TAs of other ethnic groups. The majority of the Khwe in West Caprivi (i.e. the part located in Kavango Region) have fought for over a decade for the recognition of their TA, but the Mbukushu chief insists that they fall under his authority – and he has integrated several Khwe men into his TA structure. In Caprivi Region, where the Khwe resort under the Mafwe TA, there have been fewer conflicts between Khwe and Mafwe as compared with the Khwe and Mbukushu in West Caprivi, and the Khwe in Caprivi have made fewer requests for their own TA. It appears that the Khwe in Caprivi have more confidence in the Mafwe TA than the Khwe in Kavango have in the Mbukushu TA, possibly due to historical ties between the Khwe and Mafwe. Some of the villages visited for the study in Omusati were headed by San headmen who were part of the respective Owambo TA structures. Similarly, in Ohangwena, some sites had San leaders who reported to the Kwanyama headman who was part of the Kwanyama TA structure.

Most of the San participants in our research discussions regarded the TA institution as an important instrument for making their voices heard, and as an institution that plays a crucial role as mediator between a community and the government. Since the recognition of San TAs – and especially since the establishment of the SDP in the OPM – the government has regularly consulted the San TAs on development-related issues in their communities. Some of the San TAs interviewed for this study underscored that the government’s acknowledgement of them had made it easier for them to claim the delivery of government services or the support of government agencies.

Each TA consists of the chief and 10-12 councillors (junior and senior) – thus each chief has his/her own body of representatives. As the councillors are residents of villages and farms spread across the area of jurisdiction of the chief, they provide – or are meant to provide – regular opportunities for the consultation and participation of the communities in the TA area.

Nevertheless, as mentioned in various parts of this report (e.g. Chapter 3, page 35), three of the five recognised San TAs – i.e. the !Xoon TA in Omaheke, the !Xun TA of Nǃa Jaqna Conservancy and the Hai||om TA in Kunene, Oshikoto and Oshana – have been facing serious challenges in respect of community support. Participants in our research discussions in the applicable regions complained that their respective TAs were disposed to one or more of the following: nepotism/favouritism, a lack of transparency and communication, pursuing personal interests instead of community interests, and corruption. This situation is attributable to the following issues:

- 1) The former leadership model in traditional San societies made no provision for a single chief to have authority over a very large group. Conversely, the Traditional Authorities Act (TAA), in accordance with other customary systems in Namibia, requires the appointment of such a chief, who will have jurisdiction “over the members of a traditional community in respect of which it has been established”. San chiefs thus lack internal or historic role models.
- 2) Under the South African colonial administration, the land dispossession to which the San were subjected, and their consequent social fragmentation, made the establishment of stable overall leadership structures virtually impossible.<sup>10</sup>
- 3) There is a lack of effective control mechanisms in place to monitor the performance of TAs on behalf of their communities, and more importantly, on behalf of the state.
- 4) The remuneration of the TAs by the state, and the state’s provision of assets for their use (e.g. 4x4 vehicles and offices) carry the potential to incite disagreements between communities and the state.
- 5) The process of removing a chief in accordance with the TAA is very cumbersome and time-consuming.<sup>11</sup>

These issues make clear that San TAs are ‘neo-traditional’ authorities as opposed to traditional authorities *per se*, and that this poses a number of challenges for them.<sup>12</sup> (It should be noted that these issues are not all specific to the San; some other TAs in Namibia also face some of these issues.)

Chennells et al. have reported that WIMSA has attempted to formulate ‘terms of reference’ for San leaders in southern Africa over the years. At a consultative workshop in November 2006, attended by over 30 San leaders, ‘leadership’ was identified as one of the ongoing problems that prevented the San from achieving their goals. In group discussions, the San leaders themselves listed the following issues that stood in their way: a lack of management training and skills; the lack of a work ethic; the lack of a proper support system; the abuse of power; and a lack of accountability to their communities (Chennells et al. 2009: 183-184). Our study has found that the problems are by and large the same seven years later, and it is evident that the TAs (as an institution) still have a long way to go in their efforts to serve effectively as representative structures for San communities.

There is another important issue to consider: the government deals mainly with the TAs of the San communities, whereas NGOs work mainly at grassroots level – either with CBOs or directly with community members (which is not to say that they ignore the TAs), and these differing approaches of the government and NGOs sometimes creates even more divisions within the communities: the TAs become government-orientated and occasionally unreceptive to NGOs, while the CBOs and grassroots community members tend to be critical of the TAs and more positive about the work of

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<sup>10</sup> One exception is the case of Martin Ndumba, a Khwe headman in the area now referred to as West Caprivi, i.e. Bwabwata National Park (BNP), whom the South African Administration installed as Paramount Chief of the Khwe in the 1950s (see Chapter 10 on the BNP).

<sup>11</sup> This point is based on the experience of staff of the Legal Assistance Centre (LAC) who were approached in the past for legal advice and representation in a number of cases where non-San communities attempted to establish a new chief in accordance with the TAA.

<sup>12</sup> For an overview of academic discussions on neo-traditional authorities and the analysis of the establishment of one San chief, see Schwab 2012.

NGOs.<sup>13</sup> This does not make for easier cooperation between the government and the NGO sector, despite their dependence on one another.

## 19.6.2 Namibian San Council

The Namibian San Council, established in 2006, is one of the main stakeholders in San development (see Chapter 3, page 36). This body presently has 14 members: one representative of each of the six TAs (Hai||om, !Xun, Ju|'hoansi of Nyae Nyae, Ju|'hoansi of northern Omaheke, !Xoon of southern Omaheke, and the unrecognised Khwe TA in West Caprivi); representatives of six San CBOs in the applicable areas; and two representatives of the San of Ohangwena (!Xun and Hai||om) who still have no TA. WIMSA provides the following overview of the work of San Councils:

“San Councils are elected representative bodies that work to conduct important advocacy work on behalf of national San communities. Composed of members elected by local communities and San organisations, [these bodies] bring together and strengthen existing leadership structures, putting communities in a better position to influence decision-making processes at different levels, and to link up with the international indigenous rights’ movement.”<sup>14</sup>

With support from the Spanish Agency for International Development Cooperation (AECID) and the International Labour Organization (ILO), WIMSA organised a series of training workshops for the council in 2012, the overall objective being to “capacitate members of the San Council and assist the Council into graduating into an action-driven and functional organisation” (Nakuta 2012a: 1). A SWOT (strengths, weaknesses, opportunities, threats) analysis was facilitated in the first workshop. The following, inter alia, were strengths, weaknesses, opportunities and threats identified:

- **Strengths:** the council members understand San issues; the council takes independent decisions; there is good communication between the members.
- **Weaknesses:** the council is not yet registered and not yet recognised; not all San groups in the country are represented on the council; there is a low level of education among the members; there are not enough outreach activities targeting the San communities; council meetings are not convened regularly; and capacity is low in terms of skills.
- **Opportunities:** close cooperation with the Office of the Ombudsman; the existence of the OPM SDP; sympathetic organisations such as WIMSA, LAC, DRFN and ILO; and recognised TAs.
- **Threats:** too many other organisations are working on behalf of the San, due to the council’s lack of capacity, the lack of San in the OPM Division of San Development, financial constraints and donor dependency (Nakuta 2012a: 1-2).

A number of workshops have taken place subsequently.<sup>15</sup> Only recently, the position of San Council Coordinator has been filled by a young !Xun woman, namely Metha Goaseb.

None of the communities visited for this study mentioned the San Council as an important tool for San representation. Conversely, in the workshop with San representatives in Windhoek (January 2013) and in interviews with San in Windhoek, the council was said to be a potentially important organisation for the San. Three problematic issues were identified in the workshop and interviews: how council members are elected; the lack of funding; and the council’s relationship with WIMSA. It remains to be seen whether the Namibian San Council can eventually become an important representative organisation nationally and internationally.

<sup>13</sup> This merely summarises a general tendency; the alliances, hostilities and internal conflicts are much more complex on the ground.

<sup>14</sup> See [www.wim-sa.org/our-work/advocacy](http://www.wim-sa.org/our-work/advocacy).

<sup>15</sup> Despite several attempts via email, the research team was not able to access the reports on these subsequent workshops.

## 19.7 Participation and representation in other national and international bodies

### 19.7.1 Division of San Development in the Office of the Prime Minister

A priority matter is adequate San representation in the OPM's Division of San Development (DSD), as this institution is meant to be the driving force for San development in Namibia. San participants in the research discussions in the regions and in the workshop in Windhoek complained about the lack of San representatives in decision-making positions in the DSD. As noted earlier in this chapter, the Namibian San Council, in its submission to the UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, in September 2012, expressed dissatisfaction with the 'one-size-fits-all' approach employed by government through the DSD, and alleged that many senior government officials "still see and describe San people as useless, lazily [sic] and only awaiting for hand-hands [sic]" (Nakuta 2012b: 9). Indisputably, from the ideological perspective of international principles discussed earlier in this chapter, the government is obliged to ensure adequate San participation and representation in the DSD. Beyond this obligation, increased San participation and representation in the DSD would be an important step for practical purposes: it would increase the success of the projects implemented; and it would facilitate the establishment of mechanisms for the DSD to give feedback to the San communities, and to generally communicate with them.

### 19.7.2 Participation and representation within southern Africa

Various regional initiatives are underway among the San in Botswana, South Africa, Botswana, and increasingly Angola, with a view to establishing San representation at sub-continental level. One of these initiatives has been the establishment of San Councils in Namibia, South Africa and Botswana.<sup>16</sup> Another initiative was WIMSA's consultative meetings with the San Councils and other San organisations in Botswana, South Africa and Namibia in 2012, the objective of which was to determine WIMSA's future mandate as a regional organisation.

Another initiative was the Southern Africa San Rights Conference held in Gobabis (Namibia) in November 2012, supported by Terre des Hommes and Help for Children in Distress, in which the Namibian San Council participated. The theme of the conference was: "Anything for us, without us, is against us!" During this conference, a *Declaration on the Rights and Responsibilities of the San People in Southern Africa* (WIMSA and OCADEC 2012) was developed, in which a number of challenges for San across southern Africa were identified, namely:

- a lack of education;
- a lack of access to documentation;
- a lack of access to basic services, including healthcare facilities;
- loss of cultural identity and heritage;
- a lack of political participation and representation;
- discrimination; and
- a lack of effective and meaningful government implementation of the rights of the San People within the Southern African Development Community (SADC).

The SADC governments were therefore urged to do the following (WIMSA and OCADEC 2012 – no page numbers):

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<sup>16</sup> For more information on regional representative institutions, see Chennells et al. 2009.

- To enact laws and take special measures that are tailor-made for the advancement of the San Peoples' rights and development, in particular, to put in place pro-active legislation and policies for the development of the San Peoples in areas such as education, health, citizenship and the effective protection and perpetuation of their cultural heritage, spirituality and practices;
- To include the San Peoples in all development and other projects and government programmes that are initiated by the State;
- To criminalise discrimination of the San Peoples;
- To sign, ratify and domesticate international treaties for the protection of indigenous and minority groups; and to
- Forge partnerships with civil society, business, the donor and the international community for the effective promotion and protection of the San Peoples' Rights.

The declaration was handed over to the OPM, but to date there has been no official response from the government.

### 19.7.3 Participation in international fora and conferences

Based on what many Namibian San reported at local level, it would be reasonable to conclude that little has changed in the last two decades in respect of San participation and representation, but this perception does not accurately reflect the overall picture: the San presence in international fora and conferences, especially those concerning indigenous peoples, has increased significantly – particularly since the establishment of WIMSA. The evolution of the international indigenous peoples' rights discourse, and the increasing integration of indigenous peoples' inputs in a number of areas affecting them (the environment and climate change, youth, gender, academia, etc.), have also been significant. Through their participation in international conferences, often through the facilitation of WIMSA, a number of Namibian San individuals have had the opportunity to give their inputs, raise awareness and express their concerns about the status of the San. Examples of such conferences in the last 12 years are provided in Box 19.3 on the next page.



Opening of the San Exhibition at the National Museum in August 2009



San participating in an ILO workshop in October 2010



San in a panel discussion in the ILO workshop



San chiefs in the consultative workshop to prepare for the San Exhibition at the National Museum

### **Box 19.3: Examples of International conferences attended by Namibian San over the last decade**

This impressive (though not comprehensive) list is meant to convey the extent of San participation in international fora, and the multiplicity of issues in which Namibian San are engaged. The San presence in these conferences was facilitated mainly by/through WIMSA.

- **First UN Permanent Forum on Indigenous Issues**, New York, USA, May 2002.
- **Second South-South Biopiracy Summit: “Biopiracy – Ten Years Post Rio”**, Johannesburg, South Africa, 22-23 August 2002.
- **Indigenous Rights in Commonwealth Africa Meeting**, Cape Town, South Africa, 16-18 October 2002.
- **Consultative Meeting of the African Commission’s Working Group on Indigenous Populations**, Nairobi, Kenya, January 2003.
- **International Workshop on Partnership on Indigenous Peoples and Sustainable Development**, Copenhagen, Denmark, March 2003.
- **San Hoodia Benefit Sharing Agreement Celebration**, Molopo Lodge, Southern Kalahari, South Africa, 24 March 2003.
- **Fifth World Archaeological Congress**, Washington DC, USA, 21-26 June 2003.
- **African Regional Conference on Early Childhood Care and Development among Nomadic Pastoralists and Hunter Gatherer Societies**, Nairobi, Kenya, September 2003.
- **Fifth World Parks Congress: “Benefits Beyond Boundaries”**, Durban, South Africa, September 2003.
- **“Radiance – an archaeology of southern Africa’s interior”**, Archaeologists Conference, Kimberley, South Africa, April 2004.
- **Third Session of the UN Permanent Forum on Indigenous Issues**, New York, USA, May 2004.
- **Conference of the African Indigenous Women’s Organisation**, Burkina Faso, June/July 2004.
- **Youth, Development and Peace Conference**, Sarajevo, Bosnia, 5-7 September 2004.
- **“Homecoming of Rock Art” Conference**, Windhoek, Namibia, 11-13 April 2005
- **First Angolan San Conference**, Lubango, Angola, 24-27 April 2007.
- **World Indigenous Summit on Climate Change**, Alaska, USA, April 2009.
- **UN Framework Convention on Climate Change Meeting**, Bonn, Germany, August 2009.
- **UN Framework Convention Climate Change Meeting**, Bangkok, Thailand, September 2009:
- **UN Framework Convention Climate Change Meeting**, Barcelona, Spain, October 2009.
- **UN Framework Convention Climate Change Meeting**, Copenhagen, Denmark, November/December 2009.
- **Commission on the Status of Women Meeting**, New York, USA, March 2010.
- **Conference of Parties COP 17 Meeting on Climate Change**, Durban, South Africa, November/December 2011.
- **Norwegian Church Aid Indigenous Peoples Consultative Dialogue**, Windhoek, Namibia, 28-30 October 2012.
- **Southern Africa San Rights Conference**, Gobabis, Namibia, 26-28 November 2012.
- **13<sup>th</sup> Annual Meetings of the United Nations Permanent Forum on Indigenous Issues (UNPFII)**, New York, USA, 17-31 May 2013.

– Compiled with assistance from Magdalena Brörmann, Robert Hitchcock and Victoria Haraseb

The number of Namibian San contributing regularly at international level is very small (probably fewer than 10), as these individuals must be fluent in English, able to write their own contributions, and be prepared to talk in front of large audiences – skills notably absent from the repertoire of knowledge that San have been able to acquire thus far. Capacity building takes time. Ten years ago, Brörmann noted the following:

“While the San are pleased that their expertise on San and other indigenous cultures, current affairs and development issues are in high demand internationally, they also find this demand a heavy burden as only a few San possess the organizational, administrative, linguistic and representative skills required for participation in such events.” (Brörmann 2003: 11-12)

Informal lists collated by WIMSA and others on conferences and attendees reflect that the number of San participants in international conferences has not increased over time, despite an ever-increasing number of conferences to be attended. Usually it is the same people who attend international conferences on all manner of pertinent issues, and they act as de facto representatives or ‘cultural brokers’ of Namibian San communities. As these people come to feel more at home on the international stage, network with representatives of other indigenous peoples around the world, and become accustomed to being accommodated in conference centres and hotels, their capacity and/or motivation to work at grassroots level may decrease. At local level they may thus face alienation; the egalitarian values (discussed in this chapter and in Chapter 15) could inculcate in some San a sceptical attitude towards these individuals – a disposition exacerbated by the lack of proper channels for the applicable individuals to communicate their findings and elicit feedback from those on whose behalf they work. This issue cannot be solved overnight, but it does need attention and specific action (capacity-building and institutionalised feedback mechanisms), as these few individuals could play an important role at local level – functioning as role models, helping communities to understand developments and discourses taking place at international level and how these could affect and advance San communities, etc. These cultural brokers could also play a spearheading role: instead of acting mostly in one direction (i.e. bringing the local to the attention of the global), they could work in the other direction too (i.e. communicating global developments to local level), thereby obviating, perhaps, the need for some of the local and national workshops that NGOs currently hold on indigenous peoples rights and other relevant issues.<sup>17</sup>

## 19.8 Recommendations

In this section we offer recommendations based on our assessment of the current state of affairs in respect of the following:

- 1) Consultation with San people.
- 2) San people’s participation and representation in mainstream politics.
- 3) San people’s representative structures at local, regional, national and international levels.

### 19.8.1 Consultation with San people

The following issues are pertinent with regard to consultation with the San on the planning and implementation of programmes and projects in their communities.

- Adequate time and resources should be allocated to integrating consultation mechanisms into the planning and implementation of programmes/projects that affect the San.
- Consultation mechanisms should accord with the principle of free, prior and informed consent (FPIC), and the stakeholders (including San representative institutions such as the TAs and the Namibian San Council) should develop and agree upon standardised procedures.
- During consultations – and to facilitate adherence to the principle of FPIC – information should be provided on the potential benefits and risks of the envisaged programme/project. Thus, appropriate feasibility studies, social impact assessments etc. should be conducted before

<sup>17</sup> There might be exceptions where a global development is brought to local level, but the direction generally tends to be local to global.

programmes/projects are planned and implemented, and the findings of such evaluations should be discussed with the target beneficiaries before the programme/project commences.

- The concept of consultation based on the FPIC principle should be incorporated into integration policies and programmes, as recommended by the UN Committee on the Elimination of Racial Discrimination (CERD 2008: 7).
- The OPM should broaden its consultation with San communities “in order to ensure that it is responding effectively to the needs of these groups”, as recommended by the Special Rapporteur on the Rights of Indigenous Peoples (Anaya 2013: 20).
- It is important to support the institutions that raise the voices of San communities in consultative processes, thus it is necessary to strengthen the capacity of San organisational and representational structures, first and foremost at local level, but also at regional and national levels.
- Finally, consultation mechanisms should lead to programme/project proposals that a beneficiary community can formally approve, e.g. by means of a memorandum of understanding (MoU). Thus, in consulting with the San communities, stakeholders such as the government and NGOs must apply the same principles that they apply in consulting with donors and other partners (as recommended in the San representative workshop in Windhoek).

## 19.8.2 San participation and representation in mainstream politics

As far as San participation and representation in the political arena is concerned, we recommend, firstly, an investigation of the mechanisms used in other countries to ensure the representation of indigenous peoples in parliament. The African Commission on Human and Peoples’ Rights (ACHPR) has recommended the following in this regard:

“Government should legislate affirmative action measures to increase the representation of San and other indigenous communities in governance structures such as Parliament, the National Council and local government structures. A quota system could be adopted to give indigenous communities certain percentage representation in these structures.” (ACHPR 2010: 6)

As far as participatory democracy at local and regional levels is concerned – a national ideal promoted by the “Decentralisation Policy” (MRLGH 1997) and the Decentralisation Enabling Act 33 of 2000 – a major role is ascribed to each region’s VDCs, CDCs and regional development coordinating committee (RDCC). Participatory democracy is often subject to substantial challenges in a country where distances are vast and communities live far from their elected representatives, and where a substantial proportion of the population is concerned about issues of daily survival and sustaining their families. Thus, if these bodies are to comprise the mechanism for ensuring people’s participation, then efforts and resources are needed to promote their active functioning, especially that of the VDCs and CDCs. As far as San participation is concerned, it would be important to implement the principle of affirmative action to give the San a voice in the VDCs, CDCs, RDCCs and other committees in the areas where they live. It would also be critical to provide the financial resources necessary to facilitate the transportation of the San representatives on such bodies, to ensure their presence in practice and not just in theory.

Participatory democracy relies on public monitoring systems to assess the performance of leaders in order to ensure their accountability to those whom they represent. Since provision is made for the participation of institutions such as the San TAs, the Namibian San Council and San CBOs, it would be relevant to establish institutionalised feedback processes between San representatives and their communities so that the San representatives are subject to the same social accountability mechanisms as other leaders.

Training and raising awareness on human rights and the political system is needed to optimise San participation and representation at all levels, and to enable the involvement of San representatives in the above-mentioned social accountability mechanisms. In particular, San CBOs should be supported, and their representational capacity on issues such as indigenous people's rights should be strengthened. They should also be trained on means to ensure social accountability. Similarly, public servants should be trained and sensitised on indigenous peoples' rights and San issues.

### 19.8.3 Representative structures

Consultation, support and capacity-building activities that engage San CBOs should incorporate the application of traditional internal decision-making processes. The UN General Assembly stressed the following in its *Final Study on Indigenous Peoples and the Right to Participate in Decision-Making*:

“[M]any indigenous institutions have their own decision-making processes ... . Many of these institutions continue to receive support from communities despite, in some cases, limited (if any) recognition by the State. The right to maintain such distinct decision-making processes and institutions is embodied, inter alia, in articles 5, 20 and 34 of the Declaration on the Rights of Indigenous Peoples. Generally, the ongoing functioning of indigenous peoples' internal decision-making processes and associated institutions are positive in that they facilitate the participation of indigenous peoples and individuals in public affairs in ways that are philosophically and culturally consistent with indigenous peoples' understanding of governance.” (UNGA 2011a: 5)

As far as the representation of the San at various decision-making levels is concerned, the previous point implies that it would be important to consult with the San communities on what kind of representative structures would be appropriate at local level and regional level, given their specific contexts and environments, so that the modalities developed are aligned with the distinctive needs of San in particular settings. An issue to consider in this regard is the relevance of egalitarian values and procedures for decision making in different San traditions in the past.

Although similar questions arise with respect to the representation of the San in decision-making processes at national level, the most effective strategy at this time would probably be to build on the efforts of WIMSA and the ILO to raise the profile of the San Council in Namibia. Thus it is strongly recommended that the government and development partners increase their support for the San Council as a national body, in terms of finance for operations and for strengthening capacity.

#### ***Traditional authorities***

Experiences in various regions have indicated that the recognition of San TAs can be a major step forward in terms of ensuring a more level playing field for the San as a marginalised community in Namibian society, especially in areas where the control over communal land has thus far been in the hands of TAs of other language groups. Therefore, the official recognition of San TAs (and the establishment of associated structures) should be considered the *sine qua non* for enabling adequate San representation. We also concur with the following request of the Committee on the Elimination of Racial Discrimination:

“The Committee requests the State party to provide ... information on the criteria used for the recognition of traditional leaders ... [and to] ensure that the criteria used for the recognition of traditional leaders under the Traditional Authorities Act of 2000 are objective and fair and that their application process is monitored by an independent body charged with assessing the legitimacy of applications for recognition by indigenous groups.” (CERD 2008: 4-5)

Similarly, the Special Rapporteur on the Rights of Indigenous Peoples has recommended that the government “review past decisions denying recognition of traditional authorities put forth by certain indigenous groups, with a view towards promoting the recognition of legitimate authorities selected in accordance with *traditional decision-making processes* [chapter authors’ emphasis]” (Anaya 2013: 20). In particular, the Special Rapporteur recommended that the government confirm the TA of the Khwe in Caprivi Region as a matter of priority (Anaya 2013: 20). Further to this, we recommend that any requests for the removal of an existing chief and the election of a new representative in accordance with the Act be processed by the government without delay.

To address concerns about favouritism/nepotism in both old and newly established TAs, and also to address complaints about a lack of feedback between TAs and their communities, we recommend establishing mechanisms for monitoring TA performance, and more formal mechanisms for TA reporting. Recommendations of the San representative workshop in Windhoek (January 2013) in this regard included the following:

- Establish clear procedures or mechanisms for the fair and transparent elections of TAs.
- Improve communication and feedback processes between TAs and the communities they represent.
- Support the development of committees and CBOs that have the authority to monitor the performance of TA councillors and San chiefs, so that social accountability is enhanced.
- Produce a written record of the customary laws of the San traditions as a major step in sharing customary knowledge in San communities and beyond. This may also contribute to strengthening San leadership and accountability as well as encouraging the engagement of communities.
- To keep the San TAs accountable, hold an annual general meeting of each traditional community.

In view of the many problems experienced by most of the San TAs, which are at least partly due to the lack of provision for San traditional leadership structures under the Traditional Authorities Act 25 of 2000, the government should consider amending the Act so as to formally accommodate traditional San leadership structures. This would accord with the above-quoted findings of the *Final Study on Indigenous Peoples and the Right to Participate in Decision-Making* (UNGA 2011a: 5).

### ***Participation of the San at sub-continental and international levels***

As we have seen, the San are represented on various bodies at sub-continental and international levels, and have a presence in fora that address issues relevant to them. As the organisations that represent the San are not always large, and since representation at international level may affect an organisation’s ability to dedicate resources to support representation at local level, the allocation of time and resources is always a matter of weighing priorities. In this regard it would be relevant to consult with the San communities and the organisations representing them at sub-continental and international levels on the potential for representatives to become disconnected from their communities, with a view to finding ways to reaffirm and strengthen the bonds at all levels between San spokespersons and those whom they represent.

At the same time it is important to direct adequate resources to the training and staffing of the San organisations that represent the San at sub-continental and international levels, in order to increase the number of San with the skills needed to participate in international workshops, conferences and networks. This would go a long way to ensuring better representation of San issues in these fora.

In addition, it is relevant to ensure that San representatives work as role models in the communities from which they hail, and that they report back to their communities, describe sub-continental and international developments, and explain why these developments are important for their respective communities.