

## **Access to land and security of tenure for the San people in Namibia: the case of Okongo Constituency, Ohangwena Region**

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# Abstract

This chapter analyses the dynamics of access to land, land use and security of tenure for the San people in Namibia, with a particular focus on Okongo Constituency in Ohangwena Region. It analyses security of tenure within the context of the ongoing registration and statutory recognition of land rights in Namibia's communal areas, to determine their applicability to the customary tenure system of the San people. The chapter suggests that the San people still have some forms of access to land for their livelihoods, although this is critically hampered by individualisation and fencing-off of land by sedentary agriculturalists. More importantly, individualisation of tenure has severely affected the San people's customary tenure of land as a common-pool resource that should be accessed and used as a group right. The chapter regards community-based natural resources management (CBNRM) as a possible window of opportunity through which the San people's customary tenure system, and therefore their basis of livelihoods, can be maintained. The chapter draws from data collected between 2013 and 2018 in Ohangwena Region, particularly from the San people that are living in and around Okongo Community Forest and Okongo Conservancy. Data were collected using a combination of methods of observation, semi-structured interviews, informal discussions, and analysis of land rights registration records.

## 1 Introduction

Namibia's communal lands are home to diverse groups of land users from different social groups who follow differentiated customary tenure arrangements and land use patterns. Customary tenure is used to refer to "the systems that most rural African communities operate to express and order ownership, possession, and access, and to regulate use and transfer".<sup>1</sup> In Namibia, the different social groups following customary tenure systems range from sedentary agriculturalists and pastoralists to hunters and gatherers. The San people, who are renowned as the descendants of the first people to inhabit Namibia, and indeed the broader southern African region, have long been primarily and sometimes exclusively relying on hunting wild animals, collecting wild food and seeking water sources for survival. As hunters and gatherers, they have led a nomadic lifestyle. Before the in-migration and settlement of the Bantu groups (who are mainly pastoralists and sedentary agriculturalists), the San people "were spread out thinly over most of modern-day

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1 Wily, Liz Alden, *Customary Land Tenure in the Modern World: Rights to Resources in Crisis: Reviewing the Fate of Customary Tenure in Africa – Brief #1 of 5*, Rights and Resources Initiative, 2011 (<https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/7713/customary%20land%20tenure%20in%20the%20modern%20world.pdf?sequence=1>).

Namibia, living a highly mobile life of hunting and gathering”.<sup>2</sup> The San people in Namibia are comprised of different groups, which identify themselves with their respective languages, traditions, customs and histories.<sup>3</sup> The groups vary in size, from larger groups such as the Hai||om, Khwe, !Kung, Ju|’hoansi, Naro and =Au//eisi, to smaller groups such as the //Anikwe, !Xoo, l’Auni, and /Nu-//en.<sup>4</sup> These different groups are spread across nine of the fourteen political and administrative regions of Namibia: Kavango East, Kavango West, Kunene, Ohangwena, Omaheke, Omusati, Oshikoto, Otjozondjupa and Zambezi.

Today, there are three main land tenure systems found in Namibia, namely freehold (urban areas and commercial agricultural land), communal, and state land. Some San people live on commercial agricultural farmlands and in the corridors between commercial agricultural farmlands, others on communal lands which are largely of other ethnic groups, and a small number live in protected areas, i.e. national parks.<sup>5</sup> Historical records indicate that the San people lived in some of these areas before they were later demarcated as freehold, communal and/or state land areas. Most of these demarcations have resulted in their dislocation and/or current marginalisation. It is similarly argued elsewhere that “the colonization process resulted in the San being marginalized and experiencing a significant loss of their lands and their customary livelihoods.”<sup>6</sup>

According to the Namibia Population and Housing Census of 2011, there is an estimated total number of 464 389 households in Namibia, with the various San languages being reported in 3 745 households, or 0.8% of the total.<sup>7</sup> In terms of the total population, the San people are estimated to number about 38 000, or 2% of the 2.4 million people in Namibia. These statistics should be treated with caution due to the inconsistent demographic and linguistic characteristics used in surveys – for example, the surveys only captured those San who speak a San language at home.<sup>8</sup> However, there are more San people living in these regions, who use

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- 2 Lankhorst, Marco, ‘Land Tenure Reform and Tenure Security in Namibia’, in Ubink, J.M., A.J. Hoekema & W.J. Assies (eds), *Legalising Land Rights: Local Practices, State Responses and Tenure Security in Africa, Asia and Latin America*, Leiden University Press, Leiden, 2009.
  - 3 Anaya, James, ‘Report of the Special Rapporteur on the rights of indigenous peoples’, in James Anaya, *The situation of indigenous peoples in Namibia*, 2013 (<https://www.refworld.org/docid/522db4014.html>).
  - 4 (Anaya 2013); Dieckmann, Ute, Maarit Thiem, Erik Dirkx & Jennifer Hays, ‘Executive Summary’, in *‘Scraping the Pot’: San in Namibia Two Decades After Independence*, Legal Assistance Centre and Desert Research Foundation of Namibia, Windhoek, 2014.
  - 5 Ibid.
  - 6 (Anaya 2013: 5)
  - 7 Namibia Statistics Agency, *Namibia 2011 Population and Housing Census Main Report*, NSA, Windhoek, 2011.
  - 8 (Dieckmann et al. 2013); Pohamba-Ndume, Kaleinasho Ngeteuya, *An Investigation into the Poverty Situation of the Hai//Om People Resettled at Okongo Constituency in the Ohangwena Region*, Masters Thesis, University of Namibia, Windhoek, 2016 ([http://repository.unam.edu.na/bitstream/handle/11070/2022/pohamba-ndume\\_2016.pdf?sequence=1&isAllowed=y](http://repository.unam.edu.na/bitstream/handle/11070/2022/pohamba-ndume_2016.pdf?sequence=1&isAllowed=y)).

a language other than their own as their main spoken language, and therefore they are not documented as San. It is also reported that some San communities in northern Namibia have lost their languages completely, and now speak the language/s of neighbouring ethnic groups.<sup>9</sup> In Ohangwena Region, which is the focus of this chapter, the San people mostly live in the constituencies of Okongo, Omundaungilo, Epembe and Eenhana. Okongo is one of the constituencies in which the San are recognised as the first inhabitants. In 2018, the Okongo Constituency Office in Ohangwena Region estimated that there were 308 households and a total population of 942 San people in Okongo Constituency.<sup>10</sup> They are generally spread across thirty-four villages, with the majority living in Ekoka, Eendobe, Onamatadiva and Oshanashiwa villages. According to Berger and Zimprich, the settlement of the San people in these villages is largely a result of the resettlement projects that were founded by the Finnish missionaries in the 1950s, but are currently managed and supported by the Government of the Republic of Namibia (GRN).<sup>11</sup> The rest of the San people in Okongo Constituency are reported to live in the villages of Eenguluve, Ehafo, Eloolo, Ohameva, Oidiva, Okafanyama, Okakango ka Hilka, Okalukuwena, Okanyandi, Okashamambo, Okatope No1, Okongo, Olukula, Olupale, Omauni manini, Ombabi, Omboloka, Ombuudiya, Omipapa, Omupanda, Omuepmbe, Omwandi, Onane, Onghwiyu, Oshalande, Oshixoha, Oshinanyiki, Oshushu, Oshuudiya and Otutunda.

## 2 The San people and interventions by Finnish missionaries

Okongo is known as Nkong in the !Xun language, and was earlier occupied by San who were sparsely distributed until the mid-1900s. The arrival of Ovawambo, in particular the Ovakwanyama people, who later established *omahangu* crop fields and were looking for grazing lands for their livestock in the 1960s,<sup>12</sup> as well as earlier on, along with the arrival of the Finnish missionaries in the 1950s, started to significantly transform the nomadic lifestyle of the San people. The Finnish missionaries arrived through the Evangelical Lutheran Owambo-Kavango Church.<sup>13</sup> The missionaries gathered the San people to be evangelised and converted to Christianity, and resettled them in project camps such as Onamatadiva, Eendobe, Oshanashiwa and

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9 (Dieckmann et al. 2013)

10 Okongo Constituency Office, 'List of San Communities in the Okongo Constituency', 2018.

11 Cited in Mouton, Randolph & Erik Dirks, 'Ohangwena Region', in *"Scraping the Pot": San in Namibia Two Decades After Independence*, Legal Assistance Centre and Desert Research Foundation of Namibia, Windhoek, 2014.

12 Nampala, Lovisa, 'Okongo: A Case Study of the Impact of the Liberation Struggle in the Ohangwena Region', in *Re-Viewing Resistance in Namibian History*, University of Namibia Press, Windhoek, 2015 (<http://repository.unam.edu.na/handle/11070/1820>).

13 (Nampala 2015)

Ekoka villages. These centres came to be locally known as the *omapyatumo gaayelege Okongo*.<sup>14</sup> In these projects, the San people were introduced to “[new] cultures, education, business and others” with the intention of civilising them.<sup>15</sup> They were also introduced to sedentary agriculture as practised by their neighbouring Ovawambo and Kavango. This was regarded as the only sustainable basis for livelihoods.<sup>16</sup> Takada had similarly reported that the missionaries played a central role in the “introduction of permanent settlement and residential concentration for the San people” who were allocated farming units at the camps by the missionaries.<sup>17</sup> In the 1980s, the Finnish missionaries withdrew their interventions as a result of the intensification of the war for the liberation of Namibia. The missionaries returned soon after independence to carry on with their activities, but again left the area a few years later.<sup>18</sup> The government of the newly independent Namibia built on the resettlement projects initiated by the missionaries by continuing to support common farming units for the entire San people for subsistence purposes. These interventions have been criticised and regarded as unsuccessful due to several factors, such as “inflexible policy, unrealistic and inappropriate goals, [and] failure to consider social and political dimension of poverty” in respect of the San people’s lifestyles.<sup>19</sup>

### 3 The basis of San people’s livelihoods and their marginalised status

Nationally and regionally, the San people are not only statistically a minority, but they are also severely marginalised. This is manifested in a diversity of ways, such as their exclusion as evident in the lack of opportunities available to them; their limited participation in society; relative deprivation, as characterised by poor housing conditions, limited employment opportunities, limited chances to access improved income, and high rates of poverty; and social injustice, such as the loss of their lands during colonialism, and the continuing precariousness in their access to land and threats to their customary tenure. Overall, the marginalisation of the San people is evident in the differences in their socioeconomic, political and environmental conditions, which are all inferior to those of other social groups.<sup>20</sup>

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14 (Nampala 2015: 210)

15 (Pohamba-Ndume et al. 2016, at [http://repository.unam.edu.na/bitstream/handle/11070/2022/pohamba-ndume\\_2016.pdf?sequence=1&isAllowed=y](http://repository.unam.edu.na/bitstream/handle/11070/2022/pohamba-ndume_2016.pdf?sequence=1&isAllowed=y))

16 (Mouton et al. 2014: 235)

17 Takada, Akira, *Narratives on San Ethnicity: The Cultural and Ecological Foundations of Lifeworld among the !Xun of North-Central Namibia*, Kyoto University Press, Kyoto, and Trans Pacific Press, Melbourne, 2015. (<https://www.amazon.com/Narratives-San-Ethnicity-Foundations-North-Central/dp/1920901922>).

18 (Pohamba-Ndume et al. 2016)

19 Cited in (Pohamba-Ndume et al. 2016).

20 See also (Anaya 2013).

The Namibia Household Income and Expenditure Survey of 2009/2010 showed that poverty in Namibia is highest amongst those who speak Khoisan languages, followed by Rukavango speakers.<sup>21</sup> The San people's poverty levels are directly linked to factors such as a lack of employment opportunities, threatened traditional livelihoods and limited access to education. This is exacerbated by insecure access to and tenure over land. These manifestations of marginalisation affect their ability to subsist and continue to follow their customary livelihoods practices. Additionally, the majority of those in the communal areas have no recognised traditional authorities of their own, but live under the leadership of the dominant group's traditional authority (TA). It is only in the former "Bushmanland" where the San people constitute a majority within the communal lands in which they live, and therefore, where they have decision-making powers with respect to land administration.<sup>22</sup> In Ohangwena Region, for example, San people live under the jurisdiction of the Oukwanyama TA, and partially under the Ondonga TA. These TAs are hierarchical, and led by two Ovawambo polities which operate in accordance with their respective customary laws. The lack of recognised TAs for the San people in many regions has rendered them politically weak, and so they are not included in decision-making on matters affecting them, and especially regarding land administration. As a result, many depend on other traditional communities and authorities for access to land, in particular for land allocation, but even for food and basic services.<sup>23</sup>

Poverty in Okongo does not coincide with ethnicity, because some of the Ovawambo in the constituency are also classified as poor. However, the living conditions of the San people are generally poorer, and the conditions are often appalling to the point of being inhumane. One of the interactions during fieldwork in 2018 was with a San family living just outside the fence of the offices of Okongo Community Forest and Okongo Conservancy. There, a woman who had just given birth (the baby was two weeks old at the time of the fieldwork) lived in a small hut with her husband. Nearby were other shacks belonging to family members. In the meetings, other members of the community forest and the communal conservancy from other ethnic groups also raised concerns over these appalling and inhumane shelters, and recommended that assistance be given for the building better shelters and the establishment of household gardens to improve the basic household food security of the San people. The Regional Governor, whose office is situated in Eenhana, the capital of Ohangwena Region, also shared similar sentiments by calling for donor-funded projects proposed in the area to consider the replanting of, for example, zimenia and other fruit trees on which the San people depend for their livelihoods, to enable them to maintain their traditional gathering customs.

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21 Namibia Statistics Agency, *Namibia Household Income and Expenditure Survey (NHIES) 2009/2010*, NSA, Windhoek, 2012.

22 (Anaya 2013: 8)

23 (Lankhorst 2009)

The San people in Okongo, as in most other parts of the country, now depend on a diversity of sources for their livelihoods. These include “food aid, piecework, veldfood gathering, pensions, subsistence agriculture, child labour and [support from neighbouring households in the form of food and other essential items]”.<sup>24</sup> A few San are employed, particularly in the informal sector as casual-, day- or seasonal labourers. The type of employment they obtain ranges from livestock herding, clearing land, fencing, and fetching water, to housekeeping or caring for children. Due to their historic and current higher rates of unemployment in formal sectors, poverty and desperation in the rural areas where San and other marginalised people live create a state of dependency, where labourers trade off their manual work for goods such as food and alcohol. The diversity of sources of livelihoods can be explained in terms of the multiple threats undermining the original basis of their livelihoods. It is now generally true that the original basis of livelihoods, namely hunting and gathering, has been compromised. This is a result of the individualisation of land access, and the fencing-off of land by sedentary agriculturalists. Sedentary agriculture has transformed the dynamics around access to land in the Okongo area by increasing the demand for grazing lands for the growing numbers of livestock, as well as for land for dwellings and crop cultivation. This has consequently resulted in changed natural habitats and a reduction in wildlife – formerly the basis of San livelihoods in the area. Despite the threats to their livelihoods, the San continue with their traditional practice of gathering veldfoods, even though such resources are currently compromised. Today, the veldfood that the San people in Okongo collect includes *omambibo*, *eeshe*, *omauni*, *eembu* and *eemheke*, amongst others. The fact that the San can still collect these resources suggests that they still have some form of access to land, even if it is hampered in most cases. Their access and tenure relations have been altered by the individualisation of tenure by other groups, compromising their now precarious livelihoods.

## 4 The land tenure system of the San people

Today, the population of Okongo Constituency is the third largest in Ohangwena Region, with recent estimates placing it at 25 698 inhabitants.<sup>25</sup> The constituency has grown from being an area that was sparsely populated with no forms of infrastructural development, to one with fully-fledged villages, and there is even a town emerging. The area is dominated by sedentary agriculturalists who depend on individualised holdings for homesteads and crop production, and who have fenced-off large tracts of land to include grazing lands.

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24 (Mouton et al. 2014: 243).

25 Namibia Statistics Agency, *Namibia 2011 Population and Housing Census Main Report*, NSA, Windhoek, 2011.

Hunting and gathering formed the basis of the livelihoods of the San people. As early, sparsely distributed inhabitants of Okongo, they led a highly mobile lifestyle of hunting wild animals and gathering veldfoods, with no restrictions. Like the sedentary agriculturalists, the San people used land on the basis of customary tenure. However, it is important to underscore that customary tenure arrangements differ amongst communities. The customary tenure of the sedentary agriculturalists in north-central Namibia entails individualised tenure, with individual families having exclusive rights to land for dwellings and crops; other members of the community could be excluded from using these resources without the consent of those who hold the rights. Sedentary agriculturalists also have communal tenure, in term of which a right of common usage exists and is exercised by members of the community – for example, members of a community may have the right to graze their livestock on a common pasture.<sup>26</sup> It is important to note that for sedentary agriculturalists, communal tenure has reduced as a result of the individualisation and fencing-off of large tracts of lands for grazing purposes.<sup>27</sup> This has not only reduced the availability of land as common resource, but has left the San people on the margins, with their access to land becoming ever-more precarious. The San people's customary tenure was and is based on land as common property or a common-pool resource with open access. In such a tenure system, "specific rights are not assigned to anyone and no-one can be excluded";<sup>28</sup> where it still pertains, there is no individualisation of tenure amongst the San people, as the land is open to the entire group.

It was observed in the field that individualisation and fencing-off of the land has led some of the San people – especially those in villages outside the special resettlement projects – to settle in the corridors between the fences of individualised landholdings. Other researchers have revealed that the village headmen where the San people live have indicated that San people can be allocated land if they have requested it.<sup>29</sup> However, there are factors that inhibit the land from being put into productive use, such as the lack of agricultural tools and cattle necessary for ploughing the land.<sup>30</sup> However, as described above, several projects, whether initiated by the missionaries in the past or by the current government, have not worked. Therefore, a critical question is whether the current GRN projects are adopting the wrong prescriptions as solutions to the marginalisation of the San people? Do the San people need individualised landholdings? Do they need individualised tenure? Or do they need a secured and protected common-pool

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26 FAO, *Land Tenure and Rural Development*, Rome, 2002.

27 Nghitevelekwa, Romie, *Communal Lands in Namibia Transitions in Customary Land Tenure, Land Uses and Tenure Security in North Central Communal Areas of Namibia*, Windhoek, University of Namibia Press, forthcoming.

28 (FAO 2002)

29 (Mouton et al. 2014)

30 Ibid.

and open-access system of tenure, as they have had in the past? In the section below, we analyse how the securing of land rights on communal land addresses and integrates the tenure systems of the San people.

## 5 Communal land reform in securing San people's land rights

In 2002, Namibia passed the Communal Land Reform Act (No. 5 of 2002), which subsequently came into force in March 2003. The Communal Land Reform Act provides for the registration and statutory recognition of land rights on communal land in order to give the legal security of land tenure which has long been denied.<sup>31</sup> The enforcement of the Communal Land Reform Act marked the beginning of the communal land reform process in Namibia. The land rights registered and recognised on communal land are customary land rights, rights of leasehold for general business purposes, rights of leasehold for agricultural purposes, and occupational land rights. Rights of leasehold for general business purposes are granted for land uses such as tourism enterprises, filling stations, supermarkets, small- and medium-sized trading stores, and others. Rights of leasehold for agricultural purposes are mainly granted for land uses in areas designated and gazetted for agricultural purposes, such as the small-scale farming units. Occupational land rights are granted for land uses of public interest such as schools, hospitals, churches and others. The Act defines customary land rights as rights to farming units (crop fields), rights for residential units, and any form of customary tenure that may be recognised and described by the Minister in the *Gazette*.<sup>32</sup> Here, the Communal Land Reform Act is specific about individualised tenure, but other forms such as open access tenure as practised by the San people and where resources are found on commonage are also clearly specified.

The GRN has identified and recognises the San people amongst others (Himba, Ovatie, Ovattjimba, and Ovazemba) as particularly marginalised, and they have been recognised in different laws and policies as groups that merit special attention and concern.<sup>33</sup> This identification and recognition can be compared with that of gender as a social category. In this regard, women are recognised as being historically marginalised in many spheres of life, including in access to and rights over land. As a result, the Communal Land Reform Act makes specific provision for closing gender gaps in the governance structures over communal land, for example by setting a quota for women as representatives on the communal land boards. Currently, this quota requires four women to be members of each communal land

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31 (Nghitevelekwa forthcoming)

32 Republic of Namibia, Communal Land Reform Act (No. 5 of 2002).

33 (Anaya 2013: 5)

board (two women who are engaged in farming operations in the respective board's area, and two women who have expertise relevant to the functions of a board).<sup>34</sup> Similarly, there are clear provisions set out in section 26 of the Act, to ensure, protect and secure the rights of women and especially widows' land rights upon the death of their spouses.<sup>35</sup> While we acknowledge the limitations that still exist regarding the implementation of these provisions, they do represent a recognition of the historical vulnerabilities, marginalisation and precarious positions which women, and in particular widows, have long occupied in relation to access to and rights over land. Setting a quota for female representatives on the communal land boards is intended to close the gender gap in relation to governance structures on land administration.<sup>36</sup> However, the same cannot be said for the San people, who have also been identified as marginalised and of concern, and needing special attention. The San's involvement in land administration should be given the same attention that has been given to women, with a view to securing their access to land and security of land tenure. In the absence of this recognition in the Act, they will continue to be marginalised, and to depend on marginal livelihoods. There are no indications of gaps in access to land and rights over land of the marginalised groups in Namibia being resolved by the Act.

Because of individualisation and fencing-off of land by sedentary agriculturalists, the institutions of community forests and conservancies under CBNRM seem to be the last hope of maintaining the San people's customary livelihoods, as discussed further on.

## **6 Community-based natural resources management: A window of opportunity?**

With the shortcomings identified in communal land reform and the securing of tenure, this paper argues that CBNRM provides a possible window of opportunity through which the San people's land tenure can be maintained. CBNRM is a programme established in the 1990s as part of the GRN's efforts to promote conservation and the sustainable utilisation and management of Namibia's resources. It rests on the belief that "if natural resources have sufficient value to rural communities, and allow for rights to use, benefit and manage, then appropriate incentives for people to use natural resources in a sustainable way will be created".<sup>37</sup> According to Hulme and Murphree (1999) and Adams and Hulme (2002), CBNRM is a new approach to conservation, departing from and challenging earlier fortress conservation models

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34 Republic of Namibia, Communal Land Reform Act (No. 5 of 2002), p. 5.

35 Ibid.

36 (Nghitevelekwa forthcoming)

37 'National Policy on Community-Based Natural Resources Management', Ministry of Environment and Tourism, 2013, p. i.

under colonial dispensations that excluded local communities from the equation of conservation.<sup>38</sup> According to Caruthers (2007), fortress conservation approaches were characterised by the “creation of protected areas from which Africans were forcibly, and often violently removed or displaced and subsequently excluded.”<sup>39</sup> It was these types of exclusions that the new conservation model in the form of CBNRM had to overcome. In Namibia CBNRM is implemented through communal conservancies and community forests. The programme was pioneered and officially launched in 1998 with the gazettelement of the four first communal conservancies, namely; Nyae Nyae in the east, Salambala in the north-east, †Khoadi-||Hôas in the north-west, and Torra in the west of Namibia.<sup>40</sup> Over the years communal conservancies and community forests have gone from strength to strength. By 2018, in Namibia there were 86 registered conservancies spread across the country, covering 166 045 km<sup>2</sup> and benefiting over 227 941 people.<sup>41</sup> Similarly, there were about 40 community forests spread across the country. The first 13 community forests were established in 2006. All community forests in Namibia are established under section 15(3) of the Forest Act (No. 12 of 2001).<sup>42</sup> Community Forests in Namibia further function in line with the Namibia Forestry Strategic Plan of 1996. Like the communal conservancies, the rationale behind the establishment of community forests is to promote the sustainable utilisation of forests and forest resources, with strong involvement of local communities in the management and decision-making process. The end goal is to reduce poverty, improve rural livelihoods, provide an opportunity for rural communities to reinforce their traditional rights to communal land, and provide an opportunity for community-based decision making and conflict resolution.<sup>43</sup>

In far-northern Namibia, Okongo Community Forest and Okongo Communal Conservancy were registered in 2006 and 2009, respectively. Okongo Community Forest is among the pioneer community forests to be registered in Namibia, and it plays an important role in the preservation of the forests in Ohangwena Region, which have been critical in the provision of grazing, timber and non-timber forest products to its users. Okongo Community Forest has played a role in maintaining the forest resources, albeit while having to face challenges along the way. The

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38 Cited in Nuulimba, Karine & Julie J. Taylor: ‘25 Years of CBNRM in Namibia: A Retrospective on Accomplishments, Contestation and Contemporary Challenges’, *Journal of Namibian Studies: History Culture Politics*, Vol. 18, 2015, pp. 89–110 (<https://namibian-studies.com/index.php/JNS/article/view/425>).

39 Cited in (Nuulimba & Taylor 2015: 91)

40 Ministry of Environment and Tourism, ‘Conservancies’ (accessed 9 August 2019 at <http://www.met.gov.na/services/conservancies/193/>).

41 Namibia Association of CBNRM Support Organisations, ‘Registered Communal Conservancies’, NACSO (accessed 9 August 2019 at <http://www.nacso.org.na/conservancies>).

42 Ministry of Agriculture Water and Forestry, ‘Community Forestry’ (accessed 9 August 2019 at <http://www.mawf.gov.na/community-forestry>).

43 Ministry of Agriculture, Water and Forestry, ‘Community Forestry Guidelines’, 2005.

preservation of the natural forest endowment has promoted the San people's livelihoods, and has perhaps played an important role in sustaining them and contributing to their continued presence in the area.

Okongo Community Forest, as part of the CBNRM programme, is rich in a variety of tree and plant species that are potential resources of timber, livestock grazing, and edible and medicinal plants.<sup>44</sup> In comparison to medicinal plants, however, the resource of edible plants has diminished as a result of degradation.<sup>45</sup> This has a direct impact on the San communities who depend on edible plants or veldfoods as part of their livelihoods. Members of the Okongo Community Forest Management Committee have made proposals for new donor-funded projects to include reforestation with edible plants so as to revive these resources. A socioeconomic survey for Okongo Community Forest undertaken by Okongo Agricultural College in 2000 estimated that a total of around 150 San people and around 1 100 Ovakwanyama live in Okongo Community Forest and are its primary users.<sup>46</sup>

The San people have occupation and use rights as registered members of the two community-based institutions (Okongo Community Forest and Okongo Communal Conservancy), just as members from other ethnic groups do. They have access to resources such as firewood and veldfood, but also share in general benefits generated and/or provided through the community forest or the conservancy. The Participatory Integrated Okongo Community Forest Management Plan is very clear on the integration of the San people. The plan emphasises that "the San community shall continue to be represented in the forest management committee and other forums, where their aspiration shall be discussed".<sup>47</sup> The management plan further provides for the integration of the San community and fully recognises their traditional lifestyle. However, while the management plan is clear on this, findings from the field reveal that this representation is not altogether effective, as the San members tend not to attend meetings. It has been suggested that this is a consequence of the San's mobile lifestyle. However, despite the absence of San representatives on the committee, the members ensure that the needs of the San members are addressed. One of the committee members shared that "most people that are in need of assistance are our San people. The immediate help needed is food and decent shelter."<sup>48</sup> The outcome envisaged in the management plan is that the preservation of forests will increase the availability of veldfood for the San to collect.<sup>49</sup> We contend that community-based organisations in the

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44 Shinyala, Cecilia, Andreas Nikodemus & Agnes Shikomba, 'Forest Resources Inventory Report for Okongo Community Forest', Ministry of Agriculture, Water and Forestry, Windhoek, 2017.

45 Ibid.

46 Mulofwa, Jericho, Bernhard Pfaff, Esther Amadhila & Michael Otsub, 'Participatory Integrated Forest Management Plan', Okongo Community Forest, Namibia, 2003.

47 (Mulofwa et al.: 24)

48 Informal discussion, Okongo Community Forest, 2018.

49 (Mulofwa et al.: 24)

forms of community forests and communal conservancies are the only avenues through which the “rights of groups of people to common pool resources [can be] secured”.<sup>50</sup> Furthermore, there are other forms of support that come from the community forest, namely the use of funds to support the San people in marketing their products such as fruits and crafts, to buy them blankets, especially during the winter season, and to contribute to funeral costs in times of bereavement.

Although community forests and conservancies have the capacity to preserve the San people’s livelihood basis and improve their standard of living, these benefits are threatened by the high demands for land, failure to comply with the bylaws and management plans, especially by the traditional authorities which allocate land for agriculture in the forest reserve area. This in the end defeats the very goal of sustainable utilisation and conservation. While these good intentions are clear on paper and provided for through legislation, research has revealed that some San people have “complained that the regulations [of the community forest] were also inhibiting them from accessing veldfood and other natural resources”.<sup>51</sup> Similarly, their hunting lifestyle is also inhibited because hunting is no longer permitted, or it is regulated. This means that access to and rights over common-pool resources are limited and conditional.<sup>52</sup> Werner (2015) additionally reveals that conservancies and community forests have no powers with regard to the administration of land rights, including land allocation. On communal land it is the traditional authorities at the level of the village headmen which have the legal power to allocate land. Members of Okongo Community Forest have shared that the village headman allocated land in the community forest although this is prohibited. These allocations have resulted in the individualisation and fencing off of land – and therefore in a reduction in the size of the community forest, and a restriction in access to its common-pool resources. These were confirmed by the representatives from the Ohangwena Communal Land Board, who noted that the new allocations and fencing in the community forest are treated as illegal fencing, and that there is now a moratorium on any allocations in the community forest. This moratorium is viewed as a positive development as having no individualisation in the community forest’s core area allows for the continuing availability of land on open access tenure. Similar lessons are evident in the Nyae Nyae and the N̄a Jaqna conservancies in Otjozondjupa Region. It has been found that these conservancies provide a wide range of benefits to the San people, especially by allowing them to have access to traditional veldfood, which ensures food security.<sup>53</sup> Nyae Nyae Conservancy, in particular, is said to be playing an important role in providing a platform for the San people

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50 Werner, Wolfgang, ‘Tenure Reform in Namibia’s Communal Areas’, *Journal of Namibian Studies*, No. 18, 2015.

51 (Mouton et al. 2014: 246)

52 (Werner 2015)

53 (Hays et al. 2014: 139)

there to make their interests known to outsiders, to engage with the GRN and, in particular, to defend their land rights.<sup>54</sup>

## 7 Conclusion

Access to land for the San people in Okongo Constituency remains in a precarious state. This is a result of in-migration, and the settlement and individualisation of land by agriculturalists and pastoralists. Over the years, precariousness in access to land has resulted in the marginalisation of the San people and the erosion of their livelihoods. While the model adopted by the Communal Land Reform Act and ultimately the Land Rights Registration Programme protects and secures the rights of other social groups, particularly women in Namibia, it does not give special consideration to other social groups, in particular the San people, who have long been and marginalised in relation to access to and rights over land. They therefore remain excluded from statutory recognition and protection of their customary land rights. Gathering continues to play a critical role in the livelihoods of the San people, and the fact that the current land rights registration does not include these activities reflects their exclusion from security of tenure. There is a window of opportunity in the community forests and communal conservancies model for the San people to be secured in terms of access to resources that are critical for their livelihoods. Through community forests and communal conservancies, the GRN devolves management and use rights to communities with the end goal of sustainable management. However, the presence of regulations inhibiting or prohibiting San people from accessing veldfoods contradicts the very purpose of these community-based institutions. Hence, it is important that all management communities of community forests and communal conservancies are sensitised about the basic needs of the San people, and alerted to the fact that their respective regulations should take these needs into consideration. The registration of land rights, and in particular customary land rights, ought to be specific regarding rights to forest-based or common-pool resources for the San people and other land users who depend on them. A one-size-fits-all model of land rights registration only works to the benefit of some land users, as the current model best fits their land use patterns. Other land users whose land use patterns do not revolve around the individualisation of land, for example, are excluded. Our conclusion is therefore that the Ministry of Land Reform, through the communal land boards, should consider protecting and securing land rights beyond individual land rights, and include forest-based or common-pool resources rights.

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54 Ibid.