TRANSFORMATION OF COMMUNAL LAND:
Illegal Fences in the N=a Jaqna conservancy, Namibia

By: Christa van der Wulp

Student number 910309975120
MSc Thesis Sociology of Development and Change
SDC 80436
Supervisor: Paul Hebinck

Wageningen University and Research centre, the Netherlands
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ABSTRACT

During their search for land, livestock farmers from other parts of Namibia have settled in the Nǂa Jaqna conservancy and erected fences thereby *de facto* privatizing the commons. The local community, consisting mostly of different San groups, resists the presence of fences because it interferes with their livelihood practices and restricts the movement of wildlife. Illegal fences are regarded as an expression of two competing discourses: livestock farming and conservation goals formulated according to the CBNRM model. Overlapping rights and claims lead to a complex land tenure system in Namibia whereby various institutions compete for authority and access to land. While current land legislation specifically forbids fencing in communal areas, the main institutions dealing with land allocation are not able to deal with the everyday realities in Nǂa Jaqna. Finally, the presence of non-San groups leads to the re-construction of notions of ethnicity and citizenship in order to gain access to land. Identity and ethnic affiliation continue to play an important role in the unequal distribution of land among the different social groups present in Namibia. Based on a case study of illegal fences in the Nǂa Jaqna conservancy using qualitative research methods, this research aims to portray the transformation of the commons. The way in which local actors negotiate land use, access and identity are discussed in the following chapters.
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LIST OF ABBREVIATIONS

AGM Annual General Meeting (of the conservancy)
CBNRM Community-Based Natural Resource Management
CLB Communal Land Board
CLRA Communal Land Reform act of 2002
LAC Legal Assistance Centre
MAWF Ministry of Agriculture, Water and Forestry
MET Ministry of Environment and Tourism
MLR Ministry of Land and Resettlement
Nampol The Namibian Police
NDF Namibian Defence Force
NGO Non-Governmental Organisations
SADF South Africa Defence Force
SWAPO South West Africa People's Organization
TA Traditional Authority
TAA Traditional Authorities Act of 2000
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CHAPTER 1 INTRODUCTION

1.1 COMMUNAL LAND AS AN ARENA OF SOCIAL STRUGGLE

The land question in Namibia has focused primarily on land reform. At independence, land in Namibia was distributed unequally among the population as a result of the apartheid policies implemented during the South African colonial administration. These policies divided Namibia into communal areas and commercial lands and this division continues to be the basis of Namibia’s current land tenure system. Since the late 1990s, well-connected individuals have erected fences in the communal areas of Namibia, thereby de facto privatizing large tracts of land. As a result, local farmers are faced with limited grazing areas and diminished access to water which threatens their livelihoods. The government has since then attempted to decrease the amount of illegal fences by implementing the Communal Land Reform Act of 2002, which specifically prohibits fences in communal areas. In addition, the Act states the rights and duties of the Traditional Authorities and Communal Land Board, the two main institutions which deal with land allocations. However, fences continue to be part of the current landscape in the communal areas. Illegal fences have regained public attention in the last years as several court cases were initiated to get the fences removed. One of these court cases, concerns the N≠a Jaqna conservancy, which will be our case study.

This research aims to contribute to recent academic discussions surrounding issues of land enclosures, tenure security and governing the commons. When taking a closer look at the FAO’s definition of land grabbing, the focus is on transnational land acquisitions as a consequence of the growing demand for food and increased commodification of land (FAO according to Borras Jr et al., 2012). Land grabs as part of the new global food regime, has underestimated the variety of actors involved in illegal land grabs (Borras Jr et al., 2012). The case of illegal fencing in Namibia explores land grabbing from a different angle. Firstly, large tracts of land which are fenced off and thus ‘grabbed’, are often enclosed by wealthy and well-connected national actors, rather than foreign investors. These are usually businessmen, politicians, or civil servants who derive most of their income from non-farming activities (Odendaal, 2011a). In addition, the general assumption is that land grabbing occurs due to rising food prices and modernization of agriculture. However, land grabs occur for a number of different reasons besides agricultural production such as environmental pressures, water grabbing, or for leisure activities. In Namibia, large scale commercial agriculture with a customary land right in the communal areas is prohibited. Here, illegal fences are not an expression of a growing global demand for food. Most likely, these individuals are anticipating future business opportunities due to the speculation of the removal of certain policy barriers which would allow for Namibia’s further integration into the world market (Cox, Kerven, Werner, & Behnke, 1998). For example, the removal of the Veterinary Cordon Fence and de jure privatization of communal land would allow individuals to expand their agricultural business (mostly livestock) into the communal areas of Namibia, which could potentially contribute to growing inequality in terms of access to land. With a growing number of wealthy and well-connected individuals within African countries, this case allows for a redefinition of land grabbing to encompass a wider range of national actors and reasons for land enclosures.
The enclosures in the communal areas of Namibia, are part of a wider debate regarding tenure security in Africa that has been discussed since the 1960s. According to development and modernization theories, customary law and communal land tenure do not provide secure land rights. For example, according to Hardin (1968) and his theory of the ‘tragedy of the commons’, communal land tenure could only lead to increasing environmental pressures due to resource degradation. In addition, international institutions such as the World Bank have argued that individual land rights are necessary for productive commercial agriculture and capital accumulation (World Bank according to German et al. 2013). Others argue that the flexible, adaptable and socially embedded nature of land tenure systems in Africa are incompatible with individual rights (Lund, 2002). The registration and official documentation of land rights cannot prevent counter claims based on kinship or custom, because these represent the everyday land use practices. (Cousins, 2007)

The powers of the traditional authorities who are seen as the guardians of customary law is also widely debated (Cousins, 2007). Several countries across the African continent, including Namibia, have constitutions that recognize the powers of traditional forms of local government (Ribot, 2003). Decentralization has led to the creation of new boundaries and disputed jurisdiction but also created exaggerated group identities, for example ‘traditional communities’ (Peters, 2013). In return these group identities have widened the gap between ‘locals’ and ‘outsiders’ which has limited the ability of certain groups to access resources. Besides forming unrealistic group identities, decentralization has fueled competition between traditional authorities and state institutions over who has the authority to allocate rights, solve disputes, and determine land use vis-a-vis local communities (ibid). Finally, while transferring (real or symbolic) powers from the state to local forms of governance, many states have failed to set up the adequate institutional infrastructure necessary for local authorities to deal with land issues (Ribot, 2003). Therefore, institutions dealing with land issues are unable to react adequately to the claims and disputes brought forward by local actors.

The topic of illegal fences in the communal areas of Namibia has been documented by several authors (Adams, 2013; Bruce, 1998; Fowler, 1998; Muduva, 2014; Odendaal, 2011a, 2011b; Werner, 2011). Only a few have described illegal fences in the context of N≠a Jaqna at length (Odendaal, 2006). Besides reports and scientific articles, legal documents have been collected by the Legal Assistance Centre in Windhoek, an organization which represents the N≠a Jaqna conservancy in the ongoing court case. Most literature regarding N≠a Jaqna is focused on the conservation discourse and the Community-Based Natural Resource Management (CBNRM) model, but these studies often do mention land issues and fences (Hitchcock, 2012; Hohmann, 2003; Welch, 2013). Other authors have described the San indigenous movement and the marginalized position of the San in Namibia (Dieckmann et al., 2014; Suzman, 2001; Sylvain, 2002). The San and their culture remain an important anthropological research topic, however the San in the neighbouring Nyae Nyae conservancy have been more widely documented than those in N≠a Jaqna throughout the years (Biesele & Hitchcock, 2000; Gargallo, 2015; Koot, 2013). The aspects of identity, conservation and communal land tenure will all be covered in relation to illegal fencing in N≠a Jaqna throughout this thesis.

The main question that is addressed in this thesis is: How do social actors negotiate land use, communal land rights, and identity in the conflict over illegal fences in Tsumkwe-West, Namibia?
In order to address the way in which actors negotiate power, access and identity in the arena of communal land, the following sub-questions were formulated:

1. How do conflicting discourses over land use influence the ongoing transformation of the communal area?
2. How do different actors enact power and authority in allocating communal land rights?
3. In what way are ethnic and cultural identities reinforced in the struggle over territory?

This thesis is structured as follows: Chapter 1 formulates the theoretical approach based on the concepts of power, access and identity. Then, we will discuss what methodological tools were used to unpack the arena of communal land. In Chapter 2, we will take a closer look at how various land use discourses are enacted and how these discourses influence the underlying power relations between different actors. The institutions that are competing for authority and regulate access to land are the focus of Chapter 3. Three major institutions are discussed: The Communal Land Board (CLB), the Traditional Authority (TA) and the conservancy. Chapter 4 demonstrates the role of identity in the struggle over illegal fences and discusses how different institutions in Namibia produce imagined ethnic boundaries in communal land. Finally, our conclusions are discussed in Chapter 5.
1.2 POWER, ACCESS AND IDENTITY IN THE COMMONS

This chapter seeks to frame the transformation of the communal area of Tsumkwe-West according to concepts of power, access and identity. To understand the power dynamics in Tsumkwe-West, we analyze the competing meanings over land and identity, and the different strategies actors use to impose their ideas on others. Illegal fences are not only a manifestation of an ongoing struggle for resources, but also a struggle of meanings, ideas and practices. Combining the concepts of discourse and scales allows us to explore the relations of power between actors across space. Besides an analytical tool, scales can be used as a strategy by local actors to empower themselves by creating alliances with other like-minded entities to become part of a larger e.g. conservation or indigenous movement. Power is found in all human relationships, including those that negotiate access to resources. Thus, access to resources is not a given, but constantly re-negotiated.

Securing access is not about obtaining legal rights alone, but may involve many extra-legal measures, such as erecting a fence (Ribot & Peluso, 2003). A powerful actor in determining conditions of access is the state. The state attempts to shape who has access to resources and how resources must be used within fixed spatial boundaries, for example through the creation of communal areas or conservancies. In addition, the state also aims at making citizens legible and thus creates simplified notions of ‘community’, thereby neglecting local complexities and unequal power relations. State institutions often compete with other institutions, such as the traditional authorities over the allocation of land rights. In addition, claimants will choose whichever legal system is most likely to lead to the recognition of their land claims, thereby legitimizing the institution where the dispute is brought to. Overlapping rights and claims lead to a complex land tenure system in Namibia. This creates ‘room for manoeuvre’ which enables some individuals to fence off large tracts of land at the cost of others.

Until now, we have framed the struggle over illegal fences in terms of access to resources. But the defense of territory and resources is an important part of creating identities. While indigenous groups may forge global alliances, place continues to shape identities for collective action. There are many different expressions of local resistance, however our research is focused on ‘rightful resistance’ to explain the alliance between the conservancy and various organizations that aid the conservancy to frame their struggle within the formal legal structure. Many of the San feel that removing fences will only partly solve the problem, because this does not deal with the increasing amount of outsiders (non-San) that do not uphold their local norms and values. Therefore, the issue of illegal fences is as much about the encroachment of lands as it is about the encroachment of San identity and increased marginalization. Within this theoretical framework we will analyze our empirical findings to show how social actors negotiate communal land rights, land use and identity in the conflict over illegal fences.
1.2.1 THE POWER OF LAND USE DISCOURSES

Often land conflicts occur when there are conflicting multiple realities over land use. To understand the local power dynamics, we will explore the concepts of power, discourse and scale. Ribot and Peluso (2003) construct a definition of power based on the workings of Weber, Lukes and Foucault: “...the capacity of some actors to affect the practices and ideas of others...we see power as emergent from, though not always attach to, people. Power is inherent in certain kinds of relationships and can emerge from or flow through the intended and unintended consequence or effects of social relationships” (pp. 155-156). The importance of this definition is that this leads to two statements relating to power. Firstly, that power is about competing discourses. Competing discourses on how land should be managed, for example, livestock economy versus wildlife conservation will have tangible consequences such as the erection of fences as a practice of livestock management and resistance from those who wish to remove the fences for the free movement of wildlife. Secondly, power is embedded in social relations, rather than a ‘thing’ which people may possess. All human relationships are essentially relations of power (Foucault, 1991).

**Discourse and power**

The ability to define land and resources is based on the symbiotic relationship between power and truth according to Foucault (1998). This means that reality is socially constructed, presented in different ways, by different actors. Social constructivism is an important scientific orientation on which this research is based. The frames of reference through which actors construct reality are referred to as discourses. Discourse is defined as “…a set of meanings embodied in metaphors, representations, images, narratives, and statements that advance a particular version of ‘the truth’ about objects, persons and events and the relations between them” (Long, 2001, pp. 51-52). In sum, discourses frame our understanding of ‘reality’ (ibid). Power is the ability to become the dominant discourse and dismissing other representations of social phenomena. Because there is no universal truth, these multiple interpretations of reality are inherently dynamic and contested. The multiple realities or truths can be studies in processes of negotiation between different actors. They allow for an understanding of how actors give meaning to the material and social world (Long & Long, 1992). In Tsumkwe-West various actors will compete for resources to sustain their land use practices, e.g. livestock farming, conservation projects and resettlement initiatives. Certain actors will favor individual capital accumulation as a path towards development, while others will favor community-building initiatives. There is a constant struggle between these actors to impose ideas and practices upon others and to claim resources. The way in which these realities are constructed and what strategies actors use to become the dominant discourse will be a central feature of this research. Actors actively construct and reproduce discourses in speech situations. Discourses produce different narratives (both written and oral) or story lines in which actors construct a problem but also reaffirm social and moral order, especially when dealing with issues of blame (Hajer, 1995). These narratives can be used to justify or legitimize social action or practices. Often, events that are part of the narrative are presented in a certain historical order, while other events are left out. Many land claims are based on narratives referring to historical or ancestral ties to land (Berry, 2009). Language and storytelling play an important part in discourse analysis because they are able to show the way in which discourses become internalized and how discourses are practically expressed towards others. To understand the relation between power and discourse, we should
focus on whose interpretations and discourses are dominant over others and under what conditions these prevail, to understand the different aspects of power and authority (Long & Long, 1992)

**Power across scales**

Power relations and discourses can extend across space. Discourse is not only about how problems are negotiated but also in which arenas these negotiations take place. The concept of scale and scalar politics helps us to understand the power dynamics between actors operating at different scales (Keil & Debbané, 2005). Thus, the importance of scale in relation to discourse is that it can be a tool to understand different discourses, but also a strategy employed by actors. Scale, both in terms of levels of institutional arrangements (nations, local/regional governance structures, transnational organizations) and across geographical spaces as networks are seen as socially constructed rather than fixed assumptions (Neumann, 2009; Swyngedouw, 2004a). Scales are not hierarchical per definition, often different scales are expressed within spaces: “the ‘local’ is never purely local but . . . created in part by extra-local linkages and practices over time”(Watts, 2000b, p. 32). Local responses may be influenced by global discourses such as development, modernity and neo-liberalism. The re-structuring of scales is an important part in the social conflict over access to resources, and has the ability to alter existing power relations as some scales become more or less important than others (Swyngedouw, 2004b). Not only their importance, but also their reach, content and relationship with others is constantly redefined (Swyngedouw, 2004a). This is particularly important in an era of globalization were the role of the state is redefined while competing with different transnational organisations and where decentralisation is an important aspect of the neo-liberal discourse. Especially in land tenure regimes, decentralisation has led to different institutions at multiple levels competing over authority and resources, but also the construction of different legal systems that are played out against each other (see section on legal pluralism).

According to Swyngedouw (2004b) scale can be used as a strategy to force social change: “the mobilization of scale, the occupation of geographical scale, and the production of scale are central moments in such processes of socio-spatial change” (p. 1470). Power is relational and power in practice encompasses the different strategies that actors use to affect the practices and ideas of others. One of such strategies that expresses the assumption that power is not only locally situated is the concept of ‘jumping scales’, where operating within different scales can empower certain groups (Smith, 1984). For example, when scale is mobilized to establish alliances with other like-minded groups outside national borders and becomes part of a global social movement. Thus, scalar configurations are processes that organize power relations and embodies both contestation and building alliances across space (Swyngedouw, 2004b). Rather than viewing a conservancy such as N=Jaqna, as a local entity, the conservancy is backed by various national agencies and international NGO’s to aid their conservation efforts, but also to protect their indigenous rights.
1.2.2 CONSTRUCTING RIGHTS AND ACCESS

The everyday life experiences involved with land claims are greatly influenced by institutions, laws and policies. They are used as reference points for legitimizing property relations and authority. However, legitimizing authority is inherently a process of negotiation between various actors at different levels (Lund, 2002). The multitude of institutions dealing with land rights also leads to ambiguity in land rights. This allows actors to use different legal orders to legitimize their land claims. However, land is not only about legitimatized land rights. This means we should look at the extra-legal measures which govern access to resources. These social relationships that govern access and resources are inherently power relations. We argue that land claims are not static, but that property rights are socially constructed during negotiations over access to resources.

What is ‘communal’ land tenure?

In terms of legal anthropology, it is important to explain what is ‘communal’ land tenure. When speaking of communal land, one must acknowledge that this is a categorization that often simplifies reality, and differs from the concretised property relations (von Benda-Beckmann & von Benda-Beckmann, 2006). At a level of categorical property rights, communal land is described in terms of abstract categories and general rules, that lead to a generalisation of the property objects, holders and their relationship, whereas concretised property relations can be interpreted as the actual practices occurring on the ground (Nuijten & Lorenzo, 2006; von Benda-Beckmann & von Benda-Beckmann, 2006) Often, communal is not communal but rather a mix of group and individual rights. The landscape in the communal area has considerably changed due to fencing, and property has de facto become privatized as a result. Communal land should not be treated as a homogenous category but one must consider that there are different structures and constellations possible within the wider socio-political context and that change occurs at the level of concretised property relations (von Benda-Beckmann & von Benda-Beckmann, 2006).

Competing institutions over authority

In practice, the state becomes visible on the ground through decentralisation to different state institutions that govern land rights. However, state institutions are not the only social orders that shape land tenure systems. Often, these different institutions compete for authority. These institutions embody certain rules, norms and values that regulate patterns of behaviour when dealing with land rights. This also leads us to consider how we define institutions. We define institutions as: “Institutions are the prescriptions that humans use to organize all forms of repetitive and structured interactions, including those within families, neighbourhoods, firms, sports leagues, churches, private associations and governments at all scales” (Ostrom, 2005, p. 3). Many different institutions are often involved in legitimizing land claims and this leads to a fragmentations of power. The socio-political institutions may seek out claims to legitimize but actors may reference to different socio-political institutions to legitimizing their land claims; both strategies are a way for institutions to assert their authority in land issues (Sikor & Lund, 2009). This means that land conflict can be seen as overlapping legal orders and institutions in a struggle over authority. The communal land rights regime in Namibia encompasses a wide variety of institutions. In the past traditional authorities were
the sole authorities in the allocation of land rights, but since independence there are multiple institutions such as the ministry of Lands and Resettlement and the Communal Land Boards that are competing for authority. Even though conservancies may not be able to allocate land rights, they are responsible for the protection of the resources on these traditional lands, and this also leads to overlapping jurisdictions. In the case of Tsumkwe-West we argue that even within the Traditional Authority there are two separate fractions who constantly fight over authority in land management issues. All these different actors are constantly transforming the communal area.

**Legal Pluralism**

Contestation in the struggle over land is often the result of ambiguity in land rights. This ambiguity is often present in plural legal orders and allows for the construction of multiple property relations. According von Benda-Beckmann, von Benda-Beckmann, and Wiber (2006) legal pluralism in the modern state is expressed as: “a plurality of property ideologies and legal institutions, often rooted in different sources of legitimacy, including local or traditional law, the official legal system of the state, international law or religious legal orders” (p. 3). Customary and state law should not be seen as separate or apposed, but we argue that customary land tenure should be seen in terms of institutionalisation and decentralisation and therefore is, in various degrees, embedded in formal legal systems (Peters, 2009). Legal pluralism implies that the state law is not the only means for change because it is part of a wider constellation of normative and institutional orders and that non-state legal forms should be treated as relevant factors in property struggles (von Benda-Beckmann, 2001). In everyday life, when dealing with land struggles different ideologies and legal rules allow actors to employ various strategies to construct their own realities concerning the current land situation or claims for change. Often, what is consider legal, may not always be acceptable according to local norms and values. This process is also influenced by the type of social relationships between the actors involved, and the embedded nature of property in the wider socio-political context (von Benda-Beckmann et al., 2006).

The ambiguity in land rights is often exploited by actors, who at different times may use different types of legal orders, different notions of property and present their claims to different legal institutions in the quest to legitimize these land claims and access resources. This feature is also defined as forum shopping: “Forum shopping in plural legal situations can also provide alternative procedural avenues to pursue where claims based on different rule systems may be played out against each other” (von Benda-Beckmann et al., 2006, p. 19). While actors may pursue their claims based on customary law, how customary law is interpreted may be very different. Customary law which has been codified and integrated into formal law, for example in Namibia according to the Traditional Authorities Act of 2000, customary law is defined as: “the customary law, norms, rules of procedure, traditions and usages of traditional community in so far as they do not conflict with the Namibian Constitution or with any other written law applicable in Namibia” (p. 11). The problem with this definition is that it presents customary law as static. Self-stated customary law has the flexibility to be amended over time to adapt to different socio-political developments, and can be interpreted differently by various actors (Werner, 2011). This flexibility is different than codified customary law as described by the Traditional Authorities Act. We define customary law as: “living law, consisting of a set of rather flexible principles and rules that the community has authority to amend” (ibid, p.3).
Access rather than rights

But access to resources is more than just legal rights. The focus should shift towards ‘access’ to resources rather than ‘rights’ because property embodies different land-people relations (Ribot & Peluso, 2003). Access is the ability of people to benefit from resources and to gain, control and maintain access. As a result, actors draw upon a range of ‘bundle of powers’ (ibid). Yet property is continuously redefined within the social arena. Property can be defined as: “relationships among social actors with regard to objects of value” (von Benda-Beckmann et al., 2006, p. 3). Thus, property becomes a socially constructed concept where power is embedded in social relations. Ribot and Peluso (2003) argue that we should focus on ‘access’ rather than ‘rights’ because property should not be limited to matters of law solely. Access is “a broader term encompassing legal and extra-legal mechanisms, structures and relations governing the use of resources such a social identity, social relations, coercing and trickery, material wealth, physical circumstance etc.” (Lund, 2002, p. 12). Access will encompass different strategies that actors employ when faced with competing land claims. This implies that ‘access’ is not a given, but is constantly threatened and re-negotiated. It also implies that actors can access resources without having legal rights to them and that those who do have legal rights are not able to access the resources. Struggle over property is not only about how actors are able to benefit from natural resources but also about asserting authority (Sikor & Lund, 2009). Access encompasses various processes such as legitimization, inclusion and exclusion (ibid). To understand the terms of access to resources one must understand the power relations that are at play. Currently, the struggle over illegal fences encompasses a wide variety of extra-legal measures to gain access to land. Those who own the illegal fences are able to deny local community members access to resources, often without being in possession of the legal rights to do so. Yet, a variety of strategies are employed, such as intimidation, bribery, and sometimes even violence to benefit from local resources. In return, his triggers discontent and resistance among community members who continue to fight against these inequalities.

1.2.3 TERRITORY, IDENTITY AND RESISTANCE

There are many different actors competing for power and access to resources. In the arena of communal lands, these actors present multiple claims over territory. Both the state and local actors play an important role in organizing territory. During this organization process, those who have access to resources and those that are excluded are constantly re-negotiated. Often, access depends on membership of a certain group. Therefore, identity is often enacted or transformed to gain access to resources. This implies that categories such as community are often problematic because they are flexible and dynamic. Identities are constantly re-negotiated in the ongoing struggle over resources. In the defense of territory, various forms of resistance are portrayed. Some forms of resistance may be loud and defiant, while rightful resistance exploits the existing channels against established powerful actors.
State territorialisation

An important actor in shaping processes of exclusion and inclusion in terms of access is the state. According to Scott (1998), one of the central concepts that define modern states is simplification and legibility by organizing citizens and territory. This process of organization of territory can be referred to as state territorialisation. For modern states, territorialisation is a strategy to increasingly control people’s activities and their access to resources through processes of inclusion and exclusion within specific boundaries (Vandergeest & Peluso, 1995). Different groups have different rights and entitlements that determine their degree of access relating to physical space, therefore territorialisation and the accompanying legislation and regulations that govern access, such as property rights, lead to exclusion based on categorisation (Nuijten & Rodriguez, 2009). The assignment of specific activities within spatial boundaries, can be achieved through mapping abstract spaces, registration of land titles through surveys, assigning rights to use (e.g. grazing, mining, logging) or designating areas as traditional or communal etc. (ibid). The state is able to define nature in spatial terms through the establishment of conservancies (Neumann, 2009).

The conceptualization of abstract spaces often fail to capture the actual activities of local actors in the lived spaces (Vandergeest & Peluso, 1995). While state territorialization aims to achieve fixed boundaries and determine ‘appropriate’ land uses within those boundaries, in practice these boundaries are flexible and highly contested by various actors and land use practices are transformative as a reaction to social change. Territorialization is an ongoing process where different claims are constantly being brought into the social arena (Nuijten & Rodriguez, 2009). Neither legal systems nor state notions of territoriality can determine how space will be interpreted and enacted by social actors (Peluso, 2005). Territories and the accompanying legislation also partly determine who has the authority and jurisdiction over those territories. It also facilitates the construction of notions such as ‘nation state’ and ‘citizenship’, but also ‘traditional authority’ and ‘traditional’ communities or ‘conservancy’ when the organization of people and territory occurs based on decentralisation (Lentz, 2006; Peters, 2013).

State territorialisation is not just about organizing territory, but also the subjects within a territory. Notions of ‘community’ are often the result of state ordering processes and thus a simplification of reality. Communities are often constructed on the basis of their territorial proximity, which assumes that individuals develop similar characteristic, but the underlying difference between individual actors are ignored (Agrawal & Gibson, 1999). In addition, it assumes a state of harmony between the individuals of such ‘communities’ and conflict occurs with the ‘outside world’ (ibid). This leads to the assumption that a community is a homogenous group. It may be true that groups have some common values or shared identities, but it depends on how these are perceived by individuals within the group since “all communities are imagined communities” (ibid, p. 635). Our conceptualization of community is not based on shared norms. We distance ourselves from simplified notions of community and accept that individual actors within the group may also have conflicting values, norms and interests which are constantly re-negotiated in the face of discontinuities. At other times, values, norms and interests of individuals may overlap and serve the interest of multiple actors, for example in the case of collective action. This depends on the perceptions of individuals within a given time frame because linkages can fall apart and new linkages can be formed. While all actors may have the capability to mobilize resources, some may have more resources than others because in all groups there is a degree of stratification (ibid). Therefore, we
define communities as: “Composed of actors, agency and action...representing a more or less temporary unity of situation, interest and purpose” (Werner, 2011, p. 8). Within my research area, there are many interpretations about who is part of the community and who is not. This is sometimes based on ethnicity, understanding of local customs, time lived in the area, presence of family members already settled in the area etc. However, the way in which ‘community’ is conceptualized plays an important role in land rights. Being considered part of the ‘traditional community’ is critical in being able to apply for customary land right from a legal point of view, but also in terms of the amount of resistance one will face from the community.

*Identity and place*

Identity, place and power are important aspects of this research. Social struggles may occur across various scales, but often indigenous struggles are in the defense of place (Escobar, 2001). In addition, how resources are distributed within a community are central to questions of identity (Watts, 2000a). Access to resources is often contingent on social identity or membership of certain groups (Ribot, 2003). Identity discourses are often enacted or transformed in order to access resources therefore categorizations such as ‘traditional community’ are often flexible and problematic. There is a certain bias to analyze indigenous movements from a globalization perspective. But our focus is on understanding how different interpretations of place shape identities which can be mobilized for collective action. Place is not merely a geographical area, but also the cultural attachment that is given to a certain territory. According to Escobar (2001) place is: “…the experience of a particular location with some measure of groundedness (however, unstable), sense of boundaries (however, permeable), and connection to everyday life, even if its identity is constructed, traversed by power, and never fixed” (p.140). That doesn’t mean that place necessarily means ‘local’, often expressions of other scales are expressed through extra-local linkages (ibid). For example, how neo-liberal policies are expressed and their local responses vary considerably in different places.

The identities constructed around place are very much imagined, and often legitimized through historical ties to land. Geography and history are still central to the creation of collective identities (Castree, 2004). Yet at the same time, local indigenous movements seek global alliances with other indigenous movements across the globe, thus local agendas are pursued through global means, often referred to as ‘jumping scales’ (ibid). These identities constructed around place, may have inclusive attitude by forming alliances with other like-minded social movements, yet they rely on a distinction between insider/outsider through processes of exclusion (ibid). The notion of place is enacted as “a shifting political strategy linking identity, territory and culture at local, regional, national, and transnational levels” (Escobar, 2001, p. 163). During this study, it became increasingly clear that the encroachment of land in Tsumkwe-West is often portrayed as an encroachment on San identity. Land is crucial to upholding their culture of hunting and gathering which they hope to pass on to the next generation. Many of the San feel that removing fences will only partly solve the problem, because it does not deal with the increasing amount of outsiders (non-San) that do not uphold their local norms and values. The issue of fencing is not only about access to resources but also about upholding an ethnic identity in the context of increased marginalization.
As stated, many indigenous struggles are in the defense of place. What strategies do these social actors employ to defend place? A central concept to describe actors is agency, which is referred to as “the capacity of actors to process social experiences and to devise ways of coping with life even under the most extreme forms of coercion” (Long & Long, 1992, p. 22). This means that actors are capable and knowledgeable agents that mobilize different strategies during processes of struggle and negotiation. The notion of agency is especially relevant when exploring different forms of local resistance. Many different forms of resistance have been documented in the struggle over resources. There are examples of open defiance that at times can become violent, or forms of everyday resistance (Scott, 1985). The ‘weapons of the weak’ range from sabotage, foot dragging and slander to other forms of disguised defiance. Yet we will focus on a type of resistance that is public, and actively seeking the attention of powerful actors (O’Brien & Li, 2006).

A particularly relevant form of resistance is rightful resistance. Rightful resistance as explained by O’Brien and Li (2006) refers to a form of resistance that:

Operates near the boundary of authorized channels, employs rhetoric and commitments of the powerful to curb the exercise of power, hinges on exploiting divisions within the state and relies on mobilizing support from the wider public. (p.2)

Framing their claims according to state principles and by using the existing channels, resistance becomes partly justified in the eyes of powerful actors. It is often a combination of legal tactics and political pressure, and rightful resisters do not use violence (ibid). Instead, rightful resistance uses the laws and policies created by state institutions against established political and economic elites. In a sense, rightful resistance uses the tools created by those in power against the powerful or what O’Brien (1996) refers to as ‘critic within the hegemony’. Often, they aim to show that certain elites are corrupt, disloyal or in any case not adhering to the recognized values, norms and procedures within the current system (O’Brien & Li, 2006). Finally, rightful resisters are aware that state institutions are fragmented and their success hinges upon building alliances with officials in order to break up the semblance of unity within the system. According to O’Brien (1996): “So long as a gap exists between rights promised and rights delivered, there is always room for rightful resistance to emerge.” (p. 55). Rightful resistance is seen as the strategy employed by members of the N’A Jaqna conservancy to deal with the problem of illegal fences, by forming an alliance with the Legal Assistance Centre to help them frame their resistance within the formal legal structure as a way to win back their land.
1.3 STUDYING THE ARENA: A METHODOLOGICAL FRAMEWORK

1.3.1 RESEARCH OBJECTIVE

On the basis of the above mentioned theoretical framework, the main objective of this study is to show how communal land rights, land use and identity have been transformed in the communal area of Tsumkwe-West through negotiations between various social actors surrounding the issue of illegal fences.

1.3.2 RESEARCH QUESTIONS

The main question that is addressed in this thesis is: How do social actors negotiate land use, communal land rights, and identity in the conflict over illegal fences in Tsumkwe-West, Namibia?

In addition, the following sub-questions were formulated:

1. How do conflicting discourses over land use influence the ongoing transformations in the communal area?
   a. What are the multiple realities of land use present in Tsumkwe-West?
   b. What are the narratives that are used to justify certain land use practices?
   c. How is development of the communal areas interpreted by different actors?
   d. What strategies do different actors employ to legitimize their land use practices?

2. How do different actors enact power and authority in allocating communal land rights?
   a. Which are the multiple representations of illegal fencing expressed by different actors?
   b. How are power relations reflected in the physical landscape of the communal area?
   c. What strategies do different actors use legitimize their authority?
   d. How is the conflict shaped by ambiguity due to overlapping legal orders and institutional domains?
   e. How are state law and policies interpreted and transformed in everyday life?

3. In what way are ethnic and cultural identities reinforced in the struggle over territory?
   a. What is the role of ethnic identities in the struggle over illegal fences?
   b. How are collective identities constructed?
   c. How do different institutions divide the communal areas according to cultural and ethnic identities?
1.3.3 STUDY SITE

My research was conducted between the 1st of June and the 16th of August, 2015. The research was split into two parts. Firstly, I was hosted by the Legal Assistance Centre (LAC) in Windhoek. The LAC is a public interest law firm. They provide litigation, information and education concerning human rights in specific areas including inheritance, conservancies, illegal fencing, environmental issues, and issues affecting especially marginalized groups. The LAC provided me with the necessary insights and documents surrounding illegal fencing and assisted with the logistics of my fieldwork. In addition, my time in Windhoek was spent in the parliament library and the National Archive to conduct a literature review of policy, legal and historical documents.

I conducted my fieldwork over the course of 5 weeks in the area known as the N\=a Jaqna conservancy which is located in Tsumkwe-West, Otjozondupa, Namibia (see figure 1.1). This conservancy is located in the semi-arid Kalahari desert with an average annual rainfall, about 400mm (Dieckmann et al., 2014). N\=a Jaqna is the largest conservancy in Namibia, covering 9,120 km2 (ibid). In 2007, it was estimated that around 90% of the population was San, most of them belong the !Kung ethno-linguistic group (ibid). Within the area of the conservancy, there is also a community forest, known as Mkata. The largest towns are Omatako, where the Traditional Authority is based, and Mangetti Dune, where the office of the conservancy is located. This study site was chosen because the LAC is providing legal assistance to the conservancy. During my time of research, there was an ongoing court case because the conservancy had requested for the removal of around 30 illegal fences in the conservancy area. The court case, combined with new fences being erected every week, meant that illegal fencing continued to be a relevant topic among the community members.

1.3.4 DATA COLLECTION

I conducted an ethnographic research using qualitative research methods to answer my research question. Ethnography usually means the researcher is emerged in people’s everyday lives and uses participative methods of listening, watching and asking questions (Hammersley & Atkinson, 2007). The purpose of ethnographic research is to understand the everyday realities of the respondents by conducting in-depth studies. The primary data gathering techniques that were used include informal conversations, focus groups, semi-structured interviews and participant observations. These techniques are listed below. All the interviews and observations were recorded as field notes. The information that had been collected was coded based on a coding framework. From the data we will derive meanings and interpretations that will be discussed in my empirical findings.

Because of the highly politicized nature of illegal fences, especially because many well-connected individuals are implicated, I have decided to keep all informants anonymous. During my stay both my translators and I have been intimidated with the aim of forcing us to disclose information about my research. In addition, I was often reminded that the issue of illegal fences had led to several violent conflicts within the community. In the in-text citations, I do disclose what type of actor I am referring to e.g. community member, LAC, conservancy, TA member, respondent in court case etc. as well as the place and date of the interview. Though the legal affidavits are public and usually cited by name, I choose to keep the alleged fence owners anonymous in this study.
because it would seem unfair to mentioned them by name since they are still part of an ongoing court case (at the time of writing) and I have allowed all other actors to remain anonymous.

**Figure 1.1:** Map of conservancies: Nqä Jaqna conservancy circled in red (NACSO, 2009)
Different actors are present in the arena of communal land. To give a holistic view of the illegal fencing issue, we have conducted as many interviews as possible with actors from the groups identified below. Several actors that we have identified as important actors or key informants regarding illegal fences include:

**Community members:** As argued before, the term community is problematic. However, in this study, we refer to community members as those that reside inside the conservancy area, and identify themselves as ‘San’ or individuals who have been assimilated into the San community and overall are accepted as community members.

**Illegal fence owners:** These are individuals who have constructed a fence around a certain area within the conservancy. Often, I refer to them as ‘alleged’ illegal fence owners since in most cases these individuals have been identified as illegal fence owners by the community, but no official legal ruling has been given that their fences are indeed illegal.

**Illegal settlers:** These are individuals who have settled in Tsumkwe-West without being allocated a land right by the Traditional Authority or a land right which has not been approved by the Communal Land Board. Not all fence owners are illegal settlers. Some may have approved land rights, but not an approved fence. Again, not all illegal settlers are fence owners since not all of them have constructed fences. Therefore, it seemed necessary to distinguish these categories.

**Non-San groups:** Actors which do not identify themselves as San. These individuals may have other cultural, social or ethnic affiliations.

**LAC employees:** People who are employed at the LAC and are knowledgeable on issues relating to communal land, illegal fences, and/or conservancies.

**NGO employees:** People who are employed with NGOs that operate in or work together with the Nǂa Jaqna conservancy.

**Conservancy representatives:** Persons who are employed by the Nǂa Jaqna conservancy or sit on the management committee board of the conservancy.

**TA representative:** These are the individuals that are part of the Traditional Authority of Tsumkwe-West. There are different levels, such as chief, senior councilors, secretary, or headmen.

**CLB representative:** Individuals employed by, or on the board of the Communal Land Board of Otjozondjupa.

**Literature review**

To create a deeper understand of the historical roots of the illegal fencing issue, I have spent several weeks in the National Archive in Windhoek to collect historical documents concerning land tenure and former ‘Bushmanland’. This allowed me to show how communal land tenure has evolved throughout the years and how various narratives concerning the San have been constructed. In addition, I also visited the parliament library in Windhoek to collect legislation and transcripts of parliamentary debates. These documents have given me an insight into why the government has proposed to introduce certain legislation and the challenges that Namibia faced at independence. Finally, the LAC kindly provided me with the legal documents used in the court case over illegal fences in Tsumkwe-West. These documents have been critical in collecting the narratives presented
by alleged illegal fence owners. During my stay in the Na Jaqna conservancy, I have contemplated interviewing illegal fence owners. However, my translators were very hesitant because of the political nature of the issue and stories of San being beaten by some fence owners. I did not want to put them in any type of danger thus no interviews were conducted with illegal fence owners. However, I collected several affidavits with alleged fence owners implicated in the court case and these provided an insight into their point of view.

A literature study of scientific research allowed me to familiarize myself with similar research conducted in Namibia on the issue of fencing and to find links between previous research and my own study. I found that only a few studies have been conducted in Tsumkwe-West. Most literature on illegal fences is from areas in Ovamboland. The fact that the San are very different in terms of norms and values, land use practices and traditional authority structures means that illegal fencing in this area is expressed very differently than in the other parts of Namibia. In addition, most of the literature on the San in Namibia concerns the widely documented San from the Nyae Nyae conservancy. This conservancy is much more homogenous with a strong leadership base and illegal fences are currently not an issue in this area. There are also several cultural differences between the Ju’hoansi and the various San groups that are present in Tsumkwe-West that results in different socio-economic contexts, for example in terms of livelihood practices. Applying knowledge from other areas to Tsumkwe-West became problematic for my study. Therefore, I rely heavily on a few studies and report conducted in the area. Besides specific literature on Tsumkwe-West, a literature study was necessary to formulate my theoretical underpinning and give a general overview of illegal fencing in Namibia. Scientific data such as books and academic articles were retrieved from the university library or academic databases such as Google Scholar or Scopus.

**Sampling**

Non-probability sampling is best suited for in-depth case studies. For this research, purposive sampling was used because the cases were selected based on their relation with fencing disputes. Informants are either community members affected by fencing, or representatives of institutions involved in fencing disputes. Another sampling technique was snowball sampling based on the established networks that the LAC and the conservancy maintain in the area.

**Participant observations**

Participant observations allowed me to connect with the local inhabitants and to partially immerse myself into their daily activities. This helped me understand how the communal land tenure system and illegal fences affect their everyday lives. Upon arrival, I was told that the San are sometimes suspicious of outsiders. By participating in their everyday activities I was able to build relations of trust with several community members. Some became key informants for the duration of my research. In addition, I spent a lot of time at the conservancy and sometimes assisted them when needed. During the final week of my stay at Na Jaqna, I was able to attend the conservancy Annual General Meeting (AGM). Various issues were discussed with community members, including illegal fences. This allowed me to observe and listen how these issues are discussed among the conservancy members in a formal setting. Also, I was asked by the LAC to assist in recording down the objections brought forward by village representatives to land allocations during the AGM. This allowed me to have informal conversations with many different community members about the land allocation.
process, especially those from villages that I was unable to visit myself. By spending time with the local inhabitants I was able to grasp certain re-emerging frames and discourses surrounding fencing or land claims.

**Informal conversations**

Informal conversations were often part of my participant observations, for example between meetings at the AGM of the conservancy. However, many conversations remained informal because people were scared to talk to me at length. Many were unhappy with illegal fences, but they were afraid for the consequences if some people would find out that they had invited me to their homes or that they spoke to me. During my stay in Windhoek I gained a lot of insight into issues surrounding communal land and illegal fences during conversations with the staff of the LAC. These conservations were especially helpful to construct questions for my focus group discussions and semi-structured interviews. The LAC has been helping the conservancy to remove the illegal fences since 2011, and therefore know the community and the issues that are present. In addition, the LAC has helped many actors present their land claims to the relevant authorities and trained institutions that are responsible for land allocation. The staff members that I have sent time with and use as a reference have been to N#a Jaqna several times. In addition, I conducted many informal conversations with the committee members and staff of the conservancy during the time I spent at their office and they helped me get in touch with various community members for my interviews.

**Focus group discussions**

During my fieldwork, 6 focus group discussions were organized in various villages, including Grasshoek, Omatako, and Kandu. The size of the focus groups varied between 4 to 11 participants and the length of the discussions was roughly 1.5 hours. Due to the lack of land lines, cellphone reception and availability of transportation, it was impossible to organize the focus groups beforehand. Participants within the respective villages were asked to join upon arrival. The focus groups were conducted during devil’s claw harvesting season, so sometimes groups consisted of a small number of participants. The focus group discussions were held at people’s homes and at community locations. During discussions, open-ended questions were presented with the aim of understanding how community members were affected by fencing. This technique allowed for an immediate comparison of different and/or similar perspectives within the group. However, with focus groups one cannot underestimate the influence of group settings; participants are influencing and influenced by other, as they are in everyday life (Krueger & Casey, 2000). Discussions about illegal fencing were conducted in an open atmosphere in which community members expressed strong frustrations, emotions or serious allegations. These occurrences were only possible due to the fact that key informants and translators helped select participants because they understood the local power relations. Those who were in positions of power and those towards which the majority of the frustrations were directed were interviewed using semi-structured interviews.

**Semi-structured interviews**

In total, 9 semi-structured interviews were conducted varying between 1.5 – 2 hours in length with different actors. In addition to the focus group discussions, semi-structured interviews were conducted with individual community members from Omatako, Kanovlei, Mkata, Rooidag and
Mangetti Dune. This allowed me to ask follow up questions and cross check information that was gathered during focus group discussions. It also allowed for more in depth conversations about experiences and perspectives. Besides community members, semi-structured interviews were conducted with representatives of the Traditional Authority (mostly those based in Mangetti Dune), committee members of the conservancy and with a representative of the Otjozondjupa Communal Land Board. In some cases, I only received one opportunity to speak to certain representatives and semi-structured interviews allowed me to collect the most information within a given timeframe. Illegal fences are a highly politicized issue, and semi-structured interviews allowed me to ask sensitive questions that felt inappropriate during the focus group discussions. This is especially relevant when interviewing people that hold a position of power within the area.

Translators

Two different translators assisted me during my field research, depending on their availability. One of the translators was a committee members of the conservancy and the other translator was a local community member from Mangetti Dune. They translated interviews and focus group discussions from local Khoisan languages or Afrikaans to English. Due to my Dutch nationality, I could often understand Afrikaans, but not speak it adequately.

1.3.5 DATA ANALYSIS

Using the above mentioned research methods, a case study of illegal fencing in the Nǂa Jaqna conservancy was constructed. The case study approach is relevant for this research because it allows us to answer the ‘how’ and ‘why’ questions about a contemporary set of events over which the research has little or no control (Yin, 2003). The goal of the research is to explore and to understand rather than to confirm or quantify. There are different types of case studies. In this research we will focus on descriptive case studies to describe a phenomenon (fencing) and the real-life context in which it occurs (ibid).

To capture the various narratives, ideas and normative values that actors use to describe illegal fences, we will construct a discourse analysis. According to Hajer and Versteeg (2005) “The study of discourse also allows one to see how a diversity of actors actively try to influence the definition of the problem” (p. 177). Illegal fences, land use, and development are contested and re-negotiated in everyday interactions by various actors. In this research, we base our understanding of power according to Foucault (1998) and a discursive analysis will allow us to capture discursive power struggles (Hajer & Versteeg, 2005). Though language plays an important part in the construction of discourses, our focus for this discourse analysis is on how actors negotiate power and knowledge in their everyday realities to influence the development of the communal areas in the conservancy. Similar to the case study approach, a discourse analysis helps answer the ‘how’ questions, for example what underpins and influences the way in which different institutions act within the land tenure system. Of course, my interpretations which are based on my own social and historical identity influence this discourse analysis. I attempt to deal with the subjective elements of my research both through my methodology and through reflexivity. In the following section, I will reflect on my position as both a researcher and active participant.
1.3.6 POSITIONALITY

Before conducting this research, I underestimated the political nature and consequences of asking questions regarding illegal fences. Incidents (sometimes violent) between illegal fence owners and community members were not uncommon and many feared what would happen if they spoke to me. At least on one occasion, I was personally intimidated by an individual who is said to be an illegal fence owner. Others would be more concerned with which specific individuals I interviewed. Some community members told me that they believed certain individuals did not tell me the ‘true story’ for several reasons including that these individuals were non-San (or partially), corrupt, or even because they were seen as alcoholics. It never seemed to amaze me that even though most villages in the area lack basic communication infrastructures, news always seemed to spread like wildfire.

The fact that I was working together with the LAC and the conservancy opened many doors. Their assistance allowed me to build on their trust relation with the conservancy and community members. In addition, they provide a lot of information about the Namibian judicial system. But since the LAC and the conservancy had started a court case against illegal fence owners, this meant that it also closed several doors. There were several failed attempts at conducting an interview with the Chief. Whenever a time or a date was agreed upon, the chief was otherwise engaged. Coincidentally, this was also the case with senior councillors of the TA based in Omatako. In addition, I was not able to interview people who were accused of owning illegal fences. This proved very difficult because most of them are weekend farmers, meaning they do not reside in the area. Secondly, I felt that my translators were very hesitant to attempt this, and I did not want to put them in an unpleasant situation. Any perspectives given in this thesis from the point of view of the illegal fence owners is based on what was stated in legal documents.

Before the AGM, the conservancy had received a list of new customary land allocations. It is possible for community members to object to these land allocations in writing. However, due to the fact that this occurred during the preparations for the AGM, the conservancy had not been able to post the proposed allocations and collect objections. The LAC had asked me to speak to the village representatives at the AGM and see if they had any objections and if I could write them down, since many are illiterate. This experience gave me a lot of insights as to why community members do not want certain ‘outsiders’ to acquire land in their villages. At the same time, it put me in a very difficult position in which I felt I became more of an activist rather than an objective researcher. Due to the nature of the issue it also caused some friction and gossip between community members in terms of ‘who said what about whom’. However, the official due date for the objections (or else the objections could be considered invalid) was on the last of the AGM and since the conservancy committee members were conducting their meeting, they had no time to take on this task themselves. The LAC, now has valid objections to land applications, which must be dealt with according to procedure by the Communal Land board and the traditional authority before customary land rights can be definitively allocated. This may prevent individuals who are not entitled to a customary land right from gaining land in the conservancy area.
CHAPTER 2 TRANSFORMATION OF THE COMMONS

The communal lands have always been a site of contestation. Throughout history, different actors have tried to organize the communal areas according to their ideas of ‘modernization’ or ‘development’. In order to understand the struggle over illegal fences we explore the historical roots of the conflict. The South African administration had divided Namibia into ethnic homelands, which later became the communal areas of modern Namibia. The division between commercial and communal farmers has led to inequality in terms of access to land and natural resources. Illegal fencing is seen as the only way to be able to achieve the same privileges as commercial farmers in terms of exclusive rights to resources. A history of unequal land distribution is often given as a justification for fences.

After independence, there was no legislation to regulate the communal areas and prohibit fences until 2002. Due to this legal void, a fencing explosion occurred in the communal areas. Farmers looking to expand their farming activities were hungry for land. Areas which had previously been organized according to an open resources tenure system, became de facto privatized. With the enactment of the Communal Land Reform Act (CLRA) of 2002, a legal framework to deal with fences was put into place. From that point onwards fences became institutionalized and labeled ‘illegal’ according to statutory law. But the institutionalization of fencing has also brought new actors such as the Communal Land Board and the conservancy into the arena. Though new fences are now considered illegal, enforcement of legislation has become problematic. However, the CLRA is still the main piece of legislation on which certain actors base their opposition in relation to fences.

The historical and legal background shape the two main land use discourses present in Tsumkwe-West today. Firstly, over the past years many livestock farmers have travelled to Tsumkwe-West in search of grazing lands. These farmers believe that there is an abundance of unused farm land in this part of Namibia. The government has actively contributed to the notion of Tsumkwe-West as ‘underutilized’ land (Dieckmann et al., 2014; Welch, 2013). Since independence there have been several attempts to render this part of Namibia ‘productive’, by planning different small-scale farming schemes and resettlement programs. According to Welch (2013) the government views the San livelihood practices as ‘backwards’ and therefore believes livestock farming will raise productivity and bring development into the area. However, livestock farming undermines the conservation efforts of the San, especially with the erection of illegal fences. While the San view fences as interfering with wildlife and access to natural resources, many of the newcomers see fencing as a practice of livestock management. However, illegal fences are not just a conflict over land uses, but also a conflict of values. Many San community members associate illegal fences with individual gain over community interests. This results in narratives of alcoholism and corruption as ‘making business’ at the cost of others.

In an attempt to gain more control over land and resources in the area, community members established the N≠a Jaqna conservancy in 2003. Since then, the conservancy has been the main vehicle for resistance in land matters. The uptake of the community based natural resources management (CBNRM) model in Namibia has framed resistance to fencing from a conservation perspective. Ecological zoning has been an important resource in denying settlement of newcomers and cattle in certain areas of the conservancy. In addition, the conservancy has opened up the
discussion about the notions of community that is inherent in the CBNRM model. Since community membership determines who should benefit from the natural resources in the area, defining ‘community’ has been a powerful tool in demonstrating that certain groups should not be allowed to access community resources. Yet illegal fences continue to shape the landscape of Tsumkwe-West at an unprecedented pace. The conservancy has built several alliances to frame their resistance within the legal structure in Namibia in order to portray how the relevant institutions have failed to uphold their rights and obligations in the process of land allocation. In our analysis, contestation in the arena of the communal lands is not simply a story of overgrazing and overpopulation in certain parts of Namibia, but rather a struggle over conflicting discourses: livestock farming as development or community building through conservation.

2.1 HISTORY OF LAND DISTRIBUTION AND INEQUALITY

The current land inequality has many of its roots from previous colonial administrations. Boundaries created during the colonial past still influence the land policies post-independence. The separation of Namibia into two regions along racial lines, the native reserves for the African population, and the Police Zone for the white settlers, has influenced land distribution in current Namibia. The widespread dispossession of the African population in the Police Zone was aimed at providing the white settlers with land, and forcing the African population into wage labour (Werner, 1993). Commercial farming prospered in the white settler region, while the native reserves were faced with minimal resources, overgrazing, overcrowding and lack of secure land rights. The fact that the post-colonial administration has divided Namibia into communal and commercial farming areas along the boundaries of what was previously the Red Line, continues to fuel debates about land inequality and demands for more land reform.

During the German colonial regime, most of the administration’s resources focused on the southern and central part of Namibia because this area contained most of Namibia’s mineral deposits. White settlers were allocated land within this region, because police protection was limited to areas along main roads and railways and thus did not extend to the northern part of Namibia (Werner, 1993). This area became known as the ‘Police Zone’. The administration did not possess the resources to extend their authority to the north, outside the Police Zone, and so this area had little interference. At this point, the Police Zone boundary was merely an imagined boundary, an expression of colonial authority. There was no physical demarcation of the boundary, and crossing was not prohibited (Miescher, 2012). Still, it was important for policy making and the boundary was drawn on various maps created during this period.

After WWI, Namibia became a mandate under the protection of South Africa. Namibia (or South West Africa as it was known at the time) was viewed as South Africa’s fifth province and was governed accordingly. When the Martial Laws were introduced and later the Native Administration Proclamation of 1922, these laws were based on the German Police Zone borders and now the boundary between the white settler and African regions would have legal relevance. The boundary became known as Namibia’s ‘Red Line’ and served to control the movement of people and livestock. The African population that resided outside of the police zone, could not own property unless they received permission from the Administrator (Miescher, 2012). They were allowed to own small amounts of livestock and engage in subsistence farming, but were denied the opportunity to
participate in commercial farming (Werner, 1993). At the same time, the South African administration granted loans to white settlers and provided them with other agricultural services (Odendaal, 2011b). The aim was to make the African population depended on wage labour, because the colonial economy within the Police zone required a steady supply of manual labour from the northern areas especially for the white settler farms and the mining industry (Werner, 1993). Hardly any resources were directed to the northern region, known as the native reserves, and development stagnated in comparison to the areas within the white settlement region. The Red Line was also an important veterinary border (Miescher, 2012). It aimed at preventing the spread of diseases such as lungsickness from the northern area to the livestock in the white settler region. In addition, livestock free zones were constructed. One of these livestock free areas would later become ‘Bushmanland’ because it was assumed that Bushmen did not own livestock due to their hunting and gathering lifestyle. This area would act as a buffer to prevent diseases from spreading between the Police Zone and modern day Botswana (Miescher, 2012). However, it is also argued that the border served as an attempt to protect white owned livestock farms from competition from the African livestock owners (ibid). The location of the Red Line shifted many times between the 1940s and the 1960s, often to increase the amount of land available for white settlers. The Red Line was flexible and dynamic as a policy tool, until it became a veterinary cordon fence.

The South-African administration set up ‘the Odendaal Commission’ to decide how a similar regime of apartheid should be implemented in Namibia. Their ‘development’ plan was based on a division along racial lines, and ‘homelands’ were set up according to different ethnic groups (Odendaal, 2011b). At this point, Namibia was no longer divided in terms of African and white settlement regions, rather between different ethnic groups represented by the homelands of the Odendaal commission. This shift is also projected on maps created by the administration. The Red Line is no longer shown on maps created by the administration, instead the various borders of different homelands were portrayed (Miescher, 2012). However, the Red Line was still very much alive. By now, the Red Line had taken the form of a visible physical border as game proof fences. The borders were now more tightly controlled than ever, they could only be crossed through guarded gates (Miescher, 2012). The Red Line lived on as a Veterinary Cordon Fence.

After independence, the government had to tackle the land question. Namibia is divided between the north, which is considered communal land, and the south has mainly been appointed as commercial land (GIZ, 2014). Some areas are considered ‘state land’, for example the coastal area. Around 40% of the land in Namibia is labelled ‘commercial’ land and is predominately in the hands of the white minority population in the southern part of the country (Van Donge, Eiseb, & Mosimane, 2007). The northern communal areas consist of around 46% of the total surface area of Namibia, but around 70% of the Namibian population lives in this area (ibid). There was a lot of hesitation in dealing with the unequal land distribution after independence. Firstly, many politicians believed that due to the sensitive nature of the issue, it would work against the national policy of reconciliation (Parliament of Namibia, 1990). Secondly, the government faced two opposing parties. The non-white communal farmers wanted to obtain commercial farmers through land reforms, but the white farmers argued that re-distribution of commercial farm land would devastate the economy (Odendaal, 2011a). To deal with the unequal land distribution and widespread poverty after independence, the Namibian government created the National Resettlement Policy. During a period of twelve years, 27,942 people were resettled on the communal lands, approximately three times as many as resettlement on commercial lands (Harring & Odendaal, 2007). According to the National
Resettlement Policy, the San are one of the primary beneficiaries of the government resettlement programs. The reason for their preferential treatment, according to the Ministry of Land and Resettlement, is that the San have faced severe discrimination and exploitation throughout history and continue to be marginalized today (MLR, 2001).

In 1991, the government, together with various stakeholders formulated new land policies and legislation during the National Conference on Land Reform and the Land Question (Dieckmann et al., 2014). During the conference, it was decided that land would not be redistributed according to ancestral claims. Ironically, while trying to undo the injustices of the past, the government divided customary lands according to the ‘homelands’ of the Odendaal Plan. For example, former Bushmanland became the customary lands of the San, however only a small portion of the San people were actually living there (ibid). If claims were based on ancestral ties than the San would be able to claim most of Namibia. This conference was also a stepping stone to the creation of legislation concerning commercial land. The Agricultural Commercial Land Reform was enacted in 1995, whereas any similar legislation for communal land was created in 2002. Finally, the government created the Communal Land Reform Act (CLRA) of 2002 and this is still the most important piece of legislation which governs communal land tenure today and deals with illegal fencing.

Figure 2.1 Ethnic homelands envisioned by the Odendaal Commission (University of Cologne & MET, 2002)
2.2 ILLEGAL FENCING IN NAMIBIA

After independence and before the enactment of the CLRA, fencing became widespread due to a legal and political vacuum. The new elite saw fencing as the only way to be able to conduct modern commercial agriculture in the communal lands and accumulate wealth. Fencing was easier and cheaper than acquiring commercial land in other regions (Adams, 2013). Besides land for agricultural purposes, the elite saw land as a form of investment and land was fenced off for recreational purposes, such as game hunting (GIZ, 2014). Others argue that fencing was justified as a way to rectify the inequalities between the white and non-white population during the colonial era which the current government was slow to address (Werner, 2011). These elites have the financial resources to purchase fencing materials, their income is often derived from non-farming activities, they enjoy significant local status, and are politically well-connected (Odendaal, 2011a).

In the Communal Land Reform Act of 2002, a specific provision is made to deal with illegal fencing. If fences have been erected prior to the enactment of the CLRA, one can apply to retain their fences. In assessing the legality of fencing prior to 2002, the main question is whether fences where allowed to be erected based on whether or not traditional authorities had the legal power to make such decisions based on customary rights (Werner, 2011). After 2003, all fences erected without the permission of traditional leaders is considered illegal (Republic of Namibia, 2002). The Act stipulates that no new fences are allowed to be erected without authorization, and that fences present before the enactment of the CLRA must be taken down unless they have been granted permission to stay (LAC & NNFU, 2009). However, procedures to remove illegal fences and who has the power to enforce removal are not clearly indicated (GIZ, 2014). While the traditional authorities (TA) and the communal land boards (CLB) have the legal power to order the removal of the fences, they lack the necessary resources to do so (LAC & NNFU, 2009).

While legislation to deal with fencing has been put in place, in practice addressing the issue of illegal fencing has been a slow process. After independence, the Constitution had led to confusion over who owns the land, because the Constitution states that all communal land is owned by the state. This meant that TAs were either reluctant to interfere with the government or they continued business as usual because they did not accept this view (Muduva, 2014). While some were waiting for direction from the government, their authority declined in the eyes of the local residents who became upset due to the lack of action undertaken by the TAs (Odendaal, 2011b; Werner, 2011). With the enactment of the CLRA, TAs were struggling to understand their new role, because land matters were increasingly being addressed by competing state bodies, such as the ministries, CLBs and the judicial system, which created confusion about who was responsible for the removal of the fences. There have also been allegations that the TAs were allowing fencing, either because they felt it was justified under customary law or in some cases because they received compensation (Werner, 2011). Another explanation is that farmers are too afraid to stand up to powerful elite (GIZ, 2014). Finally, the CLBs have been slow to organize themselves and lack the administrative capacity and legal knowledge to follow up on fencing cases (ibid).

Fencing has diminished the amount and quality of grazing land and restricted access to water, causing increasing pressures on the livelihoods of people and the environment. In some regions, the dry season routes used by herders are being blocked by enclosures (Odendaal, 2011b).
In search of new grazing land, farmers moved into other regions, which led to conflicts between the new herders and the local population about whether or not these ‘outsiders’ could use their grazing land (Muduva, 2014). Fencing also prohibits the free movement of wildlife, which is particularly important in conservancy areas. Due to the fact that fencing restricts the access to resources of the San, it may lead to increased inequality between the San and the newcomers. The future of fencing depends on whether action will be taken soon. Many CLBs are awaiting the high court ruling on fencing cases that have been brought to the attention of the judge. Farmers have indicated that they have acquired fencing material but have not yet erected the fences because they feared that the fences would be removed. But if the situation remains unchanged, then farmers will not hold off erecting fences indefinitely (GIZ, 2014).

Land policies created before independence have shaped the current land inequalities that Namibia is facing. The inequalities of the past, are often brought forward when justifying illegal fences. The division between commercial and communal land has been continued post-independence. The Red Line is now known as the Veterinary Cordon Fence and still prohibits livestock farmers from the communal areas to sell their livestock or meat outside the fence. Some see illegal fencing in communal areas as the only way to achieve the same privileges as farmers in the commercial areas. The creation of the homelands has led to overpopulation and overgrazing in several parts of Northern Namibia. Many have left this area in search for grazing lands, for example in Tsumkwe-West. The fact that it took 12 years to create a legislation to manage the communal areas and deal with illegal fences has resulted in an explosion of fences until the enactment of the CLRA. The Act defines when fencing is illegal, and in which cases it is permitted to retain a fence. Throughout this research, the Communal Land Reform Act will continue to play an important role as different actors use the Act to justify their position relating to illegal fences. However, illegal fences are not a thing of the past. In my interviews, local residents stated that new fences were being built every week. In the next section we will discuss discourses that are shaping the struggle over illegal fences today in Tsumkwe-West: livestock farming and conservation.

2.3 LIVESTOCK FARMING AS DEVELOPMENT

Since independence, many livestock farmers have moved from other parts of Namibia into Tsumkwe-West. Due to overgrazing and overcrowding, these farmers have chosen to settle into less populated areas to continue farming with livestock. This becomes problematic when this leads to conflicting ideas about land use and development within an area. Livestock farming is seen as one of the paths towards development. Throughout the years, the government has attempted to render Tsumkwe-West more productive through several resettlement and small scale farming initiatives. According to Welch (2013) the government has been clear on how they view development during several meetings surrounding implementation of a small scale farming scheme: “Game conservation was not seen as development; for these people [government employees] development meant cattle farming and these were the terms of development that the San should accept” (p. 372). The land use practices of the San are often illegible to the state and generally considered unproductive. An alternative path aimed at increasing the productivity of land in this area may be the arrival of newcomers and their cattle. While the San may regard fences as interfering with their livelihoods, fences are generally regarded a good farming practice within livestock farming. But, are fences a practice for productive livestock farming, or are illegal fences an expression of greed, money and
influence (or all of the above)? The arrival of livestock farmers into the conservancy area is often associated with several indirect socio-economic developments within the community. Community members often portray the conflict of illegal fences in terms of conflicting community morals and values. The term ‘making business’ is often used to describe the way in which illegal fence owners have exploited the local San community. This leads to the arrival of livestock farming in Tsumkwe-West to be viewed differently by various actors. Some see livestock farming as a way of making land productive and as a path towards economic development, while others associate livestock farming with exploitation and corruption.

2.3.1 TSUMKWE-WEST AS ‘UNDERUTILIZED’ LAND

Many areas of northern Namibia are faced with issues of overpopulation and overgrazing. As a result, many livestock farmers are searching for alternative grazing land for their cattle. During my interviews, many San stated that they believe the government sees Tsumkwe-West as prime farming land that is currently underutilized and believe that this is why the government has been hesitant to deal with the issue of illegal fencing thereby allowing others to settle and farm in the area (local community member, Omatako, 22/06/2015; community member, Mangetti Dune, 22/07/2015). Their line of reasoning may be attributed to the fact that the San in Tsumkwe-West have had to defend their lands for many years as the government has proposed several initiatives to render Tsumkwe-West into more ‘productive’ lands: “The government has a lot of its own plans about what to do in this area, the land here is good and abundant. They tried to settle refugees, small scale farming projects or other resettlement programs. But this failed, because the conservancy served as protection” (community member, Mangetti Dune, 22/07/2015). According to the Ministry of Lands and Resettlement (MLR)’s national resettlement program, Tsumkwe-West is considered as ‘underutilized’ or ‘virgin’ land and this area should be exploited to improve Namibia’s overall agricultural development (MLR, 2012b according to Dieckmann et al. 2014). Because the government and many of the illegal settlers regard Tsumkwe-West as underutilized land, everyday local practices are being obscured and ignored.

After independence, the MLR realized that the community in Tsumkwe-West faced serious economic challenges and therefore established a resettlement and development program (Hitchcock, 2012). This program was carried out in cooperation with the Evangelical Lutheran Church in Namibia (ELCIN) between 1990-1995. Inhabitants were allocated small plots, and provided with agricultural training and inputs (e.g. fertilizer, seeds, tractor). The first attempt at the development of Tsumkwe-West was through small scale agriculture which would render this area into ‘productive’ lands. However this program failed because of the top-down nature in which it was carried out, and the lack of cooperation between the various organizations and the community members (Hitchcock, 2012; Suzman, 2001). After 1995 the MLRR continued its own development program in the area, but with little results (Suzman, 2001).

In 2000, while the community members were in the process of being gazetted as a conservancy, the government announced its plans to relocate refugees from the Osire refugee camp to Tsumkwe-West. The community members protested, mainly because of the enormous social and demographic impact of relocating 21,000 refugees in a community of about 2,000 inhabitants (Hitchcock, 2012). According to Hitchcock (2012) many of the inhabitants in Tsumkwe-West felt that the government was ill-treating them because they were considered Angolans, rather than
Namibians. Interestingly, most of the refugees from the Osire camp were also from Angola. Another aspect that worried the San communities is that according to the law all communal land belongs to the state. If the government decides to go ahead with the resettlement plans, it is uncertain whether community members will be compensated for their loss of land (Odendaal, 2006).

Another resettlement scheme was proposed in 2004 when the government introduced a plan for small scale farming in Tsumkwe-West as part of the national resettlement program. One of the main objectives of the national resettlement program is to develop ‘underutilized’ land (including Tsumkwe-West) and to achieve tenure security (Dieckmann et al., 2014; Werner & Kruger, 2007). The plan stated that 100 small scale farms would be developed of approximately 2,500 hectare each (Dieckmann et al., 2014). While a few local farmers welcomed the idea of farms in the area, a majority was hesitant about the government’s intentions (Welch, 2013). One of the concerns was that while the government claims that the San people are among the primary targets of the national resettlement program, the community members believe that the plan was aimed at settling non-San farmers into the area and making the community members cheap farm laborers (Odendaal, 2006). This fear could be explained by the lack of consultation or transparency of the government with the community members and the conservancy at the time. This area had been established as a conservancy area, and a resettlement scheme could have interfered with conservancy activities as laid out in the conservancy’s land utilization plan and interfere with other livelihood activities such gathering veldkos (Dieckmann et al., 2014; Odendaal, 2006). Those who opposed the plan for small scale farming believe that N̄a Jaqna and the community would benefit more from tourism and trophy hunting rather than livestock farming. This assumption is based on their past experience with failed small scale farming programs implemented shortly after independence (Welch, 2013). In addition, livestock farming is a capital intensive agricultural activity, and unfortunately many San do not possess the capital required to render livestock farming productive. In 2012, the government decided to cancel the resettlement scheme. But the damage had already been done. Among the San their mistrust of the government grew as they viewed these initiatives as attempts to control the development of the area and the San (ibid). During the struggle over small scale farming, government representatives had made several comments suggesting that the San should become equal to all other Namibians and that farming is viewed as the only way towards equality and development (ibid p. 367).

2.3.2 FENCES AS A ‘GOOD’ FARMING PRACTICE?

The government’s lack of action against these illegal fences, is at least partly due to their perception that communal farming is outdated and unproductive compared to commercial farming (Cox et al., 1998). Local livelihood means are rendered invisible or irrelevant, which fuels the notion of Tsumkwe-West as ‘unused’ land. According to Suzman (2001), the Bantu speaking Namibians view the San’s lack of livestock as a sign of ‘backwardness’. Commercial livestock accounts for 80% of all agricultural production in Namibia and 80% of the annual livestock production is exported to other countries, mainly South African and the EU (MAWF, 2015). However, commercial farming is restricted within the communal areas. With a customary land right, commercial farming activities are prohibited. The veterinary cordon fence also forbids the sale of live cattle and meat across the fence.
According to Cox et al. (1998) while these de facto privatized farms may resemble commercial farms in structure, the extent of commercialization is questionable. Moving livestock from areas outside the veterinary fence into the communal areas makes little sense, because it would significantly decrease the value of livestock; some suspect that livestock farmers have illegally breached the fence (Harring & Odendaal, 2006). Whether or not commercial farming is occurring illegally within Tsumkwe-West remains unclear and could be an interesting topic of future research. Livestock farming and the associated land use practices continue to be an important aspect of communal areas. In most cases, land enclosures in the communal area are seen as grazing reserves (Cox et al., 1998). According to a conservancy representative: “sometimes cattle is imported or meat is sold in other areas behind the veterinary cordon fence, such as Ovambo, Kavango or Angola” (Mangetti Dune, 22/06/2015). Many of these illegal settlers are convinced that in the future, the veterinary cordon fence will be removed, thus opening up new markets that extend beyond the current local markets (LAC employee, Wageningen, 19/01/2016). In addition, both cattle and land continue to be regarded as a symbol of status which is why many regard illegal fencing as an expression of greed, money and influence rather than a necessary measure for productive livestock farming (CLB representative, Otjiwarango, 12/08/2015). One community member said: “They [illegal fence owners] do not need this much land for their cattle. They just want to own it. It is not about business, but about status” (community member, Mangetti Dune, 18/06/2015).

Figure 2.2 Map of Communal and Freehold (commercial) land tenure in Namibia (MLR, 2012)
For many livestock farmers overgrazing and land degradation are the likely outcome of a communal land tenure system. Therefore, fences are seen as a necessary measure for effective livestock farming. The erection of fences could then be seen as an expression of privatization to obtain crucial resources for livestock production, especially grazing land. This can lead to what is known as ‘the tragedy of the commons’ (Hardin, 1968), where some individuals act according to their own self-interest and deplete common resources. According to their statements, several fence owners argue that they were instructed by individuals of the traditional authority to put up a fence to protect their cattle against ‘gifblaar’ (a poisonous plant) and to make sure the cattle doesn’t roam around freely in the conservancy area (9th respondent, Aff.16; 10th respondent, Aff. 18; 16th respondent, Aff. 15; 17th respondent, Aff.5, 23rd respondent, Aff. 15; 24th respondent, Aff. 15). This narrative portrays fences as a good farming practice for livestock farming, rather than as a means of excluding community members from common resources. In defending their fences, several fence owners point out that they have contributed to development in the area. Examples of such contributions include financing new boreholes (7th respondent, Aff. 21), or the maintenance of a water pump (23rd respondent, Aff. 22; 24th respondent, Aff. 23; 25th respondent, Aff. 6), as well as offering employment opportunities for local community members as farm workers (17th respondent, Aff. 6; 23rd respondent, Aff. 22; 24th respondent, Aff. 23).

Yet, the construction of fences as a good farming practice is disputed because fence owners do not always keep their cattle within their fences, leading to the destruction of crop fields and property (community members, Omatako, 22/06/2015). When I visited the members of the Omatako Rest Camp they showed me the damage which can be caused by cattle roaming free in the conservancy area. Omatako Rest Camp used to be operational as a camping site for tourists. However, upon my visit the camp site was in shambles and no longer used by tourists. There are numerous explanations why the camp is no longer functional which cannot be attributed to illegal fencing alone. But there was also considerable damage to the buildings which according to the community members is caused by cattle from an illegal settler in the surrounding area. Apparently livestock is not always kept within the fence, and used to roam freely in the campsite and cause damage to the fence around the campsite and to the buildings (community members, Omatako rest camp, 12/07/2015). Secondly, large tracts of communal grazing land, known as the commange, have been fenced off (community members, Omatako, 23/06/2015). To make matters worse, several community members complained that the fence owners allow their cattle to graze on what is left of the commange and when there is drought they will move their cattle in the fences (community member, 22/06/2015, Kandu; community members, 23/06/2015, Omatako). This way the illegal fence owners first consume the common resources and only use their private resources afterwards, leaving the community members with an overgrazed commange. Even though many fence owners left their hometowns in search for better grazing lands, it has been reported that the area surrounding Omatako is now also overgrazed. This area is where most of the fences have been erected and now contains more than one head cattle per hectare (conservancy representative, Mangetti Dune, 22/06/2015). Because of this, the fencing ‘hot spot’ is shifting to other areas such as Kanovlei and Grashoek (game guards, Mangetti Dune, 22/07/2015, community members, Grashoek, 29/06/2015).

The conflict over resources has led to several violent incidents. According to several community members, those who have been caught jumping over the fences to access resources such as veldkos, wood or devil’s claw have been beaten by the fence owners (community member,
22/06/2015, Kandu; community member, 23/06/2015, Omatak; TA representative, Mangetti Dune, 14/07/2015). The fence owners believe that the San are trying to steal their cattle and threaten to report them to the local police (conservancy representatives, Mangetti Dune, 18/06/2015; community members, Omatak, 22/06/2015; community members, Grashoek, 29/06/2015). Land is not the only resource which is becoming more and more scarce in Tsumkwe-West. This area of Namibia has faced several droughts. The boreholes that have been created in this area are essential for the community and wildlife within the area. As a result of privatizing water which the community relies on, several violent incidents have occurred. One of those incidents, recalled by community members, involves a fence which used to deny the community members access to water, because a fence owner had fenced off a borehole for his cattle (representative conservancy, Mangetti Dune, 22/06/2015). Community members who tried to access the borehole within the fenced of area were threatened with violence. Eventually an official from NamWater had requested the fence owners to relocate (community members, Omatak, 22/06; community member, Omatak, 23/06/2015; community members, Omatak, 23/06/2015). The incident over the borehole is not the only occasion of violence. The community members themselves are afraid to report illegal activities because many of these fence owners are politically well-connected (conservancy representatives, Mangetti Dune, 18/06/2015; community members, Omatak, 23/06/2015). One community member states: “Why report to the police when it is high police officers who are putting up the fences?” (community members, Omatak, 23/06/2015).

Figure 1.3 Illegal fence in N=Jaqna (photo: van der Wulp)
2.3.3 ‘MAKING BUSINESS’ FROM ILLEGAL FENCES

The influence of newcomers and fences stretches beyond land issues. During my interviews, most of the community members blame the arrival of livestock farmers for several negative socio-economic developments in the area. More often than not, the San portray fencing as a conflict of community values and morals. Rather than a shared sense of community, the newcomers and individuals within the traditional authority are portrayed as ‘making business’ at the cost of others. One of such ‘businesses’ is the sale of alcohol to the San community, which the interviewees often link to illegal fencing. But community members also accuse some individuals in the traditional authority of using land for business by accepting bribes from newcomers. Narratives of alcoholism and corruption told by the San community portray how the arrival of large scale livestock farming and fences in the area has indirectly empowered certain individuals to capitalize on unequal power relations and exploit the local community.

Newcomers, especially those from Ovambo, are often perceived by the San to be very successful in business (community members, Grashoek, 29/06/2015). Indeed, several of these newcomers have opened local businesses in the area. However, not all of these businesses may be contributing towards economic development. Most of the bars, which are known as ‘shebeens’ are owned by non-San members. Several studies (Dieckmann et al., 2014; Suzman, 2001) have identified alcoholism as a serious threat to the livelihood of the San community in Tsumkwe-West. The San have reported spending money on alcohol rather than food or school for their children, and an increased risk of violence due to alcoholism. During my time in Mangetti Dune, I have witnessed several alcohol related incidents, such as work absence, drunken brawls, fatal car accidents, and the presence of children at the shebeens. Most of these instances tend to occur around the time social welfare benefits are paid out. According to the community members, the illegal fence owners are also the owners of the shebeens. This is why many respondents hold illegal fence owners responsible for spreading alcoholism among the San population (conservancy representative, Mangetti Dune, 22/06/215; community member, Omatako, 22/06/2015; community member, Mangetti Dune, 22/07/2015). In addition, for commercial activities in a communal area, a person must be granted a right of leasehold. However, it is alleged that the shebeen owners are not in possession of such a leasehold, but have been granted permission by the traditional authorities to conduct their businesses (Dieckmann et al., 2014).

Secondly, the term ‘making business’ is also referred to as a euphemism for bribery and corruption by local authority representatives. Reports of mismanagement by the TA are numerous. Some report avoidance of the TA, by not attending community meetings or closing the TA office on weekdays yet opening on weekends when the weekend farmers visit their farms. Upon my arrival, a new chief had been installed for a couple of months, yet community members were still waiting to meet her in her new official capacity and discuss urgent matters such as illegal fences (community members, Omatako, 23/06/2015). But the reports are not simply allegations of work neglect. According to several accounts from community members, individuals from the traditional authorities have been using land for business by accepting bribes from newcomers searching for land (community member, 23/06/2015, Omatako; community members, Omatako, 23/06/2015; community members, Omatako, 24/06/2015; community members, Grashoek, 29/06/2015, TA messenger, Omatako, 18/07/2015). One of the community members in Omatako even accused some individuals of the TA of spending money from bribes on alcohol: “Some individuals in the TA are
drunkards, they always have a lot of money that appears mysteriously so we can only assume that it comes from the outsiders they are selling land to. We see the TA get into luxury cars of the Ovambo people and go to Grootfontein and then they come back” (22/06/2015). Community members often wonder who their traditional authority is really representing: “When the TA sees money, they forget about us” (community members, Omatako, 23/06/2015). The support of the traditional authority to the illegal fence owners is seen as the main reason why fencing continues to occur in this area: “The outsiders come here not only for the abundant resources, but because they heard that our traditional authority is willing to accept money in exchange for land” (community members, Omatako, 23/06/2015). Illegal fencing is not simply a story of overgrazing or overpopulation, but also reflect issues of ‘good governance’ within the land tenure system in Namibia.

2.4 COMMUNITY BUILDING THROUGH CONSERVATION

The principle characteristics of the CBNRM model seem to be contradictory to the practices of livestock farming. The CBNRM model advocates community based development rather than individual accumulation through farming. In addition, the goal of the CBNRM model is to manage resources sustainably and protect biodiversity. This means that the CBNRM model aims at preventing natural resource depletion such as overgrazing, which is a serious consequence of intensive livestock farming by newcomers. In an attempt to gain control over their resources, the community members of Tsumkwe-West established the N≠a Jaqna conservancy in 2003. By portraying themselves as ‘conservationists’ the community has been able to gather considerable support from others groups and set up various movements to secure their land rights against intruders (Hitchcock, 2012). The conservancy has been the main instrument through which community members are resisting illegal fences. Illegal fencing has also re-defined the boundaries of the conservancy. The processes of boundary making that are occurring in N≠a Jaqna are twofold. Firstly, boundaries of different ecological zones created through mapping continue to be disputed and differ from real land use practices. Secondly, the boundaries of community are contested and dynamic through processes of inclusion and exclusion. While local community members might feel powerless against these livestock farmers, being able to define notions of community has been an important strategy in controlling who has access to resources.

2.4.1 CBNRM IN NAMIBIA

Community based natural resource management has become the dominant conservation framework in sub-Saharan states (Nelson & Agrawal, 2008) including the communal areas of Namibia. The goal of CBNRM is to protect biodiversity and manage ecosystems sustainable for the benefit of local communities (ibid). The underlying assumption is that if community members are able to benefit from the resources, it becomes more likely that they will manage these resources sustainably (ibid). This is especially important in communal areas, to prevent degradation and overexploitation of resources (Ostrom, 2005). One of the tools that is often used to ensure proper management of resources is ecological zoning, in which a detailed map of land use practices is constructed according to participatory principles and relies on local forms of knowledge (Welch, 2013).
One of the main features of the CBNRM framework is the decentralization of land use management (Fabricius & Collins, 2007). The success of CBNRM in South-African states may be partially attributed to the fact that the model is well adjusted to state decentralization efforts regarding land management authorities (Welch, 2013). While state institutions often focus on the economic value of resources, the CBNRM model does allow local communities to focus on the resources that support their everyday livelihood practices such as veldkos (ibid). Contrary to previous conservation policies, local actors are now an active stakeholder in resource management strategies (Hohmann, 2003). The CBNRM model is situated at the axis of conservation and development. Often conservation efforts are combined with development initiatives or community based tourism. The ability of CBNRM to combine rural development, participatory approaches and sustainability has made it popular among donor agencies, and thus may be another explanation for its successful uptake (ibid). However, according to de Vette, Kashululu, and Hebinck (2012) the CBNRM framework is often romanticized and therefore obscures the power relations at play in everyday struggles over resources management. Different actors such as NGO’s, the state and local groups may have different opinions and ideas concerning conservation. According to Welch (2013) forms of decentralization such as the CBNRM framework has allowed government institutions to carry out national programs in areas that were previously hard to reach. By implementing new boundaries and mapping, the resources present in an area have become more legible to state and non-state actors, who may try to seek control of these resources.

In Namibia, the government has used the CBNRM framework in policy making to give equal opportunities to communal and commercial farmers to benefit from resources. Currently, the Ministry of Environment and Tourism (MET) is responsible to implement the CBNRM framework and policies in Namibia. Before independence, both farmers in commercial areas and the government have benefitted from their exclusive rights to wildlife in terms of income and conservation. To justify the unequal rights over wildlife between farmers of commercial and communal areas, the government created a policy entitled “Wildlife Management, Utilisation and Tourism in Communal Areas” (MET, 1995). This policy advocates equal rights for communities in communal areas and encourages them to manage wildlife sustainably. In the amended nature conservation legislation of 1996, communities were given the right over resources by establishing a conservancy. While conservancies were given the right to control resources and tourism within their area, the right to allocate land is reserved for other local and regional authorities. Currently, 82 conservancies are officially registered (NACSO, 2009). These conservancies are seen as a means for economic diversification as well as to promote conservation and development in the communal areas. MET has defined the following criteria for any group who wants to apply for a conservancy: a defined membership, an elected management committee, defined boundaries and a legal constitution (Hohmann, 2003). With these criteria, MET requires that applications are brought forward by a ‘homogenous’ community with stable spatial boundaries (ibid). In the next section, the implication of CBNRM in Tsumkwe-West will be discussed.

2.4.2 ESTABLISHMENT OF THE N≠A JAQNA CONSERVANCY IN 2003

After independence, ‘Bushmanland’ became known as the Tsumkwe district and became part of the Otjozondjupa region. Since the late 1990s, the Traditional Authority (TA) of Tsumkwe-
West discussed the possibility of creating a conservancy with the Ministry of Environment and Tourism (MET) and several NGO’s. The main reason stated by community members in Tsumkwe-West for establishing the N’a Jaqna conservancy was that they believed that their status as a conservancy would secure their land rights and protect their resources while promoting economic development in the area. The final approval of N’a Jaqna conservancy took five years. Some speculate that the delay in establishing N’a Jaqna was due to government plans in 2001 to resettle approximately 21,000 refugees from the Osire refugee camp into Tsumkwe-West (Hitchcock, 2012; Hohmann, 2003). Another issue was raised by MET which concerned the definition of community. This definition was seen as important to formulate clear and defined membership requirements and for the creation of a committee which would represent the ‘community’. However the community in Tsumkwe-West was seen as ‘fragile’ because it was too flexible and heterogeneous (Hohmann, 2003; Suzman, 2001). Finally, the N’a Jaqna conservancy was established in 2003.

In the meantime, Nyae Nyae conservancy in East-Tsumkwe had been established in 1998. During the process of application for conservancy status, several boundary disputes arose because the N’a Jaqna conservancy felt that Nyae Nyae had taken their land. Eventually it was settled that the disputed area would become a co-management zone (Hohmann, 2003). There are several reasons why Nyae Nyae is regarded as a stronger conservancy than N’a Jaqna. Firstly, Nyae Nyae has more resources to its disposal, especially wildlife. In addition, the fact that Nyae Nyae has more resources available, means that they are more attractive for tourism and trophy hunting. Because of this, the annual income of Nyae Nyae is much higher than N’a Jaqna, which allows them to pay out cash benefits to their members (Dieckmann et al., 2014). Besides the availability of resources, the community in Nyae Nyae is much more homogenous and this impacts the decision-making processes within the respective communities. Finally, the N’a Jaqna conservancy and its members are facing many challenges due to land encroachment and illegal fencing.

The structure of the conservancy is based on its constitution. The constitution was designed to define membership, decision-making processes and the composition of the management committee. There are eight committee members and one chairperson in the management committee which are elected during the annual general meeting (AGM). In 2015 the AGM was held during the time I conducted my field research. There are two representatives from the twenty-five villages in the conservancy that attend the AGM. Every year, the committee presents a new financial report, budget and member benefit distribution plan at the AGM. There is also a resource management plan attached to the constitution which outlines several strategies for the conservation of resources, such as regulations on amount of cattle in grazing areas, poaching regulations, and control measures for bush fires (Hohmann, 2003). In addition, each conservancy is required to create a land use planning map which represents the different ecological zones in the area.
2.4.3 DEFINING ECOLOGICAL BOUNDARIES: THE LAND USE PLANNING MAP

Since there are few opportunities for employment, most of the people in Tsumkwe-West are dependent on the resources which the Nja Jaqna conservancy is trying to protect according to their land use planning map. However, these livelihood activities have been severely affected by the illegal fences that have been erected in the area. The livelihood strategies of the San are dynamic and flexible and are based on seasonal and socio-economic changes. Mixed farming (crop and livestock) are an important part of their livelihood activities. According to Hitchcock (2012) about one quarter of the households in Nja Jaqna own livestock though a relatively small amount compared to the livestock owned by newcomers. Several of the respondents owned crop fields but some indicated that cattle from newcomers had destroyed their crop fields (community members, Omatako, 22/06/2015). Since Nja Jaqna is located outside of the veterinary cordon fence, the selling of live animals and meat is not permitted. Harvesting wild food is still seen as an important part of their livelihood, especially when other livelihood activities (crops, cash ect.) are unavailable (Dieckmann et al., 2014). According to my interviews, this strategy is becoming more difficult due to illegal fences which prevent community members to access veldkos (community members, Grashoek, 29/06/2015).

While hunting still seems to be a livelihood strategy, this is problematic because MET has not granted hunting rights to the people in Nja Jaqna, in contrary to Nyae Nyae where traditional hunting is permitted (Hohmann, 2003). But MET has given a wildlife quota, which is used to distribute game to the various communities and to secure a trophy hunting contract. Cash income is generated through the sale of devil's claw, old age pension and crafts (Dieckmann et al., 2014). The conservancy has pursued several core conservation activities, such as re-introduction of wildlife, new water points for wildlife and sustainable harvesting of bush food and devil's claw. During the AGM, the devil's claw project coordinator of the conservancy had indicated that the profit from devil's claw had been dropping for several years because fences cut off community members from harvesting (conservancy representative, M'kata, 29/07/2015).

The conservancy has attempted to capture different land uses within the conservancy area in the zonation or land use planning map (see map figure 2.4). Communities were asked to identify how they used the land and to suggest locations for a wildlife and tourism area. According to the conservancy the TA was consulted several times before the map was finalized in March 2004 (conservancy representatives, 18/06/2015, Mangetti Dune; the Applicant; Aff.56). In addition, a copy of this map is sent to the Communal Land Board, who should consult the map before allocating land rights, since some of these areas forbid settlement, specifically the sensitive zones and wildlife areas (ibid). However, since the introduction of the land use planning map, there have been several allegations that fence owners are present in areas that are deemed ‘sensitive’ or ‘wildlife’ zones (community member, Omatako, 22/03/2015). As a result, the land use practices on the map do not reflect reality. Community members say that the fences prohibit them from being able to use the land the way in which they had envisioned (community members, Omatako, 22/06/2015). None of the respondents had objections to the map itself, because at the time of its creation several consultations with the communities had taken place and the map merely formalized land practices that had already been in place for many years within the San communities (community members, Kandu, 22/06/2015). Besides hampering the conservation initiatives of Nja Jaqna, the settlement of newcomers in the wildlife zone has been problematic for MET as well. Because of the increased illegal settlement of farmers in the wildlife zones the amount of human-wildlife conflicts have
increased from 2-3 cases a year to 10-15 cases (MET representative, M’kata, 27/07/2015). Usually, MET has a policy of compensation for farmers if their livestock is killed by wildlife (outside of a wildlife zone). However, since the newcomers and their cattle are not supposed to settle in these areas, MET does not pay out, leading to frustrations among some farmers (ibid). In addition, each year MET provides communities with game meat but the hunting of wildlife has become difficult due to the fences which restrict the movement of people and wildlife.

However not all actors agree with the land use planning map. According to the conservancy and several community members, the land use planning map was created together with the Traditional Authorities (conservancy representatives, 18/06/2015, Mangetti Dune; community member, Rooidag, 29/06/2015). However, in a letter addressed to the conservancy, the TA states that: “As for the so called ‘sensitive’ zone on the map you have shown, I, Chief John Arnold and my immediate councillors are not in the know of such a map as we were not part of its creation and it looks vague in its demarcation” (30th respondent, Aff. Annexure C). Since the TA clearly states that they were not consulted during the creation of the map, this may be a reason why they do not consult the land use map during the process of allocating land rights (TA representative, Mangetti Dune, 22/07/2015). The boundaries of different zones continue to be disputed. Many of the fence owners critique the map for being too vague. In addition, they feel that the conservancy has failed to define why an area should be considered a ‘sensitive’ habitat (30th respondent, Aff. 24.1). Because of the lack of a shared definition, one of the fence owners believes that the areas which are considered ‘sensitive’ could be used for farming purposes or to develop tourism in the area. But, the conservancy wants to keep tourism development as low as possible in areas in order to prevent damage to the fragile bio-diversity (the Applicant, Founding aff. 66). Certain members of the TA believe that the introduction of different land use areas, is hampering the economic development in the area by blocking the construction of a tourist lodge: “... the conservancy has failed to develop it [the Rest Camp tourist site] for the benefit of the traditional community so it makes no sense that the same conservancy would use outdated and dysfunctional zones to block introduction of genuine development such as the initiative of [30th respondent]” (30th respondent, Annexure C).

2.4.4 STRENGTHENING SOCIAL BOUNDARIES: THE CONCEPT OF COMMUNITY

The importance of community in CBNRM and community-based sustainable development is problematic. Who is this community that should sustainably manage natural resources? Yet policies for establishing a conservancy require clearly defined rights and obligations by which community is defined. In the case of Nǁa Jaqna, the first proposal for establishing a conservancy was rejected based on the idea that the community in Tsumkwe-West was too heterogeneous and thus too fragile to build a sense of community among the inhabitants. In addition, there is a difference between residing in the conservancy area and being a member of the conservancy. Not all inhabitants in Tsumkwe-West are part of the conservancy. The concept of community is dynamic; discussions about who is considered part of the community continue to take place. The simplification of community in the CBNRM framework obscures local power relations and the underlying conflicts that are present in the communal areas. The importance of ‘community’ in the conflict over illegal fences is twofold. Firstly, using the CBNRM model to define community membership is a crucial strategy to gain access to resources and land rights. Secondly, community membership is used as criteria by local inhabitants in assessing the legality of fences.
The court case which the conservancy has initiated together with the LAC is one of the arenas in which notions of community are continuously redefined. The CBNRM model in Namibia does not define community, but allows local actors to define this themselves. This gives the conservancy, on behalf of the community, considerable power in deciding who should benefit from the natural resources in their area. The main argument presented by the conservancy at the court case is that a customary land right cannot be allocated to a person if they are not a member of the traditional community in the area in which they have applied for a land right. Nor have the alleged illegal fence owners applied for a right of leasehold to be able to farm with cattle or conduct business activities (the Applicant, Rep. aff. 23) Several documents suggest that most of the illegal fence owners involved in the court case do not originate nor reside in the conservancy area (8th respondent, Aff. 1.1; 9th respondent, Aff. 1.1; 16th respondent, Aff. 1.1; 20th respondent, Aff. 1.1; 23rd respondent, Aff.1.1; 24th respondent, Af.1.1; 25th respondent, Aff. 6; 28th respondent, Aff. 1.1). These farmers often work in other areas of Namibia but visit their farms on weekends, which is why they are known as ‘weekend’ farmers. In the eyes of the conservancy, the fact that these farmers do not reside within the area, means that they cannot be part of the community. In this sense, community is defined by geography, but as we will discuss in Chapter 4, ethnicity also plays an important role in constructing notions of community and identity. However, at first glance, notions of community based on ethnicity are downplayed because ethnic categorization is discouraged by the government because of the colonial legacy of apartheid.

An important moment where community members used the concept of community to deny others access to land was during the registration of their objection to land applications. During the AGM of the conservancy, village representatives were given the opportunity to object to land applications in writing. The representatives would go down the list of applications for land concerning the village they represented. These applications would include, names, ID numbers, that date of allocation by the TA, village where land in question is located, amount of hectares applied for, amount of hectares measured by the CLB. Out of 129 applications, there were 38 objections to new land applications. Most of these objections were because the applicants were unknown to the village representatives. Because of the small size of the villages, most community members know each other and if the name of an applicant is not recognized by village representatives, it seems highly unlikely that the applicant is part of the traditional community. Also, I was told that it was possible to determine the origin of a person based on their name, meaning whether the person was San or non-San. There were also applications that community members rejected because a) the people had already fenced off land before receiving a land right b) they had started building houses before receiving the land right c) already brought in their cattle illegally d) the amount of hectares applied for exceeded the legal amount of 20ha for a customary land right.

Most (if not all) of the local respondents do not consider the illegal fence owners as part of the local community. The San communities have not been consulted in the land allocation or fencing process neither by the livestock farmers themselves, or the TA on behalf of the farmers. This fosters feelings of resentment among the San communities: “Why are we not consulted? We should be allowed to know what kind of person is applying for a land right. The community should be allowed to judge whether or not this is a good person” (community member, Omatako, 23/06/2015). These livestock farmers are considered ‘strange faces’, that did not follow the traditional norms and procedures. Several respondents recall that in the past the TA would consult the communities about land allocations and community members would discuss how to manage the commonage.
The presence (or not) of official documentation plays a secondary role in defining the legality of fences. Whether or not a fence is considered legitimate by the local actors is based on whether the person is considered part of their community: “We know a fence is illegal when it is being put up by a strange face with a luxury car” (community members, Omatako, 22/06/2015), “Fences are illegal if the fences owners do not come and talk to the community and we do not recognize the face.” (community member, Kanvolei, 29/06/2015).

Defining community and the legitimacy of fences shows the underlying power relations within the conservancy. It is possible for a farmer to be locally perceived as an ‘illegal fence owner’ if local norms and values are not followed and thus not considered part of the community. Even if a person has the official documentation to retain a fence, the fence may still not be considered ‘legitimate’ in the eyes of the community members. In addition, the definition of community may have significant impact on whether or not a person may legally be granted a customary land right. While community members may often feel powerless against illegal fence owners, there is considerable power in being able to collectively define who is part of their community when community membership determines access to natural resources and land rights.

2.4.5 RESISTANCE TO ILLEGAL FENCES

There have been some hidden forms of resistance or what James Scott (1985) would call ‘weapons of the weak’ towards illegal fences. A few community members have admitted to cutting the fence wires in order to access veldkos or wood that had been fenced off (game guards, Mangetti dune, 19/07/2015; community members, Omatako, 23/06/2015). Yet, many fear the consequences of getting caught. Others have attempted to voice their frustrations to the TA and call community meetings to discuss issues relating to illegal fences, but to no avail. Since the community felt that their traditional leaders have abandoned them this often leads to slander or gossip regarding individuals of the TA that are abusing alcohol or drinking together with illegal fence owners. With an institutional gap created due to lack of action from traditional land institutions, the community looked to others for help to fight the illegal fences. Their resistance has grown from individual initiatives to a more organized form of resistance against illegal fences with through the conservancy.

The local community members increasingly report illegal fences to the conservancy rather than the TA. The game guards are now the ‘eyes of the conservancy’. In addition to their primary task of monitoring wildlife, they are also responsible to inspect the area for new illegal fences (game guards, Mangetti Dune, 19/07/2015). In 2011, the conservancy mapped out the GPS coordinates of eight illegal fences in the area so that they could report them to the CLB. Since then, the community members voted to organize their resistance through the conservancy by taking the illegal fence owners to court. The conservancy has several interests in removing the fences. The conservancy aims at protecting wildlife and biodiversity since their income is generated through their trophy hunting contract and tourism. However, fences restrict the movement of wildlife in the area. To protect these resources within the conservancy against illegal settlement and construction of fences by ‘outsiders’, N'ja Jaqna contacted the Legal Assistance Centre (LAC) in 2012 to start a court case against 31 alleged illegal fence owners, but also the relevant authorities in the allocation of land rights. The conservancy felt that it did not have any choice because the TA and CLB were not performing their duties adequately to prevent fencing in the conservancy area (the Applicant, Founding aff. 88). According to the conservancy, the respondents in the court case have fenced off land illegally between 2008 and 2013, after the enactment of the Communal Land Reform Act which
forbids fences in the communal area. They are currently awaiting judgment. Due to the court case, several fence owners have voluntarily removed their fence. However, the game guards have reported that new fences continue to be erected at a weekly rate (game guards, Mangetti Dune, 19/07/2015).

Underlying this ‘rightful resistance’ (O’Brien, 1996) is an increased rights awareness that is present in the community. The community members are increasingly educating themselves about the legal procedures to apply for land rights. Some have followed trainings, obtained information folders from the MLR, or attended a drama play which the CLB had organized in the area. They are increasingly aware of the correct procedures according the CLRA. For example, several respondents reference that there should be a notice board with new land applications at the TA office, but that they have never seen one. They are now demanding their right to be able to object to new land applications. The conservancy and its members are using official channels against powerful elites. The way in which several state institutions are implemented in the court case, forces them to take a stand regarding illegal fencing. In the eyes of the conservancy, these institutions have failed their obligations and now the conservancy is using the policies and laws from which these institutions derive their legitimacy against them. In regard to the court case, the conservancy has found several allies, mostly the LAC but also gained considerable backing from various NGOs. The conservancy has not been silent about their fight against illegal fences. Several national media outlets have covered the story of fences in Tsumkwe-West. Framing their resistance within a formal legal structure, has allowed the conservancy to be heard in the struggle over illegal fences.

Figure 2.4 The land use map created by N≠a Jaqna members (photo: van der Wulp)
2.5 DISCUSSION: CONFLICTING DISCOURSES IN THE COMMUNAL AREAS

Currently, two different development paths are being pursued by different actors: productive livestock farming and promoting conservation and community building through the CBNRM model. The communal areas are the site of contestation where these two different discourses interact. In this chapter, we have explored several perspectives and narratives associated with these discourses. We argue that illegal fences are the socio-material expression of these conflicting discourses that are present in Tsumkwe-West. They embody the power struggles, different land use practices and conflicting values of the actors in the communal area.

Historically, the struggle for land was along racial lines, the white settlers and the black wage laborers, but currently in Tsumkwe-West the struggle over land is between those who have the socio-economic status to erect a fence and those who do not. However, the outcome for the San remains the same: “The San people are poor and now these rich people come in and fence, the only option left for the San is to work for them because they have no way other way of sustaining themselves. It reminds me of when I was forced to work on the white settlement farms” (community member, 23/06/2015, Omatako). Rather than using the past to predict a future of deepening inequalities, some use history as a basis to justify current actions. Uneven land distribution has denied communal farmers the same opportunities as commercial farmers. Illegal fences and the de facto privatization of communal land is seen as a way to rectify past injustices. Currently, the veterinary cordon fence prohibits the exportation of meat and livestock to the commercial parts of Namibia or the rest of the world but several farmers anticipate that the veterinary fence will be removed which will open new markets for communal livestock. Since commercial livestock farming with a customary land right is not allowed, it requires more in depth research as to whether or not these farmers are commercially farming with their livestock.

At national level, it seems no decision has been made regarding which ‘development’ path to follow in Tsumkwe-West. The contestation in the communal areas is at least partly a lack of alignment between two competing national wide programs. While the MLR is proposing small scale farming schemes and resettlements initiatives in the area, the MET is promoting CBNRM and declaring Tsumkwe-West a conservancy area. The need to search for a more productive means in the communal area, suggests that conservation and the livelihood strategies of the San are viewed as an ‘unproductive’ use of resources. While a legal framework to prevent commercial farming and illegal fences in the communal areas has been put into place, the government has yet to reinforce these measures. Evidently, the lack of government action opens up new opportunities for farmers in search to expend their livestock practices.

Fences are an important part of livestock management because they protect cattle from ‘gifblaar’ and prevent cattle from inflicting damage to the area. At the same time, it allows famers to benefit from exclusive access to resources. The arrival of newcomers and their cattle has led to competition over resources such as water, firewood, veldkos, devil’s claw and grazing areas. But the struggle over fences is not only framed in terms of conflicting land use practices, but also as a conflict of values and morals. While some may view livestock farming as economic development, others associate the presence of livestock farmers with exploitation and corruption. The multitude of allegations of bribery among individuals within the traditional authority may require a re-evaluation
of the level of transparency within the current land tenure in Namibia. In addition, the increasing amount of shebeens opened by newcomers and the way in which these businesses are run within the conservancy area raises several questions surrounding ethical business practices.

These developments are often met with resistance from local community members. In an attempt to gain more control over their natural resources, the N’a Jaqna conservancy was established in 2003. Since then, the conservancy has made many efforts to manage the natural resources sustainably for the benefit of the local community members. One of those attempts was to divide N’a Jaqna in ecological zones through mapping. However, the boundaries of these zones remain contested as some actors find that these zones do not accommodate their land use practices. This tool should be consulted during the process of land allocation because certain zones prevent settlement and/or livestock farming. Yet many newcomers and their fences have settled in these zones, presenting new challenges for community members but also for the payment of wildlife-human conflict relief from the government. Another strategy that is used by community members to gain more control over natural resources, is in defining community membership. The way in which ‘community’ is defined also determines who is legitimately entitled to resources. The line of argument presented by the conservancy is that since illegal fence owners are not considered part of the traditional community, they cannot be allocated customary land rights within the conservancy. Finally, the court case that the conservancy initiated against these illegal fence owners attempts to evict these newcomers and their cattle from Tsumkwe-West. In this court case, the conservancy is backed by several actors, most notably the LAC, to show how several authorities concerned with land allocation have failed to uphold the law. In order to understand the complex land tenure system, we must look at the underlying struggles for power and authority among the different institutions. In the next chapter we will explore the various authorities involved in allocating land rights and how reality differs from the current legal framework.
CHAPTER 3 COMPETING AUTHORITIES IN LAND ALLOCATION

In this chapter we will explore the various institutions that are competing for authority and control access to land. In Namibia, overlapping legal orders lead to ambiguity in the land tenure system which allows various actors to use different legal orders to legitimize their land claims. To understand how communal land is regulated in Namibia and which institutions have the legal authority in land allocation we will first give a brief overview of the most important piece of legislation that deals with land rights and fencing: The Communal Land Reform Act of 2002 (CLRA). The Act deals with registration and allocation of land rights, and illegal fencing in the communal areas. In addition, the Act also allocates specific powers to the Traditional Authorities (TA) and the Communal Land Board (CLB) in dealing with land allocation. When exploring these two institutions we will look at the various intuitional challenges and limitations that these organizations are faced with. In addition, we will look at how they control access to land, but also how this authority is continuously challenged by other actors. The boundaries of power are not only reflected within the interaction between different actors, but also in the physical landscape. The illegal fences embody the political struggles that are taking place within Tsumkwe-West. While legislation refers to ‘the’ TA, in reality two separate institutional arrangements are regulating land matters in the areas in which they have claimed authority. Each fraction of the TA represents one of the discourses discussed in the previous chapter which is inevitably reflected in the landscape

The political nature of illegal fencing entails that all actors are competing to serve their own interests. In this struggle, a gap is created between legal rights and responsibilities and everyday realities. This gap, allows different actors to exploit the weaknesses in land tenure system in the communal area for their own benefit. Because of this struggle no fences have been removed in Tsumkwe-West since they have been officially identified in 2011, even though the CLRA clearly defines the responsible institutions and procedures for the removal of fences. This institutional gap also allows for the emergence of new actors in land disputes. While the conservancy has been established since 2003, the loss of faith in the traditional structures regulating access to land has meant that the community is increasingly looking towards the conservancy to secure their land rights. This case demonstrates the way in which actors engage in ‘forum shopping’; pursuing a different legal order through the conservancy, rather than using traditional institutions and procedures to remove fences. However, this leads to new legal challenges as the conservancy does not have the legal tools to control allocation of land. While certain institutions may have been given legal authority in land issues, maintaining authority is a struggle which takes place in the arena of the communal area. These overlapping rights and claims lead to a complex land tenure system in Namibia.

3.1 THE COMMUNAL LAND REFORM ACT OF 2002

Before the CLRA, land was allocated solely by traditional authorities within different communities, causing the communal land areas to be almost self-governing. There were no restrictions on land allocation besides the fact that no commercial activity was allowed on communal land (Odendaal, 2011a). Land allocation was done orally, and the lack of documentation means that
boundaries continue to be disputed (Odendaal, 2011b). Because there was a legal vacuum until 2002, this encouraged various well-connected individuals to fence off land in the communal areas (Fuller, 2006). While the government had given public statements condoning illegal fencing, no action was taken. In fact, many politicians themselves were guilty of fencing (Odendaal, 2011b; Parliament of Namibia, 1999). This section will only highlight some of the most important passages of the legislation which is relevant for the purpose of this research. The aim of this section is to give a brief overview of how customary land rights are allocated and by which institutions in communal areas of Namibia, such as Tsumkwe-West.

The Communal Land Reform Act 5 of 2002 (CLRA) aims at codifying the system of communal land allocation and registration. Land rights existing before the enactment of the CLRA are still valid but must be officially recognized and registered (Republic of Namibia, 2002). The CLRA also states that ultimately all communal land is owned by the state, therefore private ownership is not possible (LAC & NNFU, 2009). This land is to be administered by the State in trust of the communities living in the communal areas. There are several differences between communal land and commercial land. Firstly, communal land cannot be sold. Secondly, communal land cannot be used as collateral to obtain a loan. And finally, a customary right does not grant rights to resources, such as wildlife, to a person; communities can obtain rights to resources by establishing a conservancy (LAC & NNFU, 2009).

Residents can obtain a customary land right for subsistence farming and/or residence. The traditional authorities (TAs) are still the main bodies that can allocate these rights. There are several restrictions to the allocation of customary rights by the TAs concerning size, time, purpose and persons (GIZ, 2014). A customary land right used to have a maximum of 20 hectares. However, in June 2015, an amendment to the Act extend this to 50 hectares (Republic of Namibia, 2015). One of the major questions surrounding the illegal fences is who can receive customary land rights. While the Namibian Constitution states that all Namibians have the right to settle anywhere, some argue that only members of the traditional community can receive customary land rights within their area. The legal definition of a ‘traditional community’ is found in the Traditional Authorities Act of 2000 and states that: “members of such communities share a common ancestry, language, culture, customs and traditions; they recognize a common traditional authority; and inhabit a common communal area. Even members residing outside the communal area in question may be included in the definition of traditional community.” (LAC & NNFU, 2009, p. x). Besides customary rights, it is also possible to obtain a right of leasehold, for example for business purposes. Those who are not part of the traditional community can also apply for a right of leasehold. However, unlike customary rights which are allocated by the TA, right of leaseholds are allocate by the land boards and restricted in size. In addition, leaseholds have to be in accordance with the conservancy management and utilization plan (Republic of Namibia, 2002). There are opportunities for the members of the community to object to land applications. This is done through the notice board. Customary land applications must be displayed for 30 days on the notice board, and community members can object in writing. Objections must be handed over to the Traditional Authority and a hearing will be organized by the TA (Republic of Namibia, 2002). If one does not have a customary right or a right of leasehold, the occupation and use of communal land is considered unlawful and can be grounds for eviction. Besides customary or leasehold rights, there is also the commonage, which is communal grazing land. Community members have user rights for grazing livestock on the commonage.
Customary land rights or right of leaseholds may not interfere with the use of the commonage by the community members. (LAC & NNFU, 2009).

The ministry has also established the Communal Land Boards. These land boards aim at supervising the powers of the TAs by ratifying their decisions in relation to the allocation of customary rights, to register land rights, and to decide on applications for right of leasehold (Republic of Namibia, 2002). Each land board must consist of several members including a representative from each TA and a representative of the conservancies within the district (Republic of Namibia, 2002). Members serve for a period of three years, however it is possible to remove certain members from the land board, for example if a members skips three consecutive meetings (Republic of Namibia, 2002). Disputes over land claims are brought before the TAs through hearings, however if a solution cannot be found than this responsibility lies with the CLBs. If a person feels that the decision reached by either the TA or the CLB is inadequate, there is the possibility to appeal at an appeal tribunal that deals with land disputes, but ultimately cases can be brought to court and solved by the police if necessary (GIZ, 2014). Presently, it is unclear whether claimants follow this procedure in practice (GIZ, 2014). The establishment of a new institution has caused the role of the TAs in land allocation to be re-shaped, a process in which struggles over power and authority are inevitable.

In the Communal Land Reform Act of 2002, a specific provision is made to deal with illegal fencing. After the enactment of the Act no new fences are allowed. However, it is allowed to fence in homesteads or a crop field if you have been granted a customary land right or right of leasehold (LAC & NNFU, 2009). If a fence is erected prior to the enactment of the CLRA, one can apply to retain their fences. The CLB must grant the application to retain a fence depending on whether this interferes with the use of the commonage and if there are good reasons for the person to keep their fence (CLRA, 2002). The authority to remove illegal fences, according to the legislation, lies with the TA and the land board. If the fence is not removed after a 30-day notice period, then that person is fined for the illegal fence and the relevant authorities may remove the fence, dispose of the material and recover the costs of removal from the illegal fence owner (ibid). The problem is that these authorities often lack the practical resources to be able to remove these fences (LAC & NNFU, 2009).

### 3.2 THE WORKINGS OF THE REGIONAL LAND BOARD

The CLB is a regional institution and mediates between the local authorities and the ministries. In Namibia, each region has their own land board that deals with land applications for that specific region. The CLB is a platform where many of the actors that are concerned with land rights and illegal fencing come together. Therefore, there are many conflicting views, interests and experiences which are expressed within an institution such as the CLB. Because each region in Namibia has its own socio-political context, the workings of the CLB of the Otjozondjupa region is not representative for all CLBs in Namibia; the way in which the CLBs operate on a daily basis differs greatly across Namibia. Analysing the workings of this particular CLB shows how different power relations between actors are enacted when discussing land applications. On an everyday basis the CLB is responsible for measuring plots, sending out the notice list, and verifying applications. Measuring plots is difficult because the Otjozondjupa region is very large and consist of areas such as Tsumkwe-West which are hard to reach (CLB representative, Otjiwarongo, 11/08/2015). The aim of
the measurements is to make sure that plots do not exceed the amount of hectares specified in the CLRA. The CLB has had several instances where applicants made illegal extensions by expanding their plot beyond the area that the CLB has measured (ibid). The sizes of the plots are taken into consideration when discussing applications. Each year, on average, the land board meets 7 times. During these meetings, land applications and objections are discussed and evaluated. Ideally, the CLB receives between 20-30 new land applications on a 3-month basis (ibid). However, the CLB is trying to deal with backlog caused by the lack of a TA structure after the death of late chief John Arnold. In the absence of a chief, the councillors must come together to discuss land applications, but since there was a communication breakdown between different parties within the TA this was not possible (ibid). After the appointment of the new chief, the CLB processed around 130 applications that were still pending since the death of the previous chief (ibid).

Since its establishment in 2003, the CLB has had 3 different boards. Currently, there are 15 members on the land board. The composition of the CLB greatly affects the outcome of the decisions taken at this level. The various representatives on the land board do not report back to local actors therefore they are unaware of what is discussed at regional level:

Within the CLB there is a representative of the conservancy, but this person is not from the N≠a Jaqna conservancy. This person on the land board does not know this conservancy and therefore cannot address certain issues. There are also representatives of the TA, but they do not communicate back to other TA members what decisions have been made at CLB level (conservancy representatives, Mangetti Dune, 18/06/2015).

Firstly, each board has one conservancy representative. However this representative is responsible for all conservancies within the region. This representative is responsible to monitor whether land applications are in accordance with the management/utilization plan of the conservancies. Therefore, the representative must stay in contact with all the conservancies in the area. However, both the CLB and the N≠a Jaqna conservancy committee members have complained that the representative does not keep in touch with the conservancies (conservancy representatives, Mangetti Dune, 18/06/2015; CLB representative, Otjiwarongo, 11/08/2015). The representative has never been in the N≠a Jaqna conservancy or met with the conservancy committee. Since an increasing amount of people are settling in wildlife or sensitive zones, the N≠a Jaqna conservancy suspects that the conservancy representative on the land board is not consulting their management and utilization plan when discussion land applications (conservancy representatives, Mangetti Dune, 18/06/2015). The CLB tried to appoint a second representative for the conservancies, but this was rejected because it was not possible according to the CLRA (CLB representative, Otjiwarongo, 11/08/2015).

In addition, there is one representative for each TA in the region. The role of the TAs in the land board is to confirm whether or not an applicant is part of the traditional community and whether there are any ongoing land disputes that must be settled before allocating a land right (CLB representative, Otjiwarongo, 11/08/2015). There seemed to be a lot of uncertainty who was representing Tsumkwe-West on the land board (TA representative, Omatak, 18/07/2015). But the previous representative of the land board had been dismissed after missing 3 consecutive meetings. The current representative is not actually a recognized member of the TA (ibid). The question remains whether the representative must be a recognized TA member or whether appointment as a
representative by the TA is sufficient. Certain individuals in the TA are frustrated due to the lack of transparency regarding what is discussed during CLB meetings. In fact, some accuse their representatives on the CLB of facilitating the allocation of land rights to illegal settlers: “The representative of the TA on the CLB does not give feedback on what was discussed in the CLB meetings so other TA members and the community are in the dark about what is happening there. He [the TA representative on the CLB] is keeping information from us to allow fencing to continue.” (TA member, Mangetti Dune, 14/07/2014). The other members of the CLB are various government workers representing different ministries. These government workers are often very busy and do not attend the meetings regularly (GIZ, 2014). This means that the TA representatives have the majority in the decision making process and often the TA representatives avoid going against each other’s decisions (LAC employee, Windhoek, 10/06/2015).

In practice, the working of the CLB is focused on preventing rather than removing fences. One of the challenges that the CLB is facing is informing communities about the laws and regulations regarding land rights. The CLB reaches out to the community through training, public awareness campaigns and radio talk shows to raise awareness of the land procedures and to get them to register their land rights (CLB representative, Otjiwarongo, 11/08/2015). According to the CLB, public awareness is seen one of the main solutions to solve illegal fences; if people understand the correct procedures there will be less land disputes. Ignorance of the law is often stated by many actors. For example, in various statements made by alleged illegal fence owners, they claim that they have ‘bought’ the land because they were asked to pay ND25 in application fees (LAC employee, Windhoek, 12/08/2015; 9th respondent, Ans. Aff. 13; 16th respondent, Ans. Aff. 12; 20th respondent, Ans. Aff. 13. However, communal land cannot be sold or bought. Some settlers have waited so long for the approval of their land right, that they have started building different infrastructures such as buildings or fences while awaiting a final decision. In some cases, those who had constructed their fences prior to the enactment of the CLRA did not know that they had to apply to retain their fences. Many are unaware that there is a separate application for a customary land right and to retain a fence (CLB representative, Otjiwarongo, 11/08/2015). They believed that the fact that they were granted permission by the TA is enough for them to build a fence (9th respondent, Ans. Aff. 17, 16th respondent, Ans. Aff. 17; 23rd respondent, Ans. Aff. 17). Several fence owners have indeed admitted that their fence is unlawful (9th respondent, Ans. Aff. 21; 10th respondent, Ans. Aff. 22; 23rd respondent, Ans. Aff. 21). One of my key informants claims that the communal land board often feels bad for applicants because they believe it is partly their fault that applicants start building before approval because of the backlog caused by the lack of administrative capacity. Thus, they accept ignorance as a valid justification (LAC employee, Windhoek, 12/08/2015).

However, the biggest challenge that the CLB is currently facing, is a lack of confidence in dealing with illegal fences (LAC employee, Mangetti Dune, 28/07/2015). The CLB has identified 77 fences that are considered illegal, but the CLB has yet to initiate proceedings. The CLB says that they are awaiting the court decision on the ongoing illegal fencing case. However, there is no reason why the CLB should have to wait the outcome of the court case. The procedure for the CLB to remove fences is laid out in the CLRA, but the CLB representative states that if they make a mistake, it could be used against them later in court (CLB representative, Otjiwarongo, 11/08/2015). At least on one occasion, a decision made by another CLB in Namibia was revoked in court. In Ohangwena, the CLB had removed an illegal fence but the fence owner argued that he was still going to apply to retain his fence as the application time had not yet passed. A judge agreed that the Ohangwena CLB could not
remove a fence before the deadline of submission for applications to retain a fence. The Otjozondjupa CLB may be afraid to act because they do not want to risk making mistakes and potentially endanger their reputation.

The CLB states that there is no conflict of power between the CLB and the TA because they know that the chief is still the mainly responsible for dealing with land rights. The land board does not want to undermine the authority of the chief and always consults the TA in land matters:

Since the chief was appointed earlier this year, we always contact the chief instead of the individual councillors, because that is the right procedure according to the law. However, because the TA doesn’t communicate, the Omatako TA doesn’t know about anything about the applicants from Mangetti eastwards and the Mangetti TA doesn’t know about the applicants from Mangetti westwards. We do not want to undermine the authority of the TA so it is safest to continue to work through the chief, rather than contacting the Mangetti TA individually (CLB representative, Otjiwarongo, 11/08/2015).

The land board does not like to get involved in internal matters concerning the TA. They are aware of the political division that is currently present within the TA (see below) but they do not want to get involved because: “...we fear that they [the TA] will think that we have a personal vendetta against them” (CLB representative, Otjiwarongo, 11/08/2015). According to the land board: “Even though there are certain rules that the TA should follow, we cannot force them to do something that they do not want to do”, which indicates that the CLB is hesitant to interfere with TA decisions (CLB representative, Otjiwarongo, 11/08/2015). However, during my stay in Mangetti Dune, the CLB sent over new land applications to the TA office and the conservancy so that community members could discuss and object if necessary. Usually land applications are only sent to the TA and not to the conservancy. This may be because of the political division, which has caused a lack of communication between the senior councillors in Mangetti Dune and Omatako. In any case, the CLB has stated that internal conflicts in the TA are a major challenge which is affecting the ability of the CLB to function properly (ibid).

### 3.3 Political Division in Tsumkwe-West

During interviews, a dysfunctional TA is often cited as a contributing factor to the problem of illegal fences in Tsumkwe-West. According to the Traditional Authorities Act 25 of 2000 (TAA), each region must have a recognized traditional leader/chief. Often The TAA is critiqued because it does not take into account that certain communities such as the San did not have an organizational structure modelled after a single leader. Before the TAA, the San had a more or less egalitarian society, in which each settlement had a headman who represented the village members (community member, Mangetti Dune, 22/07/2015). But the TAA did not allow for such leadership structures and thus a chief had to be elected to comply with the Act. The role of the traditional authorities in Namibia is to preserve a cultural identity and to assist the government (Republic of Namibia, 2000). More importantly, the traditional authorities are responsible to uphold customary law, allocate customary land rights and to settle disputes (ibid). Some say that the role of the traditional authorities has declined since the emergence of regional government bodies (such as the CLB) (Behr, Haer, & Kromrey, 2015; Riruako, 2007). But in Tsumkwe-West the TA is still very relevant in the
everyday lives of the community members. This may be explained by the fact that Tsumkwe-West is far from the political centre or regional centre and therefore the TA is the only form of decentralized power which community members interact with on a frequent basis. Though the TA has lost some popularity over time, the TA continues to gain legitimacy from the fact that it controls land allocation (Ntsebeza, 2005). The authority of the TA may be challenged by other actors, but the TA seems to be a resilient institution and should not be dismissed altogether. However, in reality the TA in Tsumkwe-West is divided into two TA fractions, but only one TA is officially recognized. This poses a new challenge for land allocation as current legislation is unable to deal with this reality. In addition, the new landscape created by fencing reflects the underlying local power relations.

Elections were held and Chief John Arnold became officially recognized as chief for the !Kung traditional community of Tsumkwe-West in 1998. Besides a chief, the TA structure consists of 7 senior councillors. In addition, there are lower level TAs or headmen operating at village level. During my interviews, several community members and other actors who had worked together with the previous chief expressed discontent about Chief John Arnold’s leadership. Firstly, they blame him for favouring certain groups such as the Herero (Chief John Arnold himself was partly Herero) but also discriminating others such as the Angolan San community as will be discussed in the last chapter of this thesis (community member, Mangetti Dune, 22/07/2015; community members, Omatako, 22/06/2015; NGO worker, Windhoek, 03/06/2015). In addition, several actors claim that he started giving away land to outsiders (community member, Omatako, 22/06/2015; LAC employee 10/06/2015; Hitchcock, 2012): “These outsiders, especially the Herero farmers, were influencing the late Chief John Arnold in a bad way, this is why he later allowed many fences in the area” (community member, Mangetti Dune, 22/07/2015). Finally, he had initially supported a proposal in favour of small scale farms in Tsumkwe-West while many community members opposed this development (conservancy representatives, 22/06/2015). In 2012, John Arnold, his wife, and grandson died in a tragic car accident.

Since the death of John Arnold, the TA has split into two fractions: The Mangetti TA and the Omatako TA. Due to the lack of communication between the two fractions, it became very difficult to elect a successor. It wasn’t until 2015 a new chief, John Arnold’s daughter, was appointed. The issue of succession has caused wide dissatisfaction within the community. Community members claim that they were not allowed to elect their new chief. Apparently, government officials stated that the San had a royal family and therefore John Arnold’s daughter would succeed him and there was no need for elections (community members, Omatako, 22/06/2015; community members, Omatako, 23/06/2015). However, since the community were able to elect the previous chief John Arnold, the community members believe they should be allowed to elect a new chief as well. Many individuals belonging to the Arnold family have been able to acquire positions of influence; one of the family members is on the conservancy committee; another member works at MET; another works for the ombudsman in Windhoek; and now his daughter became the new chief. Some speculate that she was given this position due to her ties with the government (community members, Omatako, 24/06/2015). A community member even believed that the chief was appointed by the government to serve the interest of many government officials who own land and illegal fences in this area:

Now, the government has a lot of its own plans about what to do in this area, the land here is good and abundant. They tried to settle refugees, initiate small scale farming projects or other resettlement programs. But this has failed, because the conservancy served as a protection. This is
why the government has assigned the new chief. It is the government officials who put her in succession by claiming that the San have a royal line. The chief is just a government puppet, who serves the interests of the fence owners who are government officials. (community member, Mangetti Dune, 22/07/2015).

One of the main objections towards the current chief is that she works for the Namibian Air Force and therefore is based in Grootfontein, a town just outside of Nǂa Jaqna conservancy. Because she doesn’t live in Omatako where the TA office is situated, she is often unavailable for meetings (community members, Omatako rest camp, 12/07/2015; MET representative, M’Kata, 30/07/2015). For this research, I have attempted several times to speak to the chief, but to no avail. During my time in Nǂa Jaqna, the chief had not met with the community to discuss certain issues since she was appointed, which the community viewed as a bad sign for the future (community members, Grashoek, 29/06/2015). Their dissatisfaction reached a new level during the AGM, when the chief did not show up, even though traditionally the chief attends the last day. This caused several the village representatives to state: “We no longer have a chief” (AGM meeting, M’kata, 30/07/2015).

The political rift between the two fractions of the TA is caused by disagreement on how to tackle certain issues, including illegal fences and conservation. The commitment of the Mangetti Dune TA fraction towards conservation, is influenced by the fact that until July 2015, the (ex) chairperson of the conservancy is also one of the senior councillors in Mangetti Dune. Several community members, including a community member who helped set up the conservancy back in 2003, suggested that the delay in the establishment of the Nǂa Jaqna conservancy was partly because the TA refused to gazette the conservancy since the late chief was afraid that the conservancy would take over his powers (community member, 16/07, M’Kata; community member, 22/07, Mangetti Dune; community members, Omatako, 22/06/2015). Eventually, after facing pressure from the community the TA agreed and was able to work together with the conservancy to create the land use map. However, since then the communication between the TA and the conservancy is almost non-existent. Not only the relationship between the TA and the conservancy was under pressure, but also led to two TA fractions: one who supported the conservation efforts in Mangetti Dune and another group based in Omatako that supported government initiatives to render Tsumkwe-West more ‘productive’. The relationship between the conservancy and the TA further deteriorated after the late chief had failed to provide clear leadership amidst the plans for small scale farms and by giving his support to several non-state actors to establish large scale commercial activities in the conservancy area without consulting the conservancy. During the AGM in 2015, it was expected that the chief or another TA representative would be present because they are an important stakeholder in the discussion over the development of the Nǂa Jaqna conservancy. However, during my visit there was no representative of the TA present at the AGM despite several invitations. During the AGM, the chairperson of the conservancy did not run for re-elections and a new chairperson for the conservancy was chosen. Some say the ex-chairperson’s own political ambitions to become chief led to worsened relations within the TA and between the TA and the conservancy: “The illegal fencing issue is one of the reasons why the TA split up, but that things have also worsened because [the ex-chairperson of the conservancy] wanted to become chief, but instead they appointed [the current chief]. It became a matter of local politics” (community member, Mangetti Dune, 14/07/2015).
The fact that the two TA fractions disagree on land issues can be simply observed by exploring the landscape (see figure 3.1). Almost all of the fences are located in the area surrounding Omatako, Bubi Pos (area under Omatako), Kandu, Kanovlei and Grashoek. From M’kata forestry onwards to the east, to places such as Mangetti Dune, Aasvoelness, Viksrus and Perspeka, there are almost no fences (one in M’kata). I spoke to all the village representatives during the AGM, none of the village representatives from the eastern part of the conservancy indicated that they had any problems with illegal fences. When reviewing the list sent by the CLB regarding new land applications, none of the village representatives from the eastern half of Nǂa Jaqna conservancy objected to any land applications. In comparison, village representatives from the western part of the Nǂa Jaqna conservancy objected to 38 land application out of 129 on the basis that these applications were not from members of their communities and some had already constructed fences or brought livestock into the area. This demonstrates the political reach of the various fractions in land issues. The Mangetti Dune TA controls the land in the eastern part of the conservancy, while the Omatako TA controls land in the western part of the conservancy. This was expressed by one of the senior councillors himself: “We do not allow fences in our area, there is one in the vicinity of M’kata, but most of the fences are located in the area of Omatako, where we have little control. There are still a lot of new fences over there [Omatako area]” (senior councillor TA, Mangetti Dune, 14/07/2015). The senior councillors themselves admit that there has been a lack of communication between the two parties:

There is hardly any communication between the Mangetti TA and the Omatako TA. We have divided ourselves because we did not agree on how individuals in the Omatako TA where handling certain issues, such as fencing. Now the Omatako TA does not consult us when they receive a land application and vice versa (senior councillor, Mangetti Dune, 14/07/2015).

The lack of transportation and communication infrastructure makes it difficult for the two parties to consult each other. But according to the senior councillors in Mangetti Dune, when they arrange transportation to visit the Omatako TA, their office is always closed, even if they write a letter beforehand informing the TA when they will arrive (senior councillor, Mangetti Dune, 14/07/2015; conservancy representative, 18/06/2015). During one of my field trips to Omatako, community members informed me that there had been a meeting regarding illegal fences that week at the TA office with the senior councillors, the chief, some fence owners and several community members. However, when I reported back to the senior councillors in Mangetti Dune, they had no knowledge of this meeting nor were they invited to take part (senior councillor, Mangetti Dune, 12/07/2015). In conclusion, the two competing land use discourses in Tsumkwe-West have divided the traditional authority into two parties: the councillors who support conservation efforts and those who support farming activities in the area. The political division becomes very clear when analysing where most of the fencing takes place and therefore not only the political but also the physical landscape of Tsumkwe-West reflects the underlying power struggles. The internal division of the TA hampers the ability to allocate land rights transparently. During my interview with the CLB, the internal conflict within the TA was cited as one of the main challenges which affects the work of the CLB (CLB representative, Otjiwarongo, 11/08/2015). Because of the institutional gap caused by a dysfunctional TA, the community members increasingly look towards the conservancy to secure their access to land.
While the CLRA clearly states who is responsible for the removal of fences, there seems to be a lot of uncertainty surrounding the issue of responsibility. As a result, none of the illegal fences in Tsumkwe-West have currently been removed by any authority. Currently, there are two different avenues which different actors are pursuing to remove illegal fences. One of these options is to remove fences through a court ordered eviction, which is what the LAC is currently attempting. The other option is that the TA or CLB remove fences according to the procedure laid out in the CLRA. However, the CLB indicated that they are awaiting the result of the court case before they take any action against illegal fences. The process of trying to remove fences in the Nǂa Jaqna conservancy shows how different actors are shaping their role in land issues and how different actors have tried to protect their own interests. While this section will focuses primarily on who has the legitimate authority to remove fences, the process of physically removing fences remains unclear. Should fences be removed by the Namibian Police or by the Namibian Defence force? It remains to be seen whether there is a political will to organize the physical removal of the fences (LAC employee,
Mangetti Dune, 28/07/2015). There is also the issue of enforcement and monitoring; who should oversee that fences are actually removed? These questions will need to be answered before fences can be removed effectively.

The conservancy has contacted many different authorities to try to get the fences removed. In 2011, the N\=a Jaqna conservancy reported fences to the CLB, who should have assessed the legibility of the fences in question (Dieckmann et al., 2014). At the same time, the conservancy requested MET and the Namibian police to investigate and map out several fences with GPS coordinates. During this time MET together with the TA had identified 8 fences, but later on the Namibian police had identified 103 fences in total in the area of Tsumkwe-West (ibid). The conservancy has since then requested the CLB to remove these fences, but no action has been taken so far. When the CLB failed to take action, the conservancy and LAC decided to try to remove the fences through court ordered evictions (LAC employee, Windhoek, 12/08/2015). In 2013, the Inspector-General of the Namibian Police force decided to visit Tsumkwe-West to see the extent of illegal fences in the area. In July, during the conservancy AGM, several parties such as the Namibian Police, the Namibian Defence Force, the CLB, MLR and MET gathered to discuss what should be done against the illegal fences (LAC employee & NGO worker, Mangetti Dune, 28/07/2015). The Inspector-General had stated that the fences should be removed. Eventually he issued a media briefing and a 30-day warning. However, the Inspector-General does not have any legal power to remove fences, therefore it was impossible to enforce the warning period (ibid). While all the parties involved voiced their opposition towards illegal fences, no fences were taken down. One of my informants described the event as: “Everyone just looked at each other, waiting for the other to take action” (LAC employee, Mangetti Dune, 28/07/2015). Though no fences were taken down that day, the event did (indirectly) lead to the removal of fences. Because of the political involvement and the threat of court, some fence owners took down their fences voluntarily (conservancy representative, Mangetti Dune, 22/06/2015). Currently, the land board has identified 77 illegal fences in Tsumkwe-West (CLB representative, Otjiwarongo, 11/08/2015). However, since community members and game guards have reported to me that new fences are being erected at a weekly rate, this number may not reflect the actual amount of illegal fences that are present in Tsumkwe-West.

While the LAC and the conservancy have turned to the CLB to take action against illegal fences, others believe that it is the TA who is responsible to remove the illegal fences. In an interview with a CLB representative, it became clear that the CLB still regards the TA as the main authority in dealing with the allocation of land rights and therefore the primary responsibility to remove illegal fences lies with the TA (CLB representative, Otjiwarongo, 11/08/2015). While the CLB is aware of the internal division in the TA, they continue to communicate with the chief rather than through the conservancy according to the rules and regulations. The community members still regard the TA as the ‘custodian of the land’ which is why several community members have reported illegal fences to their TA (community member, Omatako, 23/06/2015; community member, Omatako, 22/06/2015; community members, Kandu, 22/06/2015; community members, Omatako, 23/06/2015; community member, Kanovlei, 24/06/2015). However, they feel that they are being abandoned by their traditional leaders: “We are not sure anymore who is responsible to remove the fences. We thought the TA but when they talk to them the TA just says that Namibia is independent country and so people allowed to move freely and settle wherever they want.” (community member, Kandu, 22/06/2015). Instead several community members now report new fences to the conservancy, but this remains a challenge because of the lack of transportation and distance between Omatako and
Mangetti Dune where the conservancy office is based (conservancy representatives, Mangetti Dune, 22/06/2015; community members, Kandu, 22/06/2015; community members, Omatako, 22/06/2015). While the TA is traditionally viewed as the custodian of the land their legitimacy in land issues is under pressure as community members increasingly rely on the conservancy to overcome the shortcomings of their traditional leaders. The issues of ‘legitimacy’ have been re-negotiated due to the issue of illegal fencing. The CLB seems hesitant to act, because it doesn’t want to interfere with the authority of the TA when it comes to land rights, while the conservancy is trying to shift the boundaries of power in its favour. Since the TA is viewed as serving its own interests by their lack of action against illegal fences the conservancy is stepping in to safeguard its conservation efforts. In any case, the issue surrounding the removal of fences has shown us that the responsibilities as laid out in the CLRA are not always performed accordingly in everyday situations. This leaves ‘room for manoeuvre’ which allows certain actors to take advantage of institutional gaps in Namibia’s complex land tenure system.

3.5 THE ROLE OF THE CONSERVANCY IN LAND RIGHTS

With the arrival of the conservancies, the power over wildlife and other natural resources has been transferred to conservancies while the power over allocation of land still remains with the TA. Currently, it’s no longer solely at the TA’s discretion to decide how natural resources in their jurisdiction should be managed. Yet an instable land tenure system by which access to land is denied, threatens the ability of the conservancy to manage resources. Conservancies aim to protect a community’s ability to benefit from natural resources thereby providing community members with a false sense of tenure security in situations where traditional institutions are failing to provide them with secure land rights (Harring & Odendaal, 2012, hohmann). Several community members have expressed that they feel as if they are not being heard by their traditional leaders: “When we [the community] asked the TA why they don’t consult us [in allocating land to newcomers] they say that they are the government here and have all the power, they do not need consent from community” (community member, Kandu, 22/06/2015). One of the TA members has recognized this tendency: “More and more people are leaving out the TA and reporting to the conservancy when they see new fences. But communication and transport remain obstacles for community members to discuss these issues since the office of the conservancy is in Mangetti” (Mangetti Dune, 22/07/2015). Because they feel abandoned by the TA, community members are increasingly seeking help from the conservancy to deal with land issues (community members, Kandu, 22/06/2015; community members, Omatako, 23/06/2015; community members, Omatako, 22/06/2015). For example, the community decided to organize their resistance against the proposed small scale farming scheme in 2004 and the ongoing court case over illegal fences through the conservancy rather than with help from the chief.

The conservancy has become a new actor in land disputes which is shifting the existing boundaries of power. While community members increasingly regard the conservancy as the legitimate authority in land related issues, this may not be possible from a legal point of view. The increasingly overlapping authority of the TA and the conservancy leads to an increasingly complex land tenure system which the law is unable to reflect. In theory, a conservancy does not have any rights over land but can influence over allocation of land rights. In the CLRA it is specified that a right of leasehold can only be allocated if it is in accordance with the conservancy’s management or utilisation plan. For example, livestock farming in an area which is set aside for tourism would defeat
the aims of the management or utilisation plan of the conservancy. However, conservancies lack the ability to enforce compliance with their land use management and utility plans. They are depended upon the TA and the CLB to take their plans into consideration before allocating land rights. There is no mention of what actions a conservancy can undertake when allocation of land rights interferes with their conservation efforts. Even though community members increasingly rely on the conservancy to deal with land issues it is not clear whether this is legally possible. The fact that rights of the conservancy over wildlife and other resources is separated from land rights leads to new legal challenges regarding illegal fences.

Illegal fences directly affect the ability of a conservancy to protect the natural resources in the area. While a conservancy is a recognized legal entity according to the Nature Conservation Ordinance it remained unclear whether or not a conservancy could initiate legal proceedings concerning land issues. One of the legal matters that needed to be resolved in the court case over the illegal fences is whether or not the conservancy had locus standi or the right to take this matter to court. The Communal Land Reform Act is administered by the Ministry of Lands through institutions such as the TA and the CLB. In terms of initiating legal proceedings these institutions are specifically mentioned in the Act, which is why some argue that they are the only institutions that are able to bring land matters to court. However, the LAC argues that the CLRA does not preclude other parties from bringing such land matters to court as well. If the conservancy is able to initiate legal proceedings it would provide an avenue for all conservancies in Namibia to enforce their resource management and utilisation plan. The legal separation between rights to wildlife and other resources and rights to land is unable to deal with a reality in which conflict is as much about land as the resources on the land itself. Wildlife and other natural resources are dependent on the availability of land and therefore inherently linked to land matters. The creation of two separate institutions becomes problematic when the institutions are on opposing parties. Managing the communal areas sustainably will require a more holistic approach between various institutions that are shaping the landscape of Tsumkwe-West.

3.6 DISCUSSION: CHALLENGES WITHIN A COMPLEX LAND SYSTEM

In this chapter we have tried to answer the following question: Who has the authority to control access and allocate land rights? According to the CLRA, there are two main institutions which control land allocation in Namibia: the CLB and the TA. The CLRA regulates the way in which these institutions can allocate and register both leasehold and customary land rights, and how to deal with illegal fences. However, the struggle over illegal fences in Tsumkwe-West has exposed several weaknesses and challenges that these institutions are facing. Firstly, the composition of the CLB represents different parties and interests unequally. The conservancy representative has no communication with the Nǂa Jaqna conservancy and is unable to adequately interpret their management and utilization plan while the various regional TAs often have the majority during decision-making processes. Secondly, the focus of the CLB is on preventing fencing by combating ignorance of the law rather than removing fences. In this sense the CLB becomes more of a ‘passive’ rather than ‘active’ agent in removing fences. Finally, mistakes by other CLBs in Namibia has made other CLBs hesitant to act against illegal fences. In addition, the CLB is careful not to interfere with
the authority of the TA and continues to regard the TA as the principle agent in allocating land rights even though the workings of the CLB are limited by the internal struggles of the TA.

The TA is regarded as the ‘custodian of the land’ and has traditionally been in charge of land allocation, even during colonial times. But the San have never had an organizational structure which required a chief, until the Traditional Authorities Act was implemented. After the tragic death of the first chief, John Arnold, the TA has split into two fractions. However, the legislation does not allow for two TAs to operate in Tsumkwe-West. Disagreement within the TA is directly reflected in the landscape as the new boundaries created by fences reflect the boundaries of power of each fraction of the TA. In addition, one fraction is directly linked to the conservancy and thus at least partly represents the interests of the conservancy while another fraction is accused of representing the livestock farmers rather than the community. The lack of communication between the two fractions has led to a dysfunctional TA in which each fraction regulates their own land matters for ‘their’ respective territories. The fact that the San were not allowed to hold free elections to choose their new chief has caused a lot of dissatisfaction among the community which undermines her legitimacy as chief. The challenges and weaknesses both in the TA and in the CLB have contributed to illegal fencing in Tsumkwe-West. In addition, this particular case demonstrates that ‘the’ TA is a social construction which obscures underlying power relations. The TA itself is not a homogenous institution, nor does it represent a homogenous community.

The struggle over illegal fences has exposed several institutional weaknesses concerning: the responsibility to remove fences, and the role of the conservancy in land rights. Not the legislation itself, but the everyday realities in which institutions are not able to perform their duties as imposed by the CLRA leads to ‘room for manoeuvre’ which certain individuals can exploit for their own benefit. In the process of attempting to remove the illegal fences, some actors are uncertain about their position in land matters and others are competing to serve their own interests. Land legislation is unable to keep up with the new realities created by illegal fences. The conservancy together with the LAC have been able to become the main community vehicle for rightful resistance against illegal fencing, but may not be able to provide a long term solution for the institutional challenges that the TA and the CLB are facing. To remove fences, actors have pursued different legal orders to legitimize their land claims. This ‘forum shopping’ has resulted in two separate avenues for removing fences: through the TA and the CLB according to the procedure in the CLRA or the conservancy and the LAC through a court ordered eviction. A new actor, the conservancy, is challenging the authority which is bestowed upon the TA according to the current land legislation. The growing support for the conservancy as a legitimate institution to protect land rights in the eyes of the community creates new challenges for the established institutions in land allocations. Bypassing the TA and seeking assistance through the conservancy could ultimately undermine the TA’s authority as discontent with the TA continues to grow among the community. But a conservancy is not equipped with the legal tools to become a dominant actor in the allocation of land rights. Using the conservancy to fill the institutional gaps in the land tenure system creates a false sense of tenure security. The struggle over illegal fences has shifted the boundaries of power present in Tsumkwe-West. Ultimately, access to land is not determined by land legislation but by being able to perceive and exploit the weaknesses within the different institutions.
Chapter 4 Identity and the Struggle for Land

The role of ethnicity in land allocation and representations of San identity are rooted in their historical context. The apartheid policy of racial segregation that the South African administration implemented in Namibia has had profound effects on the communal areas. The creation of ‘Bushmanland’ has linked the San identity to their current territory. Images of the ‘wild’ Bushmen constructed by government officials and researchers during the colonial era continue to influence how the San are perceived in Namibia to date, and ultimately to their current marginalization. Since independence, the San have adapted to their new socio-economic environment and their land tenure system, leadership structure and livelihood strategies have been transformed. The representation of Bushmen as ‘primitive’ hunter-gatherers that live outside of the cash economy does not reflect the everyday realities of the San in Tsumkwe-West.

Identities are often constructed around place and the way in which people interact with their surroundings, thus defending territory becomes an important aspect in identity construction. As I have argued earlier in Chapter 2, geography is commonly used to define community. In most cases illegal fence owners are not considered community members because they are weekend farmers and do not reside in the area. However, geography is not the only aspect that determines community membership. In this chapter I will argue that ethnicity continues to play an important role in access to land. The issue of illegal fencing has a significant impact on how the San construct their social identities and how they use the notion of a collective San identity to protect their territory from ‘outsiders’. In this process, history and territory are often reconfigured and imagined. Communities are not a homogenous entity and simplified notions of community neglect conflicting values, norms and interests that are present. However, in the interest of collective action, differences between the different San groups in Tsumkwe-West are ignored. In this case, the common goal of preventing settlement of non-San groups into the area has strengthened a collective San identity. The case of N≠a Jaqna demonstrates how different actors use notions of identity and citizenship in order to gain access to land and natural resources.

At independence, the government has promoted national unity and reconciliation and discouraged ethnic categorizations (Parliament of Namibia, 1990). In an attempt to achieve these national goals, the government has shifted the territorial boundaries inherited from apartheid and re-determined conditions for access to land and resources. Yet the creation of institutions such as the Traditional Authorities and conservancies has revived perceived ethnic boundaries across the communal areas of Namibia. The process of recognition of a traditional authority and traditional community has meant that certain groups have been able to strengthened claims to land while further marginalizing other groups. In cases where the TA has not been able to provide the desired tenure security, conservancies are viewed as an alternative strategy. Across Namibia, conservancies are viewed as a way to defend territory and to protect natural resources from ‘outsiders’. Membership of a conservancy based on ethnicity becomes a mechanism for inclusion and exclusion of certain social groups. Finally, conservation in areas with culturally distinct groups has supported ethno-tourism. The revival of cultural identities through ethno-tourism across Namibia seems to emphasize cultural diversity rather than the national unity the Namibian government strives for.
4.1 THE SAN BEFORE INDEPENDENCE

Throughout modern history, dominant discourses on the San as being ‘backwards’ or ‘uncivilized’ have persisted. Even after independence, the San are excluded from society by being characterized as ‘traitors’ or ‘non-Namibians’. This section will focus on how ‘the’ San identity has been shaped by different colonial administrations and governments and how identities influence their claims to territory. Since the different San groups present in the Tsumkwe district were considered ‘genuine’, they were confined to this area through the creation of Bushmanland while others lost their claims to their ancestral lands and became landless. In addition, the assumption that Bushmen are ‘nomadic’ implied that they had no ties to land or customary land tenure systems. The influence of the military presence in Tsumkwe-West has drastically changed the socio-economic landscape of an area which was previously largely unpopulated. As a result, the heterogeneity of the population that now exists continues to challenge notions of ‘community’ and local leadership. The history of the inhabitants of Tsumkwe-West demonstrates how others have perceived the San over time and that the presence of a collective identity may be challenged by the different sub-groups that are present.

4.1.1 GERMAN OCCUPATION (1884-1915)

In 1884, Namibia became a German protectorate. According to Dieckmann (2007) the German administration and their policies were heavily influenced by academic research which focused on racial ideologies and defining the ‘real Bushmen’. Since the colonizers relied heavily on native labour it became crucial to understand how the Bushmen could be ‘civilized’ and if they would be able to contribute to the labour force. In a report from the South-African administration, the Germans were portrayed as very hostile towards the Bushmen. Many German farmers believed that the Bushmen were not suitable for farm work because they were physically weak and would often wander off the farm (South-West Africa Administrator’s Office, 1918) Despite this, the German farmers continued to be heavily dependent on Bushmen as farm labourers since they were faced with a labour crisis (Gordon, 2009). There are also several accounts of the ill treatment the Bushmen received while working on these farms:

The Germans treat them [the Bushmen] badly while the country was under German rule and many used to run away back into the veld. They were badly fed, flogged and very often got no money... When they came into town to report their masters for brutality or cruelty the only result was sever flogging from the German police. (South-West Africa Administrator’s Office, 1918, p. 147)

The Germans took their [the bushmen’s] wives away from them and made them their concubines...They [the bushmen] were hunted like wild animals, too afraid to even come down to a water-hole in the daytime to drink for fear a German might see and shoot them. (South-West Africa Administrator’s Office, 1918, p. 148)

The tendency of the Bushmen to retreat outside of the Police Zone meant that the Bushmen were illegible to the administration and were seen as a threat. To deal with these ‘wild’ Bushmen regulations known as ‘pass laws’ were developed in an attempt to control them. This entailed that natives had to wear tokens, a register was to be developed and work contracts were regulated (Gordon, 2009). In addition, Bushmen were condemned as vagrants, because hunting and gathering
was not considered a ‘visible means of support’ in the eyes of the colonial administrators. In addition, the notion of bushmen as ‘vagrants’ or ‘nomadic’ are misleading because the colonial administration (and later also the South African colonizers) assumed that the bushmen had no territorial claims or land tenure systems (Dieckmann, 2007). Yet the bushmen had clear customary land rights which were based on large territories (known as n!oresi) occupied by extended families represented by a headman (Dieckmann et al., 2014; Hitchcock, 2012).

The need to control the Bushmen through laws and regulations became increasingly urgent since there had been several reports in the Grootfontein district that an increasing amount of Bushmen were responsible for criminal activities such as stock theft, the murder of white settlers and attacks on Ovambo migrant workers (Dieckmann, 2007). The Germans responded by deporting the Bushmen to the south were most of them died in prison, or with police patrols in which Bushmen were either captured or shot on sight. Besides the official authorities, German farmers would also take measures in their own hands to curb ‘the Bushmen Plague’: “The Germans adopted a policy of frightfulness and issued permits to outlying farmers to shoot Bushmen on sight. I am told that hunts [on Bushmen] used to be organized by farmers, but I am not able to vouch for the truth of this” (Hull, 1916, p. 1) After the South Africans took control of Namibia, they banned ‘Bushman hunting’ (Gordon, 2009). But by this time the damage was already done and many bushmen had become victims of what Gordon (2009) refers to as the ‘forgotten genocide’.

4.1.2 SOUTH-WEST AFRICA (1915-1990)

During the South African regime, the attitude towards the Bushmen shifted. Policies were aimed at befriending the Bushmen rather than coercion. While the South African administration is generally viewed as more liberal, it has also been suggested that in practice the attitude of the farmers and the local officers towards the Bushmen did not change with the new administration and incidents between white settlers and the bushmen continued (Dieckmann, 2007). Since it was in the interest of the South African administration to convince the Western world that Namibia would be better under South African rule rather than the Germans, the number of historical reports produced which describe the injustices committed by the Germans may be far greater than those with a more neutral or positive view on the German predecessors (ibid). While the attitude towards the Bushmen may have changed, the issues that pre-occupied the German administration vis-a-vis the Bushmen remained a concern during the South African administration. Their primary concern was how to settle the bushmen so that they could become part of the labour market and to solve the ‘vagrant’ bushmen problem (Hitchcock, 2012). One of the solutions which was contemplated by the administration was the creation of a Bushmen reserve.

The Commission for the Preservation of the Bushmen (also known as the Schoeman commission) had created a report based on fieldwork, in which it advised the administration to create a reserve for the Bushmen. According to the report, the !Kung are ‘genuine’ bushmen, and efforts of conservation should be directed towards them in the Kau-Kauveld (Nyae Nyae) area which was regard as their home (Commission for the preservation of Bushmen, 1952). It should be pointed out that the commission failed to recognize the different ethno-linguistic groups that make up the !Kung and have inhabited the area for generations: the Ju/'hoansi of north western Botswana and eastern Namibia, the !Xun of Angola and northern Namibia, and the //Au//eisi (Kao/'aesi) of the northern Ghanzi area of Botswana (Hitchcock, 2012).
The Bushmen continued to be described in terms of their economic contribution to the colonial economy. This is often linked to their degree of civilization. Bushmen are seen as backwards or uncivilized, and terms such as ‘wild’ or ‘tame’ Bushmen continue to be used to indicate their level of integration into the colonial system. It was proposed that ‘wild’ Bushmen should be forced to live in the Bushmen reserve. On this issue of ‘taming’ the Bushmen, the commission recommended the following:

Your commissioners are, therefore, convinced that the Bushmen can be settled on the land... If the pace is forced too much, irreparable damage will be done to the tribe and the extremely valuable contribution that the Bushmen can make to the economy of the Territory in the way of labour will be lost – this is clear from what is happening at the outskirts today where Bushmen are regarded as potentially dangerous by farmers rather than as able and willing assistants of their farming operations (Commission for the preservation of Bushmen, 1952, pp. 13-14)

Claude McIntyre, former Bushmen Affairs, wrote a separate report in which he discusses his view on the future role of the Bushmen in the Territory:

Your commissioners therefore recommend that for the present these (Kung) Bushmen be not drafted into labour market but administered in their own area in such a way as to ensure that the transition period be gradual and sound. There is plenty of development work to occupy them, such as road construction, cutting and clearing of fire paths and the reparation of lands... Right from the start the Bushmen must be taught that they must work for their livelihoods and the dangers of demoralisation inherent in any free feeding scheme must be carefully avoided (McIntyre, 1955, p. 5)

After the publication of the report, Tsumkwe was established as an administrative centre in 1959 for the area that was proposed as a Bushmen reserve according to the commission. However, it wasn’t until 1976 that ‘Bushmanland’ became an official native reserve. The reserve was set up according to the recommendations of Odendaal Commission, which published a report in 1964 with the intent of dividing Namibia according to ethnic ‘homelands’ (see figure 2.1). Bushmanland was different than the other native reserves, because the bushmen were seen as incapable of managing their own affairs (Odendaal Commission, 1964). While other native reserves were managed by local traditional authorities, Bushmanland fell under the responsibility of the Department of Nature Conservation. The bushmen became part of ‘wildlife’ conservation efforts and future plans indicate that the area was to become a game reserve (Suzman, 2001). The experiences of the San people inside former Bushmanland are different from the San who were integrated within other native reserves or those who were employed within the white settler areas, especially in terms of land dispossession and control over their traditional territories (Welch, 2013). At the same time, the San who had been living in ‘Bushmanland’ for many generations had lost much of their territory with the recommendation of the Odendaal Commission as it was now part of ‘Hereroland’ and ‘Okavangoland’ (Suzman, 2001).
4.1.3 THE INFLUENCE OF THE SADF ON TSUMKWE-WEST (1978-1990)

In 1978, the South African Defence Force created a 36th Bushmen battalion in Mangetti Dune (one of the settlements in my research site). Their reputation for being excellent trackers is an important reason why the SADF were keen to employ the San in the army. While there was no official division between East and West Bushmanland, different social conditions prevailed as the army had several implications for the development of the area known as Tsumkwe-West (Legal Assistance Centre LEAD Project, 2006). The military improved the local infrastructure, health and education services and provided the San with an income (Suzman, 2001). Many saw the military as a chance to improve their livelihoods. However, the San became dependent on the income, goods and services that the military provided for nearly a decade, and when the military left many struggled to provide for themselves (Dieckmann et al., 2014). After independence, the San people who fought in the SADF were condemned as ‘traitors’ or ‘non-Namibians’ because they fought against Namibian Independence (Welch, 2013). Out of fear of retaliation, many San who served in the army accepted the offer of the South African government to be relocated to Schmidtsdrift in South Africa (Dieckmann et al., 2014). Before the arrival of the SADF, Tsumkwe-West had been largely unpopulated with the exception of a relatively small group of !Kung. The resettlement of many San from other parts of Namibia and Angola had a profound effect on the social landscape; at independence the population was nearly 3,000 inhabitants (ibid). The population of Tsumkwe-West is much more heterogeneous. Only 4% of the current population was born there. In contrast, 76% of the inhabitants of East-Tsumkwe were born there and the population is mostly Ju/'hoansi (Suzman, 2001). The demography of Tsumkwe-West is once again being restructured as many non-San groups are coming into the area, to search for land or government jobs. In 2011, only half of the estimated 6,000 inhabitants are considered San (Hitchcock, 2012).

4.2 THE CURRENT LIVELIHOOD PRACTICES OF THE SAN IN NǂA JAQNA

The San are often represented as ‘backwards’ or as ‘one with nature’. The different images of the San are often imposed on them by various actors such as anthropologists, government officials, NGOs etc. These perceptions are sustained because of the historical connection between the San and hunting and gathering. In reality, hunting and gathering is no longer their primary mode of subsistence and most of the San have been integrated into the cash economy. The San in Nǂa Jaqna have diversified their livelihood strategies throughout the years to cope with changing realities. Since independence, new legislation has been introduced which has changed both the leadership structure and land tenure system which sustained their hunting and gathering lifestyle. Legislation in Namibia is often modelled after the customs of the politically dominant Ovambos of Northern Namibia, and these customs differ from traditional ways in which the San organized themselves. After independence, a mostly egalitarian society has been replaced by a chief and a communal land tenure system has replaced the Nǀore system. Due to increasing pressures on their natural resource base, many San have diversified their livelihood practices to include other practices such as crops, livestock, piece work, craft making and tourism. This does not mean that the San have abandoned their traditional practices which have been passed on through generations. Though hunting is now prohibited, this is seen as a significant cultural loss for the community. In addition, gathering veldkos is still regarded as an important strategy to cope with food shortage. Instead of portraying the San as
a ‘simple’ hunting and gathering society, this chapter focuses on the ways in which the San communities have adapted their leadership structure, land tenure system, and livelihood practices to changing circumstances.

Unlike other ethnic groups in Namibia, the San have never had a single leader or chief (Bieseke & Hitchcock, 2000). Previously, the San were made up of smaller settlements. These smaller groups were represented by a headman who had several responsibilities but he would consult the community on social issues including land use rights. Thus, decisions were made based on consensus building rather than a single chief (Pakleppa, 2004). In my opinion, the emphasis on consensus building may contribute to a feeling of dissatisfaction among N‡a Jaqna community members with their current leadership because they often critique the TA for allocating land to settlers without consulting the community beforehand. Compared to several other San groups in Namibia, the San in Tsumkwe-West have relatively more control over land (Dieckmann et al., 2014). Since the Traditional Authorities Act, each communal area is administered by a chief. Both Tsumkwe-East and West have their TAs officially recognized, while many other San groups continue to be landless and have not been granted official recognition. These groups are represented as part of other ‘traditional communities’. Because the !Kung and the Ju|’hoansi have recognized TAs they are in control of their communal land administration.

Before land was allocated according to a communal land tenure system, many San groups had a different system of managing their resources. Several San groups, including the Ju|’hoansi of Tsumkwe-East, had based their land tenure system on the Nlore system, which was later introduced in Tsumkwe-West when different San groups settled in the area. Each territory, or Nloresi would contain different types of natural resources which the San depended on and could sustain a hunting gathering lifestyle. Though these territories had no fixed boundaries, there were certain social norms associated with sustainable resource use (Welch, 2013). While community members view this area as land specifically for the San community, the ancestral ties to this land by its current inhabitants is fairly recent. Before the arrival of the SADF into this area, Tsumkwe-West was largely uninhabited. Occasionally the Ju|’hoansi of Tsumkwe-East would venture into this area for hunting and gathering purposes (ibid). With the arrival of the SADF many of the San groups currently living in Tsumkwe-West were brought in from others parts of Namibia or Angola. This is why it becomes problematic to make indigenous claims to land based on historical ties to land. Previously, this area was known as Bushmanland and encompassed the whole of the Tsumkwe district, but these ‘symbolic’ boundaries have now shifted and became fixed. The current geographical boundaries that separate West and East Tsumkwe have been implemented post-independence as administrative districts, rather than an ethnic ‘homeland’. During the creation of the N‡a Jaqna conservancy, the boundaries with its neighbour, the Nyae Nyae conservancy were a subject of debate. At the time that Nyae Nyae was gazetted, the San community in Tsumkwe-West and the TA claimed that a part of their land had been incorporated in the Nyae Nyae conservancy area. These negotiations reflect that that the geographical boundaries and land tenure system of the !Kung traditional community are fairly recent (Hohmann, 2003)

Hunting and gathering practices have always been associated with San. These practices are often presented as an important part of their cultural identity: “... although traditional hunting does not appear to be a widespread practice anymore due to being outlawed, it was clear that the San of N‡a Jaqna still regarded hunting, and land on which to hunt, as central aspects of who they are”
Traditional hunting, is no longer an important part of San livelihoods in the conservancy, because hunting has been restricted by MET. Unlike Nyae Nyae, MET argued that because Tsumkwe-West was much more heterogeneous therefore it would not be possible to reach a consensus on what was considered ‘traditional hunting’ and it was feared that other hunting practices would be used (ibid). A few cases of poaching in the conservancy area have been reported (Hitchcock, 2015). The subject of traditional hunting was brought up again at the AGM this year when one of the community members asked MET: “Why are we not allowed to hunt traditionally like Nyae Nyae? Why is it different for them? This is a loss of culture, I will never be able to teach my children how to hunt” (community member, M’Kata, 30/07/2015). While traditional hunting is not allowed, the conservancy still derives a significant amount of income from trophy hunting. However, there is also a lot of concern regarding the restricted movement of wildlife due to illegal fences. A community member raised concern about the effects fencing for the future generation: “These fences will restrict wildlife and children will not know what a ‘kudu’ or ‘springbok’ looks like in the future.” (community member, Omatako, 23/06/2015).

Gathering is still and important livelihood practice, though illegal fences have made it difficult to collect veldkos: “There are now fences everywhere, when our kids grow up they won’t have any land. This place is like a jail. We cannot even collect veldkos which is part of our traditional ways.” (community member, Omatako, 22/06/2015). As a result, many of the San in N≠a Jaqna are becoming more dependent on government food aid. During my stay several government trucks came and distributed drought relief which consist of mealie and fish. Community members from the different villages of N≠a Jaqna would walk long distances to collect the food aid which was distributed in Mangetti Dune. Gathering veldkos is seen as a backup for times when other food sources are unavailable, and therefore regarded as a central aspect of food security in N≠a Jaqna (Dieckmann et al., 2014; Hohmann, 2003). In this chapter we have demonstrated several ways in which the San have adapted their livelihood strategies to include more than hunting and gathering. At the same time, hunting and gathering continue to play an important role in the San identity:

[the] San in N≠a Jaqna often informed me that hunting and gathering is not only increasingly difficult but also that it involves periods of hunger. However, these same informants also expressed a desire to integrate hunting and gathering as important elements of their identity with other forms of gaining a livelihood. (Welch, 2013, p. 288)

4.3 SOCIAL IDENTITY AND EXCLUSION

The negative image of the San that still persists in Namibia today, leads to increased marginalization of the San. To demonstrate this social exclusion, the following section will describe how the San are denied ID cards, thus reaffirming the image that the San are not ‘Namibians’. Since the San are excluded from citizenship, the San have developed a sense of collective identity to deal with the perceived threat of non-San groups. This process of identity creation has de-emphasized the underlying difference between the different San groups that form the population of Tsumkwe-West. Most notably, the Angolan San and their position within the community are redefined in the context of illegal fences. In some cases, these differences are mobilized by different actors to justify illegal settlement of other social groups in the area. The need to protect their land from an increasing
amount of outsiders leads to the framing of illegal fences by community members as an issue of ethnic identity. In the court case over illegal fences, two opposing parties present narratives of ethnic identity and citizenship in order to gain access to land and resources. The issue of illegal fences has led to the strengthening of ethnic boundaries in Nā Jaqna and increased marginalization of the San vis-à-vis other social groups.

4.3.1 ID CARDS AS A SYMBOL OF MARGINALIZATION

The San are one of the most marginalized groups in Namibia. On a yearly basis, the per capita income of the San is ND 3,263 whereas the national average is ND 10,358 (Levin 2007 according to Dieckmann et al., 2014). In addition, the Human Development Index ranks the San at 0.35 while the national average is 0.55 (ibid). According to Welch (2013), the San people who fought in the SADF are still regarded as ‘traitors’ or ‘non-Namibians’ because they fought against Namibian Independence. Several actors have told me that during interactions with government officials, the San were told that they were not “Namibians”. (conservancy representative, Mangetti Dune, 18/06/2015; NGO worker, Windhoek, 03/06/2016; community member, Mangetti Dune, 22/07/2015). For example, a conservancy committee member recounts one of those instances: “When I went down to the CLB office to report illegal fences, they [CLB employees] did not take me seriously because I was not a ‘Namibian’” (conservancy representatives, Mangetti Dune, 18/06/2015). When discussing their social identity, the several San groups refer to their marginalization in comparison to other social groups (Dieckmann, 2007). During my research I have witnessed a few instances where the San have been discriminated: filling positions preferably with non-San candidates in the few jobs that are available in the area or denying opportunities for promotion, paying them with second hand clothing for piece work or craft making instead of money; stereotyping of the San as drunks or lazy. In terms of marginalization, one of the biggest challenges that the San in Tsumkwe-West are facing, is obtaining an identification card.

This feeling of being a ‘non-Namibian’ is aggregated by the struggle which the San face in order to obtain an identity card, which symbolizes Namibian citizenship (Dieckmann et al., 2014; Welch, 2013). During the AGM of the conservancy, a group of community members approached me to ask if I would be able to help them obtain an ID cards for their parents (community members, M’kata, 30/07/2016). They explained that these documents are important for them in order to receive social benefits from the government. One of the problems is that the offices to apply for an ID card are hard to reach, especially as transportation remains scarce. Even if the San are able to reach the offices, they are often denied to right to an ID card. According to Dieckmann et al. (2014)there are several ways in which the government prevents the San to obtain these ID cards. Firstly, according to their research, the government misrepresents the age, thereby withholding old age pensions from San members that are entitled to them. Old age pensions are an important source of income that is shared among family members (ibid). At the AGM, one of the ladies showed me her ID card when I was registering land objections. The age on her identity card seemed highly unlikely to me and I suspected her to be much older. This is when one of the village representatives explained to me that the government issues ID cards with false dates of birth (village representative, M’kata, 28/07/2015). Secondly, those who originate from Angola do not qualify for old age pensions because they lack Namibian citizenship, even though most of them have been present in the area before independence (Dieckmann et al., 2014). Even their children that are born in Namibia are afraid to
register because they are afraid that their parents will be sent back to Angola (Welch, 2013). Denying the San the right to national documentation, fuels a growing resentment that they are not entitled to the same rights as ‘Namibians’. This specific case demonstrates the way in which a division is created between being San and being a Namibian. The lack of recognized citizenship by withholding national identity cards, contributes to the creation of a collective identity to deal with increasing marginalization and the construction of identity based on ethnicity rather than nationality.

4.3.2 CHALLENGING NOTIONS OF COLLECTIVE IDENTITY: THE ANGOLAN SAN

Since the presence of the SADF, different San groups have been present in the area such as Angolan San, Ju/'hoan, and Hai//om. Research conducted by Welch (2013), illustrates that there is no consensus on who is considered an ‘insider’ and ‘outsider’ and that certain San groups, especially the Angolan San, are in some cases still considered outsiders. However, according to Suzman (2001) these communities consider themselves to be part of the Tsumkwe-West community and it appears that the issue of heterogeneity is not as problematic as it has been before. An increasing amount of San are emphasising the notion of a collective identity rather than expressing underlying cultural differences:

...all-encompassing labels such as “San” or “Bushmen” are now ascendant. This reflects a newly evolving sense of collective identity that draws as much on their shared marginal socio-economic status and shared perceptions of alienation and disenfranchisement as it does on their common sociolinguistic, economic and genetic heritage (p. 3).

In my research, when the subject of the Angolan San was discussed in the context of illegal settlers and fences, Namibian born community members did not view the Angolan San as outsiders in the same way as they view illegal settlers:

Some of the Angolan San community members were cut off from accessing a borehole. When they complained to the senior councillor, they were told that Angolan San people are not allowed to speak about the land in this area, because they are from Angola and not Namibia. We do not agree that the Angolan San are ‘outsiders’. They are like us. But the cattle farmers, we do not think of them as part of our community. (community member, Omatako, 18/07/2015).

However, according to the community members, the TA increasingly uses the distinction between Angolan San and Namibian born San as a reason why certain community members are not allowed to voice their opinion on fencing. The Angolan San believe that they are being discriminated by the TA: “We are originally from Angola, so the TA tells us that we are also outsiders and so we cannot refuse other people from taking our land” (community members, Omatako, 24/06/2015). Even the Namibian born San have expressed concern for the way in which the TA is portraying the Angolan San: “Before independence a lot of Angolan San settled in this area. I don’t understand why the Chief said that the Angolan San are also ‘outsiders’, because they have been in this region before the chief was even born” (community member, Mangetti Dune, 22/07/2015). While the TA and government officials stress the differences among the community, the community members instead underline the similarities in terms of a shared cultural heritage.
The case of the Angolan San illustrates the heterogeneity that is present in the N≠a Jaqna community. According the study conducted by Welch (2013), these underlying differences within the San are still relevant in the everyday lives of the community members. Assuming that the San are a homogenous group, neglects the underlying differences and power relations that are present in a community. Yet Suzman (2001) argues that: “The diversity of [N≠a Jaqna] is not as serious an issue as it might have been some years ago... San social identity is now often expressed and understood in considerably broader terms and with a far stronger geographical focus than it once was.” The struggle over illegal fences is often presented as an ‘us’ versus ‘them’ issue. The heterogeneity within the community becomes less important than distancing themselves from illegal settlers through a collective San identity. Though a homogenous identity is often imposed by other actors, such as NGO’s that are seeking donors, the conservancy or even community members at an individual level will stress a collective identity in defending their land and natural resources and to cope with marginalization. This collective identity may (or not) be imagined, but the importance is that this assumption advocates agency and positions collective identity as a strategy rather than solely being imposed by other actors.

4.3.3 IDENTITY, CITIZENSHIP AND ACCESS TO LAND

In the previous sections we gave examples of how government officials portray the San as ‘non-Namibians’ by excluding them from obtaining ID cards. In addition, certain individuals in the TA have told the Angolan San that since they are not Namibians, they cannot participate in the discussions on illegal fences. This example already shows how certain actors create a division between San and non-San. Constructing a collective San identity has allowed the community to defend collective interests and cope with increased marginalization, for example in terms of access to land. The issue of illegal fences is often expressed in terms of the San versus ‘outsiders’, meaning livestock farmers from other parts of Namibia. A community member feels threatened by the arrival of an increasing number of non-San livestock farmers in the area: “These outsiders want to take over Bushmanland. They are driving out the San by preventing them to make a living. It is discrimination” (community member, Omatako, 22/06/2015). Identity and citizenship become important narratives of the illegal fencing issue. During discussions with community members over illegal fences, the arrival of non-San groups into their territory is often stated as the main reason for conflict:

The fencing issue is not about the fences. It is about the ‘illegal settlers’, the fences are just a representation of the real issue. Even if the fences are taken down with the court case, the fence owners will still own the land, even if the land right is illegally allocated. The problem will live on, because they will still own the land and find a new way to protect the natural resources located on these huge plots, possibly by defending this land with force. Even if the fences are removed, they will not allow the San community onto their land. We want these outsiders to go back were they came from. We do not have land anymore for our children (community member, Mangetti Dune, 22/07/2015).

Even though these illegal settlers are also Namibians, the San continue to view them as outsiders. Often, the San continue to identify illegal fence owners according to the different ethnic groups that are present in Namibia (Ovambo, Kavango, Herero etc.), thus re-enforcing the social boundaries between different ethnic groups in Namibia. The community is not merely asking these non-San groups to take down their fences, but to return the land that they occupy to the San
community. The community believes that this area was set aside for the San, entitling them to access to land like other traditional communities in Namibia: “To solve these disputes we tried contacting the government but they tell us that Namibia is a free country and people can settle where they want. But the San, we do not go and settle in Ovamboland. Why should the Ovambo be allowed to settle in Bushmanland?” (community member, Omatako, 22/06). Rather than regarding Namibia as divided by administrative regions, the San still view land to be divided along the lines of different ethnic groups. The illegal fencing issue is therefore often portrayed as a ‘San’ vs ‘Them’ issue, whereby a collective San identity is stressed. Fences are not simply erected to mark physical boundaries, but also solidify the social boundaries that exclude certain groups based on social identity. As stated by one of the community members, “the fencing issue is not about fences but about the illegal settlers” (community member, Mangetti Dune, 22/07/2015), mainly the ‘invasion’ of other ethnic groups into San territory. After independence, legislation was created that allows all Namibians to move freely, but it could be argued that the San were protected by the colonial administration’s restricted movement policies because this prevented the influx of ‘outsiders’ into their territory (Hohmann, 2003, p. 215). While many Namibians see the Veterinary Cordon Fence as a symbol of apartheid, a community member sees it as a form of protection: “The [veterinary cordon] fence provides some control over the illegal settlers and their cattle that enter this area, without it [the fence] everybody would be able to enter this area and graze their cattle on this land. At least now they need a signed form to bring in their cattle” (conservancy representative, Mangetti Dune, 22/06/2015)

Legitimate access to land according to community members is determined by San identity, however other ethnic groups legitimize their land claim by emphasizing their ‘Namibian-ness’ (Gargallo, 2010; Harring & Odendaal, 2006; Hohmann, 2003). One of the reoccurring narratives presented by the alleged illegal fence owners throughout the court case, is that Namibia is a free country and that Namibians can settle wherever they want. These actors point out that nothing can be done about the arrival of non-San groups in the area because according to the Constitution of the Republic of Namibia every Namibian has the right to settle anywhere they want: “They [the respondents] are entitled and free to settle anywhere within the border of Namibia provided they are provided with permission from the community, which the respondents did “(13th, 34th, 35th Respondent, Head Arg. 09/10/2015). But not everyone in the community believes that the right to settle anywhere is applicable to the San, thereby portraying the unequal access to land that the San are experiencing: “Everybody can come and take land in our area, but if a San person would try to settle in another part of Namibia this would not be possible because we do not have the same rights” (community member, Mangetti Dune, 22/07/2015).

The TA uses the same narrative as the alleged illegal fence owners to justify their inability to solve the problem: “The conflict is getting bigger as people continue to come in illegally but when we try to discuss this with the TA they say that the country is independent and that everyone can move freely” (community members, Omatako, 23/06/2015). When questioning the community members whether they have reported illegal fences to the TA, they say that the TA just ignores them: We are not sure anymore who is responsible to remove the fences. We used to think the TA [is responsible to remove fences] but when we confront them the TA just says that Namibia is independent country and that people are allowed to move freely” (community members, Kandu, 22/06/2015). In order to gain access to land, two different strategies are used to legitimize land claims in the communal area of Tsumkwe-West: one based on ethnic identity and another based on national citizenship. The
tensions between a San identity and a national identity that are enacted in the arena of communal land reflect the way in which ethnicity still plays an important role in the construction of social or cultural identities in Namibia. Though one can have multiple identities, the San are often excluded from being considered ‘Namibians’ and instead use their San identity to legitimize land claims. In contrast, other ethnic groups that have settled in Namibia have emphasized their national identity to access land. In the following section we will demonstrate how different institutions dealing with land issues in Namibia, the TAs and the conservancies are keeping ethnic categories alive and thus access to land is still partly determined based on social identities.

4.4 ORGANIZING THE COMMONS ACCORDING TO SOCIAL IDENTITIES

Since independence, the Namibian government discouraged ethnic categorization and sought to undo the territorial division of the communal areas along ethnic lines. However, the lack of tenure security that still persists in Namibia post-apartheid, leads to the strengthening of ethnic boundaries in the commons. As previously stated, the issue of illegal fencing within the Nǂa Jaqna conservancy is often portrayed as an ethnic issue by community members themselves. While not always mutually exclusive, in the court case over illegal fences notions of ethnic identity and citizenship are portrayed as opposite to each other; the legal uncertainty allows actors to play with notions of identity and citizenship in order to gain access to land and resources. In my opinion, this is rooted in the way in which three different developments that have taken place in Namibia: The recognition of traditional authorities, implementation of the CBNRM model and ethnic tourism. The recognition of traditional authorities and traditional communities within the communal areas is an inherently political process which creates inequalities between different ethnic groups in terms of access to land. In combination with the CLRA, the TAA aims at safeguarding the interests of the dominant social groups within an area and their ability to benefit from the resources in the area under the jurisdiction of their traditional authority. A recognized TA has provided the various ethnic and linguistic groups in Namibia with increased sense of ownership over what they perceive to be ‘their’ territory. However, in cases where the TA is considered a weak governance institution, such as in Tsumkwe-West, conservancies are increasingly viewed as a way to gain more control over land and resources. Notions of community based on ethnicity are created to protect the resources from use by other ethnic groups. Finally, we will explore the potential of ‘ethnic tourism’ at strengthening displays of cultural diversity and how illegal fences are affecting the tourist activities in Nǂa Jaqna. The case of illegal fences in the Nǂa Jaqna conservancy demonstrates that ethnicity continues to play an important role in the transformation of the commons after apartheid.

4.4.1 COMMUNAL LAND RIGHTS AND ETHNICITY

Several studies have shown that despite the government’s nation-building efforts, ethnic boundaries and categories are still present in Namibia (Krüger, 1998; Stell & Fox, 2015; Suzman, 2002). According to Gargallo (2010) Namibians believe that the government’s decisions and policies regarding land distribution are influenced by ethnicity (p. 173). The ethnic consciousness that prevails in Namibia today is largely the result of the ‘homelands’ that were created under the South African colonial administration in which various groups were segregated along racial lines (Suzman,
2002). In the communal areas, the traditional leaders under the colonial administration were relatively self-governing and thus at independence a lot of uncertainty arose concerning their survival and the future of the various ethnic groups that they represented. Especially in the communal areas of Namibia, ethnicity is still an important affiliation that structures social interaction partly because of the creation of Traditional Authorities and traditional communities.

After independence the Namibian government’s efforts were directed towards national reconciliation by de-emphasising the various tribal identities across Namibia (Parliament of Namibia, 1990). Ethnic division was seen as an obstacle to the creation of a uniform national identity and a modern state. Namibia would be divided into administrative regions according to geography rather than ethnicity. In addition, during the National Conference on Land Reform and the Land Question, the government stated that it would not recognize any ancestral or indigenous claims to land, as this would result in overlapping claims. The newly installed government aimed at diminishing the power of chiefs and kings that were the result of indirect rule in order to prevent ‘tribalism’ (Gargallo, 2010). At the same time, SWAPO government was aware that traditional leaders still played an important role in rural areas, especially in the areas where most of their political supporters are based. While the SWAPO government represents the Oshiwambo speaking majority in Namibia, there are many different ethnic groups. The 11 major ethnic groups that are present in Namibia are: The Ovambo, Kavango, Damara, Nama, Herero, Mafwe, Tswana, Himba, San, Baster and Subia (Daniels, 2004). The creation of the Traditional Authorities Act is a compromise by which the government allowed traditional communities to express their own identities at local level while making sure that this did not interfere at a national level. While the powers of the tribal authorities diminished, customary law as integrated into statutory law as long as it did not interfere with the principles laid out in the Constitution. Krüger (1998) had identified several tensions between national identity and the representation of ethnic identities at local level across Namibia:

There is a clear conflict between the recognition of ethnic, tribal or linguistic identity on village level and an attitude which condemns tribalism in its broader political sense. Ethnicity is seen as a threat for the creation of a more or less uniform national identity, but in practice political and administrative institutions sometimes find it difficult to distinguish between local cultural elements which are to be encouraged and ethiscised attitudes which have to be challenged and denounced (p. 81).

The existence of ‘traditional leaders’ that continue to play an important role in the allocation of land within ‘traditional communities’ suggests that the communal area is still divided along ethnicity. Though the government has carefully refrained from using the word ‘ethnic’, traditional communities are essentially the different ethnic and linguistic groups that are present in Namibia (Suzman, 2002). Their representation in the form of traditional authorities should be considered as ‘ethnically based leadership’ (Taylor, 2008). According to the TAA of 2000 a traditional community is defined as:

An indigenous homogeneous, endogamous social grouping of persons comprising of families deriving from exogamous clans which share a common ancestry, language, cultural heritage, customs and traditions, who recognises a common traditional authority and inhabits a common communal area, and may include the members of that traditional community residing outside the common communal area (p. 3).
According to this definition, the TAA recognizes the presence of the different ethnic groups in Namibia as well as the role of traditional leaders within these communities. However, the government holds the power to recognize a group as being a ‘traditional community’ according to these criteria. If the government does not consider a certain group a traditional community, than these groups would have no decision making powers over resources and land in the areas which they inhabited (Suzman, 2002). The SWAPO government was often accused of political favouritism in the process of recognizing traditional communities and leaders (Gargallo, 2010). Though the powers of the traditional leaders were diminished, they were still granted considerable powers by the government in terms of land allocation. The CLRA continues to divide the communal areas along ethnic lines because customary land rights can only be granted by traditional leaders to members of their traditional community over which they have jurisdiction (Suzman, 2002). According to the CLRA, communal land is for the benefit of the traditional communities residing in these areas (Harring & Odendaal, 2006). Thus, San lands should benefit the San and not non-San groups (ibid). In theory, this means that the !Kung TA can only allocated customary land rights to a !Kung traditional community member, within the area under their jurisdiction, in this case Tsumkwe-West. Legally, this would exclude a person from obtaining access to land under customary law in an area outside of their traditional community since they fall under the jurisdiction of a different traditional authority and set of customary laws. According to this interpretation of the CLRA, a person’s social identity would then define in which area this person could apply for a customary land right. Of course, the case of illegal fences shows that there are many different legal (leasehold) and extra-legal measures (illegal fences) to access land in other parts of Namibia, and that this perceived ethnic division of territory is neither fixed nor impermeable. There are often many different ethnic groups present within a given territory. But the TAA safeguards the interests of the dominant social groups within an area. Other ethnic groups, for example displaced San populations, are subjected to the jurisdiction of the traditional authority of the dominant social group in the area which may or may not grant them customary land rights. At the same time, the Constitution states that Namibians can settle anywhere within the country’s borders (ibid). Therefore, other actors base access to land on notions of citizenship rather than ethnicity. In any case, the divergence between national interests and local representations of identity continue to cause tension between the different social groups that are now present in Tsumkwe-West (ibid).

For certain groups, including the San, the lack of representation in formal government bodies, meant that the traditional authorities presented an opportunity for them to gain some political recognition (Suzman, 2002; Taylor, 2008). The TAs from areas in former Bushmanland, were recognized because the San there constitute the dominant ethnic group in these communal areas despite the presence of many more San groups in different parts of Namibia. Recognition of a TA meant that the community should have a separate identity based on “based on common ancestry, language, cultural heritage, customs and traditions, a common traditional authority, and the inhabitation of a common communal area” (Republic of Namibia, 2000). But the San in Tsumkwe-West did not have a traditional authority structure nor a codified system of customary law in place at the time the Act was drafted. Therefore a project was set up with the purpose of using the newly created TAA for the San’s quest for land (Keulder, 2000). Through community participation a new leadership structure was set up and presented as a ‘traditional authority’, which was considerably different from any organizational structure that had been in place within different San communities before the TAA (Keulder, 2000; Pakleppa, 2004). The codification of customs meant that the San
were able to demonstrate to the Namibian government that they would be able of managing their territory according to customary laws and that these were in line with the Constitution (Keulder, 2000).

As previously stated, many different San groups were brought into the area with the arrival of the SADF. The San in Tsumkwe-West were by no means ‘homogenous’ and there were differences in their customs and traditions. These ‘so-called traditions’ were politically mobilized to gain access to resources, including land (ibid). A recognized traditional authority means that they would have jurisdiction over a certain area and thus increase their control over territory (Pakleppa, 2004). Since one of the criteria for official recognition included a common communal area, many of the San groups that were landless during the colonial period because they were forced to work on white settler farms did not have their TA recognized by the Namibian government and remained landless after independence. Some argue that access to land is primarily based on political affiliation rather than ethnicity (Gargallo, 2010). During interviews, community members still identified themselves and other social groups in Namibia based on their ethnic identity (San, Ovambo, Damara, Kavongo, Herero etc.) or socio-economic standing rather than a sense of a unifying national identity. The experience of different ethnic groups vis-à-vis the state and each other concerning land issues has been different due to unequal power relations (Harring, 2004). The concept of national unity seems to serve the interests of the politically dominant Bantu groups (Ovambo, Kavango and Herero) which consists of 75% of the population while marginalized indigenous groups such as the San are continuously disadvantaged (ibid). Thus, ethnicity continues to be an important factor that influences the unequal distribution of land and resources across different social groups in the communal areas of Namibia. The strategic use of ethnic identities is a product of the creation of ethnic homelands during the colonial period (Bollig & Berzborn, 2004). While the post-independence governments had attempted to create unity through a variety of legislation and policies, imagined ethnic boundaries are still present in Namibia and continue to influence land claims in the communal areas. In cases where traditional communities and their leaders feel that ‘outsiders’ are encroaching their territory this causes inter-ethnic tensions, for example between the traditional !Kung community and ‘illegal’ settlers.

4.4.2 CBNRM AND INDIGENOUS CLAIMS TO LAND

Ethnicity has come to play an important role in CBNRM projects as marginalized groups view conservancies as a way to strengthen their claims to land and protect resources from other ethnic groups (Bollig & Berzborn, 2004; Harring & Odendaal, 2006; Taylor, 2012). The CBNRM model has not only been successfully implemented in areas such as Tsumkwe-West or the Caprivi, where different San groups are attempting to exclude others from using their natural resources, but also among other ethnic groups such as the Himba and the Herero (Bollig & Berzborn, 2004). This has led to increased awareness and integration of San groups into the larger indigenous movement with the help of NGOs. The term ‘indigenous’ had always been problematic in the context of nation-building and reconciliation. The Namibian government has often denied the recognition of indigenous rights, by stating that all Namibians are indigenous (Gargallo, 2010). Therefore, stressing indigenous identities at national level may not serve the interests of the various traditional communities in Namibia. In addition, while the government has reduced the importance of ethnic diversity in the interest of a homogenous national identity, the way in which conservation and tourism seem to
complement each other has meant that the implementation of the CBNRM model has revived the display of distinct cultural indigenous identities.

At a global level, indigenous identities have become a power tool for local actors with the help of NGOs and other donor organizations to claim resources and ancestral territories. Since the 1980s, different NGOs working with indigenous communities have been established across Southern Africa (Bollig & Berzborn, 2004). NGOs have promoted an indigenous identity of the San, with an emphasis on their traditional cultural and subsistence practices, in order to lobby for collective San goals. In this process of negotiating an indigenous identity, the traditions and practices of the San have often been reconstructed. Often, the San are portrayed as hunter and gathers and land security as a means for their cultural survival. It is not just the San who have been contacted by NGOs, but the San themselves have actively sought to be incorporated in a wider international indigenous network and have used the indigenous discourse for their own benefit. Throughout the years, the N≠a Jaqna conservancy has been affiliated with a variety of different donors including WIMSA, UNDP, the Wold Bank and others. The San are not isolated hunter gatherers in the Kalahari Desert but are part of a larger indigenous movement. For example, a local community member who is part of the San council told me that he had been to Germany and Spain to speak on San indigenous rights. According to Welch (2013), during the process of applying for grants from the UNDP, !Kung language was used to name places, people and things with the intent of highlighting their indigeneity to attracting donors (p. 157). In addition, the proposal also stressed the importance of the conservancy in being able to preserve the cultural practices of the San and their indigenous knowledge (ibid). The partnerships with various international organizations have increased the indigenous right talk among the conservancy and community members (ibid).

One of the main reasons for the San to establish a conservancy, has been to gain access to land and resources. Thus, a conservancy has become a vehicle to secure indigenous rights to land and protect their land from outsiders (Harring & Odendaal, 2006). Conflicts with other ethnic groups has led to an increased interest in conservancies and using indigenous identity as means to assert ownership over land (Gargallo, 2015). Conservation should be seen as a strategy in the struggle for land, especially in cases where the TA only provides limited tenure security, such as in N≠a Jaqna. At first glance, membership of the N≠a Jaqna conservancy seems to be based on geography. However, according to Hohman (2003) many communities will resort to ethnic identities to be able to construct a notion of homogenous community as required by the criteria to be able to establish a conservancy and define membership. The use of ethnicity as a tool to define membership coincides with the desire of the San community in N≠a Jaqna to exclude other groups from accessing land and resources which if often cited as the reason for establishing a conservancy in the first place (Bollig & Berzborn, 2004; Harring & Odendaal, 2006; Hohmann, 2003; Welch, 2013). If membership were based on geography, this means that other ethnic groups who have settled in the area would benefit from resources in the same way as the ‘traditional’ community. Therefore, in practice many community members view the conservancy as a way to strengthen San claims to land. According to the constitution of the N≠a Jaqna conservancy the following criteria are used to define membership:

Members of the community are defined as those individuals who either:

i) Can demonstrate an ancestral claim to the area (i.e. has relatives currently or in the past living permanently on one of the nloresi; or
ii) Has been granted permission to use the land and resources by the traditional authority and the conservancy committee

On application from a prospective member who has been permanently residing on one of the n!oresi for five consecutive years [...].

A prospective member of the community is defined as:

i) The relative by blood or marriage of and existing member; or

ii) A person who has been granted permission by the traditional authority to use land or other resources in the conservancy (N≠a Jaqna conservancy, 2005).

As stated earlier in this chapter, Tsumkwe-West is home to many different San groups. Therefore the concept of ‘ancestral claims’ as stated in the constitution becomes problematic since most of these groups have only been here since the 1970s (Bollig & Berzborn, 2004). Therefore it is interesting that the Angolan San are regarded as legitimate claimants while other ethnic groups are excluded. The term ‘ancestral claim’ seems to be a disguise for ethnic affiliation (ibid), excluding the non-San groups who have recently settled within the borders of the conservancy. Besides strengthening ethnic boundaries, the mapping of ecological boundaries is inherently political with the intent of excluding other ethnic groups. According to research conducted among the San in the Caprivi, Taylor (2008) demonstrates how mapping of boundaries and ecological zones as part of the CBNRM program has helped marginalized San groups to strengthen claims to ancestral territory. As explained in Chapter 2 mapping has often been used as a strategy to prevent non-San groups from settling in the N≠a Jaqna conservancy. Especially since the ecological zones that are used reflect the livelihood patterns of the San and exclude large scale livestock farming as this is presented as being contrary to conservation efforts.

4.4.3 TOURISM AND THE REVIVAL OF CULTURAL IDENTITIES

Because the San need to continuously defend their territory, land is presented as an important part of their cultural identity. The concept of indigenous culture often revolves around how natural resources are used, both in the present and in the past, by the San (Sylvain, 2002). Thus, land and natural resources are critical for the survival of cultural practices. Often, loss of land is then perceived as loss of culture (ibid). Fencing off land means that community members cannot display their traditional activities: “The fences are also present in designated tourist areas, which prevents us from carrying out various cultural activities. How can we display our heritage?” (community members, Omatako, 23/06/2015). Tourism can be an important tool for community members to generate income, but also to gain control over how they present their own image and identity to others (Koot, 2013). The type of tourism where tourists visit indigenous groups who have a unique cultural identity is referred to as ‘ethnic tourism’ (Smith, 1989 according to Hitchcock, 1997). According to Yang and Wall (2009) ethnic tourism has the potential to: “…become a powerful force to strengthen the identity of ethnic groups by presenting substantial opportunities to showcase cultures and revive traditions, languages, and cultural pride” (p.559). Ethnic tourism, which supports the commodification of cultural or ethnic stereotypes, has caused concern among various actors. Yet many of the San in the N≠a Jaqna conservancy see tourism as a way to display and preserve their heritage and as one of the few sources of cash income (community members, Omatako, 23/06/2015; community members, Grashoek, 29/06/2016)
One of the underlying features of the CBNRM model is that conservation efforts are often combined with tourism, as a way to benefit the community. Tourism is an important potential source of income for the conservancy and the community members but is currently not fully exploited in Nǂa Jaqna as for example in the neighbouring Nyae Nyae conservancy. Tourism is often seen as a way to profit from the marketing of the San cultural identity. The Grashoek Living Museum, which is run by the Nǂa Jaqna conservancy and the Grashoek community is an example of cultural tourism in Nǂa Jaqna. Tourists pay the local San members to display their cultural practices through various activities such as bushwalks, dancing and craft making. The San are actively recreating their image and identity in order to appeal to Western consumers. In this sense, the San have internalizing the Western mythical image of the San (Koot, 2013). For example, when the tourists arrive at the Living Museum the San will change into their traditional clothing, but when the tourists leave they will change back into their everyday clothes. This phenomenon has also been documented in other conservancies as well, for example in Nyae Nyae (Hitchcock, 1997). The everyday reality of illegal fences which are affecting their ability to display their traditional cultural practices are neglected in order to provide the tourists an ‘authentic experience’. Due to an illegal fence which has been erected in the area where the Living Museum is located, the San cannot access the resources inside the fence which is affecting their tourist activities:

We cannot access the veldkos and traditional medicines that we usually show the tourists. Now we must change the routes. Conflict occurs because we are not granted the right to go in and collect veldkos anymore and the fence owner charges money for us to take tourists into the fenced off area. The fence owners are now selling veldkos and traditional medicine to the San in their shops, but in the past we were just able to access these resources for free. (community members, Grashoek, 29/06/2015)

This idea of paying for access would certainly seem ‘inauthentic’ to most tourists who view the San as living with nature rather than part of the modern economy. In addition, the fences have restricted the free movement of wildlife which has limited the ability of the San to demonstrate how to track different animals. Tourists are more likely to encounter livestock rather than wildlife: “Livestock is now being kept in areas where veldfood and traditional medicine is located. Tourists do not want to see cattle. They come to track wildlife.” (community members, Grashoek, 29/06/2015).

The San in Grashoek are well aware of what kind of cultural encounter with the San the tourists hope to experience in the Living Museum and are actively contributing to the creation of the San ‘myth’. The way in which the San adapt to the expectation of tourists means that what is portrayed to tourists has little resemblance to the current practices of the San (Koot, 2013). Most tourists remain unaware about the challenges that the San are facing. Now, the San are unable to access veldkos due to illegal fences and hunting has been prohibited in Nǂa Jaqna, thus altering their traditional lifestyles to a more diversified livelihood. Hunting and gathering practices are not merely a tourist activity. As previously stated, community members still stress the importance of passing on this knowledge to future generations and gathering veldkos is still practised as part of their livelihood strategy. But the perception of hunting and gathering as their main mode of subsistence is often presented as a way to attract tourists and a way for the San to portray themselves as ‘the exotic other’ (Hitchcock, 1997). The case of Nǂa Jaqna demonstrates how tourism activities which have been supported by the CBNRM model have led to a revival of traditional cultural identities. The search for ‘authentic’ San in the tourism sector in Namibia leads to the social re-construction of people and places with the purpose of commodifying identity (Koot, 2013). The reinvention and reconstruction of traditional
customs and practices through tourism contributes to the creation of an imagined homogenous San identity in order to distinguish ‘the’ San from cultural others. It reinforces the perception that Nǂa Jaqna is ‘San territory’ when in reality many other social groups have settled in the area, causing conflict between different groups. Promoting cultural diversity and raising awareness of marginalized groups through ethnic tourism seems contradictory to the efforts of the government to construct a homogenous national identity (ibid).

4.5 DISCUSSION: IMAGINED ETHNIC BOUNDARIES IN THE COMMONS?

The lack of tenure security has led to an increased desire of different ethnic groups to exert ownership over land through conservancies and the recognition of a traditional authority. These developments have led to imagined ethnic divisions of territory that to a certain extent bare resemblance to the ethnic homelands of the South African administration. The profound effects of apartheid still shape the communal areas of Namibia today. The post-independence governments have not been able to eradicate the fundamental inequalities in terms of access to resources and land based on ethnic affiliation. It seems likely that with the current lack of tenure security in the communal areas, ethnic tensions between social groups will continue into the future. Illegal fencing occurs in many other parts of Namibia and do not necessarily lead to inter-ethnic tensions. For example, in Oshiwambo speaking regions, tension surrounding illegal fences are often expressed in terms of class rather than ethnicity and is supported by the believe that fences are an important aspect of sustainable land management (Bruce, 1998). However illegal fencing can potentially lead to ethnic tensions in areas were marginalized groups with a history of displacement have settled. In these areas the illegal fences, or rather the illegal settlers, who construct the fences, are perceived as a threat which undermines the local community’s right to land and their own identity. For the San in the Nǂa Jaqna conservancy, their resentment is not just based on the fact that the illegal fences are constructed by well-connected and wealthier individuals, but that they are from other regions of Namibia: Kavango, Herero, and Ovambo. Even if the ongoing court case achieves a positive outcome whereby illegal fence owners are instructed to remove their fences, the problems will continue to live on. Community members want those who they do not consider part of their community (a notion based on ethnicity) to ‘go back where they came from’.

The recognition of a Traditional Authority had happened prior to the establishment of a conservancy. At first, this seemed to strengthen the San claims to land in the territory which was formally known as Bushmanland. The recognition of a !Kung TA had already given the San in Tsumkwe-West a considerable better position in terms of access to land than many other San groups that did not have their TA recognized and continue to be landless. However, the TA did not seem to be able to stop illegal settlers from coming into the area. Since then, the establishment of a conservancy is viewed as a way to protect their natural resources from being used by other non-San groups. The fact that the court case against the illegal fence owners is initiated by the conservancy shows the increasing role of the conservancy in land matters as argued in Chapter 3. In the court case, but also narratives that are part of the everyday lives of the San in Nǂa Jaqna, the concepts of identity and citizenship are re-constructed in order to gain access to land.

CBNRM model should not romanticised by stating that the only aim is to protect biodiversity and manage ecosystems sustainable for the benefit of local communities. While many communities
may support the idea of conservation, the CBNRM model is inherently political and mobilized by various ethnic groups as a means for exclusion. This is especially the case when the concept of ‘community’ and conditions for membership are either explicitly or covertly based on ethnicity. This raises the question whether or not other marginalized groups in Namibia such as the Himba are using conservancies for the same reason. If the conservation discourse is mobilized in order to strengthen land claims of marginalized groups, imagined ethnic boundaries could emerge in a similar way within the current communal land tenure system which is based on the concept of traditional communities and their traditional authorities. Land is an important aspect of cultural identity, and is essential for the survival of certain cultural practices. Community-based tourism is often linked to CBNRM as a way to benefit local communities. In conservancy areas where members have distinct ethnic identity, this leads to the marketing of such identities in the form of ethnic tourism. It de-emphasized the presence of multiple ethnic groups in a specific conservancy. For example, in Nǂa Jaqna, tourism is aimed at marketing the San identity, giving the impression that the area is inhabited by the San. This reinforces the perception that Tsumkwe-West is ‘San territory’. In reality, many other ethnic groups are also present and their settlement in the area has led to conflict between different social groups. The increase of ethnic tourism has highlighted the cultural and ethnic diversity that is present in Namibia instead of a homogenous national identity. The recognition of cultural and ethnic diversity is not a negative development in itself, but it could potentially lead to conflict when these ethnic identities are emphasized to gain access to land and exclude other groups as is the case in Nǂa Jaqna. Further research into conservancies in Namibia should be done to explore the relationship between conservancies and ethnicity to demonstrate how this divides the communal areas within the country.
CHAPTER 5 CONCLUSIONS

This research aims to portray the transformation of the commons in Namibia, with illegal fences as the socio-material object of study. Our findings contribute to a wider academic debate concerning land enclosures, tenure security and governing the commons. At the beginning of this thesis the following research question was formulated: How do social actors negotiate land use, communal land rights, and identity in the conflict over illegal fences in Tsumkwe-West, Namibia? To answer this question, we analyzed communal land as an arena of social struggle in which different actors negotiate power, access and identity. Power is analyzed in terms of conflicting discourses, particularly those concerning land use and development in Tsumkwe-West. Secondly, we discuss the legal and extra-legal measures which determine access to land and the way in which different institutions compete for authority within Namibia’s land tenure system. Finally, identities are mobilized in different ways, by different actors in order to access land and resources. This affects the distribution of land among different social groups and how the commons are organized. To understand the current transformations, each chapter provides a brief overview of the historical context specifically on land distributions, policies and regulations and the colonial history of the San. Below, we discuss the most important findings of our research and place our discussion in a wider context concerning communal land tenure in Namibia.

Firstly, we provide an overview of the underlying power relations in Tsumkwe-West by understanding power as conflicting discourses over land use and development. During their search for ‘underutilized’ land, an increasing number of livestock farmers from different parts of Namibia have settled and erected fences in the N≠a Jaqna conservancy. As a result, the communal areas have become de facto privatized. The transformation of the commons embodies the competing discourses and land disputes over fences. In this sense, illegal fences are the socio-material expression of two competing development discourses: livestock farming and conservation based on the CBNRM model. Within these discourses, actors have presented several narratives which we discussed in Chapter 1. Livestock farming is seen as a productive means to develop Tsumkwe-West, and fences are presented as an integral part of livestock management. At the same time, community members argue that these fences interfere with their livelihood practices. The arrival of livestock farmers into the area is often associated with ‘making business’ at the cost of others instead of promoting community-building efforts. This expression is used as a euphemism for corruption and bribery that is taking place in Tsumkwe-West in order to access land. The multitude of allegations of bribery among individuals within the traditional authority may require a re-evaluation of the level of transparency within the current land tenure system in Namibia. In addition, the increasing amount of shebeens opened by newcomers and the way in which these businesses are run within the conservancy area raises several questions surrounding ethical business practices.

The N≠a Jaqna conservancy was established in Tsumkwe-West since 2003 and was founded on the principles of the CBNRM model. The conservancy (together with the LAC) has been the main community vehicle for rightful resistance against illegal fences. Through ecological zones and the definition of community the conservancy has attempted to curb illegal fencing. Ecological zones define which land use activities are deemed suitable within the conservancy area. However, the boundaries of these zones remain contested as some actors believe that these zones do not accommodate their land use practices nor leave room for ‘real’ development. In practice, the land
use map should be consulted during the process of land allocation because certain zones prevent settlement and/or livestock farming. Yet many newcomers have settled and erected fences in these zones, presenting new challenges for community members and the conservancy activities. The way in which ‘community’ is defined also determines who is legitimately entitled to resources. The line of argument presented by the conservancy is that since illegal fence owners are not considered part of the traditional community, since they do not reside within Tsumkwe-West, they cannot be allocated customary land rights within the conservancy. Initially, notions of community are presented as based on geography since the government frowns upon ethnic differentiation, thus this approach is likely more effective in the public sphere. As we discussed in Chapter 3, the definition of community and membership of the conservancy is also based on ethnicity.

In Chapter 2, we discussed the institutions competing for authority in the commons. The Traditional Authorities and the Communal Land Boards are the main institutions that deal with land allocation. While current land legislation specifically forbids fencing in communal areas, these institutions are not able to deal with the everyday realities in Nǂa Jaqna because they lack authority and are faced with institutional weaknesses. This leads to a complex land tenure system with overlapping claims and ‘room for manoeuvre’ which certain individuals can exploit for their own benefit. The CLB has been unable to deal with the issue of illegal fences. We argue that this is due to the way in which the CLB is composed by different actors who each represent their own interests, the CLB’s lack of confidence with the process laid out in the CLRA concerning the removal of fences, and their fear of interfering with the authority of the TA which the CLB still regards as the principle agent in allocating land rights. Because of this, the strategy of the CLB in dealing with fences has been more passive, for example by educating people about the correct allocation procedures rather than physically removing fences.

The other main institution dealing with land allocation is the TA. Since the death of the previous chief John Arnold, the TA has split into two fractions. Disagreement within the TA is directly reflected in the landscape as the new boundaries created by fences reflect the boundaries of power of each fraction of the TA. In addition, one fraction is directly linked to the conservancy and thus at least partly represents the interests of the conservancy while another fraction is accused of representing the livestock farmers rather than the community. The lack of communication between the two fractions has led to a dysfunctional TA where two separate fractions regulate their own land matters for ‘their’ respective territories; the Omatako TA controls land matters westwards of M’Kata and the Mangetti TA is responsible for the eastern half. Since the TA and the CLB are unable to deal with illegal fences, a new actor, the conservancy, is attempting to fill the institutional void in land allocation and prevent illegal fences. However, current land legislation does not recognize a conservancy as an institution that can deal with land matters and thus conservancies can only provide a false sense of tenure security. Ultimately, access to land is not determined by land legislation but by being able to perceive and exploit the weaknesses within the different institutions.

Currently, the future of illegal fences in Nǂa Jaqna remains unclear. The actors involved in the ongoing court case are still awaiting judgement. The final judgement has been postponed several times during this study. The verdict could influence the future of illegal fences throughout Namibia. A clear legal outcome could help the various CLBs across Namibia to gain more confidence in dealing with illegal fences. The CLBs are relatively new institutions and many are still hesitant to tackle the issue of illegal fences. In addition, it could open the door for conservancies across Namibia to take
land issues to court instead of relying on the TAs or the CLBs. Hopefully, the threat of legal action may discourage people from erecting a fence. If the court rules that illegal fences must be taken down, several issues regarding who is responsible to physically remove fences will have to be resolved. Institutions must be identified who will be responsible to reinforce and monitor the removal of fences. If not, it could take years before fences are actually taken down and the process of removal could lead to conflict between different social actors.

The case of illegal fences demonstrates how notions of identity and citizenship have been mobilized in order to gain access to land. Until now, illegal fences have been portrayed as a conflict over land use and competing authorities. However, in Chapter 3 we discuss the conflict over illegal fences in terms of different social groups competing over access to land. While dealing with official authorities, the San in Nǂa Jaqna have been told that they are not ‘Namibian’ and have been denied basic citizenship rights, such as obtaining an ID card. Due to their increased marginalization, the San in Nǂa Jaqna do not stress the differences between the different San groups present in the area, and instead present a collective San identity. This collective San identity has allowed community members to distance themselves from the other social groups that have settled into this area. Community members continue to view Tsumkwe-West as ‘San’ territory, and thus for the benefit of the San, rather than other ethnic groups. However, other actors, particularly the TA and the fence owners, argue that Namibia is a free country and Namibians are able to settle wherever they want. The tensions between a San identity and a national identity that are enacted in the arena of communal land reflects the way in which ethnicity still plays an important role in the construction of social or cultural identities in Namibia.

From the way in which actors in Nǂa Jaqna have mobilized concepts of identity and citizenship we draw several conclusions regarding the governance of the commons. The lack of tenure security has led to different social groups seeking out recognition of institutions such as the conservancy and the traditional authorities to exert ownership over land traditional communities are essentially a representation of the different ethnic and linguistic groups in Namibia. The traditional authorities that represent these communities are still the main institutions responsible for the allocation of land within the area of their jurisdiction. In cases where the TA has been unable to provide tenure security, community members are increasingly using conservancies to strengthen claims to land. This is done through the mapping of ecological zones and notions of community based on ethnicity which excludes other social groups. As a means of income for community members, the CBNRM model is often combined with tourism. In conservancy areas where members have distinct ethnic identity, this leads to the marketing of such identities in the form of ethnic tourism. The marketing of an imagined San identity neglects the presence of multiple ethnic groups in the conservancy. While conservation may be the goal of the CBNRM model, the model is inherently political and mobilized by various ethnic groups as a means for exclusion of other social groups. This leads to the emergence of various ethnic land claims across Namibia. While the Namibian government has directed its efforts towards reconciliation and national unity, the strengthening of ethnic identities through various institutional arrangements in order to gain access to land has led to imagined ethnic divisions of territory, that to a certain extent resemble the ethnic homelands of the South African administration. The profound effects of apartheid still shape the communal areas of Namibia today.
Through the use of illegal fences as our analytical lens we have offered a multi-layered analysis of the social-material transformation processes in the commons of Namibia. Conflicting discourses over land use and the underlying power relations have contributed to increased privatization of the commons. The process raises the question whether or not it is still possible to speak of ‘a communal land tenure system’. At the same, the CLRA prohibits commercial farming on communal land; a right which is reserved for farmers on commercial land in other parts of Namibia. This case shows the complexities and different forms of land tenure that are difficult to capture within the current classifications of land tenure systems. We must accept alternative ways to present and discuss access to land in order to truly understand how actors negotiate access to land and resources. Land tenure is not just dictated in a top-down fashion, but policies and regulations are reworked and interpreted in ways which may be different than intended. There is no single path for development that determines the future of the commons. Communal land represents an arena in which various actors express different land use and development discourses. But, what can be observed is that conflicting discourses are re-arranging mechanisms that govern access to land and ultimately our understanding and assumptions of what is ‘communal land tenure’.

The institutions created after land reform have not been able to increase tenure security for the community in Tsumkwe-West. As a result, actors are looking for different avenues to present their land disputes. This leads to increased competition between institutions that govern land. At the same time, an increasingly complex land tenure system with overlapping claims and rights has developed in Namibia. Due to the integration of local politics within regional institutions that control land allocation, the land tenure system in Namibia becomes highly fragmented and context specific. Those who understand these local power dynamics are able to exploit this to their own benefit. The power dynamics within each TA, land board, and conservancy within Namibia will be different. Therefore, each area in which these institutions compete for authority will have different mechanisms that govern access to land. For example, within regions where the TA has been able to satisfy the needs of the local community, there may not be a need to establish a conservancy or the conservancy may not be as involved in land matters as the N≠a Jaqna conservancy. The erection of illegal fences in the communal areas of Namibia has led to new actors competing for authority over land, as community members employ different strategies to achieve tenure security. The entrance of new actors into the social arena of communal land has led to overlapping land claims and the fragmentation of power.

At independence, the government discouraged ethnic categorization and instead focused on national unity and reconciliation. The case of illegal fences demonstrates that marginalized ethnic groups are mobilizing ethnicity to gain control over land and resources. The post-independence governments have not been able to eradicate the fundamental inequalities in terms of access to resources and land based on ethnic affiliation. Thus, the transformation of the communal land is highly dependent on the way in which notions of ethnicity and citizenship are mobilized in order to access land. This leads to ethnic claims over territory across the commons which are expressed through institutions such as the traditional authorities or conservancies which marginalized groups actively seek out. The exclusion of certain social groups based on ethnicity will most likely led to increased conflict and instability in the commons.
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APPENDIX I: LIST OF AFFIDAVITS

All affidavits relating to the court case concerning the illegal fences and evictions orders in N#a Jaqna have been provided by the Legal Assistance Centre in Windhoek.

8th respondent*. Answering Affidavit. Case No. A276/13. (no date)


10th respondent. Answering Affidavit. Case No. A276/13. (no-date)


16th respondent. Answering Affidavit. Case No. A276/13. (no-date)


23rd respondent. Answering Affidavit. Case No. A276/13. (no-date)


34th respondent. Answering Affidavit. Case No. A276/13. (no-date)


The Applicant. Founding Affidavit. Case No. A276/13. (no date)


* All respondents remain anonymous for the purpose of this research
# APPENDIX II: LIST OF INTERVIEWS

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<thead>
<tr>
<th>#</th>
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* M = male, F = female