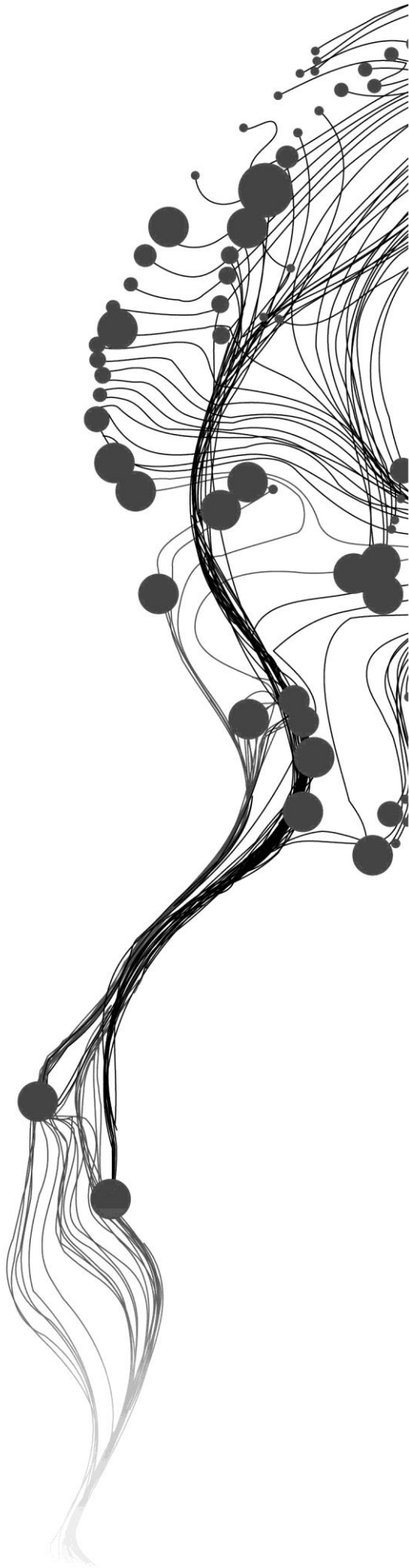


**EXPLORING THE NEED FOR
GROUP LAND TENURE RIGHTS
IN NAMIBIA'S COMMUNAL
CONSERVANCIES:
A CASE OF NYAE NYAE AND
N#AJAQNA COMMUNAL**

MARCH, 2015

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EXPLORING THE NEED FOR GROUP LAND TENURE RIGHTS IN NAMIBIA'S COMMUNAL CONSERVANCIES: A CASE OF NYAE NYAE AND N#AJAQNA COMMUNAL CONSERVANCIES

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DISCLAIMER

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ABSTRACT

The research study focuses on two communal conservancies in Otjozondjupa Region, Namibia: Nyae Nyae and N \neq aJaqna communal conservancies. Both are situated in Tsumkwe constituency. Nyae Nyae is the first conservancy created over communal land and one of the most successful conservancies in Namibia. It was established in 1998 and is on the traditional lands of the Ju/'hoansi San. It has a high diversity of wildlife. The Ju/'hoansi San people have rights to manage natural resources and promote tourism through safari and trophy hunting activities within the conservancy. They are the only San group in Namibia that has the rights to hunt traditionally with bows and arrows. N \neq aJaqna communal conservancy was created in 2003 and has a less wildlife and tourism potential. The inhabitants are !Kung Sana people have the authority to harvest wildlife sustainably and collect wild/bush foods. Most of the members of N \neq aJaqna communal conservancy employ mixed livelihood activities e.g. combine agriculture and livestock production.

Nyae Nyae communal conservancy is facing on-going encroachment by non-members. For example, cattle herders of the Herero tribe from neighboring Gam area have invaded Nyae Nyae communal conservancy. Like the Nyae Nyae communal conservancy, the N \neq aJaqna communal conservancy also has a problem of encroachment by non-members and erection of illegal fences. The illegal fencing off of the land started several years ago and was ignored by authorities in the area. Official complaints made with communal land board in the region in 2012; investigation was carried out in 2013 where eight fences were found to be illegal. More fences are still being erected on a daily basis.

The main aim of the research was to contribute to improved communal land administration in Namibia by exploring the potential in group land tenure rights in avoiding and solving land use conflicts: The case of Nyae Nyae and N \neq aJaqna communal conservancies. The main drivers of this research are the lack of tenure security rights and exclusion rights by communal conservancies over their land that makes them vulnerable to exclude non-members from using their land and resources. Also, investors are not willing to invest in communal conservancies by building lodge and organize safari tours that may provide income to the communal conservancy communities. In addition, also the fencing off of the land illegally by non-members leading to members of the communal conservancies being barred access to land and resources within communal conservancy lands.

The main problem in the two study areas relate to land use conflicts due to illegal occupation and the lack of means of the conservancies to exclude non-conservancy members from using their land and resources. The communal conservancies are governed by the Ministry of Lands and Resettlement and the Ministry of Environment and Tourism, each with its own policy and regulations, and they compete over the use of the same lands. There is therefore a lack of a clear conflict resolution mechanism resulting in confusion, abuse and unresolved conflicts.

The laws governing group land tenure rights in Namibia are drafted since the government support it but not enforced or put into practice in communal conservancies. Care should be taken in implementing group land rights in communal conservancies. Some communal conservancies may benefit of group land rights; other communal conservancies may prefer individual lease rights. The Ostrom's design principles could be used as framework for Namibia's communal conservancies in order to understand the management and highlight areas where management needs to be strengthened.

Keywords: Communal conservancy, Land administration, Traditional Authority, Land tenure, Land rights, conservancy members

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LIST OF ACRONYMS

ADR	Alternative Dispute Resolutions
CBNRM	Community-Based Natural Resources Management
CLaRA	Communal Land Rights Act
CLRA	Communal Land Reform Act
CLB	Communal Land Board
CLR	Communal Land Registration
CPR	Common Pool Resources
GIS	Geographic Information System
IAD	Institutional Analysis Development
LAC	Legal Assistance Centre
MAWF	Ministry of Agriculture, Water and Forestry
MBESC	Ministry of Basic Education, Sport and Culture
MET	Ministry of Environment and Tourism
MLR	Ministry of Lands and Resettlements
MRLH	Ministry of Regional and Local Housing
NACLAS	Namibia Communal Land Administration System
NASCO	Namibia Associations of CBNRM Supported Organization
NGO	Non-Governmental Organizations
NNDFN	Nyae Nyae Development Foundation of Namibia
SSCF	Small Scale Commercial Farms
WWF	World Wildlife Foundation

GLOSSARY

Allocate is to give or assign

Allocation of land is giving somebody the right to live or farm on a specific piece of land (MLR, 2002)

Communal land is land that belongs to the State. Individuals cannot own communal land, but may have customary land rights or rights of leasehold with regard to certain areas of land (MLR, 2002).

Deeds Registry is where all the title deeds of commercial land are kept. The deeds registry is used to find out who the owner of a particular piece of land is and whether it is farmland or an erf in a town or city (MLR, 2002)

Erf is a plot of land in a town or a city on which a house is built (MLR, 2002)

Freehold is the form of ownership under which a farmer holds commercial land. This means that the owner can sell the property or use it for his/her own benefit (MLR, 2002)

Ju/'hoansi refers to both the people and the language living in Nyae Nyae communal conservancy. The term "*Ju/'hoan*" is both the singular form of Ju/'hoansi (used when referring to one person) and an adjective (Hays et al., 2007)

N!ore is an area of land providing enough game, veldfood (bush/wild food) and water to support a band of 30-50 people. (*n!oresi* plural of *n!ore*) (Hays et al., 2007)

Ju/'hoan n!ore is a territorial system in which land belongs to a family group

!K is a click sound and is ignored in English whereby the name '!Kung' is pronounced 'Kung'

!Kung also spelled **!Xun** refers to both San people (living in N≠aJaqna communal conservancy) and the language

Leasehold is the form of land tenure under which leased land is held. For example, The Communal Land Board grants a right of leasehold to a person in terms of which he/she has the right to use the land for the purpose for which the land was leased (MLR, 2002).

State land is the land that belongs to the State. This is provided in the Constitution of the country

Symbols 'ǀ' and 'ǁ' represent distinct click sounds unique to khoisan language (UNDP, 2012)

Tenure is the right or title by which property such as land is held. Under the Communal Land Reform Act, communal land can be held under a customary land rights or as leasehold (MLR, 2002).

Traditional Authority means the chief or head of a traditional community. The senior traditional councillors and the traditional chief/leaders may be appointed as the Traditional Authority under the Traditional Authority Act (MLR, 2002).

Traditional leaders refers to chiefs or leaders of various ranks in a community

Traditional leadership refers to customary institutions/structures, customary systems or procedures of governance recognized and practised by traditional community

Tsosisi is the word for rights in Ju/'hoan language

Tsumkwe, the Ju/'hoan name for the town is **Tjum!\kui** meaning 'poison arrows'. The Ju/'hoan ancestors used this name for Tsumkwe which was formerly a n!ore, long before Europeans arrived in the area (Hays et al., 2007)

1. INTRODUCTION

1.1. Background

Communal Conservancy is referred to a self-defined common property management, registered social units with Ministry of Environment and Tourism (MET) in Namibia. A conservancy is formed by a group of people willing and wants to work together by adding the utilization of wildlife to their existing land use and income resources (Martin, 2009)

There is a major problem of illegal encroachment and occupancy on communal conservancies land in Namibia. Non-members of communal conservancies enter communal conservancies with their livestock without permission to graze. It comes to the point where the non-members erect illegal fencing over land especially where they have illegally drilled borehole. Illegal fencing off of the land on communal conservancies is a problem because members of the communal conservancies are restricted from those fenced off areas to look for wild/bush food and other natural resources. In addition, cropfields or farms of members of communal conservancies are destroyed by the cattle of non-members. Finally, the illegal encroachment on communal conservancies leads to overgrazing and depletion of natural resources. Communal Conservancies members only have rights over natural resources and not over the land.

Each communal conservancy in Namibia is under a traditional authority (TA) that is the customary leadership of a traditional community. Traditional community is a group of people that share common ancestral culture, language, communal land and traditional authority. The tribal chiefs or heads of clans exercise trusteeship over the land on behalf of a group/community. A chief is a person recognized by the traditional authority act 25 of 2000, as the chief of a particular traditional community. The roles of traditional authorities are to allocate and/or cancel customary land rights, allocate land use rights to members of the community and give consent to leasehold rights. Traditional authorities also determine boundaries and size of a piece of land over which to grant rights. They can submit an application to the Communal Land Board (CLB) and issue the approved certificates to applicants. Where traditional authority has lost power, non-members, use this advantage to access natural resources such as grazing land and forest without seeking permission of the members. In some cases, the chiefs allocate use of land to non-members without the permission from the traditional authority counsel for their benefits.

The research study focuses mostly on two communal conservancies in Otjozondjupa Region, Namibia: Nyae and N#ajaqna communal conservancies. Both are situated in Tsumkwe constituency. Nyae Nyae is the first conservancy created over communal land and one of the most successful conservancies in Namibia. It was established in 1998 and is on the traditional lands of the Ju/'hoansi San people. It has a high diversity of wildlife especially in the rainy season. The Ju/'hoansi San people have rights to manage natural resources and promote tourism through safari and trophy hunting activities within the conservancy. They are the only San group in Namibia that has the rights to hunt traditionally with bows and arrows under Namibian law. This communal conservancy is facing on-going encroachment by non-members. For example, cattle herders of the Herero tribe from neighboring Gam area invaded the Nyae Nyae communal conservancy by cutting through the veterinary cordon fence (Odendaal, 2014). N#ajaqna communal conservancy was created in 2003 and has a minimal wildlife; this means that there are few wildlife species and few tourism activities unlike Nyae Nyae. The inhabitants are !Kung San people and have the authority to harvest wildlife sustainably and collect wild/bush foods. Most of the members of N#ajaqna communal conservancy employ mix livelihood activities e.g. combine agriculture and livestock production.

The two study areas, Nyae Nyae and N#ajaqna communal conservancies are indicated below in Figure 1-1. Like the Nyae Nyae communal conservancy, the N#ajaqna communal conservancy also has a problem of encroachment by non-members and erection of illegal fences.

The illegal fencing off of the land started several years ago and was ignored by authorities in the area. Official complaints made with communal land board (CLB) in the region in 2012; investigation was carried out in 2013 where eight fences were found to be illegal. More fences are still being erected on a daily basis. Due to the death of the !Kung chief of the N#ajaqna communal conservancy the situation worsened and the acting chief has been selling sections of land to non-members without authority whereby profiting at the same time.

The land that the !Kung San people of the N#ajaqna communal conservancy thought it belongs to them and have use rights over it, is being seized by non-conservancy members. For example, illegal fencing off of the land by 30 cattle herders from Otjozondjupa Oshikoto, and Oshana regions has been a threat to N#ajaqna communal conservancy (Odendaal, 2014). The map in Figure 1-1 below shows the map of Namibia showing the two study areas.

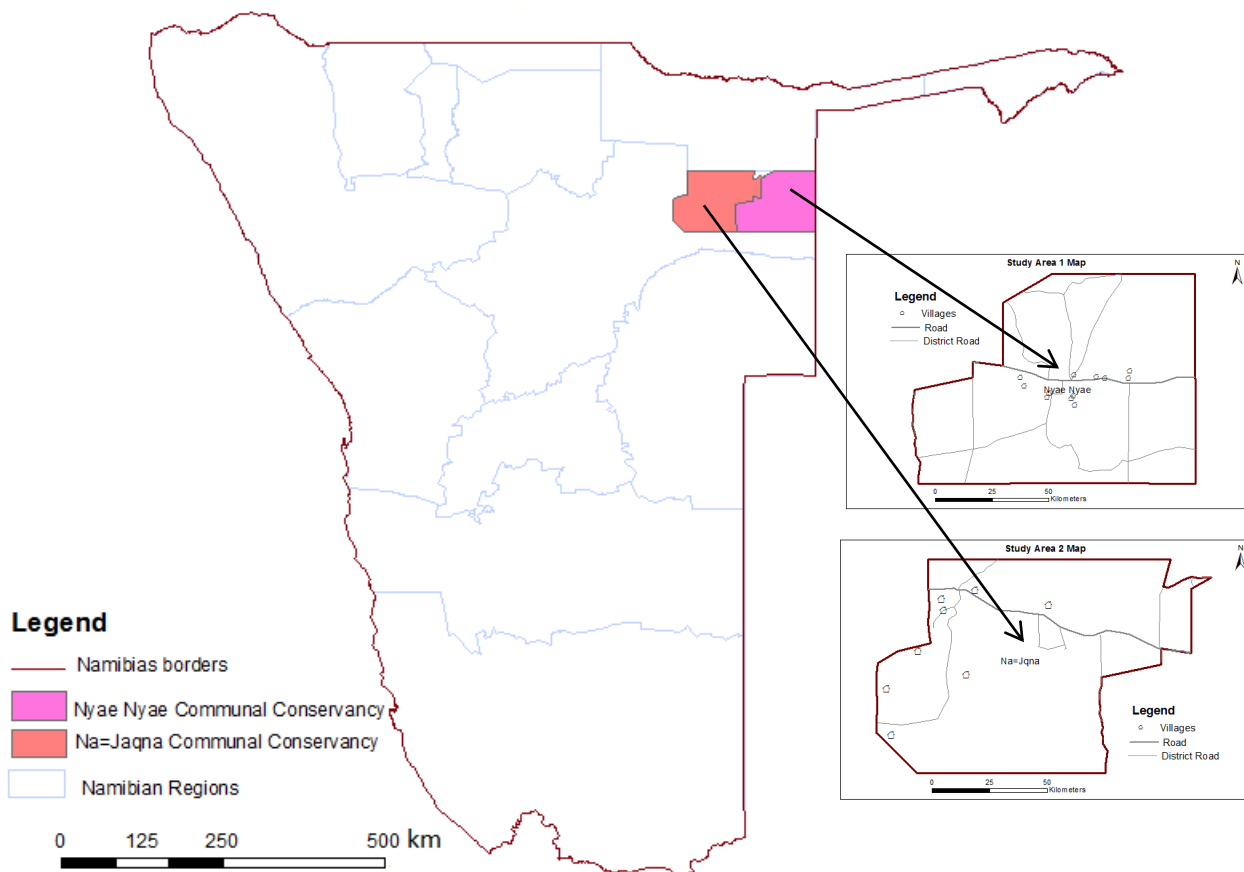


Figure 1-1: Study Areas 1 and 2, Nyae Nyae and N#ajaqna Communal Conservancies

1.2. Justification

Before independence in 1990, Namibia was administered by South Africa. The apartheid policies on land ownership and allocation were applied. After independence, policies and acts were passed on land security and wildlife rights in Namibia. Studies concerning communal land rights have been carried out in the past. The communal land, in general, is owned by state and held in trust by state, and community members have use rights over the land and its resources such as grazing (Jones, 2012). However, in communal conservancy people (conservancy members) only have rights over wildlife. They do not have rights over the land they live on, nor the power to protect the land from non-members who invades the land.

Most of the studies states that the national land policy of Namibia states that “*all people living in Namibia should have security of tenure and equal rights*” (Republic of Namibia, 1991). In practice, this statement was not obeyed.

The Communal Land Reform Act (CLRA), requires local people in communal land areas to register their properties through registration of customary land rights (CLR) in order to obtain security of tenure. The registration is limited to use rights for residential use and crop farming (agricultural land) only. Hence, the group (communal) land rights on communal conservancy land are not included in the registration program of customary land rights in communal land areas, the communal conservancy legislation does not provide for any land tenure rights to communal conservancies except use rights over wildlife. Namibia has two main tenure systems: statutory (freehold 44%) on commercial farms and in the urban area and customary tenure (43%) on communal land. The remaining 13% is state land. Figure 1-3 below shows the distribution of land in Namibia.

This study research and its outcomes will help the policy makers to know the communal conservancy’s needs in terms of land rights and managing their resources. The lack of group tenure rights obstruct those conservancies who want to manage their land and its natural resources sustainable. Because they cannot exclude non-members from using the land resources and investors (private sectors) are not willing to invest (e.g. building lodges and organizing safari tours) in these communal conservancies easily. Also, tenure insecurity causes communal conservancies to be unable to enforce zonation plans legally.

The results from this research study will help government of Namibia policy makers to review policies and laws regarding group land tenure rights, to grant communal conservancies with group tenure and/or exclusion rights to enable them to exclude non-members from their land in future. The government of Namibia needs a system that will formalize and legally register ownership rights to communal conservancies.

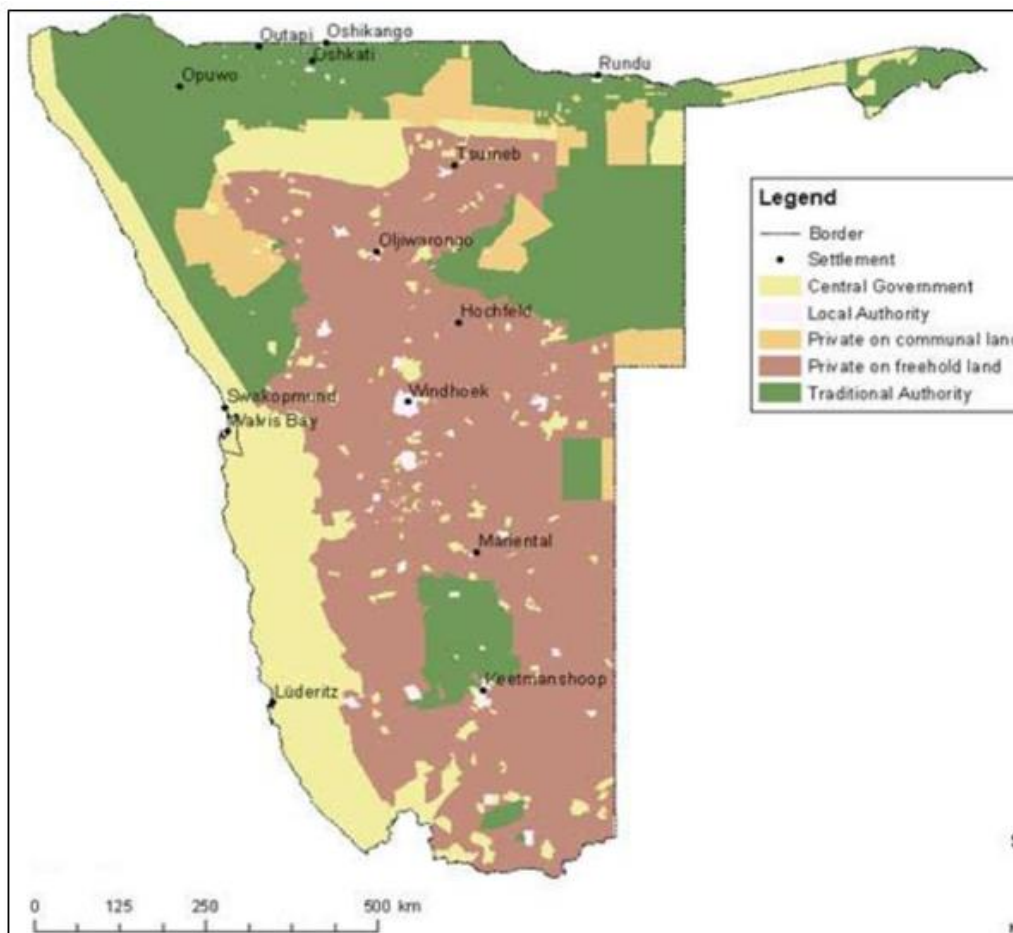


Figure 1-2: Control over land in Namibia (DFG, 2002)

1.3. Research problem

Conservancies in communal land areas have rights over wildlife and not over land. The legislation of conservancy neither provides any land tenure right to communal conservancies nor power to protect their land from non-members. In a number of cases, communal conservancy boundaries not registered, leading to overlapping of communal conservancies and small scale commercial farms (SSCF) as well as potentially other developments on traditional lands for example agricultural green schemes. Due to lack of tenure rights, non-members move into communal conservancies and allocate land/grab land and fence it off, cattle herders also enter the communal conservancies with their livestock for grazing without requesting permission. Hence, due to lack of tenure rights, members of communal conservancies are unable to prohibit and restrict the non-members and cattle herders from putting up illegal fencing or from grazing in their land

Thus, this research will describe the land administration techniques currently used in Namibia communal conservancy communities with a view to validating or further describe and map the problems. Formulate recommendations for group tenure rights to be recognized by decision makers of the government of Namibia. Assess the impact of the invasion by non-members (cattle herders) and the impact of illegal fencing and based on the findings, propose a way forward and compare the findings to Ostrom's design principles.

1.4. Research objectives

The main drivers of this research are the lack of tenure security rights and exclusion rights by communal conservancies over their land that makes them vulnerable to exclude non-members from using their land and resources. Also, investors are not willing to invest in communal conservancies by building lodge and organize safari tours that may provide income to the communal conservancy communities. In addition, also the fencing off of the land illegal by non-members leading to members of the communal conservancies being barred access to land and resources within communal conservancy lands.

1.4.1. Research objective

The main objective of the research is to contribute to improved communal land administration in Namibia by exploring the potential in (group) land tenure rights in solving or reducing land use conflicts in Nyae Nyae and N# aJaqna communal conservancies.

1.4.2. Sub-objectives

The main objective of this study research is divided into four sub-objectives in order to fulfill the aim of this study research:

1. *To describe the system of land administration in relation to communal conservancies Nyae Nyae and N# aJaqna.*
2. *To describe and map the land use and boundary conflicts in Nyae Nyae and N# aJaqna communal conservancies.*
3. *To identify the role of group land tenure security in solving and reducing these conflicts*
4. *To analyze whether Ostrom's design principles for common land apply to the two study areas?*

1.5. Research questions

1. *To describe and assess the system of communal land administration in the communal conservancies Nyae Nyae and N#ajaqna.*
 - 1.1 What are the institutions involved in communal land administration in the study area and what are their responsibilities?
 - 1.2 What policies and regulations apply to the communal land administration in the study area?
 - 1.3 Which organization is responsible for allocating of land?
 - 1.4 What are the conflict resolution mechanisms being applied in the case of land conflicts
2. *To describe and map the land use and boundary conflicts in Nyae Nyae and N#ajaqna communal conservancies.*
 - 2.1 What are the land uses in both study areas, and how are they distributed?
 - 2.2 Where are the main land use conflict in the study area and what is their nature?
 - 2.3 Are formal boundaries of the study areas the same as the perceived boundaries?
 - 2.4 Are boundary conflicts the part of the land use conflicts and to what extent?
3. *To identify the role of group land rights in avoiding and solving these conflicts.*
 - 3.1 What forms of land tenure can be recognized in both study area?
 - 3.2 What formal land rights are being exercised in the study area?
 - 3.3 Will formalize group rights contribute to reducing land conflicts? And to what extent?
 - 3.4 What measure should be adapted to strengthen group land tenure (if) it is to be recognized?
4. *To analyze whether Ostrom's design principles for common land apply to the two study areas*
 - 4.1 Are the Ostrom's design principles respected in Nyae Nyae and N#ajaqna communal conservancies?

1.6. Conceptual framework

The conceptual framework shows the registration of communal conservancy land as communal/common property and granting members tenure rights will lead to tenure security, reduction in land conflicts and certainty of ownership: the compilation of communal conservancy land will necessitate the formal identification and recognition or ownership of land and provide certainty as to who is the landowner and what other rights exist in the land. However, this is not the case with communal conservancies currently because communal conservancies are not registered and do not have formal tenure rights, that is why there is tenure insecurity, that leads to invasion of communal conservancy land and fencing off of the land.

Without recognized formal tenure, communal conservancy is unable to exclude non – community members from using their natural resources in those areas, causing overuse and overgrazing of natural resources and limiting investors from investing in communal conservancies. And the role of land administration in land conflict prevention is by improving tenure security. For communal conservancies to have security of tenure, group tenure need to be strengthened in Namibia or another alternative should be found to secure tenure of communal conservancies

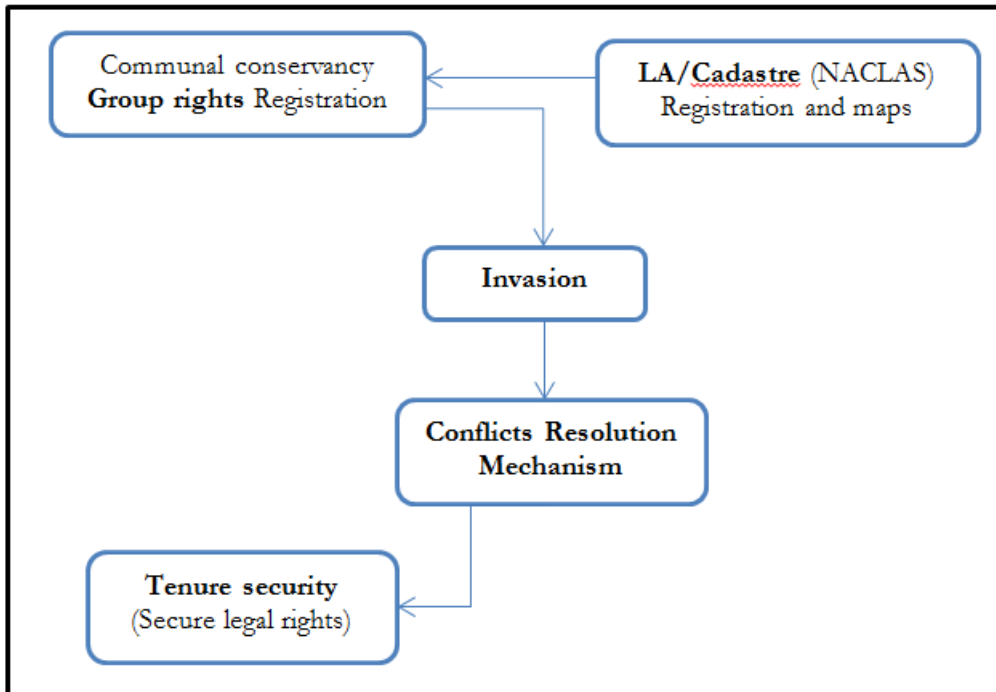


Figure 1-3: Conceptual framework

1.7. Research design

The following part describes how the research questions will be answered to meet the objectives. It includes methodology to be used, research design matrix, and research design. The research design proposed for this research is descriptive case study with an additional of explanatory nature.

1.7.1. Research approach

Two case studies:

This research will use a qualitative approach that is a process of describing the research that focuses on how group or individuals view a particular situation and construct meaning out of their experiences. This approach makes it possible for a particular phenomenon to be understood by someone; it concern the collection of in-depth information and questions asked 'why and what.' Common methods used for collecting qualitative data are interviews questions and group discussions. However, the method also includes fieldwork and/or observations in order to help the researcher understand the way communal conservancies members live and manage their resources in both study areas.. This research will use the methods of semi-structured and open-ended interview questions. Participatory GIS mapping approach will be involved, and the technique to be used in this research will be Aerial photograph. With the help of the chiefs and/or members boundaries of the two communal conservancies will be recognized, and conflict areas will be identified on the map.

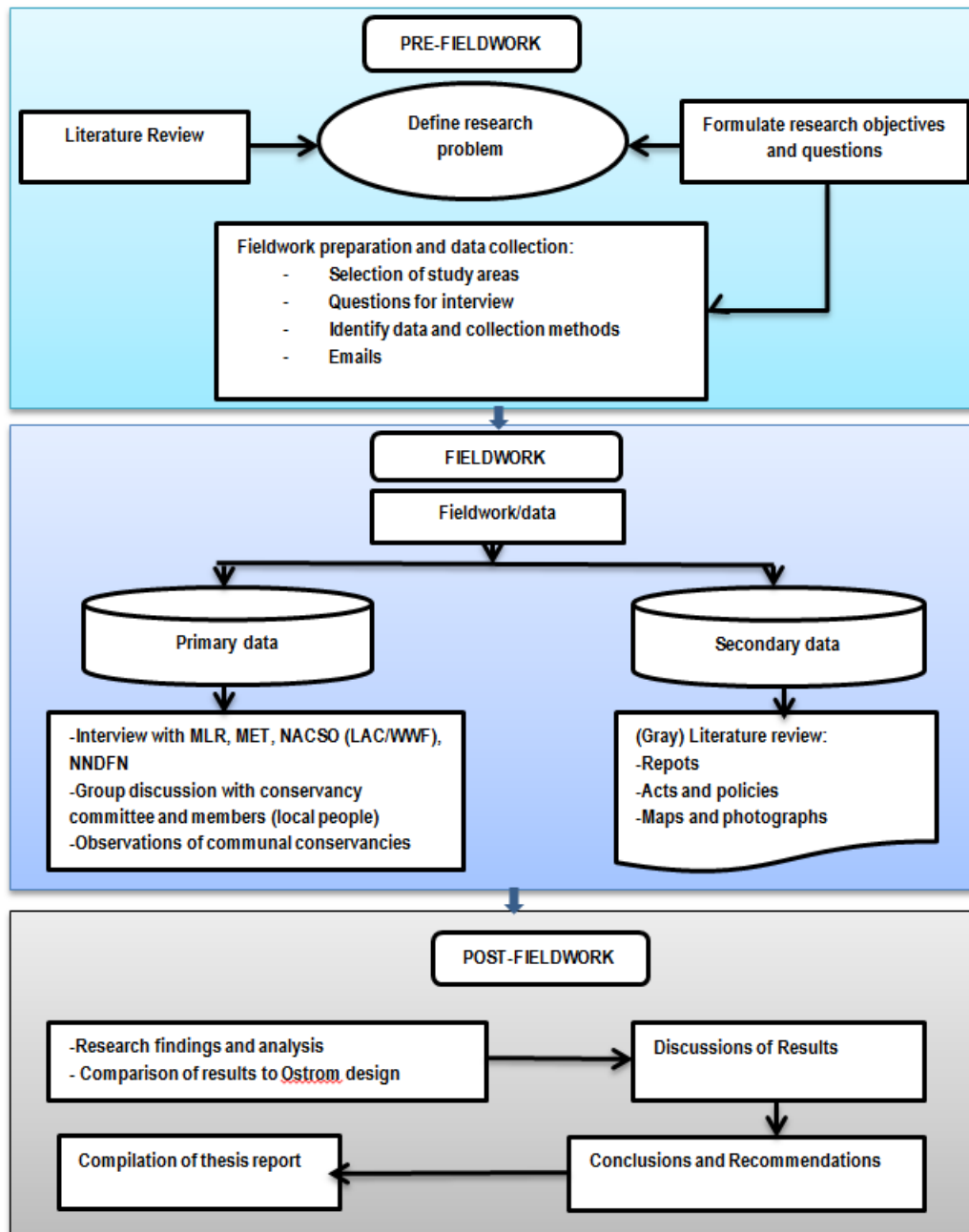


Figure 1-4: Research Design

1.8 Thesis structure

Chapter 1: Introduction

This chapter includes background and justification, research problem, research objectives (main and sub) and research questions, and thesis structure.

Chapter 2: Literature review

This chapter deals with policies and legislation, governance and management of conservancies.

It also provides an overview of land tenure and administration in Namibia. Property rights regimes and its structure will be discussed, and emphasis will be on communal property since it is a common regime on communal conservancies. It will also discuss, about tenure security/insecurity and tourism in Namibia

Chapter 3: Research Methodology and Study Areas

The methodology employed in this research study is outlined in this chapter. This chapter discusses the collection of data, data analysis techniques, fieldwork limitations. Clear description of the study sites is outlined in terms of their geographical location, vegetation cover, climate, types of wildlife species.

Chapter 4: Results

This chapter provides collected data results from fieldwork as well as from the literature review.

Chapter 5: Discussions of results

This chapter discusses the results from chapter 4 as well as best practices from the literature review. Comparison to Osrom's design principles will also be presented in this chapter.

Chapter 6: Conclusions and recommendations

2. LITERATURE REVIEW

2.1. Introduction

The thesis topic has already been thought about and researched by others. The literature review section helps to examine how it is researched, and also explain how communal conservancy is set up. The section gives an overview of the legal framework (national land policy of Namibia, policy on wildlife management, utilization, and tourism, communal land act, nature conservancy amendment act), and land administration as well as on land tenure systems and tenure security. The chapter is followed by the explanation of the methodology that will be used and end with the conceptual framework

2.2. Communal Conservancies in Namibia

A communal conservancy is recognized when the majority of people in the areas agree to its establishment and its boundaries. It should have drawn up a constitution and held annual meetings with proper the quorum and also register with the Ministry of the Environment and tourism (MET). Once a communal conservancy is registered with the Ministry of Environment and Tourism, it has the right to engage in a contract with any private sector or it may come into a joint venture with a private sector and lease out part of its land to tourism companies to be used as a campfire and lodges. Tourism operators, who run hunting tours and safaris, may also have contracts with communal conservancies.

Each communal conservancy has a committee that consists of a chairperson, a secretary as well as treasurer and respective deputies. They are elected for one year or three years, report to the annual general assembly. The communal conservancies are divided into conservation zones (e.g. Where livestock herding or agricultural activities are not allowed), zones for tourism and multi-use and single-use zones. The 100% of the income from those contracts remains with the communal conservancies, and an elected committee decides on how to administer it (Jones, 2012).

Because of the communal conservancies being the initiatives of local people, the traditional authorities see it as some competition for control over resources. Members of the communal conservancies should be over 18 years as defined by the communal conservancy's constitution and should be a resident in the area for more than five years. In order to guard the game and monitor the community resources, many communal conservancies have appointed game guards and resource monitors. These people are responsible for the sustainable of harvesting natural resources, prevent poaching from intruders and monitor wildlife. An 'event book system' approach is used to monitor game animal, human-wildlife conflicts and other natural resources (Jones, 2012).

There are many ways in which the communal conservancies obtain benefits from such as direct payments to communal conservancies and wages from joint ventures lodges, trophy hunting, campsites, craft sales and the sale of game. There are also other benefits that are non-financial or in meat from hunting and other contributions (e.g. computers, education materials, equipment) given to local social or economic development activities by joint venture partners. Figure 2-1 below shows 79 registered communal conservancies and 12 emerging communal conservancies in Namibia.

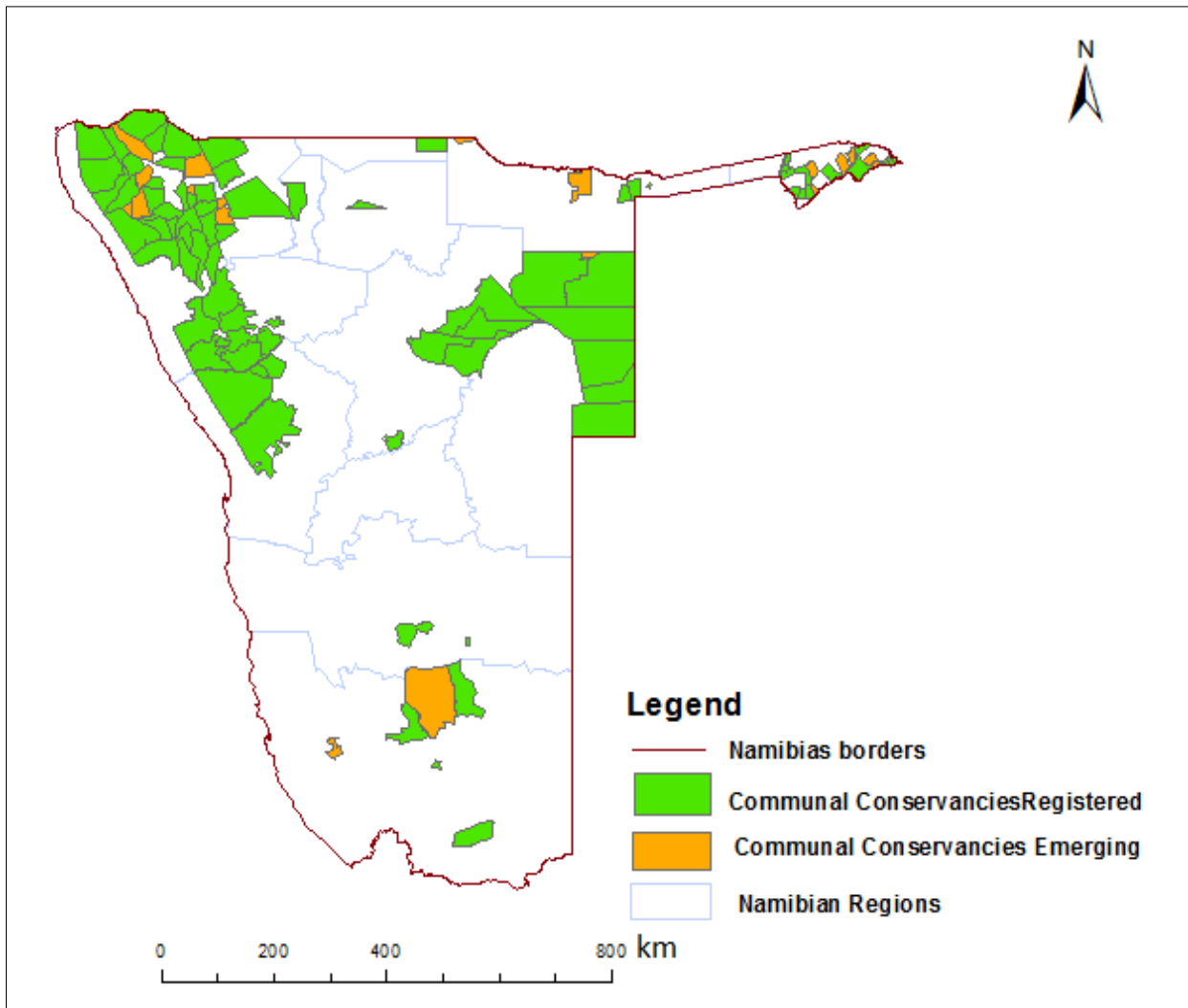


Figure 2-1: Registered and emerging communal conservancies

2.3. Legal Framework

The legal framework governing the rights of land consists of a set of formal laws that focused on land reform objectives and recognized the continuing authority of some principles of customary law in many cases.

According to the constitution of Namibia of 1991 all people have the right to own, acquire, and dispose of property, individual or with others and to bestow property to heirs and legatees (Republic of Namibia, 1991). A range of land rights are stipulated in the Land Policy of 1998 including customary grants, freehold titles, licenses, permits and certificates and state ownership of certain lands according to classifications (USAID, 2010).

The Communal Land Reform Act 5 of 2000 has mandated to regulate traditional authorities and their powers over communal lands. Regional, communal land board (CLB) were established to control the allocation customary land rights by traditional authorities (TA) e.g. headmen and chiefs). The communal land boards (CLB) have the power to record, grant and cancel any land rights allocated by the traditional land (MLR, 2002).

The Nature Conservation Amendment of 1996 allowed the establishment of conservancies in communal areas. Any group of persons living in communal areas can apply for their land or part of their land to be declared a 'conservancy' by the Ministry of Environment and Tourism (MET, 1996).

Traditional authorities (TA) are recognized as legal entities according to the Traditional Authorities Act 25 of 2000 which provides for their designation as leaders as well define their powers and duties in their communities. They assist the local government with the development of land-use plan, supervise and ensure observation of customary law in their communities and make sure that natural resources of Namibia's communal communities are used in a sustainable fashion (MLGH, 2000).

The Agricultural (Commercial) Land Reform Act of 1995 allows the government to acquire agricultural land for the purpose of land reform distribution (USAID, 2010)

2.3.1. National Land Policy of Namibia

National land policy is the most fundamental level of decision-making with respect to land management and administration, and land use and development. The policy, for this reason, should base on the principle of good governance regarding accountability, equity and efficiency (Van der Molen, 2014). That is why, weak land governance in policy leads to insecurity of tenure, corruption in the land sector, limited land markets and boundary disputes. As a result, land policy should recognize different tenure regimes in the country (Van der Molen, 2014). Land policy improve (1) economic growth (e.g. secure tenure leads to more investments, open options for cheaper credit, and distribution of better land better promotes productivity and the functioning of households in factor markets); (2) Eradication of poverty families uses their land productively whereby they no longer depend on wage labor; (3) governance improves because households get a 'voice', and basis for participatory; (4) effective land use and sustainability such as better land markets and fair distribution of land (Van der Molen, 2014).

Many countries have undertaken land policy development and since 1990s Africa has particularly been active either through commissions of inquiry, new laws, land commission, national conferences or policy process. Many countries in Africa such as Ghana, Kenya, Namibia, introduced national land process.

The Namibian national land policy is a unitary system where all citizens have equal rights and security to various tenures and management systems. Multiple forms of land rights such as customary rights, certificates or permits, freeholds, state ownership, leaseholds and licenses are provided by the policy which was implemented by the ministry of lands and resettlement in 1998 (UN-HABITAT, 2005).

2.3.2. Communal Land Reform Act (CLRA) 5, 2002

In order to improve communal land tenure system in Namibia communal land reform act, 5 of 2002 was passed in Namibia. Land rights allocation in communal areas is regulated by this act through communal land boards established by the acts that are institutions dealing with land administration in communal areas and it is supervised by the MLR (MLR, 2002). The communal land board (CLB) controls the allocation of land or cancel in an improper ways by traditional authorities (TA).

The duties and functions of the land boards are defined by the Communal Land Reform Act (CLRA). Traditional authorities (TA) do the allocation of customary land, but it has to be ratified by communal land board (CLB) who will register the grant (MLR, 2002). The traditional authority (TA) has the right to limit the number of livestock as well as a place where grazing should take place. However, grazing rights to non-residents for a specified period are granted by TA, and these rights may as well be withdrawn by TA or chief. The allocation of leases (e.g. agricultural schemes or tourism activities) is controlled by traditional authority (TA) in conjunction with the communal land board (CLB). The maximum allocation size of land is 20 hectares for land use, and any lease of land that is over 50 ha should be referred to the minister of the MLR (MLR, 2002). The CLRA also requires members of the CLB to include a representative from the communal conservancies in those areas covered by CLB as well as a representative from MET. Insecurity of unregistered land led to citizens allocating land to themselves illegally, causing

land grabbing and boundary disputes, poor land management with little investment (MLR, 2002). As stipulated by the Act (CLRA), the communal land board should consist of a member from the Conservancy and a member from the MET. When the communal land board (CLB) is granting lease, any management or use plans developed by conservancies [section 31(4)] should be taken into consideration (Jones, 2012). In terms of section 17 of the CLRA (MLR, 2002), all the communal land belong to the state and is kept in trust for the benefits of the traditional communities in those areas. Communal land cannot be sold like the commercial farmland because it belongs to the state according to Communal Land Reform Act (CLRA) of 2002.

Approximately half of the total population of Namibia live on lands commonly known as “communal lands” that covers 43 per cent of the landmass. These communal lands that were recognized after independence were formed during the apartheid era as “homelands” by the South African Government and only one homeland (Bushman land) was reserved for San people. This area consists of traditional hunting area called n!ore of the Ju’/hoansi San (Nyae Nyae communal conservancy) and was occupied entirely by this group of San people. Today, most of the communal lands in areas formerly known as a bushman land are occupied by San people; the Ju/hoansi San in Nyae Nyae communal conservancy and the !Kung San in N#ajaqna communal conservancy.

2.3.3. Wildlife Policy

The policy on wildlife management allows communal area residents to form common property resource management institutions that are called “conservancies.” A conservancy has rights over wildlife and tourism within its boundaries according to the policy. MET Policy provides a framework ensuring that local communities have access to tourism development opportunities in their land. According to the policy, registered communal conservancies have concessionary rights to the lodge development within their boundaries. They also have the right to develop tourism and enter into a joint venture contract for development with private tourism companies is recognized by the government of Namibia. The new National Tourism Policy of 2008 strengthens this approach and identified conservancies as the mechanism by which benefits from tourism, reaches rural or local communities. This policy approach entirely needs to be put into effect. However, there is yet no tourism legislation to strengthen it neither does the Nature Conservation Amendment Act of 1998, strongly provide the rights over tourism.

The Act provides the rights to “non-consumptive use” of wildlife such as non-hunting (e.g. birds watching, feeding of wildlife feeding, watching for wildlife and taking photography.) Communities that are adjacent to or in protected areas, are provided with key principles and guidelines for the awarding of concessions. They are provided with guidelines for the management of the concession process, environmental and development checklist for concessions.

2.3.4. Nature Conservation Amendment Act, 1996

In 1967, Nature Conservation Ordinance 31 of 1967 was introduced to provide private owners with rights to wildlife whereby transforming the opinion of wildlife important for sustainable management for personal gain. Later, the legislation for wildlife use in Namibia was refined to include private property owner’s right to wildlife and other benefits through the so-called Conservation Ordinance 4 of 1975. Amazing results of the recovery of wildlife on private land (44% of the country) was produced by these incentive-based reforms (Weaver et al., 2008)

After independence in 1990, same rights and benefits as in private land owners were introduced to local communities in the country in communal lands (43% of the country). Conservation policy for wildlife was passed by the Ministry of Tourism and the Environment (MET) in 1995. In 1996, the Nature Conservation Ordinance of 1975 was amended to Nature Conservation Act 5 of 1996 which provides the legal basis for people in conservancies to gain rights over wildlife through conservancies. The new policy and Act were aimed to empower local communities with the same rights to wildlife and to have the same benefits as private land owners had for years. On the other hand, local people in communal areas were

also persuaded to start to manage wildlife sustainable in order to increase wildlife population communal lands where the population was under threats (Weaver et al., 2008).

Local communities are required to form corporative entities consisting of formalized membership, well-defined boundaries, representative forms of internal leadership, and detailed management plans as defined and stipulated by the Act. Only once the conservancy is registered, the MET delegate rights of game management to the conservancy (Bolling et al., 2014). Local people benefited from the first four communal conservancies that were registered in 1998, and local people benefited legally also from the use of numerous wildlife. Today, there are 76 conservancies registered in Namibia

2.3.5. Forest Amendment Act, No. 12 of 2005

Forests are one of the important resources that provide for fuel, fodder, medicine plants, building materials, veld food for people as well as for wildlife. As a result, without forests, in Namibia large areas would become a desert and the people and the country as a whole would suffer in different ways significantly. The Forest Policy and the Forest Act of 2001 protect the forests. The purpose of the Forest Policy is to protect and make the forest productive to improve the economic welfare of rural communities. The Forests Act No.12 of 2001 that was amended by Forest Amendment Act No.13 of 2005 is the Act through which the Forest Policy is implemented. The use of forests resources and the responsibilities of the users are stipulated in the Act.

Forest Act 12 of 2001 combines the existing laws: the management/use of forests as well forest products, creates Forest Councils that recognize traditional leaders' power in communal land areas and is responsible for making recommendations on policy, law and other matters pertaining forests (protects and control forest land and products) (MAWF, 2001). The Forest Council is represented by MAWF, MLR, Council of traditional leaders and two Farmers' unions. The Act is also responsible for the appointments of forest officers in specific areas and licensing officers. There are different types of classified forest in Namibia namely:

Community forest that is declared on communal land with the consultation of the TA or chief and the people who traditionally use the community forest are represented by the forest management authority. The forest management authority has the rights for grazing and the right to use forest resources (MAWF, 2001). This authority can also lease out these rights to others, but the management authority has to agree on the following: Look at the forest (*management plan*), *Equal access* to resources in the forest by all community members, enough money made from forest should be *Reinvest* to keep the forest, and *Share* among the community members what is left over.

State forest reserve is created on state land that is not a communal land, but the MLR has to agree on this. In accordance with the management plan, management authority is appointed to manage the state forest reserve (MAWF, 2001).

Regional forest reserves, these are similar to state forest reserves except that they are created at the request of the Regional Council. The Regional Council needs to negotiate with TA or chief and all those whose rights are affected and make recommendations to the minister (MAWF, 2001)

Forest management areas are created when there is an agreement between the ministry and the owner/legal occupiers of land that is not classified as forest. This agreement includes management plan, may allow MAWF technical and assistance (MAWF, 2001).

2.3.6. Traditional Authorities and Traditional Act No. 25 of 2000

According to (Arko-adjei, 2011) traditional authority constitutes an aggregate institution which can include the position of traditional leader and/or king, the deputy, the royal family and the advisory body, the headmen of small villages, and the traditional council (refers to the form of administration in which power derives from tradition or custom). The type of leadership is passed on from person to person, generation to generation according to family. In addition, the legitimacy of the authority typically comes from the tradition mostly from royal families. The traditional leaders are elected by members of a closed community that is determined by ethnic criteria and means of the legitimate customary areas. Hence, these differentiate traditional leaders from others. In Namibia context, traditional authorities can be defined as “individuals, appointed by members of a specific community, and ethnically defined by means of the accepted customs of the community, to preside over that community (Keulder, 1996)

The tribal chiefs or heads of clans exercise trusteeship over the land on behalf of a group. Hence, they have the power to manage the land in their communities. Control most of the rural survival strategies (e.g. allocation of land, natural resources, communal labor practices and law and order sometimes) are entrusted with managing the land within their territory. Traditional leaders and authorities in Namibia must apply for registration through the Ministry of Regional and Local Government and Housing (MRLGH). They should also indicate in the registration forms their current office-bearers, possible leadership disputes and the means of ascendancy to the position. Then the MRLGH submits the application to the Cabinet Committee on Land and Social Issues (Keulder, 1996). The committee includes MLR, MHSS, MBESC, MAWF (Keulder, 1996)

In Namibiachieftaincies positions are inherited within the royal families, but councilors are elected by the local communities and ratified by their chiefs. Each traditional authority consists of six senior and six junior councilors who serve on the traditional council with the chief, as well as the secretary. All members of the traditional authorities (TA) receive monthly allowances from the Ministry of Local Government and Housing (MRLGH). Traditional authorities (TA) are divided into districts, known as wards in some communal areas. Traditional leaders are recognized by the government and control most of the important rural survival strategies such as allocation of land, natural resources, communal labour practices and law and order in some instances (Keulder, 1996). The Communal Land Reform Act (CLRA) gives power to traditional authority (TA) to allocate customary land rights. The Traditional Authority Act 25 of 2000 of Namibia provides for the establishment of traditional authorities in the country and the election and recognition of traditional leaders as well as power, functions and duties of traditional leaders (MRLGH, 2000) s. Figure 2-2 below shows the organizational structure of State and traditional leaders.

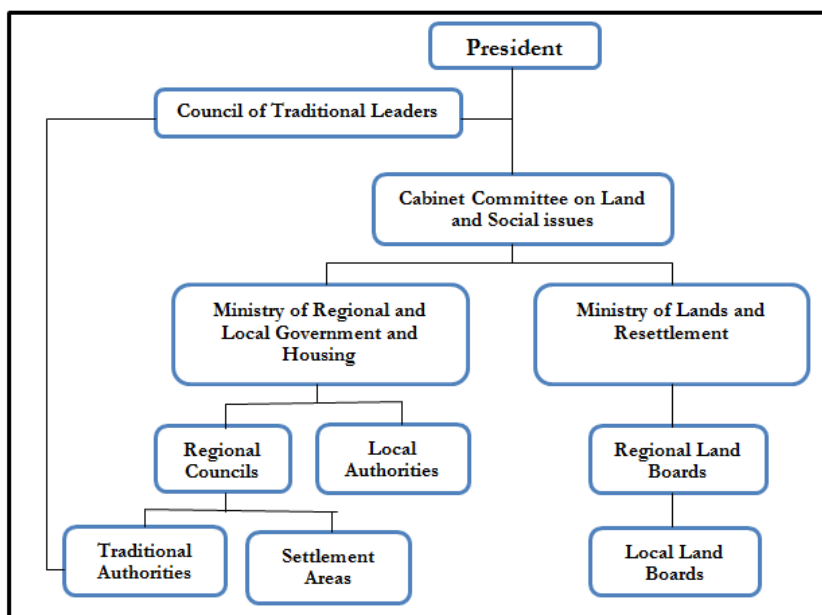


Figure 2-2: Organizational structure of State and traditional leaders (Keulder, 1996)

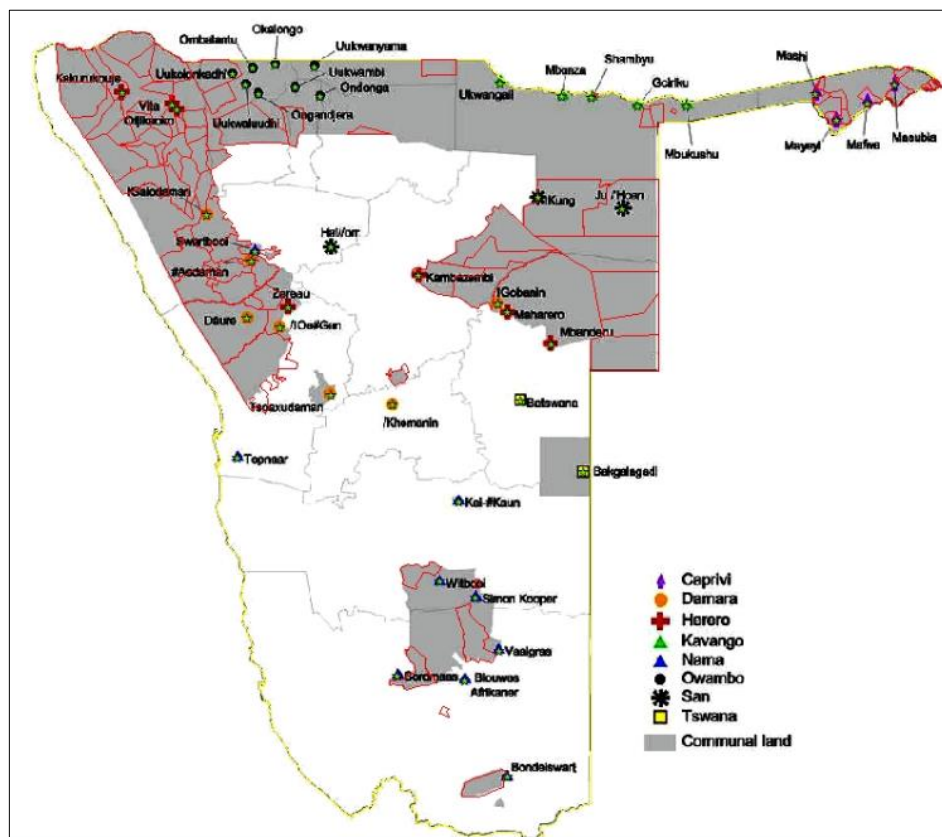


Figure 2-3: Traditional Authorities in Namibia (NASCO, 2012)

2.3.6.1. San Traditional Authorities (TA)

There are numerous groups of San people in Namibia (Memderson, 2008), and each group speaks a distinct language and lives in different areas. Only three of the group, the !Kung, the Hai-//om and the Ju/'hoansi shown on the map in Figure 2-3 below are recognized traditional authorities (TA). These group of the San people established high-level traditional authorities (TA) with chiefs and traditional councils. For example, the Ju/'hoansi traditional authority of chief Bobo was formed around 1990 while the Hai-//om was created in 1992. However, local levels of authorities within villages have been established long time where each village had a headman.

A chief/leader heads each traditional authority (TA) which consists of six senior and six junior councils and a secretary. The Councils of the Ju/'hoan traditional authority (TA), and the !Kung traditional authority (TA) represent different wards of the community areas whereas most of the Hai-//om traditional authority (TA) are based in towns and settlements (e.g. Otavi, Oshivelo, Outjo, Tsumeb, Grootfontein, Kombat, and Tsintsabis) where many people live.

The majority of the Hu/'hoan community live in Nyae Nyae communal conservancy (Tsumkwe east), and the !kung traditional community is more concentrated in N#ajaqua conservancy (Tsumkwe West). As for the Hai-//om traditional authority (TA), the community is scattered across freehold farms (eastern Kunene region and northern Otjozondjupa region) as well as in towns and settlements mentioned above (Otavi, Komabat, Etosha, etc.). There are also local councils representing the Hai-//om interests in those towns.

Village headmen allocate land, he/she allocates land to young men to build their house in the native/parental villages. However, for other San people from other villages, they need to motivate their application to the headmen and the headmen would consult members of the villages before deciding to allocate their land. However, applications by non-members of San communities (communal conservancies inhabited by San people e.g. Nyae Nyae and N#ajaqna) will be considered carefully and strictly whereby careful attention will be given to the applicant's motives and background. The chiefs and the traditional council will then make the final decisions in the case of !Kung traditional authority (TA). In the case of Ju/'hoansi traditional authority (TA), immigrants (non-members) who wish to settle in the villages of Ju/'hoansi TA have to pay a fee to the headmen and they are required to pass a five-year probation before they are fully accepted by members of the community/village. These fees are the only required payments ever for land.

The land that is not used and is abandoned is reverted to the control of the traditional authority (TA). In addition, if anyone leaves the village, he/she will need to re-apply for land allocation if he/she wants to come back.



Figure 2-4: San Traditional Authorities in Namibia (Mendelson, 2008), with chief Bobo of the Ju/'hoansi traditional authority (Hays et al., 2007) on the right.

2.4. Land administration and land tenure

2.4.1 Land administration, in General

Land administration is the way in which the rules of land tenure (FAO, 2002), land use, land value are applied and made operation. Land is the relationship between humankind and land. In order to design and operate land administration system, in a certain area, it is necessary fully to understand the types of relationship that are considered important in that region. These are normally found in the regional land tenure system, which set out the rules drawn up by society regarding who can use what resources for how long and under what conditions (Zevenbergen, 2014). Land administration consists of a range of processes and systems to administer land use regulations, land valuation and taxation, and land rights which involve the allocation of land rights, boundaries of parcels delimitation for which rights are allocated.

Land administration is defined by various definitions: land administration is defined by United Nations as the “process of determining, recording and disseminating information on ownership, value as well as use of land and its associated resources” when implementing land management policies (UN-ECE, 1996) whereby (Dale and MacLaughlin, 1999) defines land administration as a process of regulations land and property development, use and conservation of the land as well as the land tax collection. (Williamson et al., 2010), defines land administration as a system that provides for the implementation of land-related policies and land management strategies for the country.

According to (Dale and MacLaughlin, 1999), the functions of land administration are divided into three sections such as (a) **judicial** which emphasis mainly on registration of land rights in land and consists of various processes that determine or adjudicate existing land rights and allocate of land, Other process deals with delimitation of parcel whereby land is defined for the allocation of rights, and demarcation of boundaries on the ground; (b) **regulatory** section involves the development and use of land, and (c) **fiscal** section concerns the economic utility of the land and its process support tax collection revenues (Dale and MacLaughlin, 1999).

Land management paradigm is the cornerstone of modern land administration. In land management paradigm, land tenure, land value, land use, and development are considered as important and omnipresent functions that are performed by organized societies (Enemark et al, 2010). Each delivers its land policy goals within this paradigm by using various techniques and tools to manage its land and resources. Figure 2-4 below presents the paradigm. The paradigm requires designers and implementers to build the land administration systems (LAS) that are capable of undertaking core functions of tenure, value, use and development in order to specifically deliver sustainable development (Williamson et al., 2010). In addition, implement national land policy and produce land information. All the core functions of land administration systems (LAS) should be considered holistically than separate or stand-alone exercise. Land management capacity delivered by well-developed land administration system successfully benefits most of the economies of the world. Good land administration contributes to the economic development in such a way that, it provides security for investors and permits real estate to be traded in the marketplace (Molen, 2005) and allows a government to raise taxes on the basis of the value of land and property (Molen, 2005) In this research the definition by United Nations is applied

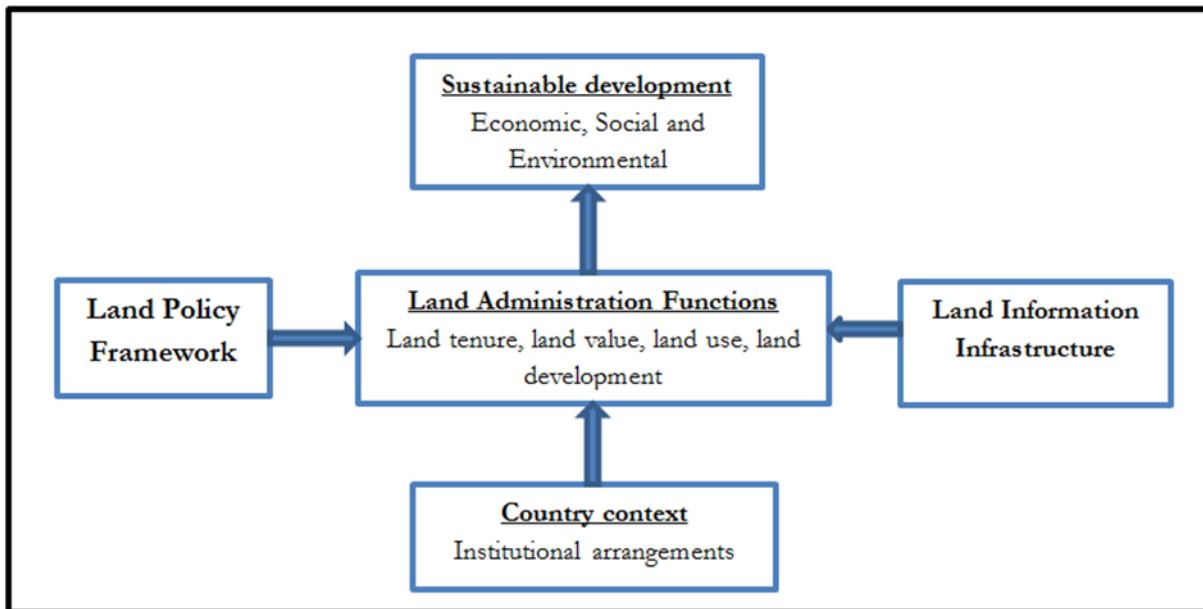


Figure 2-5: Land management paradigm (Williamson et al., 2010)

2.4.2 Land administration in Namibia

According to Meijs et al. (2008), land in Namibia is classified for administrative purposes as follows: state land, commercial land, and communal land. Each of the category present, different laws and regulations, on people using the land. Both urban land and rural land may fall within any of these categories (Meijs et al., 2008). Figure 2-5 below shows types of land: State, Commercial, and Communal lands in Namibia.

State land (13%), land owned by the state and known as protected areas (e.g. National Parks, Game Parks, Recreation and restricted areas.). All land, natural resources, and water belong to the state if, not owned by an individual lawfully. The state decides on what to do with the land, to sell it as commercial land or convert it to existing communal land. People can be allowed to reside/live on a piece of land or can be permitted to land it out by the state while the state remains the owner of the land.

Commercial land (44%) is freehold land, surveyed and occupied by commercial farmers. This land can be bought by individuals who become the owners, and all the transactions of commercial land are registered within the Deeds Registry and Cadastral systems of the country. During the apartheid era, before the independence of Namibia in 1990, commercial land were allocated according to skin color and whites freehold rights to land while non-whites were forced into homelands where communal land tenure was in effect (Fuller, 2006). Thus, Commercial Land Reform Act of 1995 was passed to solve some of these problems of land allocated according to skin color. The Act gives first option or allows the state to buy the land whenever the owner wants to sell his commercial farm land. The state decides to buy or not to buy a farm land before the land is sold to any other buyer. If one owner owns a disproportionately large amount of land or if that land has been abandoned or under-utilized the Act allows the state to acquire that commercial land. The constitution of Namibia allows the state to expropriate property according lawful procedures that are in the public interest and compensation paid to the owner of the property being expropriated.

Communal land (43%), the state owns land used by local communities and has a duty to administer communal land in trust for the benefits of the communities residing on the land and for the purpose of economic and social development of the people of Namibia(Meijs et al., 2008).

communal areas (Meijs et al., 2008). Having all land rights registered enables the MLR and the Traditional Authorities (TA) to improve communal land administration and to make sure that all people have equal land access. The Communal Land Reform Act (CLRA) requires that all owners of customary land rights to register their lands, meaning any person who had the right to communal land for farming and/or residential before the introduction of the Communal Land Reform Act (CLRA) is required to apply for recognition and registration of his/her customary land right.

In 2008, a land information system for recording communal land rights in Namibia was implemented and termed the Namibia Communal Land Administration System (NACLAS), and it is illustrated in Appendix A-1 Figure 2-5 below. The system was developed to store data on communal land in the whole country and accommodate integration with commercial registration system (Deeds Registry System is a system that records and keep track of information regarding freehold land rights in commercial areas and changes in the ownership) in the future. The NACLAS produces four different types of output namely; Certificate, Village maps, registers and Index cards. The front of the certificate describe the land right in full detail and on the back is a diagram of the parcel as illustrated in Appendix A-2.

2.4.4 Communal Land Board (CLB)

Communal Land Board (CLB) was established as from 2003 in all regions of Namibia where there is communal land. There are 12 CLB for each region in the country with the exception of Khomas Region since it is not a communal area. The functions of the CLB include: control of the allocation and cancellation of customary land right by traditional authorities and/or chiefs, decide on applications of leasehold rights, create and/or maintain registers for the allocation, transfer/cancellation of customary land rights and leasehold rights, advise the minister on the regulations (Meijs et al., 2008).

Each CLB is headed by a chairperson who directs the activities and members of the Communal Land Board are as follows: one representative each Traditional Authority that is recognized, one member of the organized farming community within the Communal Land Board (CLB) area as well as one representative from communal conservancy, a regional officer from a regional council office within the CLB area, two women involved in farming and two women with expert knowledge in the functions of the CLB and one representative from each of the following ministries: Ministry of Lands and Resettlement (MLR), Ministry of Regional, Local Government and Housing (MRLGH), Ministry of Agriculture, Water and Forestry (MAWF), and Ministry of Environment and Tourism (MET).

Every two months the CLB meet, and if there is any issue to be investigated, the CLB forms a committee to investigate those issues. In a year, the CLB held six regular meetings and for effective land administration these meetings are insufficient in most instances. Whenever, there are matters that need urgent attention; the CLB can request the Minister for permission to hold extraordinary meeting.

2.4.5 Tenure, Land tenure, and land tenure system

In most parts of Africa land, was and still is governed by traditional rules and procedures. These rules and procedures were not documented but passed verbally by way of example and practice from generation to generation that belong to a certain community or tribe. Land was acquired by means of being allocated by the chief/headman or means of inheritance and was administered by chiefs/headmen, tribal elders or clan. Customary tenure rights and restrictions are not written or documented but obeyed by a society based on custom. For this reason, customary still does exist and is still common in many parts of African countries.

Tenure means landholding (Wily, 2012) Land tenure is the relationship between people with respect to land, forest fisheries and other natural resources (FAO, 2012), be it individual or group, legally or customary. The rules of tenure determines who has access to land, who can be excluded from it, how can land be used and controlled and by which rights and obligations can land be transferred to

others. They may be based on written policies and laws or as unwritten customs and practices (FAO, 2012). Land tenure defines how property rights to land are allocated to communities, how rights to use, control, and transfer land is granted. Land tenure determines who can use what resources, for how long and under what conditions (Zvenbergen, 2014). To some people, land tenure is simple land holding rights while to others it could further be defined as terms and conditions under which land is held, used, transacted. Land tenure is the principle factor that determines the way in which resources are managed, used and the way in which benefits are distributed (ECA, 2003). Land tenure can be under through customary law; that is the traditional common rule or practice that has become a key part of the accepted and conduct in a community. Land tenure forms are; ownership or freehold, leasehold or perpetual use (permanent use from generation to generation, inheritable but not sellable), rent or life-long use (as long as person lives, he can use the land), usufruct (long but not owning the land), tenant of suffrage (most insecure tenure because the person can be evicted or kicked out anytime) and occupancy (permit to occupy)(Zvenbergen, 2014)

According to FAO, 2012, land tenure system define and regulate how people, communities and others gain access to natural resources, either through formal/statutory or informal (not recognized or protected) arrangements. Land tenure system is part of the legal regime: statutory law that is written and codified, common law (judgment as precedent), customary law where the code is assumed to be known by all community members (no-codified), and legal pluralism where different law systems co-exist simultaneously (Zvenbergen, 2014).

2.4.5.1 Formal or Statutory tenure system

Statutory tenure system is a system that is legally recognized and supported by a well-organized land administration system. It is based on codified and written land law that can be distinguished from Common Law and Roman law. Land rights are classified as bundle rights according to Common law. Bundle right has four sets of rights: (1) use rights – rights to grow crops, trees, harvest fruit and make permanent improvements, (2) transfer rights-to use or transfer land , i.e. right to sell, lease, rent or mortgage, (3) exclusion rights-rights by individuals, community, group to exclude others, and (4) enforcement rights-legal institutional land administrative provision to guarantee rights (Zvenbergen, 2014). Roman law puts more emphasis on full individual ownership (Van Asperen, 2007). Statutory tenure operates in urban areas, where someone's right is stated in the law that enables him/her to use the law to defend his/her right. Statutory tenure was introduced to African countries through colonial powers. Most of the African countries were colonized by different European and American, and they imported their views on land and implemented their land laws. Hence, land that was suitable for commercial farming and urban land were declared as statutory tenure.

2.4.5.2 Customary tenure system

Customary tenure can be defined as the right to exists within a community, where each member has a right to use independently the holdings of the community. It is mostly found in rural and peri-urban area, and land is mostly allocated by traditional leaders, focusing on group elements with the tenure. Simpson 1976 defines customary tenure as the rights to use or to dispose of use-rights over land lies neither in the exercise of brute force nor on evidence of rights guaranteed by government status but on the fact that they are considered legitimate by the community. The rules governing the acquisition and transmission of those rights being usually explicit and known though, not normally recorded in writing (Simpson, 1976). Customary tenure is also referred to communal tenure by other scholars. In order to avoid the misunderstanding between customary and communal tenure, Nkwae, 2006 defines for example: (a) Customary tenure - tenure derived or in accordance with customs that has evolved locally and this does not connote time or history; (b) Communal tenure- refers to a situation whereby group rights are predominant, but not exclusive; and (c) Traditional tenure-means a tenure consisting or drawing from tradition, with a connotation of history or antiquity (Van Asperen, 2007).

Customary land tenure is also termed indigenous tenure, and indigenous people are defined by the African Union's Commission on Human and People's Rights as mainly hunters-gathers and pastoralist. This group is found in Saharan Africa. In addition, all African are regarded as indigenous and according to the terms of customary and indigenous tenure are used interchangeably. Customary or indigenous land tenure is not only confined to Africa, it is a major tenure system on worldwide scale. For examples it governs land in industrial economies such as rural commons in Portugal, Spain, Italy, Switzerland and other territories that belong to indigenous people that are minorities in North America, Europe and Oceania (Wily, 2012). Customary land tenure system differs within countries and between neighboring countries worldwide.

2.4.5.3 Land tenure regimes (property rights regimes)

According to (Zevenbergen, 2014), land tenure system is part of the legal regime: statutory law which written and codified, common law (judgment as precedent), customary law where the code is assumed to be known by all community members (no-codified), and legal pluralism where different law systems co-exist simultaneously. Land tenure is often categorized as (1) ***Open accesstenure*** where benefits are available to anyone, and there are no duties or obligations, this system leads to overgrazing and overuse of natural resources, (2) ***Communal or commonproperty tenure***, which consists of some aggregation of bodies that exclude non-members and where members have rights and duties (well organized communal common properties).It is also called *community property regimes* where there is shared ownership and rules that provide access to land and resources, (3) ***private property tenure*** where individuals have rights (responsibilities or restrictions by others or states) and (4) ***state property tenure*** where agencies set rules for access and use that other have to respect. Often more than one person has an interest on the same land. As a result, this can be overriding interest, and an overlapping interest such as easement and servitude.

2.4.5.4 Land Rights and property rights

In wider context, land rights are rights to residential use, to use land for crop farming, to use for grazing, to make improvement permanently, to bury the dead, to have access to collect woods for fuel, bush fruits, grass and minerals .Land rights may also be defined as rights to mortgage, give, transact, lease, rent and bequeath areas of exclusive use and rights to exclude others from the above listed rights, at community and/or individual levels. According to Enemark et al. (2009), holding land rights are referred to the rules and prescriptions that define the mode in which rights to land can behold (either by customary law or land law), who will have access to holding rights to land (land reform), through which mechanisms people can acquire rights to land (Enemark et al., 2009) (e.g. lease, sale, loan, inheritance, gift, allocation by chiefs), how security of tenure can be guaranteed (customary traditions, land registration system, and cadaster), how disputes are to be resolved (customary traditions, civil or administrative law)(Enemark et al., 2009). For the rules and prescriptions to be implemented, the government should assign mandates within public administration for concerned the tasks to be carried out and this includes policies on public/private roles, decentralization/centralization, public participation, customer orientation, accountability, liability and good governance, in general (Enemark et al., 2009).

2.4.5.5 Land Tenure security and tenure insecurity

Tenure security may refer to as people's rights to control and manage their land, how they use it and dispose of its produce and engage in transactions such as transfers. A landholder can have security of tenure when she/he feels that there is no likelihood of losing her/his possession of land in the future period. Tenure security can also be referred to, the certainty a person's rights to land are recognized by others and protected in case of any specific land challenge (FAO, 2011). Land tenure security is defined by FAO, 2010, as the way land is held or owned by individuals or groups. A number of people or individuals can hold different tenure claims and rights to the same land whereby these claims may be

formal, informal, religious, customary, and/or include freehold, use rights, leasehold and private ownership (Knight, 2010). The importance of long-term security leads to full security that can only arise when there is full private ownership (freehold) because under such tenure the time for which the rights can hold is not limited to a fixed period.

In addition, security of tenure comes only withholding transfer rights to sell or mortgage. This is true for some parts of the world but not true in many other parts particularly where there are strong community-based tenure regimes and where people may enjoy tenure security without wanting to sell their land, or without having the right to do so, or having strictly limited rights to transfer (e.g. transfer may be limited to heirs through inheritance, or sale may be restricted to members of the community) (FAO, 2002). Improved security of tenure leads to greater productivity especially in communal/rural areas where farmers take great care of their land

Tenure insecurity is in contrary to tenure security; it is when the people face the risk of their rights to land being threatened or evicted by competing claims or lost as a result of eviction. Landholders/households significantly may impair in their ability to secure sufficient food and to enjoy sustainable rural livelihood if there is no tenure security (FAO, 2002). Social factors may cause tenure insecurity, for example HIV/AIDS that is impacting the security of women in various parts of Africa whereby widows lose access to land in a legal sense particularly if they cannot inherit rights from their husbands, or when they are forced off the farm land by male relatives (FAO, 2002). In many places, tenure insecurity has been part of the dynamic of violence. These places include Uganda, Burundi, Rwanda, Angola, urban Peru, Tajikistan, Papua New Guinea, Colombia and Amazon River regions in Brazil (Masum, 2013)

2.4.6 Land tenure systems in Namibia

The distribution of land in Namibia has been skewed by the country's colonial history. Under the German ruler (1888-1917), white settlers occupied much of the central part of the country and established 'reserves' for black tribal groups (Jones B. , 2003). Reserves are areas allocated to black Namibians, with low agricultural productivity and inadequate to provide grazing for cattle and other livestock. The South African administration took over from the German colonial government under a League of Nations mandated and continued with the system of 'reserves'. They consolidated the reserves into a system of black homelands based on South Africa's apartheid policy. Homelands or 'bantustans' are areas to which different groups of black people in Namibia were moved to prevent them from living in urban areas of the country. The majority of black tribal groups were allocated land that was among the least suitable for crop farming and livestock while the whites of European and South African descent occupied the commercial agricultural areas that are arable in the central and southern parts of Namibia.

As a result of colonial policies, a dual tenure system exists in Namibia by which commercial farmland is held under freehold title (statutory) and state owns communal land in trust of the community. Communal land cannot be held as freehold title, whether rural or urban. For this reason communal land cannot be sold or mortgaged (Karim, 2004) Most of Namibia's population live on underdeveloped communal land that is in the northern part of the country while few own freehold land. The vast majority of freehold farms ownership is still in the hands of the whites although a number of black people who own farms with freehold title have increased considerable (Jones B. , 2003).

Land rights holders in Namibia are: private individuals, family trusts, legally constituted bodies and institutions that exercise joint rights, duly constituted cooperatives (UN-HABITAT, 2005). The state owns all communal lands and hold in trust, and members have usufruct rights over the land and its resources (Jones B. , 2012). Nature reserve, military base, game parks and some urban land are owned by the state (USAID, 2010). Land tenure in Namibia is classified as follows:

- **Ownership/freehold tenure:** Forty-four percentages of Namibia's land is, privately owned as commercial farms. The individual owners have the right to hold the land forever, to transfer, use,

and dispose of the land, as well as to exclude others from the land. Before the independence of Namibia in 1990, all commercial land mostly owned by white farmers with large livestock was held in freehold. The rights to this land have since remained in freehold, and some black Namibians purchased and still are purchasing farms under subsidized loan programs. Most of the urban land in the country is also privately owned and can be used as collateral to borrow money from financial institutions.

- **Customary or Communal tenure:** Namibia's forty-three percentage is communal land, owned by state and held in trust for local communities. The communal land is administered by traditional authority (TA) and communal land boards (CLB). They allocate land for residence, agriculture and other uses that are recognized by the Minister. The transfer of use rights in communal areas must go through traditional authorities (TA) and communal land boards (CLB). In addition, communal land cannot be sold. All communal land must be registered with communal land board (CLB), and the CLB permits joint titling of land held by married couples. Customary land rights that may be allocated in respect of communal land are: a right to a farming unit, a right to a residential unit and a right to any other form of customary tenure that may be recognized and described by the Minister of the Ministry of Lands and Resettlements (MLR, 2002)
- **Leasehold:** a right of leasehold is allowed by the Common law and the Communal Land Reform Act of 2002. Communal Land Board grants leases of communal and commercial land for a maximum period of 99 years, leases for longer than ten years are no valid unless approved by the Minister (MLR, 2002).
- **Conservancies:** Conservancies are established on commercial farms and communal areas for owners to gain rights over wildlife, and tourism activities on the land were the conservancy is situated under the 1975 Nature Conservation Ordinance that was amended by Nature Conservation Amendment of 1996 (USAID, 2010). Before the independence of Namibia in 1990, people living in communal areas had no rights to utilize the wildlife, and they had no incentives to conserve the wildlife. During this period, all wildlife belonged to the state and traditional hunting was considered to be poaching. Commercial poaching, poaching for the pot by community members, drought, and rampant poaching by South African military forces led to decline in wildlife populations. In the late 1960s, commercial farmers already had received legal rights to use wildlife, and this resulted in large-scale wildlife recoveries as well as rapidly developing game industry on private land. After the independence, legislation that gave people in communal areas equal use rights over wildlife through the formation communal conservancies to manage the resources in a sustainable way was formulated and passed in 1996. Communal conservancies facilitate livelihood diversification and rural development (Louis, M. & Denker, H., 2012). Communal conservancies are not aimed at replacing traditional livelihood activities (crop production and livestock herding) but rather aimed at providing new livelihood strategies that are integrated into existing land uses. At the same time, communal conservancies deliver significant conservation benefits through sustainable use of indigenous natural resources (Louis, M. & Denker, H., 2012).
- **Flexible land tenure:** the aims this tenure system is to address the need for urban land (for all sectors of community) by providing access to affordable land for the poorest and most disadvantaged black people in the country. The main purposes of the Flexible Land Tenure Act are: to create alternative forms land title that are inexpensive and simpler; to provide security of title for people living in informal settlements or people with low-income housing; to empower people concerned economically by means of these rights (MLR, 2012); to under pin a system of fair taxation and to establish a basis for the further upgrading of tenure overtime. Flexible land tenure provides for two tenure types:

(1) *Starter title right*; is a right to land permanently (perpetually) to use, transfer and dispose of the land as well as exclude others from the land. Starter title is an individual type of tenure, and one person is allocated a right as a custodian for a family. In the case of a group, each household within a block of erf must abide by the rules of the community laid down by a community association (MLR, 2012) and;

(2) *Land holder title right*; provide all Common law rights of ownership and can be mortgaged. It is a statutory form of tenure with a limited range of transactions associated with it, and it can be sold donated and inherited. Land hold title right is based on Cadastral map, produced on a scale of 1:1000 or 1:5000 and shows boundaries of individual plots as agreed upon by owners. It has an undivided share in the common property and a member of the association of scheme concerned (MLR, 2012).

2.4.7 Tenure insecurity in communal conservancies

The main loophole in the regulation of communal conservancy land is the lack of an effective land tenure policy. The legal framework lacks coherence and integration; hence the land policy is the reason for this sectorial fragmentation. Communal Land Act 5 of 2002, section 31(4) states that *“before granting a right of leasehold in terms of subsection (1) in respect of land which is wholly or partly situated in an area which has been declared a conservancy in terms of section 24A of the Nature Conservancy Ordinance 4 of 1975, a board must have due regard to any management and utilization plan framed by the conservancy committee concerned in relation to that conservancy, and such board may not grant the right of leasehold if the purpose for which the land in question is proposed to be under such right would defeat the objects of such management and utilization”*(MLR, 2002)

This means that in terms of land use, the rights and interests of conservancy are protected in Communal Land Reform Act (CLRA). Firstly, conservancies are required to be represented on land boards by the Act. Secondly, no leases will be allocated within conservancies by communal land boards (CLB) that would defeat the objectives of a conservancy management and utilization plans. However, the Act does not provide for the possibility of granting group tenure over land, it only grants use rights. This result in tenure insecurity and confusion, for this reason, communal conservancies are unable to enforce zonation plans legally. Zonation means to divide the communal conservancy into different land use plans. For example, if communal conservancies want to exclude non-members from wildlife and tourism zone, they do not have any legal backing. This result in non-members especially cattle herders entering the communal conservancy land with their livestock and graze in a zone defined for tourism purposes and leased out to a private operator. Due to tenure insecurity and ineffective enforcement mechanism, open access to communal conservancy land and its natural resources will remain a threat to communal conservancy long term viability tourism potential (Lapeyre, 2006). Unclear regulations continue to results in conflicts between resource rights by which it leads to degradation of tourism common if legislation does not empower communal conservancies.

2.4.8 Land Conflicts

Land conflicts may occur due to control over resources, beliefs, values or nature of relationships, and preferences and nuisances. The usual suspects are found to be in resources, equality, territory (border), dynastic legitimacy, religion, language, ethnicity, self-determination and of course revenge. And the most disputed conflict issues are territory (border), decolonization, secession, autonomy, system (ideology), international power, national power, regional power and others. However, conflicts over common and collective property can be due to: (1) competing uses or rights on common and collective land; (2) illegal or improper use of common property; (3) unauthorized sales of common or collectively owned property, and (4) disputes over the distribution of revenue from customary land (Masum, F, 2013)

2.4.9 The Ostrom's design principles

Ostrom's design principles are seen as the way forward to overcome the problems of resource use and degradation in developing countries. Many design principles have been introduced by Ostrom for common property institutions. They are the main factors for a successful Common Pool Regime (CPR) (Quin, et al., 2007) and when they are not followed or they are absent, the management regimes will be considered inappropriate. These principles were found to be useful in all the studies which were conducted by analysing institution management (Quin, et al., 2007) and where the principles were missing there seem to be failed CPRs managements as investigated by Ostrom, (Ostrom, 1990). The design principles are as follows: (1) clear defined group boundary; (2) congruent rules; (3) collective rules; (4) monitoring system; (5) graduated sanctions; (6) conflict resolution mechanism; (7) rights to organize and (8) nested units¹⁰ (for CPRs , part of larger systems). Ostrom's design principles will be uses to assess the communal land administration in Namibia.

“Common pool resources (CPRs) are natural or human-made resources where one person's use subtracts from another's use and where it is necessary, difficult, and costly, to exclude non-members of the group (community) from using the resource.”(Ostrom, 1990)

The government of Namibia has transferred administrative rights over forests, wildlife and water sources to agents at the local level (Bolling et al., 2014) with aims: (a) to democratize decision-making in rural community, (b) to make sure that sustainable management of natural resources in rural areas, and (c) to make sure that benefit of natural resources is well harvest at local level. This legal reform reflects the design principles of common pool resource management of Elinor Ostrom(Bolling et al., 2014). The principle of the CBNRM in Namibia is: “if local communities have control over the use of resources and can derive direct financial (i.e. commercial) benefit from this use, they will look after the resources carefully and use them sustainably. Common property resource design principles such external recognition, defined boundaries and membership were explicitly considered in the formation of communal conservancy registration requirements (Hoole, 2007).

2.5 Summary

In this chapter, a review of various literatures was done with views into different aspects of this research. The literature review was done in relation to literature and works that are done by other authors on different aspects of the research study in order to fulfill the research objectives. This includes: legal framework where different Acts on land, forest, traditional authority and nature conservation were discussed and policies on land and wildlife; land administration and land tenure where these topics are discussed in general and in the context of Namibia. Different tenure types that, exists in Namibia are explained in this chapter as well as tenure insecurity in communal conservancies. The establishment and recognition of communal conservancies are also dealt with in this chapter. This chapter also reviews the Ostrom's design principles that are the main factors for a successful common pool regime. All these are concepts, theories as well as processes that relates to the research and also guide the researcher to a successfully achieve the main objectives of the research study.

3. METHODOLOGY AND STUDY AREA

3.1. Introduction

The methodology employed in this research study is outlined in this chapter. This chapter discusses the research approach. The collection of data, the study area is outlined in terms of their geographical location, vegetation cover, climate, types of wildlife species. The methodology helps to provide answers to research objectives by responding to various research questions as well to issue which were noticeable during the literature review and fieldwork.

3.3 Research approach

This research used a qualitative approach because the approach; provides an understanding of the system under study or analyse, describe and map processes at work in the system (Dandekar, 2005). In addition, the following qualitative approaches such as unstructured interviews, participation observation and oral histories allow the researcher to get closer to the people that he/she is researching, and it involves extensive collection of data/information in the field. The qualitative approach researches about people's lives, their behaviours, emotions, feelings and experiences; it also researches about the functions of an organization, cultural phenomena, social movement and interactions between tribes, group or community and nations that uses methods of focus group, in-depth interviews and participation observation (Kwa and Ding, 2008). According to Kwa and Ding, 2008, qualitative approach emphasizes the importance of meeting and values held by people. Seek to understand and interpret human experience in its social-spatial context and in the context of this research. It is useful for recovering the silence voices of marginalized social group of San people whose feelings and thoughts have been ignored by the dominant discourse of powerful groups in society (Kwa and Ding, 2008). This qualitative approach is a form of inquiry where the researcher makes an interpretation of what he/she see, hear and understand.

3.3 Data collection and sample size

During the first phase of pre-field, most of the data was obtained from the literature review. References were made to journals articles, books, publications, and government documents such as Polices and Acts, and non-published papers. Fieldwork study was conducted from 26 September to 26 October 2014 in Nyae Nyae and N#ajaqna communal conservancies in Otjozonzjupa region, Namibia. Field data were obtained from communal conservancy committees and local people living within the communal conservancy. Further data collections involved key informants on the issues of illegal fencing and land invasion as well as in the institutions such as CLB and TA. These are data collected through interviews, focus group discussion and field observations.

Data was collected using sample size of 27 Nyae Nyae communal conservancy members during focus group discussion in order to get more information in short time and this is the number of those who attended the focus group discussion, 4 communal conservancy committee members from Nyae Nyae, and 6 communal conservancy members from N#ajaqna conservancies and one person/official from each organization such as MLR, MET, NNDFN, WWF/LAC representing NASCO. Thus, 41 respondents were interviewed. There was no focus group conducted with communal conservancy members of N#ajaqna due to fieldwork time limited. This sample size is viewed by the researcher as adequate because of time involved to collect the qualitative data, and transport costs as well.

3.4 Primary data

Primary data has been collected from different key informants, using group discussion to communal conservancy members and committee members. During the fieldwork, semi-structured interviews and open-ended interview questions were conducted with stakeholders (key informants). These interviews were chosen because, during semi-structured interviews, respondents are not limited to a set of pre-determined questions. Respondents can answer the question in detail and length they wish to; with open-ended interview questions, same questions were asked of all interviewees and they can answer questions as anyway they choose to respond. For this reason with open-ended interview questions, there is no 'yes/no' OR 'right/wrong' answer.

3.4.1 Interview

In order to collect data from various institutions, at national level semi-structured interviews were conducted with the MET and NGOs namely: Namibia supported CBNRM organization (NASCO), which was represented by LAC/WWF; at regional level with the MLR and regional communal land board (CLB) chairperson, and the Nyae Nyae Development Foundation of Namibia (NNDFN). Data was gathered using (written questions) questionnaires (to obtain the necessary information) that were answered by the respondents. Apart from NNDFN, the questionnaires were emailed to the director of the organization and she respondent by email too; and at local level focus group discussions were held with members of Nyae Nyae communal conservancy committee and its conservancy members (local people), and also only with members of committee of N#ajaqna communal conservancy. There was no focus group discussion with conservancy members of N#ajaqna communal conservancy. Most of the questions used during the interview were open-ended that enabled the respondents to provide more details, same questions were asked to most of interviewers and they provided answers in different ways. Conducting of the interviews helped clarify some of the questions that were not clear.

During the interview, the questionnaires were written in English, and the interviews with communal conservancy members and committee members were conducted in local language using a translator. Filling of interview question forms and notes were done in English by the researcher. It was made clear to respondents that any information provided will be treated with confidentiality, and none of the participants will be identified individually the resulting thesis. The photos shown below, in Figure 3-1 and 3-2 respectively, were taken during group discussion sessions with the communal conservancy committee and local members.



Figure 3-1: Interview sessions with committee members of Nyae Nyae on the left and N#ajaqna on the right



Figure 3-2: Group discussion session with Nyae Nyae communal conservancy members (local people)

3.4.2 Field Observations

Participant observation which is a method of collecting data for qualitative approach/researchers was conducted during fieldwork to collect data on the ground by interacting with communal conservancy members in attempt to obtain information and/or understand their problem. This method also helped to determine the affected grazing areas within Nyae Nyae and the areas affected by illegal fencing within N#ajaqna communal conservancies as Shown below in Figure 3-4 and 3-5 respectively.



Figure 3-3: Observed affected area by illegal grazing within Nyae Nyae communal conservancy



Figure 3-4: Observed affected area by illegal fencing within N#ajaqna communal conservancy

3.5 Secondary data

Document analysis

Secondary data is a type of quantitative data already collected by someone else for the study purpose. For this research, secondary data were obtained from offices in Windhoek namely; World Wildlife Forum (WWF), Ministry of Environment and Tourism (MET) and from regional office of the Ministry of Lands and Resettlements. Secondary data obtained from various institutions were: maps of Nyae Nyae and N#ajaqna communal conservancies from the World Wildlife Forum (WWF) and were used during focus group discussions, from the Ministry of Environment and Tourism (MET) Policy on wildlife and nature conservation Act were obtain along maps showing traditional authorities and disputed commons, from the regional office of MLR, map showing illegal fencing and reports were obtained along other relevant information. From the database of NASCO, shape files related to registered and emerging communal conservancies and their boundaries in Namibia were obtained as well as shape files of Namibia border and regions. Registered and emerging communal conservancies boundaries were obtained from NASCO database in a form of shape files. Other secondary data obtained from the Ministry of Lands and Resettlement (MLR) and the Ministry of Environment and Tourism (MET) are such as Communal Land Reform Act (CLRA) that explain the duties and powers of traditional authority (TA) and communal land boards (CLB) on communal land management, communal land booklet that provide information on how/why communal land should be registered, nature conservation amendment act that explains the requirements for establishing a conservancy, national land policy and wildlife policy.

Study area maps

Maps of affected areas of the study areas (Nyae Nyae and N#ajaqna communal conservancies): The polygons for these maps were digitised in Google maps, latter they were saved as kmz and exported to ArcGIS where they were transformed into a shape file. Roads were also digitised in Google Earth using the same process as explained above. Areas for Sheep and Cattle were entered in Excel sheet and plotted on the tow maps using the add data function. For the villages, each village name was typed and checked on Google Earth from where its coordinates were collected and plotted on the final map in ArcGIS.

Shape file for the study areas was extracted from NASCO data base and used in ArcGIS. Study areas (Nyae Nyae and N #ajaqna) were found from registered communal conservancies layers. The developed by creating layers from the attribute of registered communal conservancies by selecting the study areas one by one. The study areas features were then clipped from registered communal conservancy layers

3.5.1 Data analysis

Collected data in this research were analysed and interpreted, and examined in accordance with the potential solutions to questions formulated during the first phase of the research. The proposed methodology for this research is shown below. Text-based approach is used to analyse data collected from fieldwork using discourse analysis method. Discourse analysis method is chosen because it attempts to investigate deeper into the various types of written or spoken language. In other words, it looks at the way ideas and views are interpreted based on the language used to express them.

The transcription or interpretation of the interviews with officials from the government and non-organizations and focus group discussion were done using Excel in which responses from questionnaires were counted and calculated using Microsoft Excel.

3.5.2 Ostrom's design principles

3.5.2.1 Institutional arrangements

This research study uses the methodology of institutional analysis and development (IAD) framework that originated from Ostrom (1990). Ostrom emphasized that communities are capable of solving their local problems if they are given the rights to do so when using common property, and graduated, and monitoring rules can be used to influence behaviour of individuals.

Institutional arrangements in the institutional analysis and development (IAD) framework has been categorized into eight categories [(1) clear defined group boundary; (2) congruent rules; (3) collective rules; (4) monitoring system; (5) graduated sanctions; (6) conflict resolution mechanism; (7) rights to organize and (8) nested units (for CPRs, part of larger systems).

When doing institutional analysis, the IAD helps identify broader components and relationship among those components that are considered important. For this research, only the relevant institutional arrangements for the study are used. Table 3-1 below illustrates institutional arrangements from IAD framework developed from Ostrom (1990) design principles.

Institutions are referred to as sets of formal and informal rules and norm that shape interactions of humans with others and nature. They constraint some activities and facilitate others; without them, social interactions would be impossible (Agrawal, 1999).

Table 3-1: Summary of Institutional Arrangements

Institutional arrangements	Definition
Clearly defined groups boundaries	Clearly defined individuals or households that have rights to withdraw resource units from the CRP and clearly defined boundaries of the CRP itself
Monitoring	Monitors who audit CPR conditions actively, and appropriators behaviour that are accountable to appropriators or are appropriators(Ostrom, E., 1990)
Conflicts resolution mechanism	Appropriators and their officials have rapid access to low-cost conflict resolution mechanisms to resolve conflicts among appropriators, between appropriators and officials (Ostrom, E., 1990)
Graduated sanctions	Appropriators who violate operational rules are assessed on the severity of their infractions (depending on the seriousness and the context of the offense) by other appropriators or officials accountable to these participants or both(Ostrom, E., 1990)
Congruent rules	Appropriation rules restricting place, time, technology and quantity of resource units are related to local conditions.
Minimal recognitions of rights to organize	External government authorities respect the rights of appropriators to devise their institutions

Source: (Ostrom, 1990)

This research study used variables, based on the institutional factors, both formal (e.g. Government policies) and informal (e.g. Customary) that affect the management of natural resources within communal conservancies of Nyae Nyae and N#ajaqna. The variables are developed from Institutional Analysis and Development (IAD) framework. In order to understand how communal conservancies (Nyae Nyae and N#ajaqna) are organized and how they operate, the researcher is helped by these variables. The variables that affect the management of communal conservancies (Nyae Nyae and N#ajaqna) among others include, conflicts resolution mechanisms, congruence rules, monitoring, and graduated sanctions.

Table 3-2: Variables used for analysing institutional factors on communal conservancies (Nyae Nyae and N#aJaqna). The variables are developed from Ostrom (1990) design principles.

Variables	Definition	Indicator	Measure
Clearly defined groups boundaries	Defined boundaries and rules about who has access to a common resource pool: the boundaries of the resource and specification of individuals or households	Existence of clearly defined boundaries, e.g. excludability	1 = Yes 2 = No
Monitoring	Monitoring and enforcing the rules	How are the rules enforced to monitor members?	1 =Conservancy 2 = State
Conflicts resolution mechanism	Conservancy members have access to low-cost resolution management	Conflict resolving management	1 = no conflicts 2 = conflicts
Graduated sanctions	Violators of rules are given sanctions/penalties	Fines or charges	1 = Yes 2 = No
Congruent rules	Rules that govern the use of collective resources	Any rules prohibiting non-members from using natural resources	1 = Yes 2 = No
Minimal recognitions of rights to organize	The rights of community members/resource users to devise their rules are respected by external authorities.	Decision-making body	1 = Yes 2 = No

3.6 Background of the study areas

Otjozondjupa Region is located in central of Namibia, and is one of the fourteen regions of Namibia and its capital is Otjiwarongo. Otjozondjupa region has a size of 105,460 km² and a population of 143,903. The people who live in this region are Hereros and San (Bushmans). Waterberg Plateau Park, which is one of the best-known tourism attractions, is located in Otjozondjupa region. Otjozondjupa region is home to eight communal conservancies namely Nyae Nyae, N#aJaqna, Ozonahi, and African wild dog, Ondjou, Okamatapati, Ovitoto and Otjituo. Figure 3-6 and 3-8 below show study areas 1 and 2. This research will mostly concentrate on two conservancies (Nyae Nyae and N#aJaqna conservancies) located in the Tsumkwe constituency. Tsumkwe constituency has a high concentration of San population, and it is one of the places in Namibia where the San population is in the majority. The constituency is divided into Tsumkwe east where the Nyae Nyae communal conservancy is located and Tsumkwe West where the N#aJaqna communal conservancy is located. However, parts of the Tsumkwe constituency do not fall within either conservancies, this includes the Tsumkwe town itself. These two communal conservancies were chosen because of the on-going thread by non-members and cattle herders

3.6.1 Study area 1: Nyae Nyae communal conservancy

The majority of the people living in Nyae Nyae belong to the San group called *Ju/'hoansi* and the name for Nyae Nyae is *N//oaqlae*, meaning 'place of broken rocks' (Hays et al., 2007). Prior to 1960, 250 *Ju/'hoansi* San people of Nyae Nyae were living semi-permanently in Tsumkwe District, and by 1993, the number of people living in this District increased to around 5700. Nyae Nyae communal conservancy has relatively homogenous population.

The Nyae Nyae communal conservancy was established in 1998 and one of the first conservancy to be created over communal land as well as one of successful conservancy in Namibia. It is situated within the traditional authority Lands of the *Ju/'hoansi* and has an area of 8992 km² and an approximate population of 2667 people. These *Ju/'hoansi* San people have the rights to manage their resources and promote tourism such as safaris and trophy hunting. They are allowed by the government of Namibia to hunt traditionally with bow and arrows hence they are the only San people that have this right of hunting under the Namibian law in the country. Nyae Nyae is a community-based organization that has received significant support in the past from both government and non-governmental organizations. The nearest town from Nyae Nyae is Grootfontein and is 265 km to the east on road C44. The border with Botswana is 57 km to the east also on the C44 road. People in this communal conservancy live in 38 small villages based on the *Ju/'hoansi n!ore*. *N!ore* is a territorial system in which land belongs to a family, it was an area of land that provide enough game, bush/wild food and water to 30-50 people. *In n!ore*, rights of residence were inherited from both parents and individuals also gained rights in other *n!oresi* (plural for *n!ore*) through marriage (Hays et al., 2007). The word for 'rights; in *Ju/'hoansi* language is '*tsosisi*' and chief Bobo (the chief of the *Ju/'hoansi* San people of Nyae Nyae communal conservancy) defines its concept as rights to own land, rights to the area that you are staying, and rights to hunt animals-but you have to do it in a way that you do not finish all the animals"(Hays et al., 2007). He continues to say that the rights of the Nyae Nyae *Ju/'hoansi* in respect of conservancy area does correspond with previous *n!ore* land tenure system:

In the past people had to know who owns what land and people got their own rights to land. By saying this one owns here, that one owns there. It's the same thing today; there is no conflict between them. Today, someone cannot come without permission to come into the place (the conservancy). The rules are the same for the n!oresi." (Hays et al., 2007)

In general *n!ore* include a small village and each village is referred to by the name of the applicable *n!ore* in Nyae Nyae communal conservancy. The Nyae Nyae *Ju/'hoansi* community has a recognized traditional authority (TA) and a chief, his name is Tsamkxao | Oma also known as 'chief Bobo' to the community.

Nyae Nyae conservancy co-manage their natural resources with Kaudom National Park which is located in the north of Nyae Nyae communal conservancy. This study area 1 is situated in northeast Namibia, bordering Botswana to the east, N#ajaqna communal conservancy to the west, Kavango Region to the north and to the south veterinary cordon fence known as "Red Line". The Red line is established by the Ministry of Agriculture, Water and Forestry (MAWF) to prevent the movement of animal diseases from entering the recognized livestock zone of Namibia. By combining Nyae Nyae communal conservancy with the 3842 km² of Kaudom National Park, the incorporated joint conservancy/Park is approximately 13000 km². Study area 1 is depicted in Figure 3-6 below.

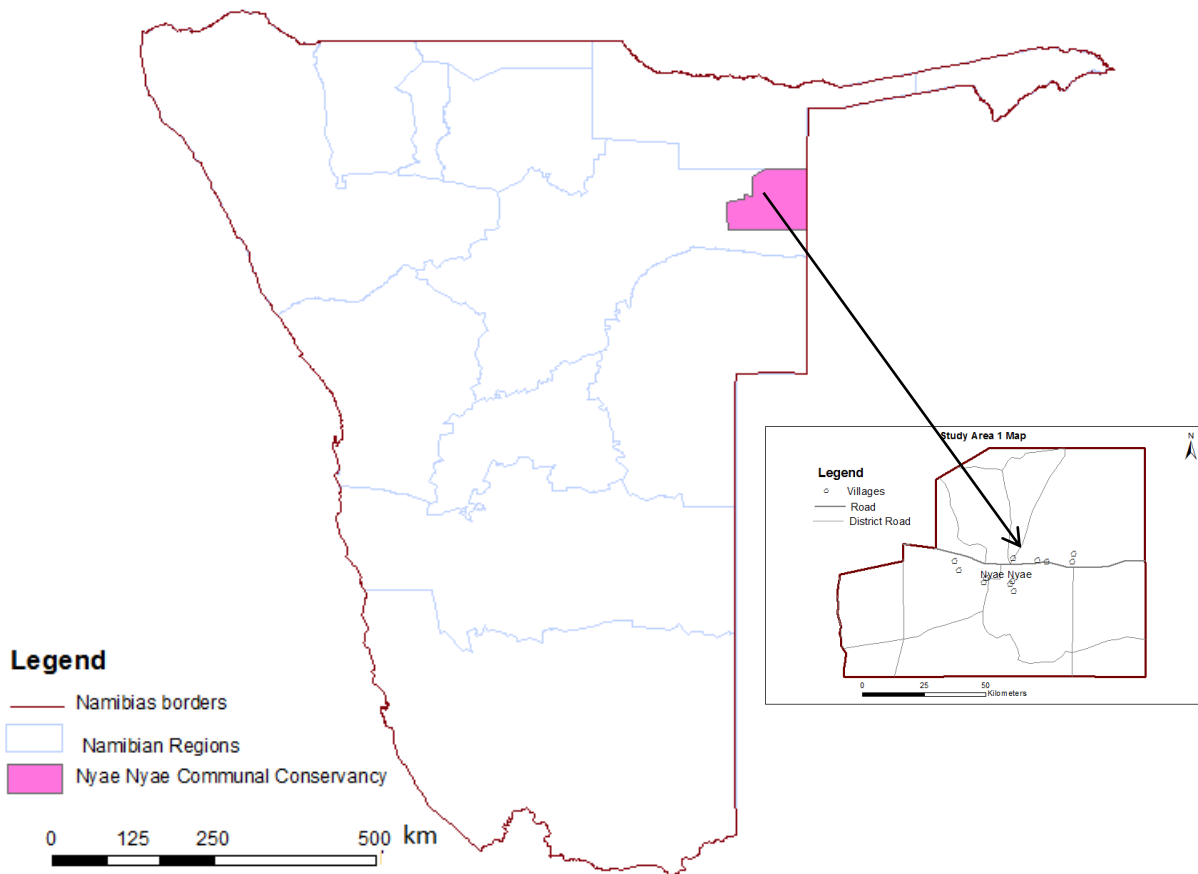


Figure 3-5: Study area 1: Nyae Nyae Communal Conservancy

Physical Characteristics:The annual rainfall is between 400 mm and 500 mm per year, however, rainfall duration and distribution varies over years. The average temperature is between 27 °c and 37 °c maximum and 10 °c and 20 °c minimum. The natural vegetation cover around Nyae Nyae communal conservancy is mostly trees and shrub savannah and acacia woodlands which are located around several large water pans. These water pans normally become full during good rainy season.

Nyae Nyae conservancy is home to many different wildlife game species namely; lion, Oryx, wildebeest, kudu, springbok, eland, duiker, hartebeest, giraffe, steenbok, buffalo, reedbuck, warthog, leopard, roam antelope, cheetah and elephants (NASCO, 2012). Bush/wild foods are foods collected from the bush in both study areas and form an important part of the communal conservancy community diet. They are referred to hunted meat and collected plant food. People in these communities consume a variety of veld foods and the most important eaten daily or occasionally are wild sweet potatoes, water roots, wild onions, baobab fruits, mangetti nuts, berries, roots and mopane worms. Sometimes hunted meat, such as kudu, eland, springbok and antelope are also veld foods that are occasionally consumed. Bush/wild foods that are consumed are shown in Figure 3-7 below.

Education: the Nyae Nyae, Ju/'hoansi are the only San people in all of Southern Africa with an opportunity to have village schools. The schooling is for a period of three years and the students are taught in their mother tongue. The village schools were initiated by Nyae Nyae Development Foundation of Namibia in Nyae Nyae villages and there are currently six schools. The village schools are run as government schools, with the support of the Namibian Association of Norway (NAMAS) and provide education for learners from Grade 1 to Grade 3. Despite the village school project, education is a problem and very few of the learners have obtained formal education certificate (Hays et al., 2007). Many of the younger people drop out of school even before reaching grade 2 or completing primary school. (Hays et al., 2007).



Figure 3-6: Hunted meat and wild berries (Hays et al., 2007)

3.6.2 Study Area 2: N#ajaqna communal conservancy

In December 2003, N#ajaqna communal conservancy was registered with the ministry of environment and tourism (MET). 'N#a' is Omatako omuramba in local language and it means "dry river bed in English and 'Jaqna' is Nhoma omuramba. N#ajaqna communal conservancy is located in the !Xun traditional authority (TA) and is one of the largest communal conservancy in Namibia with an area of 9120 km² and an approximate population of 3619 inhabitants. Unlike Nyae Nyae, N#ajaqna communal conservancy has a heterogeneous mix of people with the majority settled in the area in 1970s. Before 1960, the area where N#ajaqna communal conservancy is located was entirely uninhabited due to low water table in the area. According to Jones et al. (2012) there were few Ju/'hoansi families living along *Omatako Omuramba*, the eastern part of the communal conservancy and a small population of !Xun San were living along the Omatako in Tsumkwe West, today known as N#ajaqna communal conservancy. In 1970, Bushman land was officially proclaimed by the South West Africa administration as land for the San and this administration planned to resettle all San people of Namibia in this homeland and did not have the right to oversee their own affairs. At this time, San people of the Ju/'hoansi were living in the eastern part of the homeland and that was part of their traditional territory, (today known as Nyae communal conservancy) while some of the !Xun San people were living in western bushman land, Western Tsumkwe (today known as N#ajaqna communal conservancy) (Hays et al., 2007). In 1978, about 1000 !Xun San people were resettled in N#ajaqna communal conservancy particularly in the area of Mangetti Dune from the Kavango region by the South African Defence Force (SADF), the resettled population grew quickly and by the time of the independence of Namibia there were about 3000 people (men, women and children) living in N#ajaqna communal conservancy. The SADF personnel were training and at the same time recruiting the San. In order for the San to become economically sufficient in the long term, roads

were built and boreholes drilled focusing on settling family groups with their livestock around those drilled boreholes (Hays et al., 2007).

N#ajaqna communal conservancy has a mixed of people namely; the !Xun, Khwe, Ha//om, Herero, Kwangali and Wambos and they employ mix livelihood that are a combination of agriculture and livestock production, income cash from piecework, Devil's claw sales and crafts. They do also have small herds of goats, cattle and donkeys. People in N#ajaqna communal conservancy do practice collection of bush/wild foods for their livelihood, however, Nyae Nyae communal conservancy San people harvest more wild food because of better access to the bush and great abundance of bush/wild food. Figure 3-8 below shows study area 2.

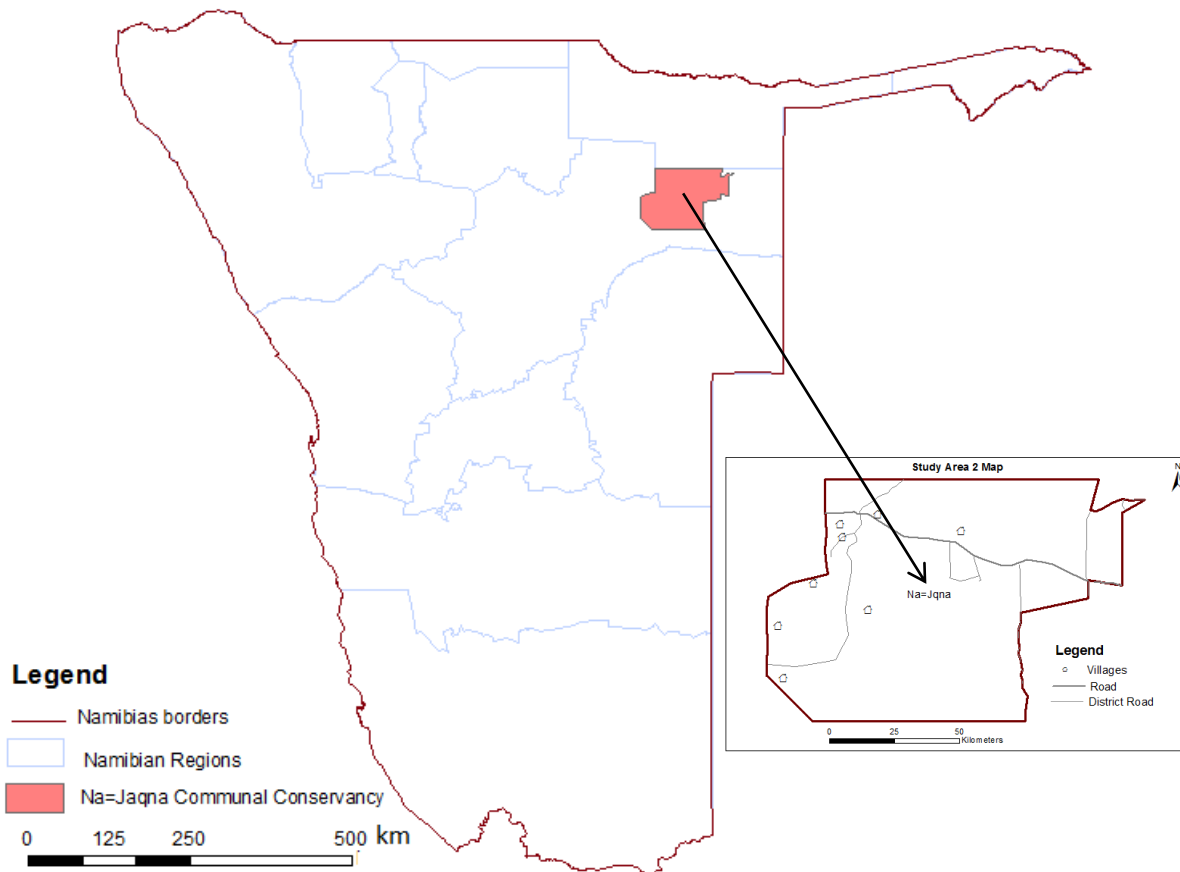


Figure 3-7: Study Area 2; N#ajaqna Communal Conservancy

Physical Characteristics: The annual average rainfall is between 400mm and 500mm and surface water is scarce, groundwater deep. Average daily temperature is between 10 °C minimum and 37 °C Maximum. N#ajaqna communal conservancy is covered with acacia woodland soils, which is called Kalahari sand and the main types of vegetation are savannahs and woodlands. N#ajaqna communal conservancy is home to typical wildlife species such as eland, elephant, Oryx, giraffe, kudu, blue wildebeest, cheetah, leopard and wild dog. The population of wildlife in this conservancy is not rich in number and diversity compared to Nyae Nyae communal conservancy. Bush/wild food in N#ajaqna communal conservancy are not gathered as an important part of the community's diet, but are collected as a strategy to address hunger in case there is no other available and sufficient food. People in this communal conservancy walk far just to look and find for this wild/bush food, and sometimes spent nights in the bush.

Education: Mangetti dune which is part of N#ajaqna communal conservancy has primary school with Grade 1-7 and two hostels that accommodated about 150 learners. Luhebo village has a kindergarten, and for primary school, learners have to go and attend at Mangetti dune primary school. For secondary school learners from N#ajaqna communal conservancy go to the town of Tsumkwe to attend secondary school. According to Jones et al. (2012), Tsumkwe schools were problematic that resulted in many San learners dropping out and the level of education within communal conservancy is much below the national average; 62% of San household heads had not received any formal education; and most of the learners who complete Grade 7 drop out instead of travelling outside of the conservancy for further studies (Hays et al., 2007)

3.7 Summary

This chapter outlined methods used to collect data (interviews, group discussions and observations), types of data collected and methods used to analyse collected data. During the fieldwork, data were collected from different key informants such as government officials and non-governmental officials and members and committee members in the two study areas (Nyae Nyae and N#ajaqna communal conservancies). The chapter also described the two study areas about their location, history and population. Some of the physical characteristics and some of the socio-economic characteristics were also discussed in this chapter.

4. RESULTS

4.1. Introduction

The previous chapter 3 described the research methodology such as data collection techniques, method used and types of collected data. This chapter focuses mainly on the three sub-objectives: (1) communal land administration in relation to communal conservancies, (2) land uses and land conflicts in the two study areas, (3) the role of (group) land tenure security in the two study areas (Nyae Nyae and N#ajaqna communal conservancies), and (4) Ostrom design principle in relation to the two study areas. This means that, it presents findings/results on land rights of the two communal conservancies, on land conflicts (illegal fencing and invasion by cattle herders) and the impact of these land conflicts on the two communal conservancies. The results of the research are discussed below according to each objective. Comparison of Ostrom's design principles will also be presented in this chapter.

4.2 Communal land administration in relation to communal conservancies, Nyae Nyae and N#ajaqna

4.2.1 Institutions involved in communal land administrations and their responsibilities

The institutions involved in communal land administrations are: (1) the Ministry of Land and Resettlement (MLR) that was created for the purpose of planning and administration of lands in Namibia. The main objective of the MLR is to eradicate the inequalities in land distribution as well as to provide for resettlements of Namibia's disadvantaged and it is divided into the Directorate of Land Reform that is in charge of land acquisition for resettlement and formulates development plans for rural areas. The MLR is responsible for the administration of the whole state land including communal areas that are managed by the division of CLB, Division of Land Use Planning and Allocation is also part of the MLR and it is responsible for the development of plans for commercial and communal land uses, Directorate of Deeds Registry and the Directorate of Survey and Mapping that supports land use in urban areas, MLR has the responsibilities of assisting the Communal Land Board, keep register of all land rights and verify applications for land parcels, produce registration certificates and verify that all applications are submitted, surveyed all land parcels and the minister is responsible for setting maximum land sizes that may be allocated.; (2) the Communal Land Board (CLB) that was created under the MLR and has the responsibilities of controlling customary land rights allocation and/or cancellation of land rights that are allocated by TA or chiefs. CLB decides on approval of leasehold rights, establish and maintain registers where all allocations, cancellations and transfer of leaseholds rights and customary land rights are kept, advice the minister concerning the objectives of Communal Land Reform Act (CLRA); and (3) Traditional Authorities (TA) or Chiefs that have the power to allocate and/or cancel customary land rights, give consent for registration of leasehold rights, they determine on the size of land and boundaries for which the rights are to be allocated/granted.. These are the institutions involved in communal land administration in Namibia generally.

In addition, since 1990 a legislative policy to support the introduction and development of communal conservancies has been pursued by the MET and the following institutions are also involved with the administration of communal land with regards to communal conservancies: (4) the Directorate of Forestry under the Ministry of Agriculture, Water and Forestry is responsible for forests in the country and it is divided into Forest Management and Forest Research. Forestry Council includes members from MAWF, MLR, council of Traditional Leaders, and two Farmers' Unions. It was observed that the communal conservancies are managed by two different ministries; the MLR and the MET, each ministry has its policy and regulations.

4.2.2 Policies and regulations applicable to communal land in the study areas

After the independence, Namibia inherited skewed land ownership. Colonial white farmers owned most of the and in order to redress this problem of skewed land ownership, Land Reform process was started in 1990. And resulted in the development of land policies such as National Land policy and Communal Land Reform Act No. 5 of 2002 with aims to address land administration issues, to provide communal areas with tenure security, establish the role of TA in land allocation and CLB functions

Communal Land Reform Act, 5 of 2002, has the mandated to regulate TAs and their powers over CLBs are established to control the allocation of customary/communal land rights by TA. The communal land boards (CLB) have the power to record, grant and cancel any land rights allocated to the traditional land.

Traditional Authority Act of 2000 recognizes TAs as legal entities that consists of traditional leaders as approved by the TA that defines the powers and duties of the traditional leaders to their communities

The wildlife policy allows residents living in communal areas, to form common property resource management institutions called “conservancies.” The formation of communal conservancies in communal areas is allowed by the Nature Conservation Amendment of 1996 and any group of people persons who live in communal areas can apply for their land and/or part of their land to be declared a ‘conservancy’ by the MET and have rights over wildlife/game only and not over the land itself.

The Forest Policy and the Forest Act of 2001 protect the forests and purpose of the Forest Policy is to protect and make the forest productive in order to improve the economic welfare of rural communities while the Forests Act No.12 of 2001 that was amended by Forest Amendment Act No.13 of 2005 is through which the Forest Policy is implemented. The use of forests resources such as wood, grass, bush fruits and the responsibilities of the users are stipulated in the Act of Forestry.

4.2.3 Organization responsible for the allocation of land in communal areas

One of the aspects assessed was the ownership of land and the allocation of land in both study areas. Respondents were asked, to who belong the communal conservancy land and who allocated land in both study areas. From the table4-1 below, it shows that most of the respondents believe, that the land belong to people/conservancy members, this is the responses from Nyae Nyae communal conservancy because they think they have lived on it for a long time. Those from N#ajaqna together with responses from officials think that the land belongs to the government. Both respondents stated that the allocation of land or portion of land in both study areas is carried out by the traditional leaders.

For this reason, the chief or the traditional leader have power to allocate and cancel customary land rights according to CLRA part 1 section 20 in respect of any portion of land. The CLB ratifies the allocation in accordance with the provision of Section 24 of the CLRA. The chief or the traditional leader notifies within 30 days the CLB of allocation/cancelling of land. After that, the CLB ratifies the application and returns it back to TA. CLB also have the responsibility to maintain the registry of communal land rights, register leaseholds interests and issue leaseholds to applicant.

Table 4-1: Responses on allocation of land in the two study areas

Assessment tools	Responses	Frequency(N=41)
Who owns the communal conservancy land?	Government	10
	Traditional authority	0
	Chiefs	0
	Local people Members	31
Who allocates land in communal conservancy?	Government	0
	Traditional leaders	41
	Local people (members)	0

4.2.4 Conflicts resolution mechanisms applied in case of land conflicts

In Namibia, especially in communal land areas, land conflicts over customary land rights are resolved by traditional authority (TA). In the case of the two study areas, they have no legal authority to resolve the land conflicts in their areas. But, if someone in communal area, or if a person is unhappy with the decision made by TA and Communal Land Board (CLB) about the land allocation, he/she can appeal to land tribunal appointed by the minister. This is a speedy process, but the person needs to appeal within 30 days. The land conflicts in both study areas are not yet being resolved as the government is slow/not acting, and the conservancy members that are the San people are mostly fearful to face (non-conservancy members) these people head-on or face to face. But people in communal areas use the means of traditional authorities to resolve the disputes by which they consult traditional authority (TA) and non-governmental organization (NGO) such as Legal Assistant Centre (LAC). Communal Land Board (CLB) has the permission to hear the land disputes in corporation with local TA and serve as appellate tribunals for those contesting the ruling of a tribal leader (USAID, 2010).

Table 4-2 below shows that most of the respondents are not aware of any land conflict resolution in both study areas. Only three respondents out of forty-one mentioned that there is no conflict resolutions mechanism in place in both study areas, the rest have no idea. However, conservancy member from N#ajaqna communal conservancy do report their cases to the traditional authority unlike conservancy members from Nyae Nyae communal conservancy who do report their cases to conservancy committee members.

There are no legal set-ups of mechanisms for conflict resolution in both study areas. Since Nyae Nyae and N#ajaqna communal conservancies have no legal authority to resolve land conflicts, government is slow/not acting and the San people are fearful of facing these people (invaders) head-on. Land conflicts over customary land rights in communal areas across the country are resolved by traditional authorities (TA). This is called customary dispute resolution system that consists of respected people who have traditional knowledge, values as well as cultures norms that they employ to bring equity and justice to the community. The complainant approaches the traditional authorities to report his/her case, and the TA invites the offending party to the traditional court where he/she is asked to apologize or make restitution. This is a very cheap approach because it is located within the community and community members/parties do not need to pay anything or incur travel cost. The traditional authority sometimes consults the non-governmental organization such as Legal Assistance Centre (LAC), and the CLB is only allowed to hear land disputes and serve as appellate tribunals for anyone who may contest the traditional leader's ruling.

Table 4-2: Conflicts resolutions mechanisms in both study areas

Assessment tools	Responses	Frequency(N=41)
Is there any conflicts resolutions mechanism in the two study areas?	Yes	0
	No	3
	No idea	38
To whom to you report land conflict case?	Traditional authority (TA)	6
	Communal land board (CLB)	0
	Conservancy committee members	31
	No idea	4

4.2.5 Summary

Lands in communal areas of Namibia are governed by Communal Land Reform Act (CLRA) of 2002 that authorizes Traditional authority (TA) in conjunction with Communal Land Boards (CLB) to allocate and administer land in communal areas. Communal Land Reform Act caters only for customary registration of residential and farm plots in communal areas and not for common property rights. The government of Namibia devolved authority to communal conservancies to manage natural resources sustainably by granting them ownership of wildlife/game. Yet, the land, where communal conservancies are situated does not belong to them. They have use rights with little if not security or certainty. Common property rights are clear policy framework, and when absent, it is, therefore, difficult for local communities, government and those working with them to develop clear strategies for these areas. This problem or dilemma is felt mostly in communal conservancies. Traditional leaders/chiefs play an important role in allocation of land use, mobilizing their communities for development and solving land conflicts. Communal land board (CLB) and Traditional authority have the permission to hear the land disputes and serve as appellate tribunal to those contesting the rules of a tribal leader or chief. However in case of any land conflicts conservancy members of Nyae Nyae report the case to conservancy committee while conservancy members of N#ajaqna report the case to traditional authority (TA). This shows that, there is a lack of formal conflicts resolution mechanisms in both study areas. Since the communal conservancies are governed by the ministry of lands and resettlement (MLR) and the ministry of Environment and Tourism, they compete over the use of the same land. And although the conservancy and forest legislations are originate from the same ministry, they are different pieces of legislations.

4.3 Land uses and boundary conflicts in Nyae Nyae and Na#Jqna communal conservancies

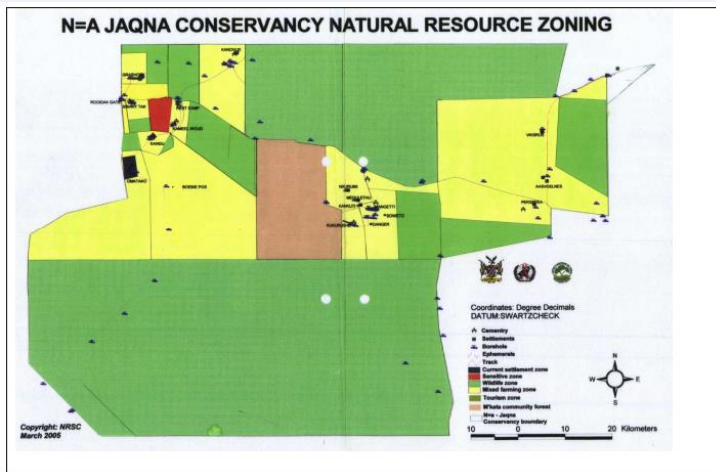
Land uses are constrained by the type of tenure for example customary land rights allocation are only for residential and crop production, and leasehold rights are for commercial land use as stated in CLRA. Therefore the majority of the people living in communal areas in general cannot use their land for income generation unless they convert their land to leasehold rights which is a long process. Residents who, wants to subdivide their land for the purpose of generating incomes, also face the same obstacles, this limits initiatives in communal areas when someone who owns the land is willing to use his/her land for a different purpose.

4.3.1 Land uses and land distribution in the two study areas

When planning for land use in communal conservancies, the needs for conservancy members to grow crops and of wildlife to move freely across the land have to be considered. It is believed that zoning communal conservancies for different land uses reduces conflicts significantly. The wildlife corridors also allow movement of wildlife species between seasonal ranges whereby reducing local pressure. Though many communal conservancies have zoned their land, they are constrained because they do not have legal powers in order to enforce these zones and they cooperate with TA and regional CLB to ensure that zonation is enforced. All the land uses in the two study areas are divided into zonation hence there is no land use that is not divided in zones.

Land uses in these two communal conservancies, study areas are divided into zonation and the purpose of zonation is to make sure that the land produces the optimal potential for the vision of these communal conservancies to be achieved and benefits to members. The sizes of the zonation are not known. Zonation and management plans are consultative documents only therefore communal conservancy communities have de facto, no legal authority. This led to sustainability of the tourism commons being threatened. Land use management zones of Nyae Nyae communal conservancy are illustrated in a map in Figure 4-1 and Land use management zones of N#ajaqna communal conservancy are also illustrated in a map in Figure 4-2 below.

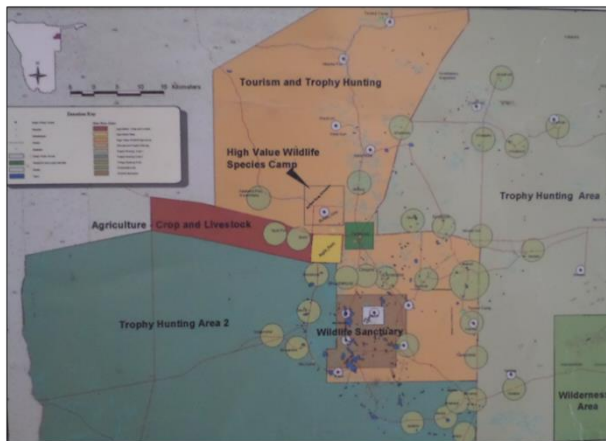
Figure 4-1: Land use management zones in Nyae Nyae communal conservancy (NASCO, 2012).



The **orange** colour on the map represents *Tourism and Trophy hunting zones*: for tourism activities such as game viewing, bird-watching, and cultural tourism, **blue** and **light blue** colours on the right and left of the map represents *Trophy hunting zones 1 and 2*: two hunting zones are allocated so as to maximize returns from trophy hunting to the Nyae Nyae communal conservancy, **red** colour represents *mix farming zone*: commercial farming of livestock and crop for those who want to practice or set up commercial farming ventures. **yellow**

colour represents *agriculture farm*, the **light green** colour on the bottom right represents *Wilderness zone*: that provides an area for tourists to undertake ‘wilderness trails’ where they can experience unspoiled nature and rejuvenate from the rigours of city life, **light brown** colour represents *wildlife sanctuary*: provide a where disturbance to wildlife is minimized in order to ensure optimal breeding, the **green** colour in the centre represents the *town of Tsumkwe* and the **light green** circles represents *village farming area*: for settlements and subsistence farming. Currently there are 36 villages around Nyae Nyae communal conservancy.

Figure 4-2: Land use management zones in N#ajaqna communal conservancy (NASCO, 2012)



Green colours on the map represent *wildlife zones*: for wildlife and eco-tourism activities such as collection of veld food, devil’s claw and medicine plants, **yellow** colour represent *mixed farming*: practice of livestock and crop farming production, **red** colour represents *sensitive zone*, black colour represents current *settlement zone*: for settlement and subsistence farming, **bright green** colours represents *tourism zone*: area for tourism development e.g. rest camp and light brown colour represents : community forest.

4.3.2 Main land use conflicts and their nature in the two study areas

Since communal conservancies only have the rights over wildlife and tourism and do not have land rights and rights over grazing land, forest and water, thus, there is always competition in land use between conservancy members and non-conservancy members and between the needs of wildlife and livestock grazing which leads to conflicts in both study areas. The most common conflicts in both study areas is with livestock of non-conservancy members who claim grazing rights over areas that are within the communal conservancies. Livestock and wildlife come into conflict because both often use the same resources such as water and graze. Many government officials included view communal conservancies as an empty land and not used by local people/conservancy members, hence, it is available for use by

others/non-conservancy members. Fencing of land in the two study areas affect the sustainability of wildlife by cutting off the migration routes of different kinds of species of game.

In N#ajaqna communal conservancy, non-conservancy members most of them commercial farmers and wealth elites (even government officials) have been erecting illegal fences and settled illegally. Over 26 000 hectares of land was discovered to have been illegally fenced-off in July last year in N#ajaqna communal conservancy and 37 fences were found to be illegally erected by farmers (non-conservancy members) in the Omatako and Janju areas which are part of N#ajaqna communal conservancy. The total communal area fenced off in these areas was 33 000 hectares. 77 fences were also found in areas of Mangetti Dune, Kano Vlei and Boebie which are also part of N#ajaqna communal conservancy and cover approximately 26 000 hectares of the communal conservancy land. The smallest portion of land to be fenced off within N#ajaqna communal conservancy is four hectares and the largest portion of land to be fenced off is 6 600 hectares. However, the smallest portion of land fenced off in Omatako and Janju areas (N#ajaqna communal conservancy) was 36 hectares and the largest 5 732 hectares. The problem of land use conflict in this area started some years ago and has been worsened by the death of the former Chief and self-proclaimed acting chief in the Omatako area of N#ajaqna communal conservancy is accused of being selling portions of land to non-conservancy members without authority. The illegal fencing off of land restrict conservancy members' movement, they have no access to bush/wild food, grass and to the area where to harvest devil's claw. It also restricts the movement of game and trophy hunting. Illegal settlers and fencers who enter N#ajaqna communal conservancies are from the following regions: Oshikoto, Ohangwena, Omusati, Kavango, Oshana, Otjozondjupa and Khomas Region.

This problem of illegal fencing in this study area is now in the hands of the regional communal land board under the ministry of lands and resettlements and the CLB found that some of the non-conservancy member in this study area have letters of permission from the traditional authority and this makes it difficult for the CLB to intervene because the Act clearly states that the TA have the power to give rights for grazing and the CLB, MLR and TA can only intervene when it comes to illegal fencing off of land. This is what they did in N#ajaqna communal conservancy. They identified the illegal fences and mapped them, then they look at data they have to see which fence is illegal and which is not. Meaning, any fence erected before the enactment of CLRA of 2002 is not illegal but fences erected after the enactment of the CLRA of 2002 are illegal. Letters, 106 in amount were written to all non-members who fenced off the land illegal to remove their fences and 50 % have removed their fences voluntarily. According to respondents, this, have cut the cost of the state significantly because if they haven't removed those fences, the state would have to step in and this would cost the state a lot of money. For those who did not yet remove their fences to date, the MLR is going to write a final warning letter or will be issued with notices which will be valid for 30 days after the notices in order for them to be able to appeal to the CLB or remove their illegal fences.

In Nyae Nyae communal conservancy, Herero cattle herders from neighbouring Gama area invaded this study area and have been grazing without permission for several years now by. They cut the veterinary Gordon fence and entered the study area whereby they exploit illegally the communal conservancy resources mainly grazing, firewood and water. Sometimes they are involved in illegal hunting whereby they use their cattle as cover up and their cattle also destroy housing, farming and water tanks that belong to conservancy members. The cattle also destroy wild/bush foods and the devil's claw that they harvest. The conservancy members are unable to evict them because they are fearful of them. In N#ajaqna communal conservancy, non-conservancy members most of them commercial farmers and wealthy elites (even government officials) have been erecting illegal fences and in Nyae Nyae communal conservancy Herero cattle herders have been grazing without permission for several years now and the conservancy members are unable to evict them because they are fearful of them.

As it can be seen from table 4-3 below the survey result shows that most of the respondents are aware of land conflicts in both study areas and believe that non-conservancy members moved into the two study areas because they have overgrazed their own communal land areas and the natural resources especially grass in the two study areas attract them. Now they are grabbing land from others who they believe will not fight them back unlike other ethnic groups who would have driven them away. The other reason from

one of the respondent as indicated in table 4-3 was that non-conservancy members maybe moving into both the study areas for the reason that it is a conservancy in order to receive benefits. Many government officials included view communal conservancies as an empty land and not used by local people/conservancy members, hence, it is available for use by others/non-conservancy members.

Figure 4-4 below shows the affected areas in the two study areas. That is the villages where illegal gazing is taking place in Nyae Nyae communal conservancy and areas where land is being fenced off illegally in N#ajaqna communal conservancy.

Table 4-3: Land use conflicts in both study areas

Assessment tools	Responses	Frequency(N=41)
Are you aware of any case of land use conflicts in both study areas	Yes	41
	No	0
What are the major sources of land conflicts in both study area?	Grazing	27
	Illegal fencing	6
	Both (illegal fencing & grazing)	8
Why do non-conservancy members move into both study areas?	Grazing	40
	Benefits	1

The green circles in study area 1 on the right (Nyae Nyae communal conservancy) represent villages where illegal cattle grazing is taking place, where there is green and red circles together, it means that horses and cattle are grazing illegally in that village. Polygons in study area 2 (N#ajaqna communal conservancy) on the left represent the places with illegal fences.

Figure 4-4 below depicts the illegal fences as mapped by the MLR. From the two Figures 4-3 and 4-4, it can be observed that there are no big differences in areas where the illegal fences are taking place in N#ajaqna communal conservancy. In fact, the observed illegal fences areas observed during fieldwork correspond to the mapped illegal fences by the MLR.

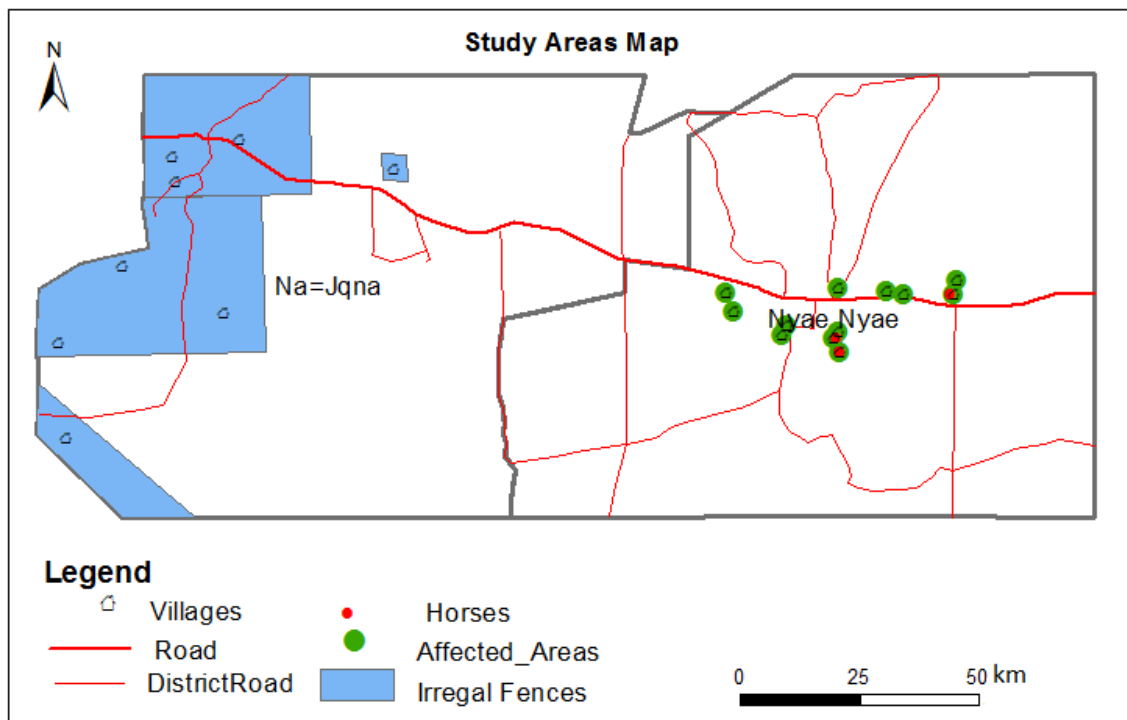


Figure 4-3: Affected areas by illegal grazing in study area 1 (Nyae Nyae) and affected areas by illegal fences in study areas 2 (N#ajaqna) as observed during fieldwork.

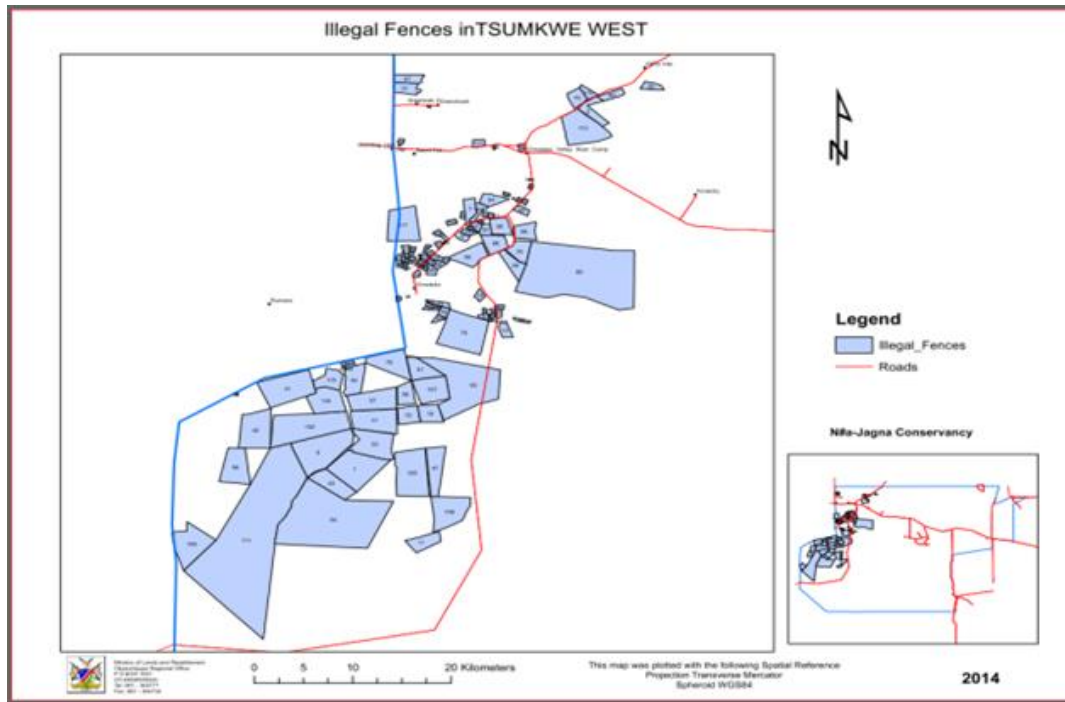


Figure 4-4: Illegal fences mapped by the MLR in N#Ajaqna communal conservancy (Tsumkwe West) (MLR, 2012)

4.3.3 Formal boundaries of the study areas: same as the perceived boundaries and are boundary conflicts part of land use conflicts.

Local communities are persuaded to establish corporative entities with a formalized membership, a well-defined territory of ‘jurisdiction’, representative forms of internal leadership, and detailed management plans. When a conservancy is set up, there is a long consultative process in the conservancy and with neighbouring community/conservancy, to ensure that the boundary is acceptable to all parties. Conservancies are developed within communal lands and/or freehold lands, thus the Nyae Nyae communal conservancy was created within communal land of the Ju/hoansi communal land under chief Bobo and the N#Ajaqna communal conservancy within the !Kung communal land under the late chief Arnold.

The responses from most of the respondents, is that, they have no idea about the boundaries of both study areas. According to some of the respondents, the formal boundary is the same as the perceived boundary in Nyae Nyae communal conservancy however the formal boundary is not the same as the perceived boundary in N#Ajaqna communal conservancy, because of some people from neighbouring Kavango Region who are inside the conservancy while the formal boundary is far behind them as its depicted in Figure4-3 below.

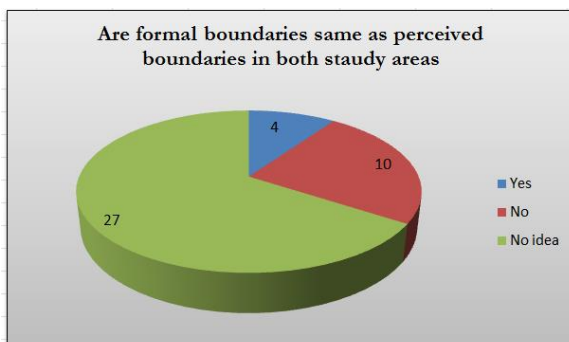


Figure 4-5: Formal boundaries vs. perceived

4.3.4 Summary

Land uses in the two communal conservancies, are divided into zonation. Nyae Nyae communal conservancy is divided into seven zones namely: *tourism and trophy hunting zones, trophy hunting zones 1 and 2, mix farming zone, agriculture farm, wilderness zone, wildlife sanctuary, and village farming areas*. N#ajqna communal conservancy is divided into five zones namely: *wildlife zones, mixed farming, mixed farming, sensitive zone, settlement zone, and tourism zone*.

Nyae Nyae communal conservancies have a significant problem of illegal grazing and N#ajqna communal conservancy has a problem of illegal fencing of part of its land by non-conservancy members.

Land use conflicts mostly concentrate around villages of the San people along the road and are increasing in Nyae Nyae communal conservancy because nothing has been done yet about the invasion by non-conservancy members with their cattle. Though communal conservancy members claim to have reported the matter to the Ministry of Lands and Resettlement (MLR), the MLR claims not to have received any report or complaint from this communal conservancy. On the other hand, land use conflicts in N#ajqna concentrate mostly on south-west, west and west-north areas and are decreasing due to the involvement of the MLR. According to the MLR, fifty per cent of illegal fences are voluntarily removed by their owners. Based on research study, boundary of Nyae Nyae communal conservancy are the same as the perceived while the boundaries of N#ajqna communal conservancy is not the same as the perceived because they have observed non-conservancy members from Kavango Region to be inside the communal conservancy far behind the formal boundary. It has also been observed that there are no boundary conflicts as parts of land use conflicts in both study areas. Based on research study, boundary of Nyae Nyae communal conservancy are the same as the perceived while the boundaries of N#ajqna communal conservancy is not the same as the perceived because they have observed non-conservancy members from Kavango Region to be inside the communal conservancy far behind the formal boundary. It has also been observed that there are no boundary conflicts as parts of land use conflicts in both study areas.

4.4 The role of group land tenure security in solving and reducing land conflicts in the study areas

The Constitution of the Republic of Namibia grants all people the right to acquire property in the country. Hence, communal land rights can be registered as customary land rights or as leaseholds and under the formal law; land may be titled/registered in the name of individuals and entities and should be jointly in the name of spouse and in the name of development authorities, conservancies and communities. In Namibia tenure remains insecure especially for some marginalized groups namely the San people. They are illiterate and are less aware of policies and regulations

4.4.1 Land tenure rights recognized and formal land rights exercised in both study areas

The land rights for the San people, living in Nyae Nyae has been recognized by the government but remains insecure. Their land status is of communal land held in trust by the state for the benefits of the communities. Hence, they have use rights over the land rather than collective ownership rights (common property rights) and the ability to control access to their land by non-conservancy members depends on their traditional authority (TA) that gives permission to settle and graze to non-conservancy members. Unlike to N#ajqna, for a long time access to land and resources has been a problem because soon after the independence of the country, non-conservancy members started moving in illegally. So the San people living in this area (now known as N#ajqna) thought that forming a communal conservancy could give them greater control of their land and resources. However, creating communal conservancy did not help to secure rights over their land because communal conservancies only have use rights over the game.

The two communal conservancies do not have legal or formal land rights because once a communal conservancy is registered it only has rights over wildlife and tourism development on the land but not on

the land itself. Nyae Nyae communal conservancy is also a forest therefore; it also has rights over the forest products including grazing.

As researched before, land belong to the state if not lawfully owned, although the result from table 4-1 shows that most of the respondents believe that the land belong to people or conservancy members. Both communal conservancies in the study area are only provided with rights over some of the resources such as wildlife and tourism and not with other rights such as rights over grazing, rights over water, and rights over the land they live on. They also do not have exclusive land rights that may help them to exercise control over land and natural resources (i.e. grazing) in order to become a fully operational and sustainable institution. Hence, some investors may secure right from the government/ministry to develop a tourism lodge not far from where the communal conservancy site preferred for investor.

Both study area communal conservancies have limited rights over the land that falls in their boundaries, they are unable to exclude non-conservancy members from using their land, meaning they are not formally empowered so that they may be able to develop and enforce rules and regulations that would guarantee stable operational frame work for tourism and/or joint venture enterprises.

Nyae Nyae communal conservancy once applied for a leasehold tenure for the purpose of the communal conservancy land management and their application was supported by the chief in the beginning. It seems someone explained to the chief that if he is supporting the application by giving Nyae Nyae communal conservancy rights to manage the land, he will lose power in allocation of any customary land rights within the communal conservancy. So he withdraws his support since

From the results from table 4-5, it is clear that most of the respondents do not have an idea, if there, exists formal legal rights in the two study areas. This shows that there is a lack of information about land right, in fact, most of respondents in both study areas do not have any knowledge about their rights over the land as depicted in table 4-5 below, all they know is that they do have rights over the wildlife they manage. On the question which, where administered to measure the level of land insecurity in both study areas, most respondents feel unsecured about their land as depicted in table 4-5 below. Most of the response to this question came from conservancy members of the two study areas and only one response that feel very secure

Table 4-4: Land tenure rights

Assessment tools	Responses	Frequency(N=41)
Do the two communal conservancies have legal rights over land?	Yes	0
	No	2
	No idea	38
How would you measure the level on insecurity in the two study area communal conservancies?	Very secure	1
	Secure	0
	Insecure	40
	Don't know	0

4.4.2 Formalized group rights: will it contribute to avoiding and solving land conflicts in the two study areas

Communal land registration (CLR) processes are going on in the country currently. The aim of this registration is to register land rights in communal areas in order to grant certificates and secure land rights to land holders. Since one of the objectives was to find out the role of group land rights in avoiding or solving land conflicts in the two study areas. Hence, it was important to investigate whether the people living in both communal conservancies are feeling secured or unsecured with their land, what is their views on registering their communal conservancies and what type of land tenure rights would they register their communal conservancies. During group discussion with Nyae Nyae conservancy and committee members, they had no knowledge about tenure rights. But after some length discussions and explanations

on tenure rights such as group rights and leasehold rights most of the respondents in Nyae Nyae communal conservancy decided that they would register their land as group. As it is revealed in table 4-6, conservancy members in both study area communal conservancies are willing to register their communal conservancy. There was no group discussion with conservancy members from N#ajaqna due to the time limit but group discussion took place with committee members. These committee members from N#ajaqna communal conservancy had knowledge about tenure land rights and would like to register their land as leasehold and the reason they gave is for business purposes. One of the respondents said this about registering communal conservancies; *“They have security over the game, wildlife management and utilization, they don’t need security over land because they are not managing the land but wildlife”*

The results from table 4-6 also reveal that most of the respondents do not know whether registering both communal conservancies will reduce or solve the conflicts. Two of the respondents feel that registering them will also not solve the problems and reason they give is that; the problems are more on laws and tenure security is a law by itself, and that there is a lack of political will power to enforce existing laws. They further, stated that the conflicts in both study areas can only be reduced and solved only if the laws are enforced. The respondents from N#ajaqna communal conservancy suggest that the only way to reduce/resolve the conflicts in their area is for the TA to follow CLRA procedures, proper consultation between conservancy members and non-conservancy members who enter their area and the TA should always consult the community member of the TA before allocating land to any individual. Unlike conservancy members of Nyae Nyae, they suggest that all cattle and their owners should be removed and send back from where they come from and only then, the conflicts could be reduced.

The MLR is registering communal land through the programme of Land Registration, however registering the conservancies is not necessarily, what they want is to have power to act immediately as soon as they get report (of someone erecting illegal fence) to evict or stop the person. Law enforcement on stopping people from erecting or setting up illegal fences is what is required; of course registration of communal conservancies will show ownership. Responses from some the official is that, the problem is more on laws and tenure security is a law and there is a lack of political will power to enforce existing laws. Hence, there is a need to improve laws, strengthen laws and improve tenure security

Table 4-5: Group Tenure

Assessment tools	Responses	Frequency(N=41)
Do you feel more insecure that your land is not registered/titled?	Yes	41
	No	0
Should communal conservancies be registered?	Yes	40
	No	1
Registered as what?	Group	33
	Leasehold	8
Could registration of the two communal conservancies reduce the land conflicts in both study areas?	Yes	1
	No	2
	Don’t know	38

4.4.3 Measure to be adapted to strengthen group land tenure (if it is to be recognized in study areas.

The National Land Policy of 1998 stipulates that “all citizens have equal rights, opportunities and security across a range of tenure management systems and it makes provision for different categories of land rights holders such as duly constituted cooperatives, and legal constituted bodies and institutions that exercise joint ownership rights. It is clear that this definition allows groups of communal area residents to become land rights holders and this group could include communal conservancies as well as community forest management bodies. Residents of any village or communal community areas are given provision to demarcate and register their village or communal community area whereby legally constitute themselves as

a group that have rights over resources and land within their boundaries. Communal conservancies could be included into this group. There are reasons for the two study areas, communal conservancies to have legal rights over their commonage or land: (a) to protect and manage their resources on which they rely for their livelihoods, and (b) conservancy members will be able to benefit from leasing their land to investors who are willing to develop lodges and safari tour.

Under the Nature conservation Amendment Act of 1996, communal conservancies have management rights over wildlife and not over land. That is why, for example, if TA and/or CLB give someone permission to use land for grazing purpose that was supposed to be used for tourism purpose, then communal conservancy would not be able to enforce the tourism designation. This is the case with N#ajaqna communal conservancy, where it was found that during field observation that some of people (non-conservancy members) who entered this communal conservancy with their livestock are grazing and have erected illegal fences in areas designated as wildlife zones, and the conservancy members have no power and/or are unable to evict them.

In regard to the question of what measure to be adapted to strengthen group tenure if is to be recognised in the two study areas; Only three out of 41 respondents give their views, the rest have no idea. The first responded answered to the question as follows; “ legal recognition and action to address those flaunting these laws”, the second respondent answered as follows; “strictly adhere to communal conservancy management plans and zonation plans” and the third respondent answered as to the question as follows;” make all residents members of the communal conservancy, like the case of communal forest”

4.4.4 Summary

The land rights, for the San people, living in Nyae Nyae has been recognized by the government but remains insecure. Their land status is of communal land held in trust by the state for the benefits of the communities. Hence, they have use rights over the land rather than collective ownership rights (common property rights). The ability to control access to their land by non-conservancy members is limited as this depends on their traditional authority (TA) that gives permission to settle and graze to non-conservancy members. Unlike to N#ajaqna, for a long time access to land and resources has been a problem because soon after the independence of the country, non-conservancy members started moving in illegally. As a result, the San people living originally in this area (now known as N#ajaqna) believed that forming a communal conservancy could give them greater control of their land and resources. However, creating a communal conservancy does not give them secure rights over their land. Because the Nature Conservation Amendment Act only allows them to form a conservancy and have use rights over the wildlife/game and not over land. Without secure tenure and exclusive rights communal conservancies are unable to exclude non-conservancy members from using their land and resources. Thus, the lack of secure group land tenure is the main problem to communal conservancies in Namibia.

Traditional leaders/chiefs play an important role in allocation of land use, mobilizing their communities for development and solving land conflicts. Communal land board (CLB) and Traditional authority have the permission to hear the land disputes and serve as appellate tribunal to those contesting the rules of a tribal leader or chief. Based on the research study, committee members of Nyae Nyae communal conservancy would like to register their conservancy as group land tenure right for the reason that they want all the members to be included. In the researcher's view this may be also due to the fact that all conservancy members living here are from the same tribe. Committee members from N#ajaqna prefer to register their conservancy as leasehold for development and investor purposes. Because N#ajaqna consists of mixed people, this may have contributed to the committee's preference of leasehold title and it was also observed that N#ajaqna committee members had a bit of knowledge about tenure land rights u In the case of the two study areas, formalizing group land tenure will not solve the problem of land conflicts unless the laws are enforced and harmonized. It can be implemented when the laws are enforced, action taken to address those flaunting these laws, and traditional leaders involved since they are respected by their communities. Namibia support group land tenure rights for community-based purposes, but it have not been put into practice.

4.5 Ostrom’s design principles for common land: does it apply to the two study areas

4.5.1 Ostrom’s design principles are they respected in Nyae Nyae and N#ajaqna communal conservancies

4.5.1.1 Clearly defined boundaries

This design principle requires clearly defined physical boundaries of the resource and that it is clear which individual or household have rights to resources. In, both study areas, (Nyae Nyae and N#ajaqna communal conservancies), physical boundaries were clear, well-defined (but does not exclude non-conservancy member) and adhere to the boundary design principle which states that individuals/households with rights to withdraw resources from CPR should be clearly defined and boundaries of CPR also clearly defined. However, communal conservancy community members are unable to prevent non-community members from using the communal conservancy land. There are conflicts between community members and non-community members over access and use of land for settlement and grazing. Lack of clearly defined boundaries means that using the design principle approach, the regimes are less likely to be considered successful. For example, 41 of respondents (as shown in Table 4-3, section 4.3.2) in both study areas, are aware of land use conflicts in their areas and complain that non-conservancy members use their natural resources mainly for grazing without any permission to do so. Also in N#ajaqna communal conservancy non-conservancy members go beyond its boundary for activities, Figure 4-4 below shows that 10 of the respondents claim that formal boundaries are not same as the perceived boundaries. These responses are from conservancy members in both study areas, 27 of the respondents have no idea and 4 of the respondents claim the formal boundaries to be the same as the perceived boundaries in both study areas.

Table 4-6: Clearly defined boundaries

Variable	Indicator	Measure	Frequency
Clearly defined groups boundaries	Existence of clearly defined boundaries, e.g. excludability	Yes	41
		No	0

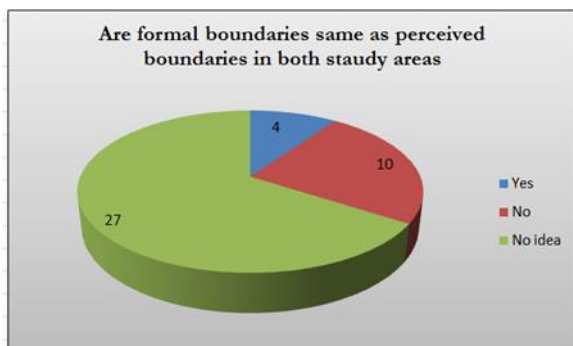


Figure 4-6: Formal boundaries vs. perceived boundaries in both study areas

4.5.1.2 Conflicts resolutions mechanisms

Conflict resolution mechanism is one of the design principles. Community members have access to low-cost conflict resolution mechanisms, and the negotiation is seen as an important element of African systems, conflict mediation is poor, in general. In both study areas, it was found that there was no conflict resolving management provided. In Nyae Nyae communal conservancy, most of respondents indicated that there are conflicts and these conflicts are reported to the communal conservancy committee. In N#ajaqna communal conservancy there are also conflicts about land use and these conflicts are reported to TA. If the TA and the communal conservancy committee were unable to resolve the conflict, then it was referred to the regional communal land board (CLB).

This, however, provides a low-cost arena for conflict resolution because it relied on existing conservancy institutions. But with the current land conflicts in both study areas, land conflicts between community members and non-community members require intervention by the government namely the MLR. For example, in Nyae Nyae communal conservancy, there are conflicts between conservancy members and non-conservancy members over access to grazing land rights, in N#ajaqna communal conservancy, there are conflicts between conservancy members and non-conservancy members who set up illegal fences for their cattle and settle there also illegally. The reason there is a conflict between conservancy members and non-conservancy members are because of grazing land with much grass in communal conservancies according to conservancy members. Non-conservancy members (from neighbouring Gama especially the Herero) graze their animals without any permission and create conflict in Nyae Nyae communal conservancy. In N#ajaqna communal conservancy, non-conservancy members from other regions enter the area with their cattle and fence off the land.

Conservancy members reported the cases to TAs in attempts to solve the problem but didn't work. In N#ajaqna communal conservancy, the government (MLR) has started to intervene so as to solve the problem but not in Nyae Nyae communal conservancy. Conservancy members of Nyae Nyae claim that they reported the problem to the authority; however the MLR claims that they didn't receive any report of illegal grazing from Nyae Nyae. 31 of the respondents do not have any idea or know to whom they should report in case of land conflicts. While 6 claimed to report to conservancy committee and 3 to traditional authority as illustrated in Figure 4-5 below, this is adapted from Figure 4-3, section 4.3.3.



Figure 4-7: shows to whom land conflicts are reported in both study areas

4.5.1.3 Monitoring system

This Ostrom's design principle is a system for monitoring member's behaviour exists; by what the community members undertake the monitoring. In both two study areas, it is found that there is a strong adheres to the monitoring principle. The TA and the communal conservancy committee are responsible for monitoring and enforcing the set of rules that are se-up by the institute. Game guards that are employed by communal conservancies monitor wildlife dynamics and also conflict between human and wildlife (human-wildlife conflicts). Concession amounts paid by trophy hunters allow for the distribution of funds to conservancy members. Based on formal agreements, joint venture lodges share profits with communal conservancy members, employ them and train them. The other way for monitoring income and benefits distribution is by having annual general assemblies in which committees explain how income from their conservancies is spent. The annual general assemblies are mandated in each and every conservancy's constitution. Both study areas carry out annual game counts to gain a better understanding of wildlife dynamics. For example, in Nyae Nyae communal conservancy has a high potential of wildlife. And San game rangers control and manage the movement of the game/wildlife and count it whereby buffalo camp rangers, manage the Buffalo, give them water, repair damaged fences and water protection maintenance group that control and maintain water tanks at villages/community level.

4.5.1.4 Graduated sanctions

This Ostrom's design principle means that violators are assessed and punished accordingly by other resource users or officials that act on behalf of the community. Violation penalties on the use of grazing lands are not used in Nyae Nyae and N#ajaqna communal conservancies, this principle seems not to be obeyed, or in fact, put into practice in both study areas. This means that sanctioning within these two communal conservancies is ineffective or at all not put in place. However, the two study areas do face problems of non-conservancy members grazing their cattle within prohibited areas such as in wildlife zones and fencing off a portion of lands in this zone. In both study areas, sanctions are not enforced, and many who were found breaking laws are not punished especially, the non-conservancy members. Non-conservancy members violate the law by grazing in areas not allowed to, and they are not punished to pay any fine or removed from that area.

4.5.1.5 Congruent rules between appropriation and provision rules and local conditions

This Ostrom's design principle deals with rules governing the use of collective goods/resources that are well-matched to local needs and conditions. This is the only design principle that addresses the sustainable use of resources. The other majority of the design principle is mainly concerned with the local structures to make management possible, but this design principle links these structures with ecological systems. In both study areas, this design principle doesn't exist because conservancy members are unable to prohibit illegal grazing and illegal setting up of fences by non-conservancy members. In fact, rules for resource use such as grazing and allocation of a portion of land is under the influence of TA and may not have done enough in order to take local conditions into account.

If security tenure is strengthened, resource management bodies in the study areas and communal conservancies would become more effective. The community forest Act provides for greater control and benefits from natural resources than the Act for communal conservancies.

4.5.1.6 Minimal recognitions of rights to organize

This Ostrom's design principle states that the rights of community members to devise their rules are respected by external authorities. Both study areas had organized rights to organize through the conservancy management plan. In fact, the Ministry of Environment and Tourism requires that any local community that wants to become a conservancy should provide a detailed management plan, and is required to form corporate entities consisting of defined membership, as well as well-defined boundaries with representative forms of internal leadership. In the two study areas, Traditional Authorities (TA) are responsible for allocating of land and grazing areas to conservancy members and non-conservancy members without having permission from communal land board (CLB) or government.

4.5.1.7 Nested units

This Ostrom's design principle describes the multi levels of institutional arrangements that should be present in more complex common property resources (CPR) regimes (Hoole, 2007). According to Ostrom, 1990 nested enterprises mean different levels or scales of collective action that are mutually reinforcing. Clearly, external recognition of communal conservancies as provided for in legislation of Namibia, the omnipresence of international donor assistance, the evolution of multiple national non-governmental organizations (NGOs) that facilitate and support community-based conservation and communal conservancy partnerships with private enterprises are all evidence of such principles (Hoole, 2007). It can be said that, there are cross-level linkages among international, national and local agents in the two communal conservancies of the study area. The Nested enterprise exists for communal conservancy in this research study since there are needs for relationships with other institutions at different scales or levels that are beyond local institution such as communal conservancy.

4.5.1.8 Land right security (formal institutional arrangement)

There is a formal institutional arrangement beside the informal arrangements governing the use of communal conservancy lands. In both study areas, conservancy members do not hold the rights to communal land. For example, most of the respondents from Nyae Nyae and N#ajaqna communal conservancies stated that they do not hold land rights. The Communal Land Reform Act of 2002 (CLRA) was created to address this issue that is the land right security in communal areas; communal conservancies included, but this CLRA did not yet provide yet any solution on land rights to communal conservancies of the two study areas and respondents indicated that they do require tenure security. However, communal conservancies are given rights to manage wildlife (game) in their areas.

4.5.2 Summary (Ostrom's design principles)

The table below shows that communal conservancy communities (in Nyae Nyae and Na#Jaqna) are given responsibility for other rules, such as to devise their rules as well as monitoring and enforcing the set rules. These rules, in the use of conservancy resources in both study areas have the same effectiveness. According to the findings, as indicated in the table below, shows that, there are no sanction rules and conflict resolution mechanism in both study areas. Congruent rules are also non-existing.

Table 4-7: Summary of (informal) institutional arrangements (Ostrom design principles)

No	Variables	Measures	
		Nyae Nyae	N#ajaqna
1	Clearly defined groups boundaries	Yes	Yes
2	Monitoring	Conservancy	Conservancy
3	Conflicts resolution mechanism	No conflicts resolving management	No conflicts resolving management
4	Congruent rules	No	No
5	Graduated sanctions	No	No
6	Minimal recognitions of rights to organize	Yes	Yes
7	Nested enterprises	Yes	Yes

4.6 Summary

In this chapter, the study described and explained the institutions involved in communal administration and their responsibilities, policies and legislation that are applicable to communal conservancies, and conflicts mechanism resolutions. It identified the land use, distribution and land use conflicts in the two study areas. The chapter further discussed boundaries and the role of group land tenure rights in avoiding and solving the land use conflicts in the two study areas. The chapter also included the comparison of Ostrom's design principles to the results

The results show that the institutions responsible for the administration of land in communal conservancies namely. The law is powerless and ineffective to protect the communal conservancy lands against the non-community members. The CLRA law regulating the use of land and intend to solve the issue of land tenure in communal areas is not enforced in communal conservancies, but only in communal land areas as stipulated by the CLRA. The results also revealed that the major land conflicts in the study areas are illegal settlers/fencers and illegal grazing by non-community members. And the members of the communal conservancies are powerless to evict them.

5. DISCUSSIONS

This chapter discusses the results from chapter 4 based on research objectives, research questions and literature review. This discussion chapter, comprises the sub-objectives components that address research questions therein: (1) To describe and assess the system of communal land administration in the communal conservancies Nyae Nyae and N#ajaqna, (2) To describe and map the land use and boundary conflicts in Nyae Nyae and N#ajaqna communal conservancies, (3) To identify the role of group land rights in avoiding and solving these conflicts and (4) To analyse whether Ostrom's design principles for common land apply to the two study areas.

5.1 Communal Land Administration in relation to communal conservancies Nyae Nyae and N#ajaqna

The Ministry of Lands and Resettlement administer all land in Namibia. Lands in communal areas of Namibia are governed by Communal Land Reform Act that authorizes Traditional authority in conjunction with Communal Land Boards to allocate and administer land in communal areas. In communal areas the Communal Land Reform Act caters only for customary registration of residential and farm plots in communal areas and not for common property rights. Communal conservancies however have the authority to manage their natural resources and are granted ownership of wildlife/game. The legislative framework for this belongs to the Nature Conservation Amendment Act under the Ministry of Environment and Tourism (MET). The land, where communal conservancies are situated does not belong to them; they have use rights with little if not tenure security or certainty. Since the communal conservancies are governed by the Ministry of Lands and Resettlement and the ministry of Environment and Tourism, each with its policy and regulations, they compete over the use of the same lands. This problem or dilemma is felt mostly in communal conservancies and the Ministry of Agriculture, Water and Forestry with its own policy and legislation regarding forestry contributes to the problem too.

Formal land rights, since the enacted of Nature Conservation Amendment Act, communal conservancies have rights to manage their natural resources through use of wildlife, especially tourism and trophy hunting. Within the geographical space of one communal area, several rights regimes can be found which sometimes are coincidental and overlapping. For example Nyae Nyae is now a Community Forest over the whole area while in N#ajaqna, M'Kata is a community forest but separate from the communal conservancy. The communal conservancies are only limited to two rights of tourism and wildlife, therefore they are vulnerable to claims by non-conservancy members or individuals who often claim rights under different set of rules for that geographic space (Fuller, 2006).

Traditional leaders/chiefs play an important role in allocation of land use, mobilizing their communities for development and solving land conflicts. Communal land board (CLB) and Traditional authority have the permission to hear the land disputes and serve as appellate tribunal to those contesting the rules of a tribal leader or chief. However in case of any land conflicts conservancy members of Nyae Nyae report the case to conservancy committee (elected members who manage the conservancy and they are not operating under NCAA neither under the MET) while conservancy members of N#ajaqna report the case to traditional authority (TA). This shows that, there is a lack of formal conflicts resolution mechanisms in both study areas.

In South Africa, communal land rights act (CLaRA) was passed in 2004, and it promotes security of tenure to those living on rural lands in South Africa known as 'traditional communities'. The interests in communal land are held by means of formal and informal land rights known as 'permission to occupy', managed and administered by traditional authorities. Under this Act, Traditional communities select their

Traditional Councils as land organization committees (Mokhahlane, 2009). This is almost similar to Namibia.

Many African countries has so far been engaged in institutional reforms; administrative decentralization and new reform of governance that favour principles of transparency, inclusiveness and responsibilities; and the promotion of the democratization of the public sphere (Anseeuw, W and Alden, C., 2003). Many different ways or alternatives have been implemented regarding harmonization of land laws. For example Kenya emphasis more on statutory law over customary while the land act of Southern Sudan make customary law as a source of law equivalent to statutory law and the Land Law of Mozambique equitable balance the two systems (customary and statutory).

Institutions of traditional leaders, has managed to survive the quest of modernity and the state control imposed on it by colonial and post-colonial rules throughout Africa. Traditional leaders play an important role of development, administration and politics in rural areas. They represent their communities and they are closest authorities to the people. One of their very important roles is of mobilizing their communities for development due to the fact that they are respected in their communities, their role also include the judicial role where they act as interpreters of customary laws and practices (Mthandeni, 2002).

In many African countries, laws that increase the power of the chiefs over land allocation have been introduced. For example in South Africa, Ingonyama Trust Act (1994) put one third of the land in the province of Kwa-Zulu under the trusteeship of the Zulu king, in Ghana, the Constitution (1979) gave traditional leaders power over land in the north of the country, and in Zambia, Land Act (1995) formally recognized chiefs' roles in land administration. Cote D'Ivoire, Niger, Mozambique and Zimbabwe adopted new policies that have also increased the formal power of traditional leaders over land administration (Baldwin, 2011). In Namibia, traditional leaders are recognized by the government and control most of the important rural survival strategies such as allocation of land, natural resources, communal labour practices and law and order in some instances (Keulder, 1996). The Communal Land Reform Act (CLRA) gives power to traditional authority (TA) to allocate customary land rights

The government of Namibia has officially acknowledged the way of handling conflicts through traditional courts and in most of the communal areas traditional or communal courts exist where the traditional leaders or chiefs act as arbitrators (Hoole, 2007). Alternative dispute resolution (ADR) mechanism has been used and has been effective in many countries worldwide. In Namibia, the practices of this approach are rare in Namibia and besides, there being partial similarities between ADR and customary law, and practices in communal areas, the legal system of Namibia recommend and prescribe rather formal and complex procedures to be followed (Hoole, 2007). These procedures, requires the involvement of courts and lawyers making it very costly and time –consuming. At the same time, people in communal areas and communal conservancies are cannot afford such a system. The alternative dispute resolution (ADR) mechanisms, creates a successful short-term settlements of conflicts between the two parties. According to Hoole, (2014), the reason is that many of conciliators and arbitrators receive their training only through studies at the University of Namibia where most of the lecturers are from legal professions. Land conflicts can be resolved through formal and informal and through legal dispute/conflict settlement machineries or Alternative Dispute Resolution Mechanisms (ADR)

5.2 Land use and Boundary Conflicts in Nyae Nyae and N#ajaqna Communal Conservancies

Land uses in the two communal conservancies, are divided into zonation. Nyae Nyae communal conservancy is divided into seven zones namely: *tourism and trophy hunting zones, trophy hunting zones 1 and 2, mix farming zone, agriculture farm, wilderness zone, wildlife sanctuary, and village farming areas*. Na#Jaqna communal conservancy is divided into five zones namely: *wildlife zones, mixed farming, mixed farming, sensitive zone, settlement zone, and tourism zone*.

Nyae Nyae communal conservancies have a significant problem of illegal grazing and N#ajaqna communal conservancy has a problem of illegal fencing of part of its land by non-conservancy members. Land use conflicts mostly concentrate around villages of the San people along the road (such as in mixed

farming zone, tourism and trophy hunting zones, wilderness zone and wildlife sanctuary) and are increasing in Nyae Nyae communal conservancy because nothing has been done yet about the invasion by non-conservancy members with their cattle. Though communal conservancy members claim to have reported the matter to the Ministry of Lands and Resettlement (MLR), the MLR claims not to have received any report or complaint from this communal conservancy. On the other hand, land use conflicts in N#ajaqna concentrate mostly on south-west, west and west-north areas (such as in wildlife zones, sensitive zones and mixed farming zones) and are decreasing due to the involvement of the MLR. According to the MLR, fifty per cent of illegal fences are voluntarily removed by their owners. Based on research study, boundary of Nyae Nyae communal conservancy are the same as the perceived while the boundaries of N#ajaqna communal conservancy is not the same as the perceived because they have observed non-conservancy members from Kavango Region to be inside the communal conservancy far behind the formal boundary. It has also been observed that there are no boundary conflicts as parts of land use conflicts in both study areas.

5.3 The Role of Group Land tenure security in solving and reducing land conflicts in the study areas

The land rights for the San people, living in Nyae Nyae has been recognized by the government but remains insecure. Their land status is of communal land held in trust by the state for the benefits of the communities. Hence, they have use rights over the land rather than collective ownership rights (common property rights). The ability of conservancy members to control access to their land by non-conservancy members is limited as this depends on their traditional authority (TA) that gives permission to settle and graze to non-conservancy members. Unlike to N#ajaqna, for a long time access to land and resources has been a problem because soon after the independence of the country, non-conservancy members started moving in illegally. As a result, the San people living originally in this area (now known as N#ajaqna) believed that forming a communal conservancy could give them greater control of their land and resources. However, creating a communal conservancy does not give them secure rights over their land. Because the Nature Conservation Amendment Act only allows them to form a conservancy and have use rights over the wildlife/game and not over land. Without secure tenure and exclusive rights communal conservancies are unable to exclude non-conservancy members from using their land and resources. Thus, the lack of secure group land tenure is the main problem to communal conservancies to defend their land in Namibia. When there is a high proportion of unregistered land and legislation is not clear the risk of dispossession for the poor and vulnerable indigenous majority from a major land-grab are high. Like the wealth and elite have invaded the land that belongs to poor San people in N#ajaqna communal conservancy.

The Nyae Nyae communal conservancy indicated they would like to register their conservancy as a group land tenure rights. The reason they gave that they want all the members to be included. This may be due to the fact that all conservancy members living here are from the same tribe. Committee members from N#ajaqna prefer to register their conservancy as leasehold. The arguments were that they would like to use the land for development and investor purposes. N#ajaqna consists of mixed people, and this may have explained the preference for leasehold right. It was further observed that N#ajaqna committee members had some more knowledge about tenure land rights unlike those in Nyae Nyae.

Namibia support group land tenure rights for community-based pasture management, wild/bush plants and conservancies, community areas fence off to protect grazing around villages in communal areas, and emergence village committee to help allocations of land (MLR, 2011). But group land tenure rights have not been put into practice in Namibia. This research show that conservancies may have different opinions on group land rights and not all may be in favour.

Group land tenure rights have been allocated to communities in many developing countries in South-East Asia, South America and Africa hence the concept of group rights is not new (MLR, 2011). In Kenya for example, customary land is vested in county councils as trustee, and this right is exercised by central government as the legal administrator. Farming and residential customary occupancy is not interfered with unless the land has to be registered, and the right has to be converted into freehold by which removing it from community jurisdiction. Trust lands are turned into community lands held by groups and communities through registration, this is done by the new constitution (2010) of Kenya (Wily, 2012).

Commons of those with livestock are registered under group title, and those without livestock are excluded. Recognition of land use has also been a source of conflict among tribes in Kenya. In Mozambique the 'new land law' recognizes customary rights. It provides statutory title and the registration can be in the name of a group, community or the name of individual (Wily, 2012). However Mozambique does not have a formal registration mechanism to assist local communities to define their perspective land boundaries hence protection level for these rights is low. The communal land right Act of South Africa was removed from the constitution in 2010 because the chiefs made themselves customary lands trustee owners, and this was undemocratic (Wily, 2012). Uganda recognizes customary land tenure and the communal land belongs to local communities, registered or not. Local communities can form an association, but few have been formed, and this has led to land-grabbing by elites and the state. The state owns all the wetlands, waters, national parks, and forest reserve and areas reserved for tourism activities (Mwebeza, 1999). As a result, communities have limited use rights over these areas to manage. Unlike in Namibia where forest and tourism activities, belong to communities i.e. communal conservancies. Some countries provided community associations that operated as private associations with clearly defined laws while in other cases, community land management institutions are incorporated into government administrative structures (MLR, 2011). The institutional and arrangements for the formation of private associations in many cases are similar to communal conservancies and community forests requirements in Namibia. The requirements are the needs of an elected body, clearly defined and agreed boundaries, the adoption of a constitution and legal persons, and the establishment of management plan.

5.4 Ostrom's design principles for common land

The table below shows that communal conservancy communities (in Nyae Nyae and N#ajaqna) are given responsibility for other rules, such as to devise their rules as well as monitoring and enforcing the set rules. These rules, in the use of conservancy resources in both study areas have the same effectiveness. According to the findings, as indicated in the table below, shows that, there are no sanction rules and conflict resolution mechanism in both study areas. Congruent rules are also non-existing.

Ostrom's design principles are seen as the way forward to overcome the problems of resource use and degradation in developing countries and were found to be useful in all the studies which were conducted for analysing institution management (Quin, et al., 2007) and where the principles were missing there seem to be failed common pool resources (CPRs) managements as investigated by Ostrom, (Ostrom, E., 1990). Communal or common property tenure consists of some aggregation of bodies that exclude non-members and where members have rights and duties (well organized communal common properties). It is also called community property regimes where there is shared ownership and rules that provide access to land and resources. Hence, communal conservancies in Namibia can be referred to as common pool resources because common property resource design principles such as recognized external, defined boundaries and membership were explicitly considered in the formation of communal conservancy registration requirements (Hoole, 2007).

Common property rights have the most support in African countries such as Tanzania, Mozambique, Ghana, and Uganda. In Mozambique, for example while both National Constitution and Land Law (1997) demand that customary rights should be supported and sustained, mechanisms meet this objective is not available. While investors seek land must consult with local communities, the procedure is undemocratic because it does not require the participation or consent of community members and decisions rest with self-elected representatives (Wily, 2012)

South Africa is also included in this category because it supported customary rights in its Constitution and demonstrated good faith in its restitution initiatives that directly affects communally held lands within former homelands. Although the Communal Land Rights Act (2004) recognized local tenure, the law was not applied and since been ruled unconstitutional.

The governments of all the six countries (Mozambique, South Africa, Tanzania, Ghana, Tanzania, Uganda), all recognise customary tenure as a legal source of property and require formalization in registered entitlements for this to be upheld administratively or in the courts. These countries also

recognize or institutionally provide for customary and community-based land administration as a result of recognizing indigenous tenure (Wily, L.A., 2011).

On the other hand, Namibia belongs to countries with ambivalent or uncertain support for common property rights, even though it could be included in the category of most support of common property rights. But for the fact that it limits customary rights to residential units and crop farming units only, this makes Namibia be excluded from countries that most support for common property rights. This leaves common properties, open for non-customary lease, not requiring local community consent (Wily, L.A., 2011). Thus, this is the case with Nyae Nyae and N#ajaqna communal conservancies where non-conservancy members, settles and graze on these lands without permission as well and fence off land illegally.

6. CONCLUSION AND RECOMMENDATIONS

6.1 Conclusions

This study research was conducted with the main objective to explore the potential in group land tenure rights in solving and reducing land use conflicts in Nyae Nyae and N#ajaqna communal conservancies in Namibia. In order to achieve the main objective, four sub-objectives were formulated. The conclusions are as a result of this presented according to the sub-objectives and resulting in the final conclusion

The system of communal land administration in the communal conservancies Nyae Nyae and Na#Jaqna

The Ministry of Lands and Resettlement administer all land in Namibia. Land in communal areas of Namibia, are governed by Communal Land Reform Act that authorizes Traditional authority in conjunction with Communal Land Boards. In communal areas, the Communal Land Reform Act caters only for customary registration of residential and farm plots and not for common property rights. Communal conservancies however have the authority to manage their natural resources and are granted ownership of wildlife/game. The legislation framework for this belongs to the Nature Conservation Amendment Act under the Ministry of Environment and Tourism. The land where communal conservancies are situated does not belong to them; they have use rights with little if not tenure security or certainty. Since the communal conservancies are governed by the Ministry of Lands and Resettlement and the ministry of Environment and Tourism, each with its policy and regulations, they compete over the use of the same lands. And although the conservancy and forest legislations are original from the same ministry, they are different pieces of legislations. This situation makes land administration in communal conservancy areas in Namibia confusing, resulting in abuse by the more powerful and the potential for more conflicts. Although the government has officially acknowledged the way to handle conflicts though traditional arena, the legal system of Namibia recommend and prescribe rather formal and complex methods to be followed. Affected people in communal conservancies cannot afford such a time consuming and costly method.

Land use and boundary conflicts in Nyae Nyae and N#ajaqna communal conservancies.

The most common conflict in both study areas is with livestock of non-conservancy members who claim grazing rights over areas that are within communal conservancies. Livestock and wildlife come into conflict because both often use the same resources such as water and graze.

Land use conflicts mostly concentrate around villages of the San people along the road (such as in mixed farming zone, tourism and trophy hunting zones, wilderness zone and wildlife sanctuary) and are increasing in Nyae Nyae communal conservancy. Nothing has been done yet about the invasion by non-conservancy members from Gam with their cattle. The communal conservancy has reported the matter to the Ministry of Lands and Resettlements however the ministry claims not to have received any report or complaint. On the other hand, land use conflicts in N#ajaqna communal conservancy concentrate mostly on south-west, west and west-north areas (such as in wildlife zones, sensitive zones and mixed farming zones) of the conservancy. Here the problem is decreasing due to the involvement of the Ministry of Lands and Resettlement; fifty per cent of illegal fences are voluntarily removed by their owners.

The studied communal conservancies are faced with a significant problem of illegal grazing and illegal fencing of part of their land by non-conservancy members. The fencing off of the land causes conservancy members, not to be able freely to collect wild/bush food that is their livelihood. It has been observed that there are no conflicts over conservancy boundaries; the main problems relate to land use conflicts in the study areas due to illegal occupation and the lack of means of the conservancies to exclude non-conservancy members from using their land and resources.

The role of group land rights in avoiding and solving these conflicts.

The land rights for the San people, living in Nyae Nyae has been recognized by the government but remains insecure. Their land status is of communal land held in trust by the state for the benefits of the communities. Hence, they have use rights over the land rather than collective ownership rights (common property rights). The ability to control access to their land by non-conservancy members is limited as this depends on their traditional authority (TA) that gives permission to settle and graze to non-conservancy members. Nyae Nyae communal conservancy is in favour of registering their conservancy as group land tenure right for the reason that they want all the members to be included. This preference of group rights may be explained by the fact that all conservancy members living here are from the same tribe. Unlike to N#ajaqna, for a long time access to land and resources has been a problem because soon after the independence of the country, non-conservancy members started moving in illegally. As a result, the San people living originally in this area (now known as N#ajaqna) believed that forming a communal conservancy could give them greater control of their land and resources. However, creating a communal conservancy does not give them secure rights over their land. Often wealthier and elites have invaded the land that belongs originally to poor San people in N#ajaqna communal conservancy, resulting in a mixed population. Committee members of conservancy from N#ajaqna prefer to register their conservancy as leasehold right for development and investor purposes. N#ajaqna committee members had a bit of knowledge about tenure land rights unlike the Nyae Nyae committee members.

In the case of the two study areas, formalizing group land tenure will not solve the problem of land conflicts unless the laws are enforced and harmonized. Group land tenure rights could be considered for conservancies with homogeneous population from the same tribe like in Nyae Nyae. In other communal conservancies where there exists a mixed of people this might not be a preferred solution

Ostrom's design principles for common land apply to the two study areas

There are no sanction rules and conflict resolution mechanism, neither do congruent rules exists in both study areas. Many of Ostrom's design principles are applicable to communal conservancies. In many countries in Africa, Ostrom's design principles apply to overcome the problems of resource use and degradation. Ostrom's design principles were found to be useful in analysing institution management. Where the principles were missing there seems to be failed common pool resources managements. These Ostrom's design principles are applicable to communal conservancies in Namibia. Although some of the principles such as graduated sanctions, congruent rules and conflict resolution mechanism were found to be non-existing in the two study areas. This is the result of an ineffective institutional arrangement in the study areas. However, Ostrom's design principles are useful when they are used as an analytical framework for looking at common property resources management in Namibia where they can highlight areas where management might be strengthened.

Overall conclusion

The main problem in the two study areas relate to land use conflicts due to illegal occupation and the lack of means of the conservancies to exclude non-conservancy members from using their land and resources. The communal conservancies are governed by the Ministry of Lands and Resettlement and the Ministry of Environment and Tourism, each with its own policy and regulations, and they compete over the use of the same lands. There is therefore a lack of a clear conflict resolution mechanism resulting in confusion, abuse and unresolved conflicts.

The laws governing group land tenure rights in Namibia are drafted since the government support it but not enforced or put into practice in communal conservancies. Care should be taken in implementing group land rights in communal conservancies. Some communal conservancies may benefit of group land rights; other communal conservancies may prefer individual lease rights. The Ostrom's design principles could be used as framework for Namibia's communal conservancies in order to understand the management and highlight areas where management needs to be strengthened.

6.2 Recommendations

Ministries (MLR and MET) responsible for communal conservancies need to come together and review the laws and policies that govern communal conservancies in order to harmonize these laws and policies

Since, there is a programme of registering land in communal areas in Namibia, the example of 'new land law' of Mozambique could be adapted in Namibia to secure common property rights to communal conservancies by which the government will only change the way it allocates land in communal areas, including land held collectively in communal conservancies and not changing the constitution of the country.

Group/ collectively held land registration should be approached holistically before it happens, because each ministry, each institution will defend their power and not give up easily.

Laws for communal conservancy and laws of community forest are different pieces of registration. They originate from the same ministry (MET) and yet are drawn up differently there is a need to integrate them in order to co-manage these areas without confusion or difficulty.

Land conflicts in communal conservancies need low-cost conflict/dispute resolution mechanism and since Alternative Dispute Resolution (ADR) is not yet popular in Namibia. Alternative Dispute Resolution (ADR) should be recommended to be introduced to the legal system to be used in land disputes in order to reduce cost and time spent resolving land conflicts using the court system.

Ostrom design principles should only be used as a framework because even if a communal conservancy has a defined membership, this will not help against violation by non-conservancy members. Even, if the principles of conflict resolution mechanism is obeyed and adhered to resolve the land conflict, it will not protect communal conservancies against non-conservancy members because they do not recognise the local conflict resolution arena and they can disregard any decision by the local arena whether traditional court or arena/mechanism where communal conservancies depend on their governing status.

Further research study regarding policies and legislations concerning communal conservancies could be undertaken, especially on common property rights and on harmonization of the laws of the ministries involved in communal conservancies

REFERENCES

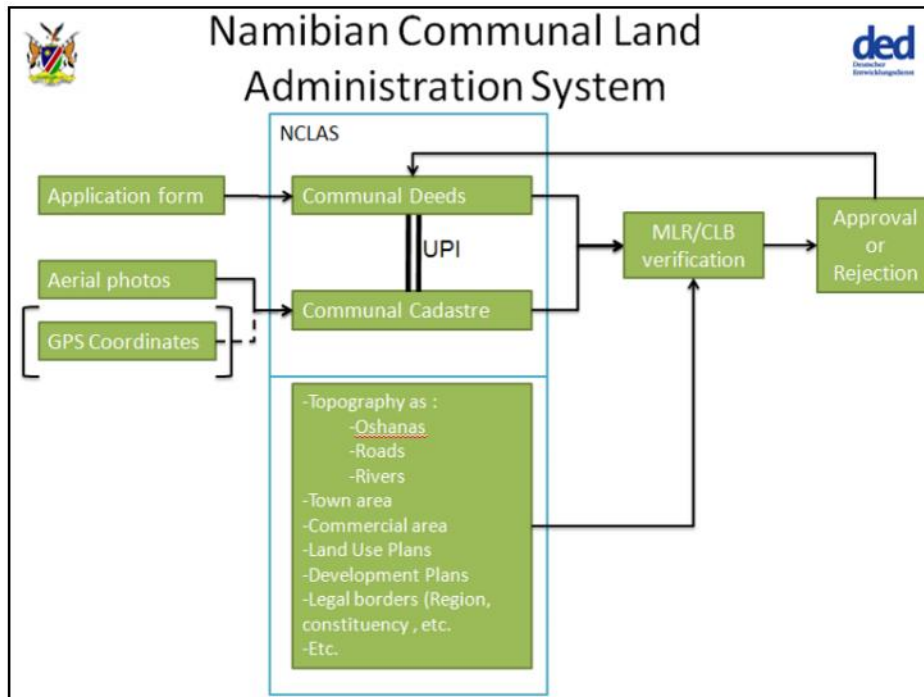
- Anaya, J. (2013). *Report of the Special Rapporteur on the rights of*.
- Anseeuw, W and Alden, C. (2003). *The struggle over land in Africa: Conflicts, politics and change* (First Edition ed.). CapeTown, South Africa: HRSC Press.
- Arko-adjei, A. (2011). *Adapting land administration to the institutional framework of customary tenure. The case of peri-urban Ghana*. University of Twente, Faculty of Geo-Information Science and Earth Observation(ITC). Enschede: ITC.
- Baldwin, K. (2011, April 0). *When Politicians Cede Control of Resources: land, Chiefs and Coalition-Building in Africa*. University of Cape Town and Michingan State University, Center of Social Science Research. Center for Democracy (CDD, Ghana), Institution for Democracy in South Africa (IDASA), and Institution of Empirical Research in Poliyical Economy (IREEP) with support from Michingan State University (MST) and University of Cape Town.
- Bolling et al. (2014). Fragmentation, Cooperation and Power: Institutional Dynamics in Natural Resource Governance in North-Western Namibia. *Human Ecology*, 42(2), 167-181.
- Dale and MacLaughlin. (1999). *Land Administration*. NewYork, United State: Oxford University Press.
- Dandekar, h. C. (2005). Qualitative Methods in Planning Research and Practice. *Architectural and Planning Research*, 1-10.
- DFG. (2002). *Digital Atlas of Namibia: Atlas of Namibia Project E1*. University of Cologne, Deutschen Forschungsgemeinschaft (DFG). Windhoek: Ministry of Environment and Tourism.
- Durang, T. and Tanner, C. (2004). Access to land and other natural resources for local communities in Mozambique: Current Examples from ManicaProvince. *Green Agri Net Conference on 'Land Registration in Practice'*, (pp. 1-25). Denmark.
- ECA. (2003). *Land Tenure and Sustainable Development in Southern Africa*. Southern Africa Office: United Nations.
- Enemark et al. (2010). Land Administration for sustainable development. *Facing the Challenges – Building the Capacity* (pp. 1-16). Sidney: UN/FIG.
- Enemark et al. (2009). Land Governance in Support the Millennium Development Goals. *FIG/World Bank Conference*. Washington, DC: The International Federation of Surveyors (FIG).
- FAO. (2002). *Land tenure and rural development*. Rome, , Italy: FAO- United Nations.
- FAO. (2011). Legal aspects of large Scale Investment in Land: Implications for Food Security and Rural Development. *Symposium on Legal Aspects of Large Scale investment in Land*. Rome: FAO.
- FAO. (2012). *Governance of Tenure: Making it happen*. Committe on World Food Security.
- Fuller, B. (2006). *Improving Tenure Security for the Poor: Namibia case study*. Windhoek: Food and Agriculture Organization of the United Nation (FAO).
- Fuller, B. (2006). *Improving tenure security for the poor:Namibia case study*. Windhoek: FAO.
- Hays et al. (2007). *Otjozondjupa Region*. Windhoek: Legal Assistant Cernter (LAC).
- Hoole, A. (2007). *Lessons from the Equator Initiative:Common Property Perspectives for Communiy-Based Conservation in Southern Africa and Namibia*. Natural Resources Institute, Centre for Community-Based Resources Management. Winnipeg: University of Manitoba.
- IPIR. (2013, June 08). Retrieved August 20, 2014, from Indigenous People Issues and Resources: www.indigenouspeopleissues.com
- Jones. (2012). *An analysis of international law, national legislation, judgements and institutions as they interrelate with territories and areas conserved by indigenous peoples and local communities*. Windhoek: LAC.

- Jones, B. (2003). *Selected Natural Resources Management and Limited Rural Development Assessment*. Windhoek: USAID/Namibia.
- Jones, B. (2012). *An analysis of international law, national legislation, judgements and institutions as they interrelate with territories and areas conserved by indigenous*. Windhoek: LAC.
- Karim, O. (2004). *Country Report*. FIG.
- Keulder, C. (1996). *Traditional Leaders*. Windhoek: Friedrich-Ebert-Stiftung.
- Knight, R. (2010). *Statutory recognition of customary land rights in Africa: An investigation into best practices for law making and implementaion*. Rome: FAO/United Nations.
- Kwa and Ding. (2008). Geo-Narrative: Extending Geographic Information System of Narrative Analysis in Qualitative and Mixed Research. *Association of American Geographers*, 60, 443-465.
- Lapeyre, R. (2006). The conflicting distribution of tourism revenue as an example of insecure land tenure in Namibian communal lands. In R. Lapeyre, *The struggle over land in Africa: Conflicts, Politics and Change* (pp. 85-104). Cape Town: HRSC Press.
- Louis, M. & Denker, H. (2012). *Community-based natural resources management-What are conservancies really about?* Windhoek: NACSO.
- Martin, J. (2009). *Conservation and Development : The Effect of Property Rights on Development A Case Study on Communal Lands in Namibia*. Stockholms School of Economics, Department of Economics. Stockholms: Stockholms School of Economics.
- Masum, F. (2013). *Land Conflict Management*. Technische Universitat Munchen, Centre of Land, Water and Environmental Risk Management. Munich: Technischen Universitaet Munchen.
- Masum, F. (2013). *Land Conflict Management*. Technische Universitat Munchen, Centre of Land, Water and Environmental Risk Management. Munich: Technischen Universitaet Munchen.
- MAWF. (2001). *Patent No. 12*. Namibia.
- Meijs et al. (2008). Land Registration using Aerial Photography in Namibia: Costs and Lessons. *Conference on Land Governance in Support of the MDG: Responding to New Challenges* (pp. 1-20). FIG-World Bank.
- Memdelson, J. (2008). *Customary and legislative aspects of land registration and management on communal land in Namibia*. Windhoek: LAC.
- Mendelson, J. (2008). *Customary and legislative aspects of land registration and management on communal land in Namibia*. Windhoek: LAC.
- MET. (1996, June 17). *Patent No. 5*. Namibia.
- MLGH. (2000, December 22). *Patent No. 25*. Namibia.
- MLR. (2002, August 12). *Patent No. 5*. Namibia.
- MLR. (2011). *Communal Land Support (CLS) Sub-activity: A review of policies concerning tenure in Communal Areas of Namibia*. Windhoek: MCA and GIZ.
- MLR. (2012, June 13). *Patent No. 4*. Namibia.
- Mokhahlane, M. (2009). *Institutional factors affecting the use of communal rangelands in the eastern Cape province of South Africa*. Department of Agriculture Economics and Extension. 1-117: University of Fortthare.
- Molen, V. d. (2005). Some Micro-economic Aspects of land Ownership. *Second FIG-Regional Conference*, (pp. 2-5). Marrakech.
- MRLGH. (2000). *Patent No. 25*. Namibia.
- Mthandeni, E. (2002). Traditional leaders and new local government dispensation in South Africa. *Frenb-South African meeting on Territorial Innovation* (pp. 1-5). Grenoble-Avignon: HAL.
- Mwebeza, R. (1999). How to integrate statutory and customary tenure? The Uganda case. *Land Rights and Sustainable Development in sub-Saharan Africa* (pp. 1-11). Berkshire, Uk: DFID.
- NASCO. (2012). *Community conservation in Namibia*. Windhoek: NACSO.

- Nelson, F. (2012). *Recognition and Support of ICCAs in Kenya*. Montreal: ICCA Consortium, Kalpavriksh, and Natural Justice.
- Odendaal, W. (2014, June 25). *Land laws failing the San*. Retrieved 08 23, 2014, from Open Society Initiative for Southern Africa (OSISA): www.osisa.org
- Ostrom, E. (1990). *Governing The Commons The Evolution of Institutions for Collective Action Cooperation Commons*. (Cambridge University Press) Retrieved July 22, 2014, from Cooperation Commons: <http://www.cooperationcommons.com/>
- Ostrom, E. (1990). *Governing the Commons: The Evolution of Institutions for Collective Action Cooperation Commons. The Cooperation Commons (CoCo)*.
- Quin, et al. (2007). Design principles and common pool resource management: an institutional approach to evaluating community management in semi-arid Tanzania. *Journal of environmental management*, 84(1), 1-13.
- Republic of Namibia. (1991). *Constitution of the Republic of Namibia*. Windhoek: Republic of Namibia.
- Simpson, R. (1976). *Land law and registration*. London: Surveyor Publications.
- Sisamu. (2008). *Spatial Impacts of Proposed Farm Development in the N # aJaqna Conservancy: A GIS Case StudyY in Tsumkwe West*. University of Twente-, Faculty of Geo-information Science and Earth Observation (ITC). Enschede: University of Twente.
- Tanner, C. (2005). Land rights and enclosures: Implementing the Mozambican Lan Law in Practice. *The changing politics of land in Arica: Domestic politics, crisis management and regional norms* (pp. 1-26). Pretoria: University of Pretoria.
- UNDP. (2012). *N#aJaqna Conservancy, Namibia: Equator Initiative Case Study Series*. New York: UNDP.
- UN-ECE. (1996). *Land Administration Guidelines: With Special Reference to Countries in Transition*. United Nation, Geneva.
- UN-HABITAT. (2005). *Land tenure, housing rights and gender -National and urban framework: Namibia*. Nairobi: United Nation Human Resettlements Proramme.
- USAID (2010). *Country Profile Property Rights and Resources Governance..* Rural development institution. Washington, DC: USAID.
- Van Asperen. (2007). Effects of multiple land tenure regimes on tenure security: African cases. *Second European Conference on african Staudies* (pp. 1-17). Leiden: Delft University of Technology.
- Van der Molen, P. (2014). Governance and Land Policy. *Lecture notes*. Enschede, Netherlands: ITC-Faculty og Geo-information Science and Earth Observation .
- Weaver et al. (2008). *Achievements and Practical lessons learned from a decade of wildlife utilization in Namibia's communal area conservancies*. Windhoek: WWF.
- Weaver, L.C and Skyer, P. (2002). *Conservancies : Integrating Wildlife Land-Use Options into the Livelihood , Development and Conservation Strategies of Namibian Communities 1*. Windhoek: LAC.
- Williamson et al. (2010). *Administration for Sustainable Development* (First Edition ed.). California, United State: ESRI Press.
- Wily, L. (2012). *Customary land tenure in modern world: Rights to resources in crisis- Reviewing the fate of customary tenure in Africa*. washington: Rights and Resources Initiative (RRI) Partners.
- Wily, L.A. (2011). "The Law is to Blame": The Vulnerable Status of Common Property Rights in Sub-Saharan Africa. *Development and Change*, 42(2), 733-757.
- Zevenbergen, J. (2014). *Land Administration: To See Change from Day to Day*. University of Twente, Faculty of Geo-Information Science and Earth Observation (ITC). Enschede: ITC.
- Zvenbergen, J. (2014). *Land Tenure and Tenure Security*. University of Twenre, Faculty of Geo-Information Science and Earth Observation (ITC). Enschede: ITC-University of Twente.

APPENDICES

Appendix A-1: NACLAS position of land registration processes (Meijs et al., 2008)



Appendix A-2: Example of back and front certificate of registration of existing customary land rights (Meijs et al., 2008)

REPUBLIC OF NAMIBIA
MINISTRY OF LANDS AND RESETTLEMENT

Certificate No: **OCCLB-CU000274** Form 4

CERTIFICATE OF REGISTRATION OF RECOGNITION OF EXISTING CUSTOMARY LAND RIGHT
As in the Communal Land Reform Act (Section 28, Regulation 8)

IT IS HEREBY CERTIFIED THAT

Farming (Crop) and Residential Unit

(description of customary land right which has been recognised, as described on the back)

in respect of

Eenghala Village in Onamutai Traditional District

(proportion of land in respect of which customary land right has been allocated)

measuring

4.8 ha

has been recognised to be held by

Mr Vilho Shidolo

(full names of person to whom the right concerned has been allocated)

of

Eenghala

(residential address of person to whom right has been allocated)

Signature of Chairperson/Secretary of the Board _____ Date _____

The figure above represents the customary land right for Vilho Shidolo
ID card 24043010109
The Unique Parcel Identifier (UPI) is EENGH4.0000033

The parcel is situated within:
Eenghala Village
Onamutai Traditional District
Ongwediva Constituency
Oshana Region
Registration Division A
The parcel has been approved by:
Oukwanyama Traditional Authority
Oshana Communal Land Board

The parcel covers an area of 4.8 ha

Legend

- Corner points
- Parcel boundary

The amount of the parcel was calculated by providing the vertices the following longitude and latitude coordinates:

Point ID	Longitude	Latitude
1	17 34 47.14	15 02 22.02
2	17 34 50.82	15 02 28.80
3	17 34 50.82	15 02 28.80
4	17 34 50.82	15 02 28.80
5	17 34 50.82	15 02 28.80
6	17 34 50.82	15 02 28.80
7	17 34 50.82	15 02 28.80
8	17 34 50.82	15 02 28.80
9	17 34 50.82	15 02 28.80
10	17 34 50.82	15 02 28.80
11	17 34 50.82	15 02 28.80
12	17 34 50.82	15 02 28.80

Corner points are denoted in the table as 1 to 12 and in decimal degrees using the decimal point.

Appendix A-3: Design Matrix

Research sub objectives	Research Questions	Data source	Data collection techniques	Data analysis	Anticipated results
<i>To describe the system of land administration in relation to communal conservancy in study areas</i>	1.) What are the institutions involved in communal land administration in the study area and what are their responsibilities?	Secondary data; Acts and policies, researched papers	Literature review	Qualitative analysis	Need for the research
	2.) What policies and regulations apply to communal land administration in the study area?	Secondary data: Acts and policies,	Literature review	Qualitative analysis	Expectations from research findings
	3.) Which organization is responsible for allocating of land?	Secondary data Acts, policies and regulations, Primary data	Literature review Interviews	Qualitative analysis Text based approach: discourse analysis	Expectations from research findings Views of CBL and MLR,TA on allocation of land
	4.) What are the conflict resolution mechanisms being applied in case of land conflicts?	Primary data Secondary data	Interviews Literature review	Text based approach: discourse analysis	Need for research
<i>To describe and map land use conflicts in communal conservancies.</i>	1.) What are the land uses in the study area and how are they distributed?	Primary data Secondary data: Reports, maps	Interviews Literature review Field observations	Text based approach: narratives analysis Qualitative analysis	Depends on the views of TA, CLB, MLR, MET, and members
	2.) What formal land rights are being exercised in the study area?	Secondary data: Acts, regulations, researched paper, reports Primary data	Literature review Interviews	Qualitative analysis Text based approach: discourse analysis	Expectations and views of MET, MLR, NASCO
	3.) Are formal boundaries of the study areas the same as the perceived boundaries?	Primary data	Interviews, Field observation (PGIS)	Text based approach: discourse analysis	Need for the research
	4.) Are boundary conflicts part of the land use conflicts and to what extend	Primary data Secondary data	Interview, Field observation (PGIS) Literature review	Text based approach: discourse analysis Qualitative analysis	Need for the research
<i>To identify the role of land tenure security in these conflicts.</i>	1.) What forms of land tenure can be recognized in the study area?	Secondary data: reports, Acts, journal, regulations Primary data	Literature review Interviews	Text based approach: discourse analysis	Expectations and Views of NASCO, ORCA, NDT, NNFDN, MET,MLR
	3.) Will formalizing group rights contribute to reducing land conflicts? And to what extend?	Secondary data Reports, journals, Primary data	Literature review Interviews	Qualitative analysis Text based approach: discourse	View's and expectation of NASCO, ORCA, NDT, NNDFN on group tenure rights
	4.) What measure should be adapted to strength (if) group land tenure is to be recognized?	Primary data	Interviews	Text based approach: discourse analysis	View's and expectation of NASCO, MLR, NDT, MET on group tenure rights

Appendix B-1: Questions for group discussion with Nyae Nyae Communal Conservancy members (local people only)

Name of Communal Conservancy..... Date:.....

NB: *Need to use map in order to map the movement of cattle herders in the area.*

1. Are you aware of any invasion by cattle herders in your area?

Yes

No

2. If yes, in which area or part of the conservancy does the invasion by cattle herder takes place?

3. What is the impact or effect of this conflict to your area?

4. How the conflict/problem of invasion by cattle herder is is being solved?

Appendix B-2: Questions for Communal Conservancies Committee members of Nyae Nyae and N#ajaqna

Name of Communal Conservancy:.....

Traditional Authority Name:.....

Date:.....

1. Do you experience problems with illegal fencing off of land and/or with invasion by cattle herders in your area?

Yes

No

2. If yes, how are you affected by this problem? Explain

3. In your views, why do non-conservancy members from other Regions move into your area (communal conservancy)?

4. What are the land uses in your area and how are the land uses are distributed in your area?

5. (a) There is this programme of communal land registration going on in Namibia, in your view, should communal conservancies be registered?

(b) If yes, registered as:

Group

Private

Leasehold

6. Do you feel more insecure that your land is not titled/registered?

Yes

No

I do not know

7. How would you measure the level of tenure security if the communal conservancies are to be registered or title is to be issued?

Very secured

Secure

Unsecured

No idea

8. (a) Are there any case of conflicts between the traditional authorities (TA) or the chief and local communal conservancy communities members?

Yes

No

(b) If yes, explain?

9. (a) Do you experience any boundary conflicts as part of land use conflicts in your area?

Yes

No

(b) If yes, to what extend? Explain and indicate on the map please

10. What should be done to reduce the land conflicts in your area?

11. (a) Are formal boundaries of your area (communal conservancy) the same as the perceived boundaries?

Yes No

(b) If No, Explain:

12. (a) Do you experience any boundary conflicts as part of land use conflicts in your area?

Yes No

(b) If yes, to what extend?, explain.

13. In your view, to whom, belong the communal conservancy land?

Traditional authority Government Chiefs People

14. (a) To whom do you report the case of land conflicts in your area (or what do you do with that case)?

Ministry Communal land board
 Conservancy committee other

(b) If others, please Explain:

15. In your own view, what do you think needs to change in the administration of customary/communal land tenure in terms of communal conservancies? (from traditional authorities and government respectively)

16. Would you like to add any additional comments about problems and possible solutions to the conflicts/problems in your area?

Appendix B-3: Questions for the Ministry of Lands and Resettlements

Name of the Organization:..... Date.....

Name of Respondent:..... Position.....

1. Are you aware of any case of land conflicts in Nyae Nyae and N#JaQna communal conservancies?

2. (a) What are the major sources of land conflicts in these communal conservancies?

(1) Illegal land fencing (2) Illegal grazing

(b) If 1 and/or 2 is the source, please justify to what extent and indicate on the map the areas affected.

3. If it is illegal fencing of land and /or invasion illegal grazing, what is the current status in these areas?

4. In your view, why do non-conservancy members from other Regions move into these communal conservancies?

5. What legal rights do communal conservancies have to their land?

6. What is your opinion about registration of communal conservancies?

7. In your view, should communal conservancies be registered as:

Group Private Leasehold

8. (a) In your view, should communal conservancies be registered as:

Group Private Leasehold

(b) If Yes, to Group, or Private or leasehold, explain

(c) If No, Group, Private or Leasehold, explain why?

9. In your view, if communal conservancies are to be registered as group tenure rights, who will act in the name of the group/conservancy?

10. How would you measure the level of tenure security if the communal conservancies are to be registered or title is to be issued?

Very secured Secure Unsecure No Idea

11. (a) In your view, will formalizing group rights contribute to reducing land conflicts? Yes

 No

(b) If yes, to what extend?

12. In your view, what measure should be adapted to strength group land tenure (if) it is to be recognized in communal conservancies?

13. (a) Will registering/titling communal conservancies reduces land use conflicts situation in communal conservancies?

Yes No

14. (a) In your view, should the registration of communal conservancies be accommodated into the communal land registration programme which is currently going on in the country?

Yes No

(b) If No, justify

15. In your own view, what do you think needs to change in the administration of customary/communal land tenure in terms of communal conservancies? (from traditional authorities and government respectively)

16. Would you like to add any additional comments on customary/communal land administration in communal conservancies?

Appendix B-4: Questions for NACSO (LAC/WWF), NNDNFN, and Ministry of Environment and Tourism (MET)

Name of the Organization:.....

Date.....

Name of Respondent:.....

Position.....

1. (a) Are you aware of any case of land conflicts in Nyae Nyae and N#ajaqna communal conservancies?

Yes

No

I have no idea

(b) If yes, what are the nature /kind of land conflicts and who is the main cause? Explain:

2. (a) What are the major sources of land conflicts in these communal conservancies?

(1) Illegal land fencing

(2) Illegal grazing

(3) Land grabbing

(b) If (1), (2) and/or (3) is the source, please justify to what extend and indicate on the map the areas if possible

3. If it is illegal fencing and/or invasion by illegal grazing, what is the current situation in these communal conservancies?

4. What are the impacts of these land conflicts to these communal conservancies?

5. In your view, why do non-conservancy members from other Regions move into these communal conservancies?

6. Could registration of communal conservancies reduce these land conflicts?

7. (a) Are there any conflicts resolution mechanism applied in these communal conservancies and/or how are land conflicts are being solved?

Yes

No

(b) If Yes, Elaborate please:

8. In your view, are formal boundaries of these communal conservancies the same as the perceived boundaries?

Yes No

(b) If No, please Elaborate and indicate the boundaries as perceived on the map if possible;

9. (a) Are you aware of any communal conservancy boundary dispute in these communal conservancies?

Yes No

(b) If yes, please Elaborate and show the area on the map:

10. (a) Are boundaries of these two communal conservancies surveyed and registered with Communal Land Board (CLB)?

Yes No

(b) If No, Why?

11. What legal rights do communal conservancy members have to their land?

12. What is your opinion about the registration of communal conservancies?

13. In your view should communal conservancies be registered as:

- Group Private Leasehold

14. How would you measure the level of tenure security, if communal conservancies are to be registered or issued with title?

- Very secure Secured Unsecured No idea

15. (a) Will registering of communal conservancies solve and/or reduce land use conflicts in communal conservancies?

- Yes No

(b) If No, Why? Explain

16. (a) Are you aware of any communal conservancy boundary dispute in these two communal conservancies?

- Yes No

(b) If yes, explain and show on the map if possible

17. In your views, what measure should be adapted to strengthen group land tenure, if it is to be recognized in communal conservancies?

18. What mechanism is used in terms of agreeing to communal conservancy boundaries?

19. (a) In your view, are there any overlapping for example with forestry, small scale commercial farming and/or with any development on traditional land with these communal conservancies?

- Yes No

(b) If yes, please justify;

20. What do you think should needs to change in the administration of customary/communal land tenure in terms of communal conservancies?

21. Would you like to add any additional comments on customary/communal land administration in communal conservancies?

LIST OF REFERENCES
