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Immaterial Indigenous Modernities in the Struggle against Illegal Fencing in the N≠a Jaqna Conservancy, Namibia: Genealogical Ancestry and 'San-ness' in a 'Traditional Community'

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For several years, livestock farmers from different parts of Namibia have settled in the N≠a Jaqna Conservancy – an area mostly inhabited by San (Bushmen) – and have illegally erected fences to keep livestock. As a result of this encroachment, communal land in N≠a Jaqna has become de facto *privatised. In response, the local San present themselves as the 'indigenous' inhabitants, even though many of them do not originate from the area. They have mobilised the Conservancy as their legal entity – including in a court case – despite Namibia's lack of a legal framework for the recognition and enforcement of global indigenous rights. We analyse their strategic usage of 'traditional community', which is a legal term in Namibia, in this land politics. To this aim, we use the four core pillars (characteristics) of the global concept of 'indigeneity', namely genealogical ancestry, cultural difference (in this case 'San-ness'), non-dominance and self-ascription, with specific emphasis on the first two. Whereas genealogical ancestry appears to be a 'weak' argument for the San at first glance, cultural difference (supported by non-dominance and self-ascription) has proven crucial to winning the court case. We show that the use of 'traditional community' enables these four pillars to play an important role in defining who has access to the land and its resources. As such, we argue, traditional community and indigeneity (even though the latter is not formally acknowledged) provide the San of the N≠a Jaqna Conservancy with 'immaterial indigenous modernities': modern values or ideas in society that can be used strategically by local, marginalised groups to reach political goals.*

Keywords: indigenous modernities; San; Bushmen; Namibia; indigeneity; land conflict; fences; privatisation

Introduction

In 2013, the Namibian N≠a Jaqna Conservancy (NJC), together with the non-governmental organisation (NGO) Legal Assistance Centre (LAC), initiated legal proceedings against

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illegal fence owners: farmers who have occupied an area with their livestock and started to erect fences on communal land despite the enactment of the Communal Land Reform Act 5 of 2002 (CLRA). The CLRA is the main piece of legislation that prohibits fencing in communal areas. In this case, the fences restrict the local communities' – mostly !Kung San (or 'Bushmen') – access to resources and wildlife and their ability to move freely in the Conservancy. Authorities in the allocation of land rights, the Traditional Authority and the Communal Land Board, were also taken to court because the NJC believed that neither were performing their duties adequately to prevent illegal fencing in N≠a Jaqna.[1] According to the NJC, land has been fenced off illegally between 2002 and 2013. The NJC demanded that these illegal fence owners take down their fences and vacate the land that they (or their livestock) had occupied. In 2016, the court ordered 22 out of 32 fence owners to leave the area and to remove the illegal fences.[2] Moreover, the Traditional Authority and the Communal Land Board were ordered to enforce this ruling by taking the necessary action if the illegal settlers would not execute these rulings. The judge based this on two important facts: first, he recognised the marginalised position of the !Kung San in Namibia and agreed that illegal fence owners were contributing to this marginalisation, which in turn worked against the efforts undertaken by the government to improve the lives of the San. Secondly, while communal land is owned by the Namibian state, it must benefit the 'traditional communities' living in those areas, yet none of the illegal fence owners was part of the !Kung 'traditional community', an important concept that has been mobilised throughout the process.[3] The counter-narrative presented by the illegal fencers and the Traditional Authority is that nothing can be done about the arrival of non-San groups in the area because, according to the Constitution of the Republic of Namibia, every Namibian has the right to settle anywhere they want.[4] However, despite this right, the CLRA clearly prohibits new illegal fences in the communal areas after March 2003.[5]

The NJC forms the western part of the Tsumkwe district, which is located in the semi-arid Kalahari desert. The population of Tsumkwe West district consists mainly of different San groups who have named the NJC after a local species of trees, the Buffalo Thorn Tree.[6] N≠a Jaqna is the largest conservancy of Namibia, covering 9,120 square kilometres, and was established in 2003.[7] Recent data suggest that about 7,500 people reside in the NJC.[8] Discussions between community members and the Traditional Authority about establishing a conservancy started in the late 1990s and were facilitated by officials from the Ministry of Environment and Tourism (MET) and several NGOs, particularly the Working Group of Indigenous Minorities in Southern Africa (WIMSA).[9] These developments were inspired by the successful creation of the Nyae Nyae

1 *The Njagna Conservancy Committee v The Minister of Lands and Resettlement* (A 276-2013) [2016] High Court of Namibia Main Division (NAHCMD) 250 (18 August 2016).
2 *Ibid.*
3 *Ibid.*
4 *Ibid.*
5 LAC and NNFU, *Guide to the Communal Land Reform Act, 2002* (Windhoek, Legal Assistance Centre, 2009).
6 NACSO–NJC, 'NACSO: N#a-Jaqna Conservancy 2017', available at http://www.nacso.org.na/conservancies/na-jaqna, retrieved 5 October 2017.
7 *Ibid.*
8 R. Hitchcock and W. Babchuk, 'San Traditional Authorities, Communal Conservancies, Conflicts, and Leadership in Namibia', paper presented at the American Anthropological Association, Minneapolis, Minnesota, USA, 16–20 November 2016.
9 U. Dieckmann, M. Thiem, E. Dirkx and J. Hays, *Scraping the Pot: San in Namibia Two Decades After Independence* (Windhoek, Legal Assistance Centre and Desert Research Foundation of Namibia, 2014).

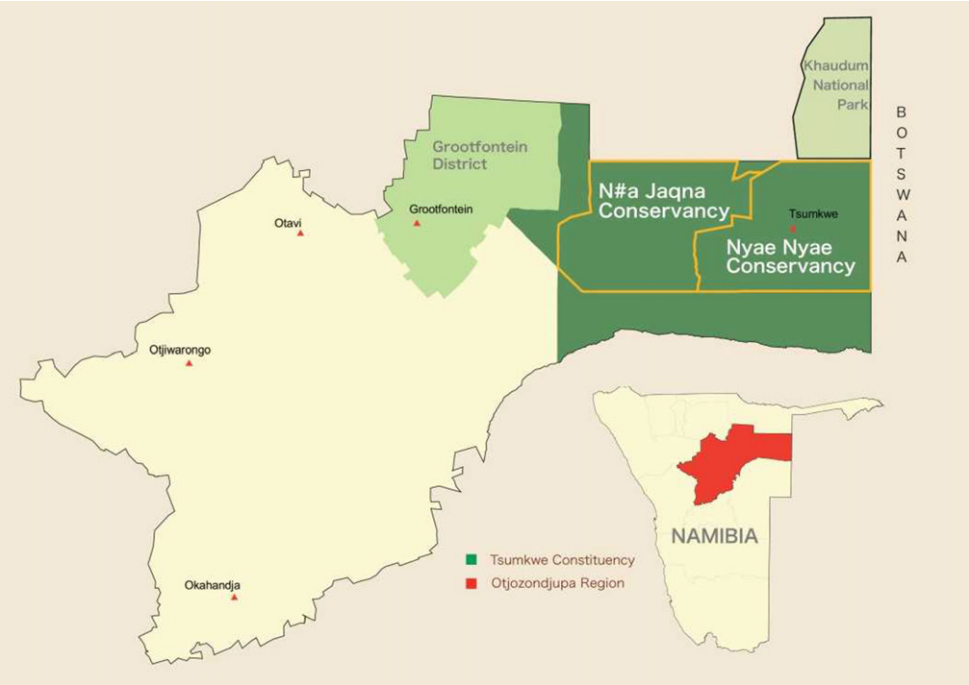

Figure 1. The N≠a Jaqna Conservancy in Tsumkwe West, Otjozondjupa region, Namibia. (Source: 'Nyae Nyae Conservancy Region Map' (2013), https://victoriafalls24.com/wp-content/uploads/2013/09/nyae_nyae_conservancy_regionmap.jpg?x84945)

Conservancy in 1998, the first communal conservancy in Namibia,[10] adjacent to the NJC. Community members believed that establishing a conservancy would promote economic development in the area through employment opportunities and trophy hunting concessions, and they envisaged that their status as a conservancy would secure their land rights and protect their resources. There were several delays in establishing the conservancy: a boundary dispute with the neighbouring Nyae Nyae community, plans to relocate refugees from a refugee camp (Osire) to Tsumkwe West and the heterogeneity of the population, which, according to the MET, would hamper their ability to build a sense of community.[11]

Despite the strong focus in the court case on 'traditional community', many of the San in the NJC themselves could also be considered 'outsiders', in the sense that they consist of different groups that have mostly settled in the NJC since the 1970s, a relatively short period when compared to other San groups in southern Africa, but decades before the arrival of the livestock farmers. So although San people are generally considered the 'indigenous people' of southern Africa,[12] in this particular case their 'indigeneity' is ambiguous, at least from the

10 T. Hohmann, 'We Are Looking for Life. We Are Looking for the Conservancy. Namibian Conservancies, Nature Conservation and Rural Development: The N≠a-Jaqna Conservancy', in T. Hohmann. (ed.), *San and the State: Contesting Land, Development, Identity and Representation* (Köln, Rüdiger Köppe Verlag, 2003) pp. 205–54.

11 *Ibid.*

12 See J. Hays and M. Biesele, 'Indigenous Rights in Southern Africa: International Mechanisms and Local Contexts', *International Journal of Human Rights*, 15, 1 (2011), pp. 1–10; S. Saugestad, 'The Indigenous Peoples of Southern Africa: An Overview', in R.K. Hitchcock and D. Vinding (eds), *Indigenous Peoples' Rights in Southern Africa* (Copenhagen, IWGIA, 2004), pp. 22–41.

point of view of 'genealogical ancestry'[13] in relation to N≠a Jaqna. Genealogical ancestry is one of the four important pillars of (the global construct of) indigeneity (the other three being 'cultural difference', 'non-dominance' and 'self-ascription'). In this article, we analyse this mobilisation of traditional community through these pillars, with specific emphasis on genealogical ancestry and cultural difference. Against this background, the term 'traditional community' has been deployed by the NJC to protect their land. In this process, cultural differences between the various San groups are mitigated, which creates the idea of a homogeneous 'San-ness' or 'Bushman-ness',[14] and, as such, the San of NJC are strongly affiliated to the larger group of indigenous peoples in southern Africa. This way, ties to the land have been reimagined to achieve common interests in the struggle for land and natural resources. We show that the (global) concept of 'indigeneity' has been problematic in the context of nation-building and reconciliation in Namibia, but that the concept of traditional community – a legally accepted concept that the San in N≠a Jaqna are often expressing – provides for a strategic articulation of ideas that are similar to the four core pillars (or characteristics) on which 'indigeneity' is built. The difference between indigeneity and 'autochthony' as a form of collective idenity is that, while both concepts emphasise a shared culture and collective ties to territory, the former deals specifically with groups who already occupy a marginalised socio-economic position within society. In that sense, the San of N≠a Jaqna still show this type of autochthony that demands special entitlements from the Namibian government.[15]

The aim of this article is to show how indigeneity, even when this concept has no legal bearing, as is the case in Namibia, can still be influential for local, marginalised groups of people who identify as indigenous. As such, we argue, traditional community and indigeneity provide the San of the N≠a Jaqna Conservancy with 'immaterial indigenous modernities': modern values or ideas in society that can be used strategically by local, marginalised groups to reach political goals. Generally, the livelihoods of indigenous peoples today are dependent on modern means of production, communication and transportation, including rifles, radios and motorised vehicles that can be acquired with money from public transfer payments and waged labour. This integration of global products and systems into indigenous cosmologies is what Sahlins calls indigenous modernities;[16] indigenous people look at such technologies to see what these can afford them. Building on this, Koot[17] showed that indigenous modernities can also be immaterial – ideas and values (such as democracy or equality). Using immaterial indigenous modernities can be seen as a creative solution to enable the use of dominant ideas from the global discourse on indigenous rights, in a country where these rights are not constitutionally accepted. These developments are not exclusive to the NJC but can be observed in other parts of Namibia as well. For example, in Bwabwata National Park,

13 T. Ingold, *The Perception of the Environment: Essays on Livelihood, Dwelling and Skill* (London, Routledge, 2000).

14 S. Sullivan, 'Difference, Identity, and Access to Official Discourses: Hai//om, "Bushmen," and a Recent Namibian Ethnography', *Anthropos*, 96, 1 (2001), pp. 179–92; R. Sylvain, '"Land, Water, and Truth": San Identity and Global Indigenism', *American Anthropologist*, 104, 4 (2002), pp. 1074–85.

15 O. Zenker, 'Autochthony, Ethnicity, Indigeneity and Nationalism: Time-Honouring and State-Oriented Modes of Rooting Individual–Territory–Group Triads in a Globalizing World', *Critique of Anthropology*, 31, 1 (2011), pp. 63–81.

16 M. Sahlins, 'What is Anthropological Enlightenment? Some Lessons of the Twentieth Century', *Annual Review of Anthropology*, 28, 1 (1999), pp. i–xxiii; see also S. Robins, 'Whose Modernity? Indigenous Modernities and Land Claims after Apartheid', *Development and Change*, 34, 2 (2003), pp. 265–86; S. Koot, 'Cultural Ecotourism as an Indigenous Modernity: Namibian Bushmen and Two Contradictions of Capitalism', in H. Kopnina and E. Shoreman-Ouimet (eds), *Handbook of Environmental Anthropology* (New York, Routledge, 2017), pp. 315–26.

17 Koot, 'Cultural Ecotourism as an Indigenous Modernity'.

the Khwe San have used mapping to legitimise a specific version of history and territory to counter threats from other ethnic groups in the area in the context of increased social, political and economic marginalisation.[18] And at the Treesleeper Camp, the Hai//om, supported by various NGOs, use their cultural heritage to engage in community-based tourism activities, thereby emphasising both the modern and the traditional.[19] Both community-based tourism and mapping are indigenous modernities, and, by strategically using the four pillars of the globally constructed concept of indigeneity, the San of the NJC also emerge as local agents who are actively engaging in global processes of modernisation. In doing so, the San are able to use modern elements strategically to emphasise their indigeneity: 'Similarly, by participating in NGO- and donor-driven projects, indigenous groups such as the Kalahari San are drawing on the modern institutions and resources of a global civil society to reconstitute themselves as a "traditional community"'.[20]

The article draws on three months of ethnographic fieldwork in Namibia in 2015 undertaken by van der Wulp, alongside longitudinal research and practical engagement with various San groups throughout southern Africa by Koot since 1999. For the fieldwork in the NJC, we collaborated closely with the LAC. The primary data-gathering techniques included informal conversations, three focus group discussions, 19 semi-structured interviews and participant observation. A translator was used to assist with interviewing local community members, senior councillors, village headmen, representatives of the Communal Land Board and of the Conservancy representatives. To create a deeper understanding of the historical roots of the illegal fencing issue, van der Wulp also spent several weeks in the National Archive in Windhoek, Namibia's capital. Furthermore, she attended a couple of court hearings.

In what follows, we first elaborate on the situation of the Namibian San in relation to global indigeneity and discuss the four pillars in greater detail. Next, we zoom in on the specific case of N≠a Jaqna and position this communal area and its history within broader land matters in Namibia. We then specifically highlight dynamics of genealogical ancestry and the construction of cultural difference (framed as 'San-ness). In both cases, we show how these pillars have been used as a political strategy. In the discussion that follows, we connect these two pillars with the other two – non-dominance and self-ascription – and we position our findings in a global context. In our conclusion, we briefly revisit our main argument.

Namibian San and the Four Pillars of Indigeneity

The global movement for indigenous rights has produced a variety of definitions about who is considered 'indigenous'. No agreement has been reached about a universally accepted definition of 'indigeneity' that does justice to the diverse groups of people it tries to describe. Some scholars doubt that such a definition is desirable in any case; they generally find it more important to identify the major characteristics of indigenous peoples, which is, in reality, what often happens.[21]

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18 J. Taylor, *Naming the Land: San Identity and Community Conservation in Namibia's West Caprivi* (Basel, Basler Afrika Bibliographien, 2012).

19 A. Hüncke and S. Koot, 'The Presentation of Bushmen in Cultural Tourism: Tourists' Images of Bushmen and the Tourism Provider's Presentation of (Hai//om) Bushmen at Treesleeper Camp, Namibia', *Critical Arts*, 26, 5 (2012), pp. 671–89; Koot, 'Cultural Ecotourism as an Indigenous Modernity'.

20 S. Robins, 'Whose Modernity?', p. 279.

21 A. Barnard, 'Kalahari Revisionism, Vienna and the "Indigenous Peoples" Debate', *Social Anthropology*, 14, 1 (2006), pp. 1–16; A. Barume, *Land Rights of Indigenous Peoples in Africa* (Copenhagen, IWGIA, 2014); M. Zips-Mairitsch, *Lost Lands? (Land) Rights of the San in Botswana and the Legal Concept of Indigeneity in Africa* (Copenhagen, IWGIA, 2009).

In Africa particularly, the concept of indigeneity is contested, whereas in settler societies, such as Australia, Latin America, Canada or the USA, the line between indigenous and non-indigenous is relatively clear. But in Africa all black groups can claim a long historical genealogical connection to the land; more often than not, however, the indigenous peoples of Africa turn out to be hunter-gatherers,[22] which is arguably based on their different livelihoods and languages. This has led various African governments to explain that all Africans are indigenous and that there is no need for specific indigenous rights in addition to already existing human rights. The history of apartheid in southern Africa has made governments in this region especially wary of approaches that could be used to centralise, disadvantage or isolate specific groups.[23] In Namibia, shortly after independence (1990), the government would not recognise any ancestral or indigenous claims to land as they expected this to result in overlapping claims. There is therefore no reference to indigenous rights in the Namibian constitution.[24] However, the 1990 Constitution of Namibia is fully aligned to various UN treaties in which fundamental and human rights are pivotal, and these are legally binding. Indirectly, this should offer protection for indigenous peoples[25] and, indeed, the government believes that the Namibian constitution provides sufficient formal protection for all Namibian people. Namibia is not a signatory of the UN International Labour Organisation Convention 169, which is one of the most important legally binding instruments to protect indigenous peoples – it recognises ownership of the land that indigenous peoples have traditionally occupied.[26] Namibia did, however, vote in favour of the UN Declaration on the Rights of Indigenous People (UNDRIP) in 2007. It has also signed several other international agreements that confirm many of the values of UNDRIP,[27] but the degree to which these provisions have been implemented has, to date, remained minimal.[28]

Land claims by indigenous people often raise complex issues, one of these being the question of who should be the new chief or traditional authority of the reclaimed land and resources.[29] Although the issue of traditional leadership has been legally organised in Namibia, it often remains controversial. Significantly, the only reference in Namibian law to the term 'indigenous' is in the Traditional Authorities Act 25 of 2000 (TAA), which defines the legal scope of traditional authorities and traditional communities in relation to land. According to this Act, a traditional community is defined as:

> [a]n *indigenous* homogeneous, endogamous social grouping of persons […] which share a common ancestry, language, cultural heritage, customs and traditions, who recognises a common traditional authority and inhabits a common communal area, and may include the members of that traditional community residing outside the common communal area.[30]

Interestingly, the government considers it important that a traditional community is simultaneously indigenous. In Namibia, such traditional communities consist of the different

22 Barume, *Land Rights of Indigenous Peoples in Africa*; R. Lee, 'Indigenous Rights and the Politics of Identity in Post-Apartheid Southern Africa', in B. Dean and J.M. Levi (eds), *At the Risk of Being Heard: Identity, Indigenous Rights, and Postcolonial States* (Ann Arbor, University of Michigan Press, 2003), pp. 80–111.

23 Hays and Biesele, 'Indigenous Rights in Southern Africa'.

24 C. Daniels, 'Indigenous Rights in Namibia', in R.K. Hitchcock and D. Vinding (eds), *Indigenous Peoples' Rights in Southern Africa* (Copenhagen, IWGIA, 2004), pp. 63–81.

25 Zips-Mairitsch, *Lost Lands?*

26 *Ibid.*

27 IWGIA, 'Namibia', available at https://www.iwgia.org/en/namibia, retrieved 9 July 2018.

28 M. Sapignoli and R.K. Hitchcock, 'Indigenous Peoples in Southern Africa', *The Round Table*, 102, 4 (2013), pp. 355–65.

29 A. Kuper, 'The Return of the Native', *Current Anthropology*, 44, 3 (2003), pp. 389–402.

30 Republic of Namibia, Traditional Authorities Act (2000), Act 25, p. 3 (our emphasis).

ethnic and linguistic groups,[31] but exclude the white descendants of colonial settlers, thereby considering all non-white inhabitants of the state as 'indigenous'. The use of the term 'indigenous' in the TAA is thus ambiguous, since it implies that all traditional communities in a communal area are automatically also indigenous. This supports the view of the government that all black Africans who live in those areas and whose ancestors were invaded by colonial powers are indigenous, thereby making indigeneity – and 'traditional' – merely derivative of colonialism.[32] The creation of the TAA is a compromise by which the government has allowed traditional communities to express their own identities at local level (self-ascription), while making sure that this did not interfere with the process of building a unified national identity. The government holds the power to recognise a group as being a 'traditional community' according to the TAA. Without this acknowledgement, groups have no decision-making power over resources and land in the areas they inhabit.[33] The Traditional Authorities from communal areas in former Bushmanland were recognised because the San there constitute the dominant and distinct socio-cultural groups. This is not the case for other San groups in Namibia, where the San are considered the dominant socio-cultural group but are represented by Traditional Authorities from different traditional communities or by Traditional Authorities that have been appointed by the government. For example, in Bwabwata National Park, which is situated in the Zambezi and Kavango East regions, the majority of the population are Khwe San, yet the Khwe are still struggling to have their own traditional authority recognised and are officially represented by a Mbukushu Traditional Authority, which leads to tensions.[34] In another example, the Traditional Authority of the Hai//om has been government-appointed. Not only does he firmly support the ruling party, the South West Africa People's Organisation (SWAPO), but he also refrains from claiming land back in and around the Etosha National Park. In the meantime, traditional Hai//om territory further to the east, in an area called Mangetti West, seems to be allocated to relatively wealthy Owambo farmers by Owambo Traditional Authorities that live far away.[35] One of the criteria for official recognition of a traditional authority was a common communal area, but many of the San groups became landless during the colonial period because they were forced to work on white settler farms or in the South African army. These groups, such as the Hai//om and the Omaheke San, did not have their Traditional Authority recognised by the Namibian government and remained landless after independence.[36]

Despite the ambiguity of 'indigeneity' in Namibia and the controversies surrounding San Traditional Authorities, the Namibian government recognises marginalised minorities that have special needs, including the San, and has also started various initiatives to support them.[37] In response to the United Nations Permanent Forum on Indigenous Issues (UNPFII), Namibia stated that a category of 'indigenous people' is not applicable because: 'all the Namibians are indigenous peoples of their country. However, the wording "most marginalised people" is applicable and it refers to the most vulnerable and extremely poor people of our community. These include the San and Ovahimba (Ovatue)'.[38] Despite this

31 J. Suzman, *Minorities in Independent Namibia* (London, Minority Rights Group International, 2002).
32 Sylvain, '"Land, Water, and Truth"'; Ingold, *The Perception of the Environment*.
33 *Ibid.*
34 Taylor, *Naming the Land*.
35 S. Koot and R. Hitchcock, 'In the Way: Perpetuating Land Dispossession of the Indigenous Hai//om and the Collective Action Lawsuit in Etosha National Park and Mangetti West, Namibia', *Nomadic Peoples*, 23, 1 (2019), pp. 55–77.
36 S. Sylvain, 'Class, Culture and Recognition: San Farm Workers and Indigenous Identities', *Anthropologica*, 45, 1 (2003), pp. 111–19.
37 IWGIA, 'Namibia'.
38 Republic of Namibia, Statement of the Government of Namibia to the UN Permanent Forum on Indigenous Issues (UNPFII) Annual Meeting 2009, p. 1, cited in Sapignoli and Hitchcock, 'Indigenous Peoples in Southern Africa', p. 356.

recognition, because many San fought for the South African Defence Force (SADF), they are often regarded as 'traitors' because they joined the oppressors.[39] This has resulted in community members even now experiencing daily discrimination. Several examples of discrimination were mentioned in interviews, such as the fact that most of the few available jobs are given to non-San candidates, and the San are denied opportunities (for promotion) or are paid with second-hand clothing for day jobs or craft work instead of receiving a salary.[40] Moreover, they often tend to be stereotyped as drunks or laggards, and one of the biggest challenges that the San of N≠a Jaqna face is to obtain an identity card. Denying the San the right to national documentation fuels a growing resentment of the fact that they are not entitled to the same rights as 'Namibians'.[41] Even though the San of N≠a Jaqna are a majority numerically,[42] they generally live in subjugated socio-economic positions. Moreover, the different San groups were threatened by the same 'outsiders' and their fences, which of course created a shared interest. For example, an elderly community member felt threatened by the arrival of an increasing number of non-San livestock farmers in the area, since he feels they 'want to take over Bushmanland [the old name for the Tsumkwe districts]. They are driving out the San by preventing them from making a living. It is discrimination'.[43]

When the African Commission on Human and Peoples' Rights (ACHPR) uses the term 'indigenous' in the African context, this is mostly related to very specific conflicts of marginalised groups that suffer discrimination and not merely based on genealogical ancestry. Claims by indigenous peoples are, then, not necessarily demands for privileges, but often – based on their collective status and identity as marginalised – for protection that the more general human rights cannot sufficiently ensure.[44] Despite the ambiguity in the definition of indigeneity, four central characteristics stand out in the discourse on global indigenous rights, based, among other sources, on the working paper of the UN Working Group on Indigenous Populations.[45] These characteristics, which we consider the four pillars (of indigeneity, play a central role in our analysis and are as follows.

First, the 'genealogical ancestry' (or descent, as in 'those who were there first') is a crucial pillar of indigeneity. People who are indigenous are so *to the land*, meaning that they have inherited the land from their ancestors who have now passed it on. This socio-cultural, and often spiritual, heritage makes for a significant relation (often self-ascribed, see pillar four below) to the land that once 'belonged to' their ancestors. Land is considered not simply a means of production, income and livelihoods, but also part of their world view,[46] since 'ancestral lands remain for many African communities, and particularly those who self-identify as indigenous peoples, sacred and embedded with spiritual or cultural values'.[47]

Second, 'cultural difference' or 'cultural distinctiveness' is mostly shown because indigenous peoples have different livelihoods, such as hunting and gathering. Across Africa,

39 C. Welch, 'Land is Life, Conservancy is Life. The San and the N≠a Jaqna Conservancy, Tsumkwe District West, Namibia' (PhD dissertation, McGill University, 2013).

40 Interview, Omatako, 23 June 2015 (all interviews for this article were conducted by Christa van der Wulp); interview, Mangetti Dune, 22 July 2015; see also Dieckmann *et al.*, *Scraping the Pot*.

41 Interview, M'kata, 30 July 2015.

42 R. Hitchcock, 'Sustainability, Socioecology, and Resilience: Communal Conservancies and the Impacts of Development in North Eastern Namibia', paper presented at the INSAKA International Symposium, Windhoek, Namibia, 19–22 June 2017.

43 Interview, Omatako, 22 June 2015,

44 Zips-Mairitsch, *Lost Lands?*; see also Zenker, 'Autochthony, Ethnicity, Indigeneity and Nationalism'.

45 Barume, *Land Rights of Indigenous Peoples in Africa*; Zips-Mairitsch, *Lost Lands?*; Sullivan, 'Difference, Identity, and Access to Official Discourses'; Sylvain, '"Land, Water, and Truth"'; E.I.A. Daes, 'On the Concept of "Indigenous People"', working paper, UN, 1996.

46 Zips-Mairitsch, *Lost Lands?*

47 Barume, *Land Rights of Indigenous Peoples in Africa*, p. 10

however, there are also a fair number of pastoralists who are considered indigenous. In general, in our current global political economy, there is a tendency to favour settled agriculture and formal economic growth over these nomadic livelihood strategies. Consequently, there is a strong tendency for the supporters of indigenous rights to protect the lands of indigenous peoples. Evictions of indigenous peoples would lead to a loss of cultural values, including languages, and to sacred sites and links to the ancestors. Their relationship with land is often viewed as central to their collective identity as a culture, and a necessity to survive.[48]

Third, 'non-dominance' is a pillar that is characterised by experiences of discrimination, exclusion, dispossession and subjugation, leading to a situation of severe marginalisation.[49] Generally, indigenous peoples are numerically inferior and, because of their cultural differences, they often tend to be dominated by economic and political elites who focus more on industrial farming, modern development and settled agriculture. Moreover, these elites often tend to consider the livelihoods of indigenous peoples as 'primitive' or 'backward'.[50]

Fourth, 'self-ascription' or 'self-determination' is based on the universal human right of all people, including indigenous peoples, to be equal in their opportunities to control their own destinies. Internationally, this has remained controversial for indigenous peoples and it has created tensions among governments, which, in some cases, would consider it a threat to decolonisation and state-building because it could be interpreted as an argument for secession. However, most indigenous groups have emphasised their understanding of this pillar as a way to increase control over their own lives.[51]

A Brief History of the San of the N≠a Jaqna Conservancy and Land Matters in Namibia

Before the arrival of the South African army in Tsumkwe West, this region was largely uninhabited except for a small group of !Kung who have been present in this region for centuries. Moreover, there were some Ju/'hoansi who sometimes ventured into Tsumkwe West for hunting and gathering purposes, but today most of them live in the Nyae Nyae Conservancy to the East of N≠a Jaqna.[52] Although there are cultural differences between the two San groups, they share a common language and they have lived in the larger Tsumkwe district for generations.[53] In addition, both groups divided their areas according to a traditional communal land tenure system which was based on *n!oresi,* or territories. According to Hitchock, the San view a *n!ore* as 'an area over which local people have rights of access and resource use. It is usually a named unit of land that contains natural resources upon which people depend'.[54] Today, the *n!oresi* system has been reinvented to fit within the Community-Based Natural Resource Management (CBNRM, explained further below) programme and lays the foundation for how land and resources are managed in the Conservancy.[55]

48 Barume, *Land Rights of Indigenous Peoples in Africa*; Saugestad, 'The Indigenous Peoples of Southern Africa'.
49 Daes, 'On the Concept of "Indigenous People"'; Barume, *Land Rights of Indigenous Peoples in Africa*.
50 Barume, *Land Rights of Indigenous Peoples in Africa*.
51 Saugestad, *The Inconvenient Indigenous: Remote Area Development in Botswana, Donor Assistance and the First People of the Kalahari* (Uppsala, Nordic African Institute, 2002).
52 R.K. Hitchcock, 'Refugees, Resettlement, and Land and Resource Conflicts: The Politics of Identity among !Xun and Khwe San in Northeastern Namibia', *African Study Monographs*, 33, 2 (2012), pp. 73–132.
53 *Ibid.*
54 R.K. Hitchcock, 'Sharing the Land: Kalahari San Property Rights and Resource Management', in T. Widlok and W. Tadesse (eds), *Property and Equality, Volume II. Encapsulation, Commercialisation, Discrimination* (Oxford, Berghahn Books, 2005), pp. 191–2.
55 Welch, 'Land is Life, Conservancy is Life'.

During the German colonial administration (1884–1915), policies focused on how the San of the Tsumkwe region could be 'civilised' in such a way that they would be able to contribute as farm labourers to the colonial political economy.[56] This need became increasingly urgent since there had been several reports of San engaging in 'criminal activities' such as stock theft, the murder of white settlers and attacks on Ovambo migrant workers.[57] The problems that preoccupied the German administration *vis-à-vis* the San remained a concern during the South African administration, whose primary concern was to settle the San to make them part of the labour market.[58] One of the solutions contemplated by the administration was the creation of a Bushmen reserve. In 1976, the South African administration created 'Bushmanland', which encompassed the current administrative district of Tsumkwe. Bushmanland was set up according to the recommendations of the Odendaal Commission, which published a report with the intent of dividing Namibia according to ethnic 'homelands'. Since the San groups present in the Tsumkwe district at the time were considered 'genuine', they were confined to this area through the creation of Bushmanland, while other San groups in Namibia lost their claims to their ancestral lands and became landless.[59]

As a result of previous land policies implemented during the colonial and apartheid administrations, the northern region of Namibia was left to deal with minimal resources, overgrazing, overcrowding and lack of secure land rights.[60] As a result, livestock farmers moved to different regions in Namibia after independence in search of new grazing land. The former, colonially instated 'ethnic homelands' in northern Namibia formed the basis of the communal areas after Namibian independence (1990), but there was no legislation to regulate these communal areas until the CLRA of 2002 was ratified. Owing to this legal void, illegal fences became widespread.[61] For many livestock farmers, fencing was the only way to conduct 'modern' agriculture on communal lands, and this was easier and cheaper than acquiring commercial land elsewhere.[62] These farmers are characterised by their financial ability to purchase fencing materials; their income is often derived from non-farming activities; they enjoy significant status (locally and nationally); they tend to be politically well-connected and they may permanently reside in the area or visit their farm on a regular basis.[63] This way, large parts of communal areas that had previously been organised according to an open resources tenure system became *de facto* privatised. However, according to the CLRA, all communal land is owned by the state, so private ownership is not possible.[64] The land is administered by the state in trust for the communities living there. Moreover, the CLRA specifies responsibilities to traditional authorities and communal land boards in dealing with land allocations; residents can obtain a customary land right for subsistence farming and/or residence.[65] Since the enactment of the CLRA, all fences were considered illegal; those that were present prior to the CLRA had to be taken down unless they had been granted permission to stay by

56 R.J. Gordon, *The Bushman Myth: The Making of a Namibian Underclass* (Boulder, Westview Press, 1992).
57 *Ibid.*
58 Hitchcock, 'Refugees, Resettlement'.
59 Odendaal Commission, *Report of the Commission of Enquiry into South West Africa Affairs 1962–1963* (Pretoria, Republic of South Africa, 1964).
60 See W. Werner 'A Brief History of Land Dispossession in Namibia', *Journal of Southern African Studies*, 19, 1 (1993), pp. 135-46.
61 W. Odendaal, 'Elite Land Grabbing in Namibian Communal Areas and its Impact on Subsistence Farmers' Livelihoods', *PLAAS Policy Brief*, 33 (2011), pp. 1–6.
62 M. Adams, 'Reforming Communal Rangeland Policy in Southern Africa: Challenges, Dilemmas and Opportunities', *African Journal of Range & Forage Science*, 30, 1–2 (2013), pp. 91–7.
63 Odendaal, 'Elite Land Grabbing'.
64 LAC and NNFU, *Guide to the Communal Land Reform Act, 2002*.
65 Republic of Namibia, Communal Land Reform Act (2002). Act 5.

the Traditional Authority and the Communal Land Board.[66] However, procedures and responsibilities to remove illegal fences remain unclear,[67] and, while the Traditional Authorities and the Communal Land Boards have the legal power to order the removal of the fences, they lack the necessary resources to do so.[68] This seems to be a problem still unresolved.[69]

In 1998, before the establishment of the NJC, elections were held and the (now late) John Arnold was officially recognised as the Traditional Authority for the !Kung traditional community of Tsumkwe West. In various interviews, community members claimed that John Arnold started selling off land to livestock farmers, even though communal land cannot be bought or sold.[70] Since the establishment of NJC, the relationship between the Conservancy and the Traditional Authority has been complicated because Arnold feared that the Conservancy would take over his powers.[71] Conflicts arose between the Conservancy and the Traditional Authority when the government announced in 2006 that they planned to establish small-scale commercial farms in the area; the TA expressed their support for the government plans, while community members and the Conservancy opposed the scheme because they feared that it would mainly benefit applicants from outside N≠a Jaqna.[72] Recently, new tensions have arisen between the new chief, Glony Arnold (the late chief's daughter), and the Conservancy because of local political differences between senior councillors, resulting in an internal split within the Traditional Authority.[73] This political rift has been caused by disagreement about how to tackle certain issues, including that of the succession after the death of John Arnold in 2012 and the matter of illegal fences.[74] One of the senior councillors based in Mangetti Dune is also a member of the Conservancy committee and has actively supported the court case against illegal fences. Though the difficult communication between these two factions is partly caused by the lack of infrastructure, the senior councillor in Mangetti Dune expressed her view on the dispute as follows: 'there is hardly any communication between the Mangetti [Dune] councillors and the Omatako Traditional Authority. We have divided ourselves because we did not agree on [...] certain issues, such as fencing. Now the Omatako Traditional Authority does not consult us when they receive a land right application and vice versa'.[75]

Conflicts with other, 'non-San', groups has led to an increased interest in establishing a conservancy to define who is considered a member of 'the community' to be able to assert ownership over resources.[76] The Nature Conservation Amendment Act of 1996 gave communities who own a communal conservancy the right to control resources and to start tourism activities within their area, but the right to allocate customary land is reserved for the Traditional Authority and the Communal Land Board. Currently, 83 communal conservancies are officially registered,[77] and they are seen as a means to promote

66 *Ibid.*
67 Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), *A Decade of Communal Land Reform in Namibia: Review and Lessons Learnt with a Focus on Communal Land Rights Registration* (Windhoek, GIZ, 2014).
68 LAC and NNFU, *Guide to the Communal Land Reform Act, 2002*.
69 Hitchcock, 'Sustainability, Socioecology, and Resilience'.
70 Interviews, Kandu, 22 June 2015; Omatako, 23 June 2015; Omatako, 24 June 2015; see also Hitchcock and Babchuk, 'San Traditional Authorities'.
71 Interview, M'Kata, 16 July 2015.
72 Hitchcock and Babchuk, 'San Traditional Authorities'.
73 Dieckmann *et al.*, *Scraping the Pot*.
74 See Hitchcock and Babchuk, 'San Traditional Authorities'.
75 Interview, Mangetti Dune, 14 July 2015.
76 E. Gargallo, 'Conservation on Contested Lands: The Case of Namibia's Communal Conservancies', *Journal of Contemporary African Studies*, 33, 2 (2015), pp. 213–31.
77 NACSO, 'NACSO: Conservation and Conservancies Overview', available at http://www.nacso.org.na/conservation-and-conservancies, retrieved 9 July 2018.

conservation and economic development in the communal areas. To these ends, they often implement CBNRM, as it is 'community-based'. The MET has defined the following criteria for any group who wants to apply for a conservancy: a defined membership, an elected management committee, defined boundaries and a legal constitution.[78] With these criteria, the MET requires that applications are brought forward by a 'homogeneous' community with stable spatial boundaries, which was also an important issue raised by the MET during the process of establishing the NJC. Yet, in post-apartheid Southern Africa, '[h]ow to define "community" in land claims has been an ongoing and difficult struggle faced by claimant communities and their advocates'.[79] As Clifford mentioned, communities in general are imagined and political, in particular through a politics of articulation, because cultural forms are always 'made, unmade, and remade […] drawing selectively on remembered pasts. The relevant question is whether, and how, they convince and coerce insiders and outsiders, often in power-charged, unequal situations, to accept the autonomy of a "we"'.[80] Thus, the strong focus on 'community' in CBNRM is problematic;[81] the CBNRM model in Namibia does not define community but allows local people to do this themselves. As a result, many communities will stress distinguished cultural identities and show homogeneity to be able to establish a conservancy and define membership.[82] This gives a conservancy, on behalf of the community, considerable power in deciding who should benefit from the natural resources in their area. Moreover, boundaries that are acknowledged by the government are a very useful way to prevent intruders from taking land, or to persuade those who are already residing in the area to follow local rules.[83]

The Ambiguity of Genealogical Ancestry

The notion of genealogical ancestry, descent, or 'first come' is one of the most decisive pillars of the global indigenous rights movement. At first sight, this is problematic for the San of N≠a Jaqna, since many of them in Tsumkwe West settled there during the 1970s as a result of resettlement by the SADF or owing to the Angolan civil war. In 1978, the SADF created the '36 Bushman Battalion' in Mangetti Dune, a village in Tsumkwe West. Around 1,000 San from Angola, the Caprivi and Kavango regions in northern Namibia were relocated to Mangetti Dune to serve the SADF.[84] These new San groups were much more closely attached to the Vasekele !Kung and Mpungu !Kung further north and did not specifically relate to the !Kung San who were already present in Tsumkwe West. At independence, the population in Tsumkwe West had grown to nearly 3,000 inhabitants[85] and had become much more heterogeneous than before. Only 4 per cent of the population in 1995 was born in Tsumkwe West.[86] Thus most San in this area have a relatively recent connection to the specific geographical region and the land.

78 Hohmann, 'We are Looking for Life'.
79 D. Huizenga, 'Articulations of Aboriginal Title, Indigenous Rights, and Living Customary Law in South Africa' *Social and Legal Studies*, 27, 1 (2017), p. 12.
80 J. Clifford, 'Indigenous Articulations', *The Contemporary Pacific*, 13, 2 (2001), p. 479.
81 See also A. Agrawal and C. Gibson, 'Enchantment and Disenchantment: The Role of Community in Natural Resource Conservation', *World Development*, 27, 4 (1999), pp. 629–49.
82 Hohmann, 'We are Looking for Life'.
83 M. Bollig and Diego A. Menestrey Schwieger, 'Fragmentation, Cooperation and Power: Institutional Dynamics in Natural Resource Governance in North-western Namibia', *Human Ecology*, 42, 2 (2014), pp. 167–81.
84 J. Suzman, *An Assessment of the Status of the San in Namibia* (Windhoek, Legal Assistance Centre, 2001).
85 *Ibid.*
86 A. Botelle and R. Rohde, *Land Use Planning Series Report No. 1: Those Who Live on the Land: A Socio-Economic Baseline Survey for Land Use Planning in the Communal Areas of Eastern Otjozondjupa* (Windhoek, Ministry of Lands, Resettlement and Rehabilitation, 1995).

These recent connections to land are also used strategically by the Traditional Authority in relation to illegal fences. Some community members explained that the Traditional Authority increasingly uses the distinction between Angolan San and Namibian-born San as a reason for certain community members not to be allowed to voice their opinion on fencing. An elderly Angolan San, who has lived in the area since before independence, believes that the Angolan San are being discriminated against by the Traditional Authority: 'we are originally from Angola, so the Traditional Authority tells us that we are also outsiders and so we cannot refuse other people from taking our land'.[87] In support, a younger community member who is a Namibian-born San has expressed concern for the way in which the Traditional Authority is portraying the Angolan San: 'before independence a lot of Angolan San settled in this area. I don't understand why the Chief [Traditional Authority] said that the Angolan San are also "outsiders", because they have been in this region before the chief was even born'.[88]

However, as Clifford explains, '[i]ndigenous experience' evokes very diverse senses of belonging, which sometimes come down 'to the minimal claim, relational and strategic: "we were here *before you*"',[89] showing a focus against any invaders, not necessarily only European colonists. Moreover, Barume provides various examples of African groups who are generally considered indigenous, but some (such as the Himba of Namibia or the Maasai of Tanzania) have arrived relatively recently, whereas others, such as the Batwa or the San (with the exception of those in the NJC), have lived in their geographical areas for centuries.[90] Genealogical ancestry is not necessarily a matter of who has lived where since time immemorial, but who lived in an area before others arrived; it is about 'descendants of those inhabiting an area at the time of the arrival of other groups', without any further specification of who exactly these 'other groups' are.[91] The matter in the NJC is further complicated by the fact that Tsumkwe West is seen as the homeland of the !Kung San. But this applies to only a relatively small number of !Kung San, owing to the resettlement of different San groups throughout the years. For some community members, the argument of who has lived here since time immemorial may apply, but, for most San in the NJC, it is important that they have stated that they were there first, before the illegal fencers. Furthermore, it is no coincidence that WIMSA, being concerned with indigenous minorities, has played a key role in the creation of the Conservancy. This shows an almost automatic assumption that San people are always indigenous, whether or not they have actually lived on the land as 'first people'. In the end, this NGO for indigenous peoples has supported all the San of N≠a Jaqna, and not only the minority of !Kung who were there first. Altogether, this shows once more how flexible and political the concept of 'indigeneity' has become, as have its four pillars. Using this strategically, the San of N≠a Jaqna seem to have embraced the core ideas of these pillars in their own interests, and they have not strongly articulated the idea of genealogical ancestry in their rhetoric against illegal fencers, probably because their genealogical ancestry is relatively recent.

San-ness as a Strategy for Cultural Difference

In addition to strategically articulating their genealogical ancestry, the San of N≠a Jaqna have also collectively emphasised their cultural difference *vis-à-vis* non-San groups – most

87 Interview, Omatako, 24 June 2015.
88 Interview, Mangetti Dune, 22 July 2015.
89 J. Clifford, 'Varieties of Indigenous Experience: Diasporas, Homelands, Sovereignties', in M. de la Cadena and O. Starn (eds), *Indigenous Experience Today* (Oxford, Berg, 2007), p. 197.
90 Barume, *Land Rights of Indigenous Peoples in Africa*.
91 Saugestad, *The Inconvenient Indigenous*, p. 43.

notably the illegal fencers – thereby evidently infusing global ideas about indigeneity in the interest of their national and local politics, which, on the ground, seems to have been instigated by a large variety of NGOs and donors (see below). During a discussion with members of the San community about objections to customary land applications, they explained that the main reason for objecting is that the applicants are not part of their 'traditional community'. When asked what they meant by the term 'traditional community', they explained that the applicants are not San but belong to other ethnic groups. Thus the issue of illegal fences is often expressed in terms of San versus non-San, in which 'San-ness' has proven a crucial strategic asset.[92]

Throughout the years, the NJC has been affiliated with and supported by a variety of different donors and NGOs, including WIMSA, the United Nations Development Programme (UNDP), Nyae Nyae Development Foundation of Namibia (NNDFN), and the World Bank. It is not just that the San have been contacted by NGOs and donors, but that they themselves have actively sought to be incorporated in a wider indigenous rights movement and have used the indigenous rights discourse to their own benefit. These players have had an important role in the construction of an identity based on 'San-ness', in which the San, as former hunter-gatherers, are considered culturally different from, for example, their pastoralist neighbours. This process of incorporating the NJC into the wider indigenous movement by employing 'San-ness' as a strategy has also been addressed by Welch, and we will elaborate on how this strategy relates to the context of illegal fences specifically.[93] When applying for UNDP grants, for example, !Kung language was used to name places, people and things with the intention of highlighting their cultural anchors in order to attract donors. In addition, in their application to the UNDP Small Grants Programme, the Conservancy also stressed how important it is to 'preserve' the cultural practices of the San and their 'indigenous knowledge',[94] which also shows that they consider themselves indigenous. Such partnerships with various international organisations have initiated rhetoric in line with global indigenous rights in the Conservancy and among community members. These strategic alliances have called for the local San of the Conservancy to stress their specific cultural identity as San in opposition to other, more dominant (both politically and economically), non-San socio-cultural groups.[95] During our interviews, it became clear how this preservation of cultural practices and its connection to San identity is expressed and leveraged by the community in the context of illegal fences. A local headman in Mangetti Dune expressed the following concern about illegal fences and the preservation of a San identity:

> the fencing issue is not about the fences. It is about the 'illegal settlers', the fences are just a representation of the real issue. Even if the fences are taken down with the court case, the fence owners will still own the land, even if the land right is illegally allocated. The problem will live on, because they will still own the land and find a new way to protect the natural resources located on these huge plots, possibly by defending this land with force. Even if the fences are removed, they will not allow the San community on to their land. We want these outsiders to go back where they came from. We do not have land any more for our children.[96]

In fact, the conflict over resources has so far led to several violent incidents. According to various members and representatives of the Conservancy, those who were caught 'trespassing' to access resources such as *veldkos* (bush food), wood or devil's claw have

92 Sullivan, 'Difference, Identity, and Access to Official Discourses'.
93 Welch, 'Land is Life, Conservancy is Life'.
94 *Ibid*.
95 *Ibid*.
96 Interview, Mangetti Dune, 22 July 2015.

been beaten by the fence owners, who believe that the San are trying to steal their cattle, and they threaten to report the 'trespassers' to the local police. Such incidents have degraded relations between San and non-San, and the San continue to identify illegal fence-owners according to their different socio-cultural groupings (Ovambo, Kavango, Herero, and so on), thereby reinforcing the socio-economic and ethnic boundaries from both sides. The Conservancy (on behalf of different community members) is asking these non-San groups not merely to take down their fences but also to return the land that they occupy to the Conservancy. Community members believe that this area was set aside for the San, entitling them to access to the land like other traditional communities on communal lands in Namibia.

Most of the Angolan San consider themselves to be part of the Tsumkwe West community – thereby using the fourth pillar of indigeneity of self-ascription, simultaneously showing their cultural difference – and it appears that the issue of heterogeneity is not as problematic as it used to be among the different San groups.[97] In fact, Namibian-born community members did not regard the Angolan San as outsiders in the same way that they do illegal settlers. As explained by a San community member from Omatako, '[w]e do not agree that the Angolan San are "outsiders". They are like us. But the cattle farmers, we do not think of them as part of our community'.[98] In that line, an increasing number of San are emphasising a more homogeneous identity as marginalised and as San rather than expressing underlying cultural differences: '[a]ll-encompassing labels such as "San" or "Bushmen" are now ascendant. This reflects a newly evolving sense of collective identity that draws as much on their shared marginal socio-economic status and shared perceptions of alienation and disenfranchisement as it does on their common sociolinguistic, economic and genetic heritage'.[99]

Often connected, at least partly, through this 'shared marginal socio-economic status', local players use the global indigenous rights and identities as a strategic tool, in many cases with the support of NGOs and donors, to claim resources and to demonstrate their ties to ancestral lands. In the case of the San, NGOs have promoted their indigenous identity, with an emphasis on their traditional, cultural and subsistence practices, to lobby for collective San goals, and this is not unique to N≠a Jaqna; the use of 'San-ness' by both the San and NGOs to highlight differences and gain authority has also been documented, for example, in Bwabwata National Park in northern Namibia,[100] or further to the west by the Hai//om.[101] However, this emphasis on cultural 'survival' based on the idea that the cultural practices of the San are 'fixed' does not really reflect the diversified livelihood strategies that are employed by the San of N≠a Jaqna and other San groups today. In contrast to the Omaheke San, for example, who live at farms,[102] the San in N≠a Jaqna are not trying to restore their traditional cultural practices but to mobilise their cultural difference, based on 'San-ness', to defend their lands and to achieve what they see as social and economic justice. Suzman explained that '[t]he diversity of [N≠a Jaqna] is not as serious an issue as it might have been some years ago [...] San social identity is now often expressed and understood in considerably broader terms and with a far stronger geographical focus than it once was'.[103]

97 Suzman, *An Assessment of the Status of the San in Namibia*.
98 Interview, Omatako, 18 July 2015.
99 Suzman, *An Assessment of the Status of the San in Namibia*, p. 3; see also Zenker, 'Autochthony, Ethnicity, Indigeneity and Nationalism'.
100 Taylor, *Naming the Land*.
101 Sullivan, 'Difference, Identity, and Access to Official Discourses'.
102 See Sylvain, '"Land, Water, and Truth"'.
103 Suzman, *An Assessment of the Status of the San in Namibia*, p. 110.

Discussion: The Interaction of Local and Global Articulations of Indigeneity in the N≠a Jaqna Conservancy

Just as '[i]ndigenism is emerging as a significant political discourse in the postcolonial world'[104] as an important sense of belonging to the land, San-ness has emerged in parallel in N≠a Jaqna against an ambiguous background of genealogical ancestry. These processes do not stand apart from each other but are abstrusely entangled as a result of the 'glocal' character of indigeneity. It seems as if the globally constructed pillars on which indigeneity is built have become important immaterial indigenous modernities for indigenous peoples and the NGOs and donors they work with, to be used, or sometimes to be avoided, strategically. In fact, the global and the local are blurred and, in such a process of 'glocalisation', influences and ties are carefully chosen, consumed and processed according to the local culture's structure, habits and needs.[105] Accordingly, indigeneity and the ideas it has brought about can be seen as an important indigenous modernity in itself. And, in combination with this other indigenous modernity, namely 'traditional community', the San of the NJC have been enabled to use the important elements of indigeneity strategically to their advantage, thereby showing considerable agency, in a context where indigeneity remains a legally contested concept. Therefore it seems as if both the global and local processes are interdependent and enable each other.[106] We should also consider the national level in these dynamics.

Arguably the 'strongest' point as articulated by the San of the NJC has been that of cultural difference, framed as San-ness, and this has been infused by collective experiences of marginalisation as an essential element of their non-dominant position in society. Both cultural difference and non-dominance have also been self-ascribed, which shows that the pillars of indigeneity continuously influence each other and, in some cases, also strengthen each other. The construction of a collective cultural identity has allowed the San of the NJC to defend common interests and cope with increased marginalisation, and it is doubtful that they would have identified in such a collective way if they had not been subjugated in the first place. The 'newly arrived' San have identified themselves with the !Kung who were already there because they have a shared feeling of San-ness, and they all consider themselves indigenous peoples, which is an important part of their identity. In contrast, the illegal fencers have not identified themselves in such a way with the !Kung. Indigeneity is thus relational, not only in the sense that it is a collective identity, but also as a collective identity in relation to others, in this particular case to the illegal fence owners. In this relational nature of identity constructions, many indigenous/autochthonous constructions are based on a given group's claims to have arrived earlier than others rather than on postulating having been there 'first' (although even first comers can be regarded as 'in relation to colonists'). Hence the rather late arrival of the San seems irrelevant in this case, as the illegal fencers arrived still later. It shows the San's flexibility and their agency; they express different aspects of their cultural identity based on the situation at hand, the interests at stake and who they interact with.[107] Therefore, '[b]ecause the segregated San must defend their land claims, their relationship to the land understandably moves to the forefront of their own sense of cultural identity'.[108]

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104 Lee, 'Indigenous Rights and the Politics of Identity', p. 99.
105 R. Robertson, 'Glocalization: Time-Space and Homogeneity and Heterogeneity', in M. Featherstone, S. Lash and R. Robertson (eds), *Global Modernities* (London, Sage, 1995), pp. 25–45.
106 See *ibid.*
107 See Hitchcock, 'Refugees, Resettlement'; Huizenga, 'Articulations of Aboriginal Title'.
108 Sylvain, '"Land, Water, and Truth"', p. 1080.

Shared experiences of non-dominance have also added to the construction of a shared cultural identity as a 'traditional community', but what exactly is meant by 'traditional' remains ill-defined in Namibian law. Maybe what is meant in this case is their collective origin as hunters and gatherers, but ironically the San of N≠a Jaqna are no longer allowed to hunt 'traditionally', in contrast to the San who live in the neighbouring Nyae Nyae Conservancy.[109] If 'traditional' means that they can keep their culture 'as it once was', this would be highly problematic in any case; the Conservancy is driven by a CBNRM programme, thereby allowing market mechanisms such as ecotourism and trophy hunting – to protect nature while simultaneously 'developing' the local community based on ideas of economic growth. So even if non-dominance is focused on relations with other peoples,[110] we should not forget the domination of the global political economy either and how this affects people's daily activities.[111]

Transnational laws can engage closely with indigenous communities and vice versa; the latter can consequently influence local and even national processes. Articulations at the local level do not stand apart from such global movements.[112] The way in which indigenous people are represented globally seems to have a big impact on the way in which the San of N≠a Jaqna have presented themselves at the local level. Global legal constructs show a strong relationship, often as a deep connection, between indigenous people and their land and resources, which is often articulated as crucial to their cultural identity and how this identity differs sharply from others'.[113] This ongoing enablement 'is used much more creatively and expansively than is often acknowledged'[114] by those labelled indigenous.

These local processes of articulation and construction of indigenous identities are played out against the backdrop of neoliberal capitalism, which has heavily shaped the conservation discourse in southern Africa, including the Namibian CBNRM.[115] Moreover, further privatisation of communal goods, including land, is a fundamental strategy of the neoliberal discourse. In the case of the NJC, we see how land is *de facto* privatised through illegal fences while other players struggle to retain communal ownership over what they believe is 'their' land. This struggle for communal ownership, however, is also channelled through mechanisms of neoliberal capitalism; conservancies based on CBNRM have been advocated by powerful global players since the late 1990s. With the democratisation and decentralisation of conservation through various CBNRM programmes, local communities' struggles over belonging, autochthony and indigenous identities have intensified in order that they may retain control over land and other natural resources.

Conclusion

In August 2016, the Namibian High Court ordered 22 illegal fencers to leave the NJC. However, after appeals had been filed by illegal fencers against this decision in June 2017, these people had not yet opted to leave the area,[116] even though the Minister of Environment

109 Hitchcock, 'Sustainability, Socioecology, and Resilience'.
110 Saugestad, 'The Indigenous Peoples of Southern Africa'; Saugestad, *The Inconvenient Indigenous*.
111 S. Koot and W. van Beek, 'Ju/'hoansi Lodging in a Namibian Conservancy: CBNRM, Tourism and Increasing Domination', *Conservation and Society*, 15, 2 (2017), pp. 136–46; Sylvain, '"Land, Water, and Truth"'.
112 Huizenga, 'Articulations of Aboriginal Title'.
113 Zips-Mairitsch, *Lost Lands?*
114 Huizenga, 'Articulations of Aboriginal Title, p. 3.
115 M. Bollig, 'Towards an Arid Eden? Boundary-Making, Governance and Benefit-Sharing and the Political Ecology of the New Commons of Kunene Region, Northern Namibia', *International Journal of the Commons*, 10, 2 (2016), pp. 771–99; S. Sullivan, 'The Elephant in the Room? Problematising "New" (Neoliberal) Biodiversity Conservation', *Forum for Development Studies*, 33, 1 (2006), pp. 105–35.
116 Hitchcock, 'Sustainability, Socioecology, and Resilience'.

and Tourism had stated in a newspaper that '[w]hat we will do is […] ensure that the rights of the San are protected'.[117] The uncertain situation that this has created for the San of N≠a Jaqna does not cover up the broader message that the process shows, which is that 'indigenous peoples have asserted their place in 21st century global culture, economy, and politics'.[118] The flexible use of the four pillars by the San of the NJC has shown that indigeneity is not a fixed category but a process in which power structures, relationships and encounters play a crucial role in creating a type of becoming in which hegemony and counter-hegemonic elements are strategically used to achieve socio-economic goals.[119]

The legal strategy to concentrate on the term 'traditional community' has become important for the San of N≠a Jaqna to claim and defend their land and resources from outsiders and, we suggest, may potentially be more successful in Namibia than emphasising indigenous rights more directly. Although the four pillars are not legally acknowledged in Namibia, the ideas that are represented by them have strongly influenced the strategies of the San in N≠a Jaqna. We argue that the San have been able to make strategic use of these exponents of global modernisation through the use of another immaterial indigenous modernity, namely the idea legally accepted in Namibia of a 'traditional community'. This shows the flexibility of the concept of indigeneity beyond the law; the mobilisation of 'traditional community' leads to an inclusion of the four pillars, which are all immaterial indigenous modernities.

Moreover, despite being able to use (the pillars of) indigeneity, this does not erase the power asymmetries in this process; showing your cultural difference is a response to standards that have been set at national and global levels, thereby at least partly conforming to the global political economy. Moreover, the implementation of CBNRM programmes is often presented as preserving a culture, whereas they are really focused on nature conservation and development through market mechanisms, predominantly, in which the San still often tend to take a submissive role. Such power differences are likely to remain influential every day; as it stands now, it remains uncertain how the court ruling will be followed up in practice and whether the illegal fences will be removed, and, if so, by whom.

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Check for updates

117 'Shifeta Fights for San Rights', *Namibian Sun*, Windhoek, 26 September 2016.
118 M. de la Cadena and O. Starn, 'Introduction', in De la Cadena and Starn, *Indigenous Experience Today*, pp. 1–2.
119 *Ibid.*