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Namibia's San uniquely powerless: New report

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EXISTING legislation has failed to address the land rights of Namibia's approximately 30 000 extremely marginalised San or Bushmen communities, a new report on land rights reveals.

Land Boards and traditional authorities were powerless to defend the land rights of marginalised people and could not prevent rich communal Oshiwambo and Herero-speaking cattle owners and those of the Okavango Region moving their animals "illegally" across the Red Line into the Mangetti area for instance.

This was because the Communal Land Reform Act does not protect the occupational rights of minorities or allow for compensation.

The in-depth, 60-page report, 'Our Land They Took - San Land Rights Under Threat In Namibia', was written by Namibian researcher Willem Odendaal and US law professor Sidney Haring.

The authors point to shortcomings in existing legislation, criticise the present land reform drive as unimaginative and inflexible and call for new and more innovative forms of land reform.

Presenting the report at the Legal Assistance Centre (LAC) in Windhoek on Friday, LAC board Chairman Clement Daniels said it was a "disgrace that 17 years after Independence one group of Namibians - the San - remain marginalised and are living in extreme poverty".

Although Deputy Prime Minister Dr Libertina Amathila was due to launch the report, Deputy Director for Special Projects Gerson Kamatuka read out her speech.

Acknowledging the comprehensive overview the report provides, Amathila's speech noted that "not everyone is currently happy with the land redistribution process as this is too costly and slow".

"The land issue is going to haunt us for many years to come," the Deputy Prime Minister said.

Reading out Amathila's speech, Kamatuka said the report did not mention a San development programme started by Amathila's

office in 2005 - the formation of the Kyaramacan Association for communities living in the Bwabwata National Park in the Caprivi.

It has 4 800 members - including San - and they derive income from trophy hunting concessions.

For its part, the report criticises Government for setting up a prison farm on the land of the Khwe San near Divundu, ignoring them and for declaring a large area in West Caprivi as the Bwabwata National Park a few years ago, without even consulting the Khwe about it.

"The San are a marginal and powerless people.

The San want basic respect from their Government, and basic information about their situation," the report said.

"They have the impression that Government ignores them, and that the Government is both distant and dishonest in dealing with them."

Government should maintain an open and honest relationship with San communities, giving forthright answer.

Given that land meant wealth in any agrarian society, Government's land reform programme had the potential to enrich a small group of powerful and politically well-connected people, the authors wrote.

"Rumours abound of politicians, ministers and friends being enriched by this programme.

In an agrarian society, the land reform programme offers great potential for unjust and unlawful enrichment of a few at the expense of the poor people these programmes are designed to help.

It is entirely the responsibility of Government and specifically the Ministry of Lands and Resettlement to maintain transparency and honesty in the land reform programme.

A careful and public planning process would ensure transparency, and would also enable the poor and landless to gauge what was likely to happen to them."

"It would help Government administer its land reform programme with minimal waste and inefficiency.

This cannot be said to be occurring at present," the report said.

ETOSHA Some San lived on their "own" land - the Nyae Nyae Conservancy in north-eastern Namibia, for example - but others like the Hai//om lost all their land, which is the present day

Etosha National Park, from where they were evicted in the 1960s.

Those fortunate enough to live in communal areas still faced encroachment from other groups, competing for scarce farming and grazing land.

More than a million people live in the communal areas, which are overcrowded, and are in competition for land.

The whole area near Etosha could be redeveloped around the concept of San tourism schemes or other economic development endeavours that would allocate existing farm land to the San and also take tourist pressure off the fragile environment of Etosha, the report recommended.

New models of jointly owned national parks existed, with land either shared with indigenous people or owned by indigenous people and leased to the state for park purposes.

"Any such re-conceptualisation of Etosha must include a strong Hai//om presence as this park is located on their land," the authors emphasised.

They acknowledged that one San resettlement project was already on the cards, with Government planning to acquire commercial farms bordering Etosha with the aim of resettling the Hai//om there and then gradually extending the Park to include this new Hai//om land.

"Existing tourist facilities in the park could be removed or supplemented by new tourist facilities run wholly or partially by the Hai//om on their new land," the authors added.

GRN OWNS ALL Government's assertion that it owned all communal land raised many difficult questions and threatened San communities as well as individuals.

The San were "uniquely powerless" and outside the political sphere.

The Communal Land Reform Act was intended to resolve some of the difficult issues of land tenure in the communal areas but had proved inadequate.

Poor information and inconsistent policy implementation had exacerbated this situation.

"If the communal lands are vested in the state but held in trust for the benefit of the communal landholders then there should be additional legislation detailing how these trust lands must be administered for the benefit of the respective communities," the report pointed out.

"These are not just difficult legal problems, but also they are uncertainties leading to dangerous and chaotic situations on the land by pitting groups of poor people against each other in competition for scarce land and resources."

The Communal Land Reform Act's provisions that enabled Traditional Authorities to administer communal lands were "quite worthless" if the Government did not recognise Traditional Authorities and did not empower them to enforce communal land laws.

"Unless the Government acts promptly to set up a statutory and administrative framework for the administration of San communal lands, there is going to be political and legal chaos with potential to destabilise the Government's land reform measures.

This is particularly likely in West Bushmanland and Caprivi," Odendaal and Harring warned.

In keeping with basic principles of international law, and recognising that the communal areas of Namibia had been owned by their occupants for hundreds of years, Namibia should declare, as a matter of national policy, that the communal lands belonged to their traditional occupants and were wrongfully alienated from them under colonial apartheid rule.

Government could then establish a statutory regime to administer those lands for the benefit of the people who live there through the existing Traditional Authorities Act and/or the Communal Land Reform Act.

Furthermore, the same statutes should clearly state that any land taken by Government for purposes of development had to be acquired legally under Article 16 of the Namibian Constitution, which gives these lands the same protection as commercial agricultural land.

Although the N#a Jaqna Conservancy (with 2 000 San members) in the Tsumkwe area had been officially gazetted in 2003, Government had still not sanctioned the development plan and had recently revealed plans to fence off 100 small farms in the conservancy.

This obstructed plans to release 4 000 head of game to J#a Naqna and go ahead with tourism projects.

REFORM FOR LAND REFORM Government needed to rectify the status quo on the land rights of the San.

Steps should include a clear legal status for San land; governmental institutions to administer their lands; and an adequate law-enforcement mechanism to protect San lands from encroachment.

"Regarding the latter, the situation that San Chief John Arnold faces in West Bushmanland is unconscionable.

A chief who allocates communal land under the Communal Land Reform Act has to be able to call on local police and other government bodies, such as the Regional Communal Land Board, to enforce San land law," the authors said.