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**INFORMATION ABOUT NAMIBIA'S LAW**

### **Namibia's environmental laws**

The Oxford Dictionary describes the environment as “the surroundings or conditions in which a person, animal, or plant lives or operates.”

Humankind has been reliant on the environment for its existence for as long as humans have been living on earth. In numerous ways, the future survival of humankind will depend on how we take care of our air, soil, rivers, oceans, animals and plants.

After the Second World War, the world went into an era called the “golden age of capitalism”. Fuelled by a seemingly unsaturated appetite for natural resources exploration, this era brought significant structural and institutional changes to the global economy. But it also brought difficult environmental challenges with it, such as land degradation, water scarcity and pollution, deforestation, biodiversity loss and climate change.

Given the importance that the environment plays in our everyday lives, it is surprising that environmental law is a relatively new field. The 1972 Declaration of the United Nations Conference on the Human Environment is considered one of the first legal foundations of environmental protection. It declared that “the protection of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world” and that “the natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management as appropriate.”

Many years later, the words of the 1972 Declaration reverberate in the Namibian Constitution. Chapter 11 of the Namibian Constitution deals with “Principles of State Policy.” In this chapter, Article 95(1) stipulates that the State shall actively promote and maintain the welfare of the people by adopting policies that are aimed at the “maintenance of ecosystems, essential ecological processes and biological diversity of Namibia”. These policies should also strive for “the utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future”. The same Article further calls on government to implement “measures against the dumping or recycling of foreign nuclear and toxic waste on Namibian territory”.

The principles of state policy are not directly legally enforceable in the courts, but Article 101 states that the courts are entitled to have regard to these principles in interpreting any laws based on them. It also

states that the principles of state policy should “guide the Government in making and applying laws”. In other words, the Constitution places a duty on the Namibian Government to develop appropriate laws to protect the environment, and to make sure that they are enforced. In turn, the Constitution also places a duty on our Courts to interpret laws relating to the environment within the spirit of Article 95(1).

The Environmental Management Act 7 of 2007, brought into force in 2012, is perhaps the most significant piece of environmental legislation enacted after independence. The Act promotes the sustainable management of the environment and the use of natural resources by establishing principles for decision-making on matters affecting the environment. It also creates the Sustainable Development Advisory Council and provides for the appointment of the Environmental Commissioner and environmental officers. Most importantly, it sets out a process for the assessment and control of activities that may have significant effects on the environment.

Several other acts relating to the environment have also been enacted or amended since independence. These include the Environmental Investment Fund of Namibia Act 13 of 2001, which establishes a fund to support sustainable environmental and natural resource management.

In addition, the Nature Conservation Ordinance 4 of 1975 (as amended) regulates the management of game parks and nature reserves, the hunting and protection of wild animals (including game birds), problem animals (such as baboons, lynx, dassies and black-backed jackals) and fish, and the protection of indigenous plants.

A key amendment to the 1975 Ordinance is the Nature Conservation Amendment Act 5 of 1996. It provides utilisation rights over wildlife to community members living on communal land. In this way the Act allows communities to generate an income from wildlife utilisation, while at the same time encouraging the sustainable use of wildlife resources.

The Protected Areas and Wildlife Management Bill, which has been in the making for over 20 years, will replace the 1975 Ordinance. Its purpose is to consolidate the 1975 Ordinance and all its amendments and to bring the management of protected areas and wildlife management in line with Article 95(1). However, it remains unclear when this Bill will finally be passed.

Besides Namibia’s domestic environmental laws, Namibia is also party to various international environmental laws such as covenants, treaties, conventions and protocols. In terms of Article 144 of the Namibian Constitution, international law becomes binding on Namibia once the country has ratified it.

Some of the more well-known international environmental agreements which Namibia has joined include the 1992 Convention on Biological Diversity (Biodiversity Convention), the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the 1992 United Nations Framework Convention on Climate Change and the more recent Paris Agreement of 2015.

The role of the Ombudsman as Namibia’s environmental “watchdog” is often overlooked, and unfortunately also underutilised, because the Ombudsman has only dealt with a few environmental complaints since independence. In terms of Article 91(c) of the Namibian Constitution, the Ombudsman has a duty to “investigate complaints concerning the over-utilization of living natural resources, the irrational exploitation of non-renewable resources, the degradation and destruction of ecosystems and failure to protect the beauty and character of Namibia”.

While the Ombudsman is tasked with the role of environmental watchdog, it remains the duty of every Namibian to avoid the degradation and destruction of Namibia’s ecosystems and to protect the beauty and character of its unique landscape. The strong environmental protective clauses in the Namibian Constitution alone will not stop the wanton destruction of our environment. In particular, Namibia needs a robust institutional structure and a vigilant population committed to the protection of the environment and

the achievement of environmentally sustainable goals. Something as modest as planting a tree or recycling our waste is a good start in the right direction.

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