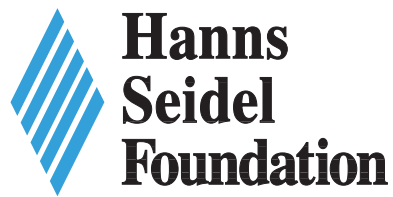




# LEGAL ASSISTANCE CENTRE

*fighting for human rights in Namibia since 1988*



## VOICES IN THE DARK GREEN

CLIMATE CHANGE CHALLENGES FOR MARGINAL COMMUNITIES IN NAMIBIA



## SILENCE OF THE VOICES

In many of Namibia's local rural communities, relationships among people, wildlife, and the natural environment are not only important to spiritual and mental health but necessary to ensure sustainable social and economic development based on natural resource capitalisation. Accelerated climate change, coupled with unsustainable resource extraction, social marginalisation and environmental destruction is disrupting these connections, threatening social networks and knowledge-sharing and exacerbating conditions for poverty.



*Ncumcara Community Forest members training workshop 2022.. (All photographs have been printed with the requisite permission).*

Often the voices of indigenous people and local communities are ignored with top down decision-making being imposed on marginalised communities. As a result, the outcomes are ill-informed without reference to the direct needs of vulnerable people who are displaced by anthropogenic induced climate change effects.

***Indeed, so critical is the situation for the entire planet that according to the report of the Intergovernmental Panel on Climate Change (IPCC) in October 2018, the world must control global warming within 1.5°C to avoid extreme climate disasters<sup>1</sup>.***

<sup>1</sup> IPCC (2018). Mitigation Pathways Compatible with 1.5 °C in the Context of Sustainable Development. Available at: <https://www.ipcc.ch/sr15/chapter/chapter-2/>.

Only when the whole world achieves net-zero emission of greenhouse gases in the middle of the 21st century, can this goal be achieved

## INDIGENOUS PEOPLE AND LOCAL COMMUNITIES

The Special Rapporteur of the UN Sub-Commission on the Promotion and Protection of Human Rights, José Martínez Cobo, formulated the following working definition that suitably describes the generally acceptable attributes of Indigenous Peoples:

*“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural, social institutions and legal system<sup>1</sup>”.*

While this definition and conditions of these groups - the San, Himba, Ovaherero, Ovatombo, and Ovazemba - especially relative to other segments of the population of Namibia - can be identified as similar to those of groups defined as indigenous worldwide, the Namibian government recognizes these groups as particularly marginalised groups that merit special attention and concern because they are especially vulnerable. **The government refrains from confirming them as indigenous peoples.**

Apart from being disadvantaged relative to other groups in the country this distinct group expressed strong desire for greater inclusion in decision-making at all levels, to be able to genuinely set their own priorities for development and to regain or

strengthen rights over lands and natural resources, particularly lands to which they retain a cultural attachment<sup>2</sup>

Although there is no universal agreement on the definition of the term “indigenous peoples” in Namibia, the UN Declaration on the Rights of Indigenous Peoples (a non-binding international declaration<sup>3</sup>), identifies “indigenous peoples” as being the beneficiaries of the rights contained in the Declaration, without defining the term. As such there are several acceptable formulations of the terms which are widely understood as guiding principles for the identification of indigenous peoples in any particular context or country.

## **LOSS OF LAND AND NATURAL RESOURCES**

While the loss of land by indigenous peoples during colonialism and apartheid was pervasive, by all accounts San groups in the country experienced the greatest loss and resultant social, economic, and cultural disruption, the legacy of which has not been overcome since independence. Today, San people use and occupy lands in Namibia under several different kinds of arrangements, with varying levels of security and control over lands and resources, none of which are wholly adequate or without problems. These land tenure arrangements include communal lands, conservancies, resettlement farms and occupation of lands within national parks.

“Indigenous peoples in Namibia have suffered injustices in the past that have left them disadvantaged, to varying degrees, in the present. Since the independence of Namibia in 1990, the Government has made many significant achievements in rolling back some of the destructive legacies left by colonialism and apartheid<sup>4</sup>.”

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<sup>2</sup> Human Rights Council Twenty-fourth session Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya Addendum

<sup>3</sup> Resolution adopted by the General Assembly on 13 September 2007 [without reference to a Main Committee (A/61/L.67 and Add.1)] 61/295. United Nations Declaration on the Rights of Indigenous Peoples.

<sup>4</sup> Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, 2013

## **PARTICIPATION IN ENVIRONMENTAL DECISION MAKING**

International and domestic human rights norms require that indigenous peoples are able to effectively participate in decision-making processes which may affect their rights or interests, including by being consulted. The main objective of these norms is to ensure that indigenous peoples can effectively participate in mainstream political and legislative processes which may affect them directly.

The Namibian government recognises and embraces the fundamental rights of “humankind” and further recognises the dire predictions that the most severe effects of climate change will be felt by the rural poor, women, children and marginalised groups/ individuals. It thus unequivocally advocates for the practising of human rights-based development in accordance with national and international law at all times during implementation of climate change response activities.

The conservation and sustainable use of Namibia’s biodiversity and effective management of ecosystems, as well as the equitable sharing of benefits arising thereof for the well-being of the nation is also actively promoted through government policies. It is supported by legislation to enable community based natural resource management for sustainable development and socio-economic upliftment with respect to acceptable environmental management principles<sup>5</sup>.

To effectively address the challenges posed by climate change to biodiversity, the government also encourages involvement of local communities in the conservation and sustainable use of biodiversity through provision of conservancies and has undertaken to ensure that any mining activity within and in the vicinity of National parks does not compromise the well-being of the ecosystem and will also identify biodiversity hotspots where no development should be allowed<sup>6</sup>.

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<sup>5</sup> Article 95(I)

<sup>6</sup> National Policy on Climate Change 2011

## **NATIONAL CLIMATE CHANGE POLICY**

In terms of its national Climate Change Policy of 2011, Article 3 states that the government recognises the importance of meaningful participation in the planning, development and implementation of climate change activities at local, regional and national level. The policy recognises the need to ensure the participation of women, children and other vulnerable/ marginalised groups and individuals, as well as, the use of appropriate local knowledge for adaptation.

Soon after independence, a revised policy framework<sup>7</sup> was presented towards a mechanism for positive development for Community Based Natural Resource Management (CBNRM) in Namibia. It expressly recognised that years of neglect by the South African and previous German colonial administration had resulted in the serious underdevelopment of the communal areas and their inhabitants<sup>8</sup>.

It recognised that affirmative steps had to be taken to redress discrimination as it existed in both access to natural resources (particularly wildlife) and opportunities to benefit financially from its sustainable utilisation. While it also sought to facilitate the involvement of rural communities in tourism enterprise development, it notably sought to combine local knowledge and other scientific expertise to preserve wildlife and protect biodiversity. The bulk of Namibian rural communities and indigenous communities live on communal land where CBNRM takes place.

It must, however, be noted that these opportunities for community-based development by access to utilise wildlife resources and forest produce and non-consumptive uses such as tourism, communal conservancies and community forests are peculiar to communal land dwellers.

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<sup>7</sup> “Wildlife Management, Utilisation and Tourism in Communal Areas”, “The Establishment of Conservancies in Namibia” and the “Promotion of Community Based Tourism”, published by the Ministry of Environment and Tourism in June 1995.

<sup>8</sup> See also discussion in judgement: *Njagna Conservancy Committee v Minister of Lands and Resettlement* (276 of 2013) [2016] NAHCMD 250 (18 August 2016) at paras 10 -;

***It does not assist indigenous people who have been evicted or dispossessed of their ancestral lands elsewhere and who remain landless and vulnerable to the effects of climate changes.***

## **COMMUNITY BASED NATURAL RESOURCE MANAGEMENT**

Most rights to occupation and use of communal land is regulated by the Communal Land Reform Act (CLRA). Conservancies and community forests operate as juristic persons on communal land, a body corporate managed by a management committee elected by its local community members and organised in terms of its constitution. The communal conservancy and community forest arrangement presupposes that the local community who have caused it to be established, already exercises existing rights to occupy the conservancy area as local community members on communal land which falls within a geographically defined communal land area.

The individual land rights within the conservancy are largely regulated by the Communal Land Reform Act. In terms of Section 17 of the CLRA communal land areas vest in the State in trust for the benefit of the traditional communities residing in those areas and for the purpose of promoting the economic and social development of the people of Namibia. This relates in particular to the landless and those with insufficient access to land who are not in formal employment or engaged in non-agriculture business activities.

Some of these conservancies are occupied by indigenous people but are being taken over with impunity by wealthier illegal settlers and cattle farmers, while others have no lands whatsoever after a history of dispossession.

## **NATIONAL LEVEL PARTICIPATORY EXCLUSION**

In his report of 2016 regarding participation in governance and decision-making at the national level the Special Rapporteur James Anaya notes that although Namibia has maintained a stable democratic governance system since independence, representatives of **all** of the indigenous groups with whom the Special Rapporteur met in 2016 expressed concerns that their disadvantaged conditions and small populations

relative to dominant groups within Namibia result in challenges in participation in governance structures at the national level.

“Since independence, national politics have been dominated by the South West Africa People’s Organization party which, despite being open to all ethnicities and tribes in Namibia, is viewed as a predominately Owambo party, given that the Owambo make up around 50 per cent of the population. Representatives to the National Assembly are also elected on the basis of party list proportional representation; thus, the parties that have the highest membership receive the most seats in the National Assembly, helping to solidify the dominance of the South West Africa People’s Organization in national decision-making<sup>9</sup>.”

## **VULNERABILITIES**

Although Namibia as a whole and its indigenous peoples’ traditional ways of life have contributed little to climate change, indigenous peoples are the most vulnerable to its consequences for diverse reasons such as poverty and lack of access to land and natural resources.

As a result of their historic dependence on local biological diversity, ecosystem resources and cultural landscapes as a source of sustenance and well-being, climate change poses a real threat particularly to the survival of indigenous peoples who have been forced from their natural environment. More often than not they continue to be excluded from the national and local processes of decision- and policymaking that are defining their future.

The consequences of such marginalisation are that many current Government sanctioned programmes aimed at mitigating the impacts of climate change — such as mega-hydrogens projects constructed under the Clean Development Mechanisms (CDM) framework<sup>10</sup>, or building of hydroelectric dams to pursue renewable energy

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<sup>9</sup> Anaya, J Ibid

<sup>10</sup> Article 12 of the Kyoto Protocol



aspirations<sup>11</sup>, can further exacerbate the direct impacts of climate change on indigenous peoples, undermining their livelihoods even more.

## **GREEN MINING RUSH**

Although global warming is identified as a global threat, the current global drive towards the transition to greener, low carbon, and clean fuelled economies and the subsequent increase in demand for rare-earth elements such as nickel, lithium, cobalt, and copper to advance “green” technologies, is causing a surging global demand and driving a wave of investment into new, expanded mining and “green” energy projects around the world, including Namibia<sup>12</sup>.

On the one hand it is said that Green energy can also lead to stable energy prices as these sources are often produced locally and are not as affected by geopolitical crisis, price hikes or supply chain disruptions. The economic benefits include job creation in construction and maintenance of facilities that often serve the communities in the area where the workers are employed.

On the other hand, the mining and processing of these minerals are highly polluting and environmentally damaging. Namibia possesses significant reserves of rare earth minerals such as lithium, dysprosium and terbium needed for permanent magnets in the batteries of electric cars and wind turbines, most of which remain undeveloped<sup>13</sup>.

The impact of mining in dry land ecologically sensitive areas further exacerbates adverse environmental impacts undermining the quest for a net zero carbon emission goal and displacing marginal people, causing ecological system destruction through loss of traditional knowledge and unsustainable practices.

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<sup>11</sup> See "God Gave Us This Land": the OvaHimba, the Proposed Epupa Dam, the Independent Namibian State, and Law and Development in Africa Sidney L. Harring; Ezzell, Carol. (2001). The Himba and the Dam. Scientific American. 284. 80-9. 10.1038/scientificamerican0601-80.

<sup>12</sup> Mining of critical and strategic metals in socially and environmentally sensitive areas in Namibia Tesh, D.; Barakos, G.; Musiyarira, H.; Mischo, H. 2016 Proceedings of the 24th World Mining Congress, Rio de Janeiro

<sup>13</sup> <https://www.reuters.com/markets/commodities/namibia-eu-reach-provisional-deal-rare-earth-minerals-2022-10-20/> Accessed 10 December 2022

## **BENEFITS**

- 1.** Transportable
- 2.** Clean
- 3.** By-products
- 4.** Powerful
- 5.** Versatile
- 6.** Storable

- 1.** Expensive
- 2.** High energy consumption
- 3.** Volatile
- 4.** High volume
- 5.** Infrastructure

## **DRAWBACKS**

While the future successful implementation of a greener, cleaner economy remains speculative<sup>14</sup>, the stark reality is that the cumulative and added impact of mining and transitional energy projects risk replicating the same harms of mining and other extractive industries, which threaten remaining indigenous people's or local community rights and further displaces them from their lands, having significant impacts on the natural environment and social economy of Namibia. Many of these extractive industries are peddled as "green" simply because they supply raw materials to the burgeoning Green economy.

Business interests, particularly involving Government agencies and interests in Namibia, as elsewhere, are often prioritised over indigenous rights, leaving many indigenous and local communities with little recourse other than protest to protect their communities. There is seemingly little imperative for other line ministries to exercise powers to override prioritised Government development goals goaded by promise of job creation, and economic wealth and development for the region even if it means

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<sup>14</sup> See also Government of the Republic of Namibia Ministry of Mines and Energy National Renewable Energy Policy July 2017

significant impacts on indigenous and local community managed natural resources and lands<sup>15</sup>.

As a result, it is likely that conflicts between indigenous peoples and extractive industries will continue to fester in Namibia as indigenous land and natural resources continue to be threatened by industrial scale resource extraction and inadvertent or planned dispossession of Indigenous peoples' remaining resources.

Uncurbed illegal occupation of their lands by wealthier and sometimes politically connected elites along with opportunistic mining entrepreneurs, illegal and unrestrained logging operators, burgeoning wildlife crime and the reluctance by the state to effectively deal with it serves only to further marginalise indigenous people and local communities. They remain vulnerable without meaningful participation in the decision making or law enforcement processes or are economically challenged to the extent that they cannot afford to realise their rights through the judicial system in the apex courts.

## **STATE SANCTIONED**

Past acts of state-sanctioned spoliation of indigenous people's lands are legitimised by modern law, while the courts have remained unempathetic<sup>16</sup> in advancing the cause of collective rights bearing entities such as indigenous people's groups to access justice - as a class - rather bolstering conservative, restrictive common law interpretations to effectively exclude legal standing for such indigenous groups to approach the courts as a "rights-bearing collective" to assert their individual member's human rights collectively as a class of people<sup>17</sup>.

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<sup>15</sup> See for example *Ncumcara Community Forest Management Association v Environmental Commissioner* (HC-MD-CIV-MOT-GEN 289 of 2022) [2022] NAHCMD 380 (29 July 2022)

<sup>16</sup> See for example in *Tsamkxao Oma v Minister of Land Reform* (HC-MD-CIV-MOT-GEN-2018/00093) [2020] NAHCMD 162 (7 May 2020) Masuku J, after several years, rejected the claim of the Ju/'Hoansi-San to interdict against invading Herero cattle farmers because the founding affidavit, despite being initialled and endorsed by the Commissioner of Oaths with her name and designation in her own handwriting, she failed to sign on the space on the page provided for a signature. In the High Court's view, this rendered the affidavit totally defective in law and therefore no case was properly before the court since there is no founding affidavit. The High Court effectively managed to avoid dealing with the merits of the claim.

<sup>17</sup> *Tsumib and Others v Government of the Republic of Namibia and Others* (SA 53 of 2019) [2022] NASC 6 (16 March 2022);

## **THE RIGHT TO SELF DETERMINATION**

For indigenous peoples the right to self-determination has its foundation firmly entrenched in the binding International Covenant of Civil and Political Rights (ICCPR) the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples Rights (Banjul Charter).

According to these internationally binding laws, the right to self determination is the fundamental right supporting any other rights which can be recognised by indigenous peoples and local communities. According to these covenants all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Furthermore, all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

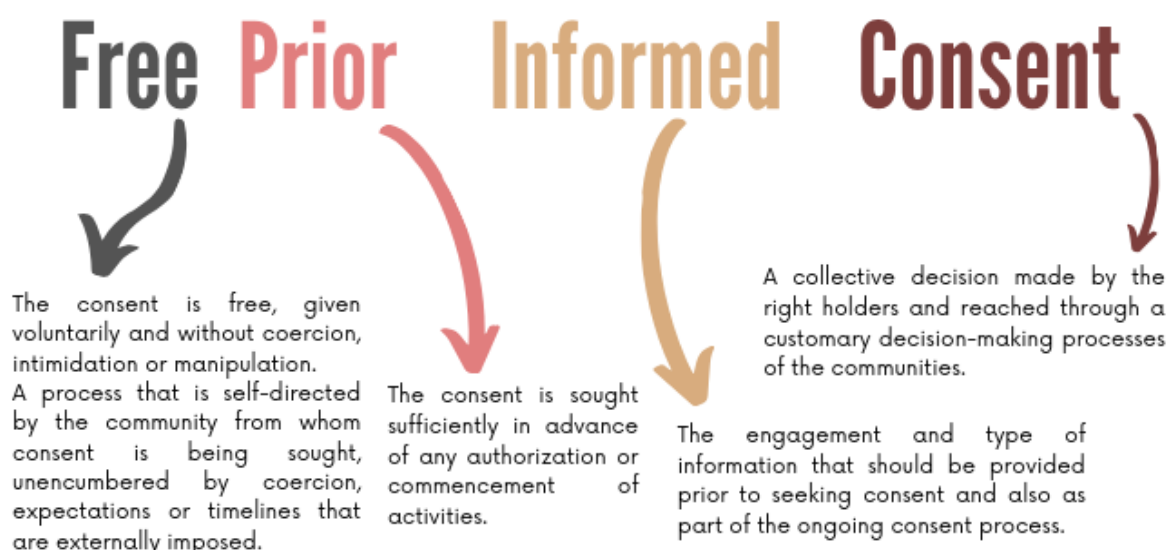
## **FREE, PRIOR AND INFORMED CONSENT (FPIC)**

As thought leaders and environmental activists from all over the world recently convened at the 27th United Nations Framework Convention on Climate Change (UNFCCC) Conference of Parties in November 2022, in an effort to unite in the battle against climate change, and to share ideas of how science and Traditional Knowledge can come together for the common good of mankind, one of the pertinent factors for consideration remains Free, Prior and Informed Consent which creates an obligation on the state to facilitate full participatory process and information sharing<sup>18</sup>. This will enable indigenous people and local communities to express their views and be heard and make informed choices in developing climate change adaptation strategies to combat the loss of biodiversity as a result of global warming and for the preservation of their livelihoods and very survival.

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<sup>18</sup> See also Indigenous Peoples' Rights and the Role of Free, Prior and Informed Consent A Good Practice Note endorsed by the United Nations Global Compact Human Rights and Labour Working Group on 20 February 2014 Amy K. Leh

Participatory processes, which underline the rights of affected communities to Free, Prior and Informed Consent in relation to decisions or policies which affect them, are essential to maintain a human rights-based response to climate change involving indigenous and local communities.



[fao.org/indigenous-peoples](http://fao.org/indigenous-peoples)

Without meaningful participation in decision making, conflicts and exclusion will accordingly continue to occur because the very identity of indigenous and local peoples is inextricably linked with their lands<sup>19</sup>, and those few indigenous people who are still able to occupy ancestral land<sup>20</sup> are usually located predominantly at the social-ecological fringes of mainstream habitation.

It is here at the survival level that the impacts of climate change including effects on agriculture, pastoralism, fishing, hunting and gathering and other subsistence activities, such as access to water, are already felt the most acutely.

It is here that traditional knowledge could still inform climate change planning and adaptation strategies. But it is also here where indigenous people remain vulnerable in an endless cycle of poverty and dispossession without scope for recourse to meaningful participation in decision making processes that directly affect them.

<sup>19</sup> See definitions of Traditional Community, member of Traditional community in the Traditional Authorities Act 25 of 2000, regarding ethnic based divisions and habitually occupied lands.

<sup>20</sup> Report of the Commission of Inquiry into Claims of Ancestral Land Rights and Restitution 24 July 2020

## ENVIRONMENTAL LAWS AND POLICIES



Since independence, Namibia has developed an impressive body of law to protect the environment and expand its already plentiful wildlife populations and protect its biodiversity, all without meaningful participation of all marginalised indigenous communities including the landless as a result of historical dispossession.

Any gains by local communities and indigenous peoples in this regard have often been offset by the unwillingness of the various state organs and justice institutions to effectively implement the laws that preserve their rights or to recognise the full range of laws that have been constructed to enable historically denied indigenous peoples' realisation of their rights in a modern constitutional society. As a result, indigenous peoples remain in a continued stagnation of marginalisation and poverty. This is because they are often, in reality, without recourse to law and access to justice while environmental predators and land hungry settlers continue to displace indigenous and local communities from their ancestral lands and natural resources with impunity.

Others have been displaced by historical dispossession and confiscation of lands by discriminatory state policies or otherwise excluded from their lands and access to natural resources by the formation of proclaimed conservation and protected areas<sup>21</sup>.

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<sup>21</sup> Koot, Stasja & Hitchcock, Robert. (2019). In the way: perpetuating land dispossession of the indigenous Hai//om and the collective action lawsuit for Etosha National Park and Mangetti West, Namibia. Also Interview Moore, B circa October 2022

Their indigenous voices are all but silenced in the more determined pursuit for economic wealth.

## **PRINCIPLES OF STATE POLICY**

Namibia has established itself with a constitution that remains the supreme law of the country and underscores the importance of maintaining its biological diversity and ecological systems for the benefit and wellbeing of all<sup>22</sup>. It was the first state to encapsulate the need to maintain the integrity of the natural environment as a principle of state policy. The Constitution places a duty on the Namibian government to develop appropriate laws to protect the environment, and to make sure they are enforced and that government is accountable.

The Constitution also places a duty on our courts to interpret laws relating to the environment within the spirit of Article 95(I). In order to give effect to the constitutional imperative, the Environmental Management Act 7 of 2007 was brought into force during 2012.

This statute promotes the sustainable management of the environment and the use of natural resources by establishing participatory procedures and principles for decision-making on matters affecting the environment. It sets out a process for the assessment and control of activities that may have significant effects on the environment. This act also recognises the significance of social impacts as a result of development activities in the natural environment. It recognises that human societies form part of the environment. It shares the same universal principles of environmental management found in internationally binding instruments. Importantly it also encapsulates the notion of Free, Prior and Informed Consent.

Several other statutes 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 in 1996) not only regulates the management of game parks and nature reserves, the hunting and protection of wild animals (including game birds), problem animals (such as baboons,

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<sup>22</sup> Article 95(I) Constitution of Republic of Namibia



lynx, dassies and black-backed jackals) and fish, and the protection of indigenous plants but enables the emergence of communal land conservancies Forest Act has extended community-based conservation management to the forestry sector.

## **LOCAL EMPOWERMENT**



By enabling communal conservancies and community forests, these laws provide, among other things, utilisation rights over wildlife and forest produce to local communities living on communal land. In this way the act allows local communities to generate an income from wildlife utilisation, while at the same time encouraging the sustainable use of wildlife resources and biodiversity protection for socio-economic upliftment as required by Section 17 of the Communal Land Reform Act which administers, in the main, communal land rights, home to several indigenous and local communities.

## **ENVIRONMENTAL WATCHDOG**

The Ombudsman's function as Namibia's environmental "watchdog" is often overlooked and unfortunately also underutilised.



In terms of Article 91(c) of the Namibian Constitution, the ombudsman has a duty to “investigate complaints concerning the overutilisation 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”.

The same provision is reflected in Section 3 (c) of the Ombudsman Act, 7 of 1990.

## **INTERNATIONAL INSTRUMENTS**

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 2016.

The Convention on Biological Diversity is dedicated to promoting sustainable development. The Convention recognises that biological diversity is about more than plants, animals and micro organisms and their ecosystems – it is about people and our need for food security, medicines, fresh air and water, shelter, and a clean and healthy environment in which to live.

The Convention also recognizes the close and traditional dependence of indigenous and local communities on biological resources and the need to ensure that these communities share in the benefits arising from the use of their traditional knowledge and practices relating to the conservation and sustainable use of biodiversity. Member governments such as Namibia, have undertaken "to respect, preserve and maintain" such knowledge and practices, to promote their wider application with the approval and involvement of the communities concerned, and to encourage the equitable sharing of the benefits derived from their utilisation.

However, it is clear that the strong environmental protective clauses in the Namibian Constitution and other laws, treaties and policies in itself, will not stop the wanton destruction of the natural environment without a robust institutional structure, political will and state accountability, a determined and independent judiciary with an engaged population to support indigenous people's involvement and commitment to environmental protection in the face of a looming global catastrophe.

As such the State is obliged to be vigilant and remain committed to the protection of the environment and the attainment of environmentally sustainable goals by including indigenous people as having a valid and legitimate stake on lands and natural resource capital development which resources they may call their own, under the protection of law.

Thus, while the case for climate change adaptation is clear, some communities most vulnerable to climate change are the least able to adapt because they are poor and already struggling to come up with enough resources for basics like food, health care and education and have been dispossessed of their lands and remain extremely marginalised. Their voices all but ignored with little recourse to the courts as a collective.

## **EQUITABLE TRANSITION**

Therefore an equitable transition for indigenous and local communities to a greener economy is one that takes a human-rights based approach to facilitate cultural and spiritual rehabilitation by restoring, protecting and returning resources to indigenous and local communities. By their own empowerment, they may re-assert a meaningful stake in the protection of Namibia's biodiversity, which recognises and advances indigenous people's right to self-determination as prescribed by law in all aspects relating to the successful building of green economies, social economic development and natural resource management.

This approach will require that all stakeholders observe and fully implement the UN Declaration on the Rights of Indigenous Peoples and the right to self-determination and pay more than lip service to Free, Prior and Informed Consent in all decision-making processes that affect them wherever they may be.

## IN THE DARK GREEN

Accordingly, a pragmatic set of adaptive climate change solutions should necessarily include a guarantee that indigenous and local communities are always given full information and participation with a meaningful voice in determining development needs or in decision making regarding policies or implementing climate change adaptation strategies. A commitment by the State to implement existing laws and to protect human rights and enforce laws, can go a long way towards the improvement of indigenous peoples' capacities to strengthen their own institutions with a view to making respect for the principle of free, prior and informed consent a reality for indigenous peoples and local communities.

By allowing right-bearing collectives of indigenous and local people to access justice; by facilitating proper participation in decision making; by protecting cultural rights; by reforming old mining and petroleum laws and regulations; by effectively implementing existing laws; by setting standards and meeting targets for minerals' reuse and recycling; and by reducing demand for non-essential industrial development and mining in the remaining protected and conservation areas of Namibia, the state can also go a long way to meeting its international and domestic legal obligations. The state must definitely ensure intergenerational traditional knowledge informs continued adaptation strategies by marginalised indigenous peoples and local communities on their own terms to counter the predicted effects and impacts of climate change due to global warming and radical climate change.

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**LET'S MAKE HUMAN RIGHTS  
REAL FOR ALL**