



Land, Environment and Development Project
LEGAL ASSISTANCE CENTRE

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GREEN HYDROGEN HYPE

SUMMARY OF THE LAC-LEAD ARTICLE (2024) ON INDUSTRIAL ACTIVITIES IN NAMIBIA'S NATIONAL PARKS

PART 1

Climate Change, Risk of Biodiversity Loss, Pollution and
the Welfare of People: A Threat to Human Rights

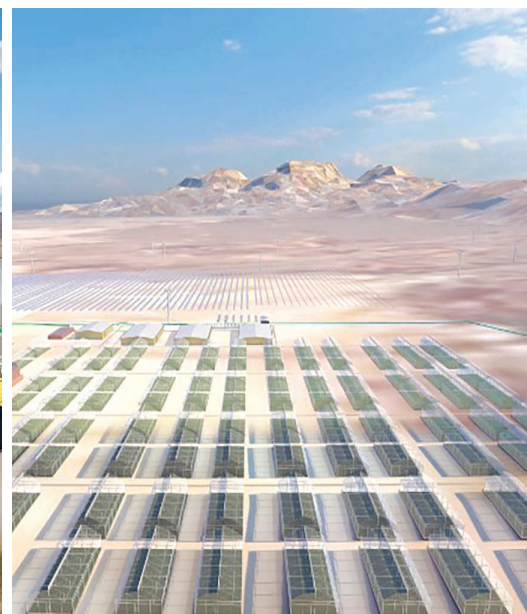
PART 2

Lack of Regulatory Oversight

PART 3

The Socio-Economic Fallout for Namibia in the Absence
of a Legal Framework and Neo-Colonial Approach

By **Mercedes Ovis**



INTRODUCTION

Despite limited scientific data being available to show that hydrogen is an effective decarbonisation strategy, Namibia has given approval for the production of green hydrogen in ecologically sensitive national parks at an unprecedented scale. Eight hydrogen projects have been approved to date: Cleaner Solutions; Daures Green Hydrogen Village; Hydrogène de France; Hylrone; Hyphen; HyRail; and Zhero. The Hyphen project, a joint venture between Nicolas Holdings Limited (based in the UK) and German Enertrag, is the largest sub-Saharan project of this nature, and is particularly controversial because its proposed location, the Tsau ||Khaeb (Sperrgebiet) National Park (TKNP), is a biodiversity hotspot. National parks in Namibia are protected areas, and commercial activities permitted in the national parks are predominantly centred on the tourism sector. These areas are already vulnerable to the effects of climate change (e.g. more frequent droughts), and the addition of industrial activities, along with mining activities, has the effect of increasingly subjecting the fragile ecosystems to pollution and biodiversity loss. Although green hydrogen as a synthetic fuel potentially represents a promising pathway towards a more sustainable and low-carbon energy future, offering solutions to address climate change, promote energy security and drive economic development for the world, there is the additional risk that other sectors of the economy, such as tourism and fishing, may be adversely impacted. Currently tourism is invaluable to Namibia's economy, securing almost 20% of the GDP annually. From the perspective of a developing country that contributes the least to climate change but is the most impacted by it, this three-part series of articles examines the issues surrounding green hydrogen production in Namibia.

PART 1

Part 1 examines the issues relating to climate change, biodiversity loss, pollution, the welfare of the people, and how the triple planetary crisis of climate change, biodiversity loss and pollution poses a threat to human rights. The United Nations High Commissioner for Human Rights has described this triple planetary crisis as the biggest threat to human rights globally. The UN General Assembly has reaffirmed the importance of the human right to a clean, healthy and sustainable environment. This right reflects global agreement on the links between sustainable development, protection of the environment, including ecosystems, and promotion of human wellbeing and full enjoyment of all human rights for present and future generations. It is accepted that developed countries are primarily responsible for environmental crises and should therefore take the lead in addressing them. *Setting up industrial plants in protected areas in developing countries is not a recipe for success!*

In Namibia, the production of green hydrogen, which requires enormous amounts of water, will necessitate constructing more desalination plants along the coast. The construction of additional desalination plants to service the industrial needs of foreign countries, while Namibians are at risk of not having access to clean fresh drinking water, is a matter of concern. In addition, desalination plants pose a threat to the marine environment, because the brine discharged from the plants is

highly toxic and could pollute the marine ecosystem. In 2017, Namibia's fishing sector sustained approximately 17 000 jobs directly, and was considered to be the second most important source of forex earnings in the years 2012-2016, with an income of N\$10 billion annually.

PART 2

Part 2 considers the country's current policy and legislative framework apropos its bearing on hydrogen production, and the absence of a legislative framework that regulates the production, distribution and storage of hydrogen for commercial purposes. There are concerns about the safety risks posed by this odourless, colourless and flammable gas. If a leak is not detected and gas collects in a confined area, it can ignite and cause explosions, hence regulation is a necessity. Currently, however, the Hyphen project and other hydrogen projects in Namibia are regulated only by Memorandums of Understanding, the terms of which have not been made public. In Namibia as elsewhere, this lack of transparency is compounded by frequent exclusion of indigenous peoples from environmental decision-making, including decision-making on climate change mitigation and adaptation actions, as is evidently the case in the hydrogen projects here. Yet, the High Court of Namibia has stated that natural resources are “.. *simply administered by the State on behalf of the Namibian people,*” since the natural resources “*belong to the people*”.¹

Namibia's Nature Conservation Ordinance 4 of 1975 is a major biodiversity law that governs the conservation of protected areas. To prepare for the introduction of conservancies in the country, amendments were made to the Ordinance and its regulations which came into effect in 1996. The amendments were made to take into account the establishment of conservancies and Wildlife Councils. Wildlife conservancies are important primarily because they allow for the communities to have custodianship of the natural resources in the areas that they inhabit, particularly wildlife and fish. Community-based natural resource management (CBNRM) projects within and outside the conservancies give communities the opportunity to manage and utilise their own natural resources to benefit the community members. Conservancies and CBNRM projects provide not only for sustainable employment in the tourism and agriculture sectors, but also for sustainable resource management, which in turn enables the communities to provide for their own basic needs and to maintain their livelihoods as they continue practising their respective cultures and traditions.

Together with the conservancies and CBNRM projects, the national parks have been gazetted and are managed in accordance with individual management plans that are designed specifically to protect the particular environment and its unique ecosystems while benefiting the people who depend on that particular environment and simultaneously the country's tourism industry. The TKNP Management Plan specifically prohibits industrial activities in parts of the park.

¹ *Rostock CC and Another v Van Biljon* (844 of 2010) [2011] NAHC 259 (14 June 2011) (<https://namiblii.org/akn/na/judgment/nahc/2011/259/eng@2011-06-14>).

PART 3

Part 3 examines the neo-colonial approach that has emerged in the wake of the ‘hydrogen hype’. The primary target for Namibia is exportation. In a globally unequal system, the risk for Namibia is that benefits from the green hydrogen trade will be captured by the Global North while the majority of Namibians lose out. As has happened in developmental projects in other developing countries, there is a distinct possibility that one or more of Namibia’s international partners will import green hydrogen from Namibia at low prices, and sell to Namibia the technology needed for producing green hydrogen. This would enable such a partner to become a leader in green technology and to ensure that its energy-intensive industries can continue to operate as usual. Germany’s Federal Minister for Economic Affairs and Climate Action, Robert Habeck, is aware that Germany’s ‘grab’ for green hydrogen could become a target of criticism. During a recent visit to Namibia, he cautioned: *“The last thing we should accept is some kind of green energy imperialism.”*

In addition, international investors and banks often champion the issues of sustainability and responsible investing through the lens of human rights, access to natural resources, and climate change mitigation, but there is a troubling possibility that in supporting projects such as green hydrogen production in developing countries for their own benefit, they may not consistently apply their own standards in the areas where the projects are located in the developing countries. Pressured by economic incentives and the allure of emerging markets, these financial entities may overlook or turn a blind eye to potential human rights violations, exploitation of natural resources, and environmental impact concerns associated with such projects. An inconsistency of this nature can lead to a disconnect between espoused values and actual practices, raising questions about the true commitment of international investors and banks to uphold their ethical standards and ensure sustainable development in the global transition towards renewable energy sources.

We trust that this series of articles will inform policy-makers and decision-makers, as well as add to the public debate currently underway in Namibia. We owe it to indigenous communities whose livelihoods depend on tourism activities in protected areas and who face potential displacement, as well as to future generations, to thoroughly examine the issues before taking any decision that may ultimately be detrimental to the welfare of Namibia’s people.

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