

**Biodiversity and the ancestors:
Challenges to customary
and environmental law**
**MO Hinz & OC Ruppel (Eds), Namibian
Scientific Society, Windhoek, 2008, 282 pp**
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The publication *Biodiversity and the ancestors* assesses the role of customary law in biodiversity management. The main objectives of the editors is to heighten awareness among academics, policymakers and the interested public of the fact that customary law fulfils important coordinating functions with regard to natural resource management in Namibia. This seems to be especially important if one considers the past impact of global, regional and national policies on the effectiveness of customary law. This impact is assessed in the first section of the book in particular, where issues like the link between cultural and biological diversity; the global, regional, national and local values of biodiversity; the protection of intellectual property rights; and the coordination of customary and statutory law are discussed. The analysis considers multiple dimensions of the topic, which is possible due to the profound expert knowledge of the editors. Manfred O Hinz is a Professor at the Faculty of Law at both the University of Namibia (UNAM) and the University of Bremen. For more than 20 years he has worked in the field of customary law and has authored and edited numerous publications. Worthy of particular mention is the book *Without chiefs there would be no game: Customary law and nature conservation*. Oliver Ruppel is a lecturer at UNAM's Faculty of Law. He is an expert in the field of public law, with special emphasis on the interrelationship between international trade, human rights, and the protection of the environment. Both editors demonstrate a strong affiliation to questions dealing with issues of cultural philosophy. This affiliation is well reflected throughout the publication.

The analysis of global, regional and national policies puts the local problems discussed in the section that follows in a broader context. Eleven case studies form the main part of the book. They were carried out within the framework of the Biodiversity Monitoring Transect Analysis (BIOTA) Southern Africa Project. Authors of the case studies are senior students at UNAM's Faculty of Law. The general methodology of equipping university students with a theoretical legal

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concept and sending them to their home communities in order to assess and discuss the role of customary law in biodiversity management was an interesting approach.

In addition, giving the students the opportunity to publish their results strongly contributes to capacity-building in Namibia, and encourages them to continue with an academic career. In this way, the book contributes to the development of tertiary education in a country which still lacks sufficient lecturers.

As an integrating framework, all studies test four hypotheses:

1. Traditional communities possess the social capital of norms suitable for the protection of biodiversity.
2. Traditional communities recognise the values of biodiversity.
3. The awareness of biodiversity's values entails the potential to establish customary norms, and
4. Customary law has advantages compared with statutory law regarding the protection of biodiversity.

The results clearly show that customary law and traditional authorities matter when it comes to the management of a wide range of natural resources in different communities all over Namibia. Community members are aware of social norms which aim to ensure the sustainable use of pastures, trees, medical plants, fish and land in general. Traditional norms control access to resources; limit the amount of resource extraction; regulate the technologies of resource use; and prescribe clear consequences for non-compliant behaviour. The norms are based on the traditional knowledge of the local value of resources. In many cases, they are the only effective institutions regulating resource use.

However, in most instances, the case studies also show that customary laws do not prevent unsustainable utilisation, resulting in high pressure on natural resources. How is it possible that, despite the applicable customary law regulations in place, resources are not managed in a sustainable manner? The case study authors identify a number of key problems responsible for this situation. One reason is that neither the customary nor the statutory legal system manages to fully consider national, regional or global biodiversity values. It is simply unrealistic to expect that traditional communities have the necessary overview over biodiversity values beyond the local level, and the capacity to develop mechanisms to internalise externalities such as option values for pharmaceutical uses, aesthetic values, or carbon sequestration.

Another challenge is the cultural transformation Namibian society has undergone, resulting in a reduced appreciation of traditional knowledge. Conflicts with competing value systems such as religious ones are common. This goes hand in hand with the limited capability of customary law systems to adapt quickly to new developments such as the commercialisation of resource use.

Insufficient enforcement is mentioned repeatedly, which underlines the problem of how customary law is embedded in the country's legal system. In some cases, statutory law enables community norms to function effectively, but in others it hampers them. For example, customary law is recognised by the Namibian Constitution. However, the executive authorities often do not have the capacity or knowledge to deal with the enforcement of traditional rules. There are obvious attempts by government to incorporate customary law into statutory law. Indeed, various government reforms even go so far as to interfere with the powers of communities and traditional authorities, sometimes enabling traditional institutional knowledge, but sometimes creating confusion about property rights and responsibilities. The case studies describe the customs of different ethnic groups and impressively demonstrate the challenge the Namibian government faces in linking culturally heterogeneous value systems to a non-discriminative standardised legal system. Decentralised approaches such as the establishment of conservancies and community forests attempt to address this challenge.

Additional crucial factors often diminishing the effectiveness of customary law are conflicts within and between communities, as well as corruption among traditional authorities. The abuse of power is as common in the traditional authority system as in any other system of governance. Even more complex is the question of how to deal with broadly accepted community norms that conflict with fundamental human rights.

The studies give a comprehensive overview of the complexity of the issue. They present a differentiated picture, balancing the advantages and disadvantages of traditional communities' rules and norms with regard to natural resource management. Referring to the fourth hypothesis, the empirical work shows that customary law is not generally superior to statutory law. It is this multifarious situation which creates such difficulty for lawmakers in their attempts to locate traditional governance appropriately in the overall societal and state system.

In the concluding discussion, the editors re-link the local situation to global and national discourses. They assess how national laws incorporate traditional knowledge as well as the philosophies of international conventions and policies. Both a naïve centralised and a decentralised governance approach are criticised. Nonetheless, a structured, in-depth analysis of the root causes for existing customary law often being ineffective is only partially given. The reader is no doubt sufficiently inspired by the book to connect and interlink different policy and governance levels. However, the authors leave it up to the reader to reach his or her own conclusions as regards how existing global and regional policies encourage communities to apply indigenous institutional knowledge to the protection of biodiversity and, in this way, to provide values beyond the local and national dimension.

Biodiversity and the ancestors impressively links the specific human and social capital of local indigenous knowledge to challenges we face on a global level. It

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fulfils its objective to make students, academics and policymakers aware of the complex role customary law plays in biodiversity management. This differentiated analysis is an important basis for the authors' strong call for improved inter- and transdisciplinary research.