

# Third-generation human rights and the protection of the environment in Namibia

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## **Introduction**

This paper examines the role of third-generation human rights and their implication in respect of the protection of the environment. In the first part, the emergence of third-generation human rights and the interrelationship between the rule of law and the protection of the environment in Namibia will be examined. For comparative purposes, reference will also be made to the situation in South Africa. The second part of this article reflects on environmental law and policy in Namibia, again with special attention to human rights. The third part focuses on current human rights and environment-related challenges for Namibia. Burning issues like climate change and poverty, the exploitation of natural resources and atomic energy, as well as international trade, globalisation and foreign investment are reflected with regard to the interrelationship between human rights and the environment. The Ramatex case exemplifies how liberal trade and globalisation driven by investment and profit motives can equally violate human rights and threaten the ecosystem.

## **Third-generation human rights**

### *Third-generation human rights and the environment*

Taking into account the strong factual relationship between environmental degradation and the impairment of human rights, it is important to consider how these two fields interrelate within the law. Various constitutions<sup>213</sup> of the world regard the right to a safe, healthy and ecologically balanced environment as an independent human right.

The Czech jurist and first Secretary General of the International Institute for Human Rights in Strasbourg divided human rights into three generations as

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213 See *infra* section 24 of the 1996 South African Constitution.

early as 1977. The so-called first-generation (human) rights<sup>214</sup> refer to traditional civil and political liberties prominent in Western liberal democracies, such as freedom of speech, religion, and the press, as well as freedom from torture, which presuppose a duty of non-interference on the part of government towards individuals. These rights are the ‘classical’ human rights contained in notable instruments such as in Chapter 3 of the Constitution of the Republic of Namibia. For many years, the dominant position was that only these rights were genuine human rights.<sup>215</sup>

Second-generation rights have generally been considered as rights which require affirmative government action for their realisation. Second-generation rights are often styled as *group rights* or *collective rights*, in that they pertain to the well-being of whole societies. In contrast with first-generation rights, which have been perceived as individual entitlements, particularly the prerogatives of individuals, second-generation rights are held and exercised by all the people collectively or by specific subsets of people. Examples of second-generation rights include the right to education, work, social security, food, self-determination, and an adequate standard of living. These rights are codified in the International Covenant on Economic, Social and Cultural Rights (1966),<sup>216</sup> and also in Articles 23–29 of the Universal Declaration of Human Rights (1948).<sup>217</sup> Writers reluctant to recognise second-generation rights as human rights have often based their arguments on the assumption that courts are unable to enforce affirmative duties on states and that such rights are, therefore, mere aspirational statements. Similarly, critics have opined that, regardless of the political system or level of economic development, all states are able to comply with civil and political rights, but not all states have the ability to provide the financial and technical resources for the realisation of affirmative obligations such as education and an adequate standard of living.<sup>218</sup>

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214 The terminology was introduced by Karel Vasak; see Vasak, Karel. “Human rights: A thirty year struggle. The sustained efforts to give force of law to the Universal Declaration of Human Rights”. *UNESCO Courier*, 30:11.

215 Steiner, HJ, P Alston & R Goodman (Eds.). 2008. *International human rights in context: Law, politics, morals* (Third Edition). Oxford: Oxford University Press.

216 1966 United Nations International Covenant on Economic, Social and Cultural Rights; see [www.unhchr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhchr.ch/html/menu3/b/a_ceschr.htm); last accessed 29 March 2008.

217 1948 United Nations Universal Declaration of Human Rights; see <http://www.unhchr.ch/udhr/lang/eng.htm>; last accessed 29 March 2008.

218 On the classification of human rights, see Parker, C. 2002. *Human rights law*. Leicestershire: Upfront Publishing, p 39f.

Third-generation or ‘solidarity’ rights are the most recently recognised category of human rights.<sup>219</sup> This grouping has been distinguished from the other two categories of human rights in that its realisation is predicated not only upon both the affirmative and negative duties of the state, but also upon the behaviour of each individual. Rights in this category include self-determination as well as a host of normative expressions whose status as human rights is controversial at present. These include the right to development, the right to peace, the right to a healthy environment, and the right to intergenerational equity.<sup>220</sup>

The right to a healthy environment requires a healthy human habitat, including clean water, air, and soil that are free from toxins or hazards that threaten human health. The right to a healthy environment entails the obligation of governments to –

- refrain from interfering directly or indirectly with the enjoyment of the right to a healthy environment
- prevent third parties such as corporations from interfering in any way with the enjoyment of the right to a healthy environment, and
- adopt the necessary measures to achieve the full realisation of the right to a healthy environment.

However, do individuals really have the ‘challengeability’ when it comes to human rights and environmental law and policy, or are these still considered to be merely aspirational ‘soft law’?

### ***The rule of law and the environment in Namibia***

Environmental degradation and climate change increasingly receive international coverage within the context of human rights issues. Recognition of the link between the abuse of the human rights of various vulnerable communities and related damage to their environment is expressed under the term *environmental justice*. In both the industrialised and developing parts of the world, a growing body of evidence demonstrates that poor and other disenfranchised groups have been the greatest victims of environmental degradation.

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219 Recent reference has been made to so-called fourth-generation human rights or ‘communication rights’, which are concerned with human rights in the information society.

220 Kiss, A & D Shelton. 2004. *International environmental law*. Ardsley, NY: Transnational Publishers, p 12ff.

The concept of *environmental justice* embraces two objectives. The first is to ensure that rights and responsibilities regarding the utilisation of environmental resources are distributed with greater fairness among communities, both globally and domestically. This entails ensuring that poor and marginalised communities do not suffer a disproportionate burden of the costs associated with the development of resources, while not enjoying equivalent benefits from their utilisation. The second is to reduce the overall amount of environmental damage domestically and globally.

In Namibia, the Constitution is the fundamental and supreme law of the country. It excels in being a Constitution guaranteeing human rights by comprehensive coverage and provisions set out in clear language.<sup>221</sup> Human rights are justifiable as their protection can be secured through the courts. As part of the Bill of Rights under Chapter 3 of the Namibian Constitution, Article 10 provides as follows:

- (1) *All persons shall be equal before the law.*
- (2) *No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.*

Article 12 of the Namibian Constitution contains the provisions for fair trial. The principle of the rule of law runs throughout the constitutional regime.<sup>222</sup> The doctrine of the separation of legislative and executive powers from those of the independent judiciary is guaranteed. The doctrine of the separation of powers recognises the existence of three organs of state: the executive, the legislature, and the judiciary, as provided for by Article 1(3) of the Constitution, but it also recognises that, in order to guarantee and protect the civil liberties of the individual and to prevent dictatorship and absolutism, there need to be established mechanisms that are capable of putting constitutional and legal restraints on the powers of government or the various organs of state. Various mechanisms are put in place to ensure that each branch of government remains independent of the other, through a system of checks and balances.<sup>223</sup>

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221 Ruppel, OC. (Forthcoming). "Nature conservation in Namibia: Customary law to complement statutory environmental law?". *UNEP Journal of African Environmental Law and Policy*, Volume 2008:1ff.

222 Hinz, MO. 2003. "The rule of law and the new African constitutionalism". In Hinz, MO (Ed.). 2003. *Without chiefs there would be no game: Customary law and nature conservation*. Windhoek: Out of Africa Publishers, p 273.

223 Diescho, J. 1994. *The Namibian Constitution in perspective*. Windhoek: Gamsberg Macmillan Publishers, p 70ff.

Article 78(2) and (3) guarantee the independence of the judiciary, and provide that courts shall be independent and subject only to the Constitution and the law. Article 25(2) of the Constitution provides that –<sup>224</sup>

*[a]ggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent Court to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require, and the Ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient.*

The relevant clause for the environment is Article 95(l), which stipulates that –

*[t]he State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following:*

...

- (l) *maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future; ... .*

Furthermore, when it comes to the protection of the environment, Article 91(c) includes in the functions of the Ombudsman –

*... the 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;*

...

The Constitution and the Ombudsman Act, 1990 (No. 7 of 1990) spell out the key mandate areas and powers of the Ombudsman, which include the protection, promotion and enhancement of respect for human rights and the environment in Namibia. In dealing with this mandate, the Ombudsman has a two-pronged approach: first, a complaint will be received from an aggrieved person and investigated. If satisfied that a violation in the light of the above has occurred, the Ombudsman may provide suitable remedies, including those provided for in the Ombudsman Act and in Article 25(2) of the Constitution. Article 100 of the Constitution provides that, all natural resources, including water, vest in the state, unless otherwise legally owned.

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224 (ibid.).

It can be concluded that the Constitution merely sets the environmental framework. The wide range of national environmental policies and laws will now be discussed, after a brief comparative look over the border to Namibia's neighbour, South Africa.

### ***Human rights and the environment in South Africa***

In South Africa, the 1996 Constitution takes into considerable account the strong factual relationship between environmental degradation and the impairment of human rights. Under section 24 of the South African Constitution, everyone has the right to an environment that is not harmful to their health or well-being. It adds that the government is obliged to act reasonably to protect the environment by preventing pollution, promoting conservation, and securing sustainable development, while building the economy and society.<sup>225</sup> Section 24 demonstrates that the right to a healthy environment is part of socio-economic rights. This right is often applied by the court to give a meaningful interpretation of the right to life.

Section 9(2) of the Constitution deals with the right to equality, including "the full and equal enjoyment of rights and freedoms". It declares that the state may take steps to protect or advance individuals or groups that have been disadvantaged by unfair discrimination, with the aim of promoting the achievement of equality. Without access to education, sufficient food, health care and housing, poor people will not be able to participate equally in the social life of the country. To ensure that the environmental rights under the Constitution are fulfilled, the government must follow transparent and reasonable procedures. Section 32 deals with the right of access to information, while section 33 deals with the right to a just administrative decision. Section 32 can be used by community groups to find out more about harmful industrial development that will have a detrimental effect on their life and well-being. These rights are not absolute and can be limited,

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225 Section 24 reads as follows: "Everyone has right (a) to an environment that is not harmful to their health or well-being[;] and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development".

provided the limitation is reasonable and justifiable in a democratic society based on human dignity, equality and freedom (section 36 of the Constitution).<sup>226</sup>

In order to effectively protect environmental rights, the government passed the National Environmental Management Act, 1998 (No. 107 of 1998), which creates a set of environmental principles that show the government how it should act. The government also passed the Promotion of Access to Information Act, 2000 (No. 2 of 2000). This Act outlines which information would be available and how to go about asking for it from the government and from private individuals.

Public participation in decision-making is another important area. The Promotion of Administrative Justice Act, 2000 (No. 3 of 2000) explains what the constitutional right to just administrative action means. The kind of environmental concerns that can be raised include destruction of plants and animals, pollution, loss of jobs and small businesses, and loss of property values. Government is obliged to make sure that development which meets present needs must not compromise the needs of future generations.<sup>227</sup>

Section 27(1)(b) of the South African Constitution guarantees the right of everyone to have access to sufficient food and water, while section 28(1)(c) gives children the right to basic nutrition. The environmental rights protected under the Constitution are closely related to the right of access to sufficient water. The environmental rights place duties on the state to prevent the pollution and ensure conservation of water resources. One of the central goals of the government's water policy is to ensure equitable access by all South Africans to the nation's water resources, and to end discrimination in access to water on the basis of race, class or gender. Section 38 lists the people who have the right to approach a competent court with allegations that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are —<sup>228</sup>

- anyone acting in their own interest
- anyone acting on behalf of another person who cannot act in their own name

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226 See Glazewski, J. 2005. *Environmental law in South Africa* (Second Edition). Durban: LexisNexis Butterworths, p 15ff.

227 Razzaque, J. 2002 (online). *Human rights and the environment: The national experience in South Asia and Africa*. <http://www.unhchr.ch/environment/bp4.html>; last accessed 16 March 2008.

228 See Glazewski (2005:15ff).



- anyone acting as a member of, or in the interest of, a group or class of persons
- anyone acting in the public interest, and
- an association acting in the interest of its members.

## ***Environmental law and policy in Namibia***

### *Constitutional law*

Article 95(1) of the Namibian Constitution stipulates clearly that –

*[t]he State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following:*

...

- (1) *maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future; ... .*

Thus, the Namibian Constitution lays the foundation for all policies and legislation in Namibia and contains two key environmental clauses with a human rights outreach, namely Article 95(1) and Article 91(c).<sup>229</sup> In the light of this foundation, the following section will briefly monitor environmental policies and legislation applicable in Namibia.

### *International law*

Namibia is party to various international human rights<sup>230</sup> and environmental covenants,<sup>231</sup> treaties, conventions and protocols and is, therefore, obliged to conform to their objectives and obligations. As to the application of international

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229 Supra.

230 As far as can be established, Namibia has formally recognised the African Charter in accordance with Article 143 read with Article 63(2)(d) of the Constitution. The provisions of the Charter have, therefore, become binding on Namibia, and form part of Namibian law in accordance with Articles 143 and 144 of the Constitution. See also Viljoen, F. 2007. *International human rights law in Africa*. Oxford: Oxford University Press, p 549f.

231 See e.g. Hinz, MO & OC Ruppel (Eds.). (Forthcoming). “Customary law, biodiversity and the protection of the environment: Case studies from Namibia”. Windhoek: Namibia Scientific Society, p 13ff.



law, after independence, a new approach was formulated, as embodied in the Namibian Constitution. Article 144 therein provides that –

*[u]nless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.*

Thus, the Constitution explicitly incorporates international law and makes it part of the law of the land. Ab initio, public international law is part of the law of Namibia.<sup>232</sup> No transformation or subsequent legislative act is needed.<sup>233</sup> However, international law has to be in conformity with the provisions of the Constitution in order to apply domestically. In case a treaty provision or other rule of international law is inconsistent with the Namibian Constitution, the latter will prevail. Article 144 of the Namibian Constitution mentions two sources of international law which will be applicable in Namibia: general rules of public international law, and international agreements binding upon Namibia. General rules of public international law include rules of customary international law supported and accepted by a representatively large number of states. The notion of *international agreements* refers, in the first place, to *treaties* in the traditional sense, i.e. international agreements concluded between states in written form and governed by international law,<sup>234</sup> but also includes conventions, protocols, covenants, charters, statutes, acts, declarations, concords, exchange of notes, agreed minutes, memoranda of agreement, etc.<sup>235</sup>

It needs to be noted that not only agreements between states, but also agreements with the participation of other subjects of international law, e.g. international organisations, are covered by the term *international agreements*. In general, international agreements are binding upon states if the consent to be party to such treaty is expressed by –

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232 See Tshosa, O. 2001. National law and international human rights law: Cases of Botswana, Namibia and Zimbabwe. Burlington: Ashgate Publishing Company, p 79ff.

233 Erasmus, G. 1991. “The Namibian Constitution and the application of international law in Namibia”. In Van Wyk, D, M Wiechers & R Hill. *Constitutional and international law issues*. Pretoria: VerLoren van Themaat Centre for Public Law Studies, p 94.

234 Definition in Article 1 of the Vienna Convention on the Law of Treaties of 1969, which entered into force in 1980.

235 See also the definition of *treaty* proposed by the International Law Commission, in Article 2(a) of the Draft Articles on the Law of Treaties, with commentary; available at [http://untreaty.un.org/ilc/texts/instruments/english/commentaries/1\\_1\\_1966.pdf](http://untreaty.un.org/ilc/texts/instruments/english/commentaries/1_1_1966.pdf); last accessed 17 March 2008.

- signature, followed by ratification
- accession, where the state is not a signatory to a treaty, or
- declaration of succession to a treaty concluded before such a state existed as a subject of international law.

A treaty will be binding upon Namibia in terms of Article 144 of the Constitution if the relevant international and constitutional requirements have been met. A treaty has to have entered into force in terms of the law of treaties, and the constitutional requirements need to have been met. International agreements will, therefore, become Namibian law from when they come into force for Namibia.<sup>236</sup> The conclusion of or accession to international agreements is governed by Articles 32(3)(e), 40(i) and 63(2)(e) of Namibia's Constitution. The executive is responsible for conducting Namibia's international affairs, including entry into international agreements. The President, assisted by the Cabinet, is empowered to negotiate and sign international agreements, and to delegate such power. It is required that the National Assembly agrees to the ratification of or accession to international agreements. A promulgation of international agreements in order for them to become part of the law of the land is, however, not required by the Constitution.<sup>237</sup>

### *Statutory law*

Sectoral legislation covering the protection of the environment is wide-ranging in Namibia. Namibia as a country has numerous legislative instruments that provide for the equitable use of natural resources for the benefit of all. Within its legislative framework, Namibia has provided extensively for safeguard measures to protect the environment. The implementation of this legislative framework is a mammoth task. Although this paper is not the forum to introduce the said legal instruments dealing with the environment in Namibia, worth mentioning is the Environmental Management Act, 2007 (No. 7 of 2007), which was recently passed by Parliament. Its aim is to –

- promote the sustainable management of the environment and the use of natural resources by establishing principles for decision-making on matters affecting the environment
- establish the Sustainable Development Advisory Council

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236 Erasmus (1991:102f).

237 (ibid.).

- provide for the appointment of an Environmental Commissioner and Environmental Officers, and
- provide for the process of assessment and control of activities which may have significant effects on the environment.

How far this new piece of environmental legislation will cross-fertilise in respect of protecting and implementing human rights will only be seen with time.

### *National policy*

Despite the broad variety of existing national sectoral environmental legislation, recent policy and legislative reforms have created a unique opportunity for Namibia to incorporate environmental sensitivity, including for the sake of human rights protection. Namibia's Vision 2030<sup>238</sup> was launched by the Founding President, Dr Sam Nujoma, in June 2004. The Vision's rationale is to provide long-term alternative policy scenarios on the future course of development in the country at different points in time up until the target year of 2030. Chapter 5 of Vision 2030 states the following:<sup>239</sup>

*The integrity of vital ecological processes, natural habitats and wild species throughout Namibia is maintained whilst significantly supporting national socio-economic development through sustainable low-impact, high[-]quality consumptive and non-consumptive uses, as well as providing diversity for rural and urban livelihoods.*

One of the long-term aims of Vision 2030 is the availability of clean, unpolluted water, and productive and healthy natural wetlands with rich biodiversity.<sup>240</sup> Vision 2030 regards the sequential five-year National Development Plans (NDPs) as the main vehicles for achieving its long-term objectives.

In 1992, Namibia presented its Green Plan to the United Nations Conference on Environment and Development (UNCED) in Rio. As a direct result of UNCED,

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238 Government of the Republic of Namibia, Office of the President. 2004. *Namibia Vision 2030: Policy framework for long-term national development*. Windhoek: AIM Publications; available at <http://www.npc.gov.na>.

239 (ibid.:167).

240 For more detailed information on wetlands in Namibia, see Ruppel, OC & S Bethune. 2007. *Review of Namibia's policy and legislative support to the sustainable use of wetlands in the Zambezi Basin: Report for IUCN*; available at [http://www.ramsar.org/wa/w.n.namibia\\_review.htm](http://www.ramsar.org/wa/w.n.namibia_review.htm).

the United Nations Framework Convention on Climate Change (UNFCCC) was established. The Convention became effective in March 1994, following ratification by the required number of governments. Namibia acceded to the Convention in 1995.<sup>241</sup>

The successive NDPs will contain the goals and intermediate targets (milestones) that will eventually lead to the realisation of Vision 2030. NDP2,<sup>242</sup> which spanned the period 2001/2–2005/6, sought sustainable and equitable improvement in the quality of life of all the people in Namibia. The national development objectives were to –<sup>243</sup>

- reduce poverty
- create employment
- promote economic empowerment
- stimulate and sustain economic growth
- reduce inequalities in income distribution and regional development
- promote gender equality and equity
- enhance environmental and ecological sustainability, and
- combat the further spread of HIV/AIDS.

NDP3 spans the five-year period 2007/8–2011/2.<sup>244</sup> The draft guidelines for the formulation of NDP3 were prepared in the latter part of 2006, and approved by Cabinet in December that year.<sup>245</sup> The predominant theme of NDP3 is defined as accelerated economic growth through deepening rural development,<sup>246</sup> while the productive utilisation of natural resources and environmental conservation are key result areas. Principal environmental concerns include water, land, marine, natural resources, biodiversity and ecosystems, drought, and climate change. Waste management and pollution will grow in significance with increasing industrialisation.

NDP3 recognises that, with the country's scarce and fragile natural resource base, the risk of overexploitation is considerable, and that sustained growth

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241 See <http://www.dea.met.gov.na>.

242 Government of the Republic of Namibia. 2002. *Second National Development Plan (NDP2)*. Windhoek: National Planning Commission.

243 Ruppel & Bethune (2007:14), *supra*.

244 Text available at <http://www.npc.gov.na>.

245 *Guidelines for preparing the Third National Development Plan (NDP3): 2007/08–2011/12*; <http://www.npc.gov.na>; last accessed 13 January 2008.

246 (*ibid.*).

is highly dependent on sound management of these resources. The guidelines for preparing NDP3 stipulate that the renewable resource capital needs to be maintained in quantity and quality. This is to be achieved by reinvesting benefits into natural resources by way of diversifying the economy away from resource-intensive primary sector activities, and by increasing productivity per unit of natural resource input. Two NDP3 goals ensuring the protection of environmental concerns are the optimal and sustainable utilisation of renewable and non-renewable resources on the one hand, and environmental sustainability on the other.

### *Customary law*

The Traditional Authorities Act, 2000 (No. 25 of 2000) provides certain powers, duties and functions to Traditional Authorities and their members.<sup>247</sup> The Act regulates the establishment of a Traditional Authority for every traditional community which could consist of the designated and recognised Chief or head of that community, the senior traditional councillors, and traditional councillors appointed or elected in accordance with the Act. Inter alia, the Act empowers the Traditional Authority to —<sup>248</sup>

*... ensure that the members of his or her traditional community use the natural resources at their disposal on a sustainable basis and in a manner that conserves the environment and maintains the ecosystems for the benefit of all persons in Namibia.*

This implies that the onus is on the communities to maintain and ensure that they safeguard their way of living. This entails their customary laws as well, including the protection of the environment within traditional areas. The majority of indigenous Namibians still live in accordance with their respective customary laws. After independence, Namibia gave the same degree of recognition to customary law as it accorded to common law. This is contained in Article 66 of the Constitution, which states that both customary law and common law are to be recognised as far as they are not repugnant to the provisions of the Constitution.<sup>249</sup> This leads to the conclusion that customary law should also reflect the recognition of human rights when it comes to the protection of the environment.

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247 Section 3.

248 Section 3(2)(c).

249 Ruppel (Forthcoming), supra.

## ***Human rights in the light of environmental challenges in Namibia***

### *Climate change and poverty*

A prognosis for Africa is that, by 2050, millions of persons will be suffering from water shortages associated with climate change. Indeed, climate change is already affecting people across Africa, and will wipe out efforts to tackle poverty on the continent unless urgent action is taken. Global warming means that many dry areas are going to get drier and wet areas are going to get wetter. The great tragedy is that Africa has played virtually no role in global warming – a problem which was primarily been caused by economic activity in rich, industrial nations. At a recent conference in Geneva on climate change and migration, United Nations officials said rising sea levels and intense storms, droughts and floods could force people from their homes and off their lands – some permanently.<sup>250</sup> “Global warming and extreme weather conditions may have calamitous consequences for the human rights of millions of people,” was the way Kyung-wha Kang, UN Deputy High Commissioner for Human Rights, put it.<sup>251</sup>

In the light of the above, it is predicted that agricultural production will decrease, suitable cultivation areas will be reduced, the length of growing seasons will be shortened, and yields will be compromised – all of which will affect food security and malnutrition. Local food supplies are expected to decrease due to decreasing fisheries, while coastal areas affected by a rise in sea levels will also be problematic. The social impacts of climate change will increase the vulnerability of specific groups and populations. This vulnerability has become a key element in human rights discussions, which focus on how flooding, devastated housing, changes in the supply of fresh and irrigation water, infectious diseases, prolonged droughts and subsequent forced migration, deforestation, and flooding, amongst others, will impact human lives. To mention but a few of the burning issues associated with climate change, there are poverty and hunger due to reduced livelihood assets; insufficient primary education caused by deteriorated infrastructure and displacement; child mortality as a result of extreme weather events; and maternal health problems stemming from the effects of weather and drought. Climate change can affect the capacity of vulnerable countries, communities, and

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250 For example, large parts of northern Namibia have again been heavily flooded this year, forcing thousands of people – mostly the poorest – to evacuate their homes; see various articles in *New Era* and *The Namibian*, 14 March 2008.

251 Reuters, 20 February 2008.

and individuals to realise their human rights. It is important, therefore, to assess the impact of climate change on human rights.<sup>252</sup>

*Exploitation of natural resources, uranium mining and atomic energy*

Moreover, the international run for Namibia's natural resources continues.<sup>253</sup> The expected depletion of fossil fuels like oil and gas and the resulting increase in electricity prices are forcing the world's energy industry to look at nuclear power to meet future needs for electricity provision. Namibia also came under the spotlight, with foreign investors from, amongst others, Canada, China, Japan, and Russia arriving in droves to secure supplies or mining rights, expecting a boom in uranium mining.<sup>254</sup>

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252 Kiss & Shelton (2004:307), *supra*.

253 Goanikontes, Langer Heinrich, Rössing, and Trekkopje are names related to major Namibian mining projects. Other prospective projects include the Kudu gas field located 140 km offshore from Oranjemund, and the Kunene No. 1 oil drilling area along the Namibian coastline.

254 An article by Brigitte Weidlich in *The Namibian* of 4 January 2008 summarises the ongoing activities, as follows: 'Rössing Uranium, Namibia's 30-year-old uranium mine, has extended its lifespan to 2026, despite being slated for closure barely two years ago. Rössing intends to develop two newly discovered uranium deposits east of the existing mine, which requires the construction of an additional wastewater (tailings) dam and the construction of an on-site sulphuric acid production plant. Consultants are currently drafting an environmental impact assessment (EIA) for the new developments, after a preliminary scoping report towards the end of last year. The acid plant is necessary to produce 'yellowcake' uranium from the ore. According to the scoping report, the acid plant will require 1 000 cubic metres of water daily ... Langer Heinrich Uranium (LHU) is the second uranium mine in Namibia after Rössing. It is situated in the Namib-Naukluft Park east of Walvis Bay and became operational 13 months ago. It belongs to an Australian mining company, Paladin Energy, formerly Paladin Resources[,] and has a mining licence until 2030. Several foreign mining companies, dominated by Canadian firms, hold over 60 exploration licences (EPLs) for uranium, ranging from Tsumkwe to the Skeleton Coast, Kaokoveld, Rehoboth, Lüderitz and even Warmbad. The majority of EPLs issued are for the Erongo Region. Since the year 2000, the price of uranium has risen from a low of US\$7 per pound to over US\$100 per pound in November 2007. Most energy analysts are predicting a global uranium shortage of some 45 000 tonnes or 100 million pounds over the next decade, unless significantly more mines are brought into production. Bannerman Resources from Australia holds exploration licences at Goanikontes in the Namib Desert. A full feasibility study will be undertaken this year [2008], with construction planned near Goanikontes in 2009 and production to start in 2010. It found significant uranium ore deposits, as far as 300 metres deep, over the 2.3-km-long stretch during drilling in December 2007. Canadian company Uramin holds EPLs at Trekkopje and Klein Trekkopje in the Namib Desert east of Arandis. It was bought by French government energy company Areva last year for US\$2.5 billion (about N\$17.5



Such extensive natural exploitation of resources not only brings destructive effects to ecosystems and habitats that support essential living resources, but these activities also need to be monitored with regard to their impacts on human rights. Only recently, Namibian environmental and human rights groups have joined ranks to oppose the government's plan to partner with Russia to build a nuclear plant, which is seen as a panacea to the country's electricity woes.<sup>255</sup>

*International trade, globalisation and foreign investment: The Ramatex case*

Notwithstanding the disputable question of whether or not market freedoms and freedom of trade have a human rights character of a fundamental nature,<sup>256</sup> the recent Namibian case of Ramatex has demonstrated how the two fields of human rights and globalised investment can intersect and how human rights violations and environmental damage can occur concurrently. In 2001, the Ministry of Trade and Industry announced that it had succeeded in attracting a N\$1 billion (US\$143 million) investment project – ahead of South Africa and Madagascar, which had also been considered as investment locations – by the Malaysian multinational textile company, Ramatex. The plant turned cotton (imported duty-free from West Africa) into textiles for the United States market. This was achieved by offering concessions in the form of an export processing zone (EPZ).<sup>257</sup> EPZs

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billion). Uramin wants to mine those 'significant uranium deposits' for about 15 years should it receive the go-ahead from the Ministry of Mines and Energy. Areva agreed in 2007 to supply 35 per cent of its uranium production – including from Africa – for at least the next 14 years to China. Areva will also build, operate and supply two nuclear reactors in the Chinese province of Guangdong. Areva's Namibian uranium mining near Trekkopje requires about 20 million cubic metres of water per year. NamWater cannot supply sufficient amounts of water for the Trekkopje uranium mine project. Therefore, Uramin plans to build a 15 million cubic metre per year desalination plant near Wlotzkasbaken at the coast. The pipeline that will connect the proposed Trekkopje uranium mine to the desalination plant will traverse unique lichen fields only found in this area ...".

255 In a statement made to the South African Press Association on 29 March 2007, the NSHR Director, Phil ya Nangoloh, said that the "NSHR and environmentalist Earthlife Namibia have teamed up to roundly condemn the nuclear plant concept, urging the International Atomic Energy Agency to keep a keen eye on the developments".

256 See Petersmann, EU. 2005. "Human rights and international trade law: Defining and connecting the two fields". In Cottier, T, J Paulwyn & E Buerger (Eds.). *Human rights and international trade*. Oxford: Oxford University Press, p 29ff.

257 See also *New Era*, 14 March 2008.

are usually schemes to attract foreign direct investment. The Export Processing Zones Act, 1995 (No. 9 of 1995) exempts companies from sales or value added tax payable in Namibia, and from all customs or excise duties for goods imported into the EPZ or manufactured in the EPZ. This piece of legislation supports the establishment, development and management of EPZs in Namibia, which are demarcated either in terms of section 2 or section 19 of the Act, with the object of<sup>258</sup>

- attracting, promoting or increasing the manufacture of export goods
- creating or increasing industrial employment
- expanding export earnings and foreign investment, and
- encouraging technology transfer and the development of management and labour skills in Namibia.

The City of Windhoek and the Ministry of Trade and Industry put together a scheme with an incentive package that included subsidised water and electricity, a 99-year tax exemption on land use, and over N\$1 billion million (US\$143 million) to prepare the site, including the setting up of electricity, water and sewerage infrastructure. From the beginning, a debate focused on controversies surrounding Ramatex's environmental impact and working conditions. Since 2002, continuous disputes concerning human rights protection and labour standards<sup>259</sup> were topped by alleged environmental offences.<sup>260</sup>

The technology used by Ramatex to dispose of the waste water was inadequate and polluted Windhoek's water sources: waste water containing a high salt

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258 Winterfeldt, V. 2007. "Liberated economy? The case of Ramatex Textiles Namibia". In Melber, H (Ed.). *Transitions in Namibia: Which changes for whom?*. Uppsala: Nordiska Afrikainstitutet, p 65ff.

259 According to *The Namibian* on 12 March 2008, a study carried out in 2003 found widespread abuses of workers' rights, including included forced pregnancy tests for women who applied for jobs; non-payment for workers on sick leave; very low wages and no benefits; insufficient health and safety measures; no compensation in case of accidents; abuse by supervisors; and open hostility towards trade unions, etc. Tensions boiled over on several occasions. After spontaneous work stoppages in 2002 and 2003, Ramatex finally recognised the Namibia Food and Allied Workers' Union (NAFAU) as the workers' exclusive bargaining agent in October 2003. The recognition agreement was supposed to pave the way for improved labour relations and collective bargaining. However, the union was unable to make progress on substantive issues, and on several occasions reported Ramatex to the Office of the Labour Commissioner for unfair labour practices and the company's unwillingness to negotiate in good faith.

260 Winterfeldt (2007:65ff).

content was pumped onto the ground, contaminating underground water with toxins from the wet processing section at the plant. Streams stemming from the factory carrying contaminated water threatened to pollute the water at the Goreangab Dam, one of Windhoek's major reservoirs. Textile dyes and other chemicals used in textile processing are known to contain heavy metals and other dangerous substances which can be highly toxic to the environment and, thus, to human beings. The factory has also been accused of disposing excess waste water carelessly. Residents in the neighbourhood of the works complained not only of the stench emanating from the disposed waste water, but also recorded irritation to their skin and respiratory tracts.<sup>261</sup>

The recent closure of the Ramatex clothing and textile factory in Windhoek marked the end of one of the most controversial investments in Namibia since independence. The way in which the closure occurred once again showed the company's disregard for its workers as well as the host country. The company managed to mislead Namibia – and the government in particular – time and again by providing false information to hide its true intentions of using the country merely as a temporary production location.<sup>262</sup> Ramatex's decision to locate production in southern Africa was motivated by the objective to benefit from the Africa Growth and Opportunity Act (AGOA), which allows for duty free exports to the US from selected African countries who meet certain conditions set by the US government.<sup>263</sup>

The Ramatex example reflects the interrelationship between human rights, environmental, and labour law issues. It clearly points out the importance of ensuring people work in a safe environment – not only in respect of not contaminating it, but also as regards other negative impacts, e.g. on the resources of local communities that depend on these for their agriculture-based livelihoods.<sup>264</sup> The case characterises liberal trade and globalisation which are often driven by mere investment and profit motives that can seriously threaten ecosystems, intergenerational equity, and the right to a clean environment.

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261 *The Namibian*, 21 December 2004, 4 November 2005.

262 *The Namibian*, 12 March 2008.

263 The African Growth and Opportunity Act (AGOA) was signed into law on 18 May 2000 as Title 1 of The Trade and Development Act of 2000. The Act offers tangible incentives for African countries to continue their efforts to open their economies and build free markets. For further information, see <http://www.agoa.gov/>.

264 [www.unep.org/labour\\_environment/TUAssembly/case\\_studies/Cappuccio-ITGLWF.pdf](http://www.unep.org/labour_environment/TUAssembly/case_studies/Cappuccio-ITGLWF.pdf); last accessed 10 March 2008.

## **Conclusion**

The right to development, the right to peace, and the right to a healthy environment are at the heart of third-generation human rights. Rights and responsibilities regarding the utilisation of environmental resources need to be distributed with greater fairness among communities, both globally and domestically. The environmental justice and international human rights movements are increasingly applying a rights-based strategy to confront global environmental devastation and to protect ecological habitats and the planet for future generations.

In order to advance the debate on the linkages between human rights and the environment, issues such as international trade, foreign investment and globalisation, the exploitation of natural resources and energy production need to be monitored. Water in Namibia is also a critical component of health and a healthy environment. The Ramatex example clearly points out that when governments answer too directly to international industries' interests, 'costly' environmental demands may be in the way, and governments make their citizens worse off in the end.

The South African Constitution takes into particular account the strong factual relationship between environmental degradation and the impairment of human rights. Under section 24 of that country's Constitution, everyone has the right to an environment that is not harmful to their health or well-being. Article 95(1) of the Namibian Constitution stipulates that the State shall actively promote and maintain the welfare of the people by adopting, *inter alia*, policies aimed at the maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future.

The extensive natural exploitation of resources in Namibia does not only bring destructive effects to ecosystems and habitats that support essential living resources. These activities also have negative impacts on human rights. For the benefit of present and future Namibians, issues like public participation, access to information, access to justice, public action, the human right to water, poverty, and indigenous human rights, *inter alia*, will have to be focused on in more depth in order to assure intergenerational equity and the recognition of the human right to a clean environment in Namibia.