

Courtesy M Griffin

It has been globally acknowledged that urgent action must be taken to conserve species and ecosystems to curb the increasing rate of loss of biological diversity.¹ Namibia has taken up this challenge in a number of ways.

Its constitution, which came into effect at the country's Independence in 1990, explicitly refers to biodiversity, providing that in the interests of the welfare of the people, the State shall adopt policies aimed at maintaining ecosystems, ecological processes and biodiversity for the benefit of present and future generations (Article 95: 1). More specifically, Namibia has launched a project to review and revise its environmental legislation, incorporating the Convention on Biological Diversity (CBD) as outlined below. Namibia's National Biodiversity Programme, and indeed this book, demonstrate Namibia's commitment to biodiversity conservation.

In general, legal approaches to conserving biodiversity in Namibia must be seen in terms of its developing country status, its relatively recent Independence and colonial legacy, its unique and fragile ecosystems, and the diversity of its people.

5.1 The Convention on Biological Diversity (CBD) and Namibia

Status, overall objectives and definition

Namibia signed the Convention on Biological Diversity on 12 June 1992 in Rio de Janeiro,

at the United Nations Conference on Environment and Development, and ratified it on 18 March 1997. Namibia is accordingly now obliged under international law to ensure that its domestic legislation conforms with the CBD's objectives and obligations.

The Convention's overall objectives are set out in its Article 1:

- the conservation of biodiversity;
- the sustainable use of its components;
- the fair and equitable sharing of benefits arising from the use of genetic resources.

Article 1 outlines the framework within which action must be taken, and demands that implementation and further development of the CBD conform to these objectives. It will thus help ensure that balanced decisions are taken, and that where interpretations diverge, conflicts are resolved amicably.

Article 2 of the CBD defines biodiversity to mean the variability among living organisms from all sources, including terrestrial, marine and freshwater ecosystems. This includes diversity within species, between species, and of habitats or ecosystems.

General features of the CBD

Two of the Convention's general features should be noted at the outset. First, it is **broad ranging**, covering conventional legal

methods of habitat and species protection, as well as innovative instruments, ranging from the use of intellectual property rights to the regulation of biotechnology. Traditional legal approaches to general conservation in Namibia are outlined in section 5.3 below, while innovative methods which are still new to the country are discussed in section 5.4.

A second feature of the CBD is that it does not lay down substantive rules. Instead, it lays down overall principles, objectives and goals, leaving it up to contracting states to develop and adopt detailed means to achieve these. It is **facilitative rather than substantive**. With this framework in mind, the CBD leaves it up to individual countries to determine exactly how to implement most of its provisions. Therefore, major decisionmaking is placed at a national level.

Unlike other treaties related to the conservation of biodiversity, the CBD lays down no lists of accepted sites or species to be protected. These are left to individual countries to determine.

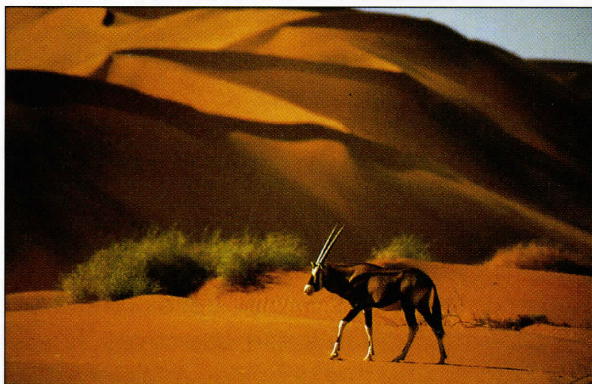


Fig. 5.1 Courtesy P Tarr

5.2 Threats to biodiversity in Namibia

The Convention recognises that the conservation of global biodiversity is a common concern of humankind, and a common and shared responsibility exists based on its paramount importance to the global community. While recognising that biodiversity knows no national borders and that international legal instruments must thus be adopted, the CBD respects national sovereignty.

Any programme to conserve biodiversity must recognise underlying reasons for biodiversity loss. The root causes of diversity loss recognised globally² also apply to Namibia:

- population growth and increasing resource consumption;
- ignorance about the roles of species and ecosystems;
- poorly conceived policies;
- effects of global trading systems;
- inequal resource distribution;
- failure to account for the value of biodiversity.

It is evident from this that human actions, economies and policies are the cause of most biodiversity loss. Legal efforts to address this loss must urgently consider these and other factors, and not only focus on the species and habitats which require direct priority action.

5.3 Environmental law in the context of Namibia's political and legal system

Namibia is a young country, having only attained Independence in March, 1990. It then inherited Roman Dutch common law from South Africa, and took over laws put in place by that country. Many of its environmental laws are accordingly outdated and inappropriate for the newly independent country, still reflecting vestiges of its colonial *apartheid* past.

For these reasons, Namibia is undertaking a four year donor-funded programme to review and revise its environmental legislation, and has appointed an environmental lawyer to manage the project.

The Namibian Constitution stipulates that both common law (its Roman Dutch legal heritage) and customary law shall remain