

Transboundary Protection of Biodiversity (TraProBio)



The focus of the present partnership between Justus Liebig University and the Faculty of Law, North-West University Potchefstroom is on the structural improvement of educational, research and transfer capacities in (transboundary) environmental and planning law primarily at NWU but also at neighbouring universities in order to improve management, protection and conservation of biodiversity in transboundary settings within the Southern African Development Community (SADC). In addition to preserving biodiversity as such, the project aims at the protection of indigenous knowledge in accordance with the use-oriented processing of the mentioned capacities as recommended by the Convention on Biological Diversity.

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The conservation of biodiversity and the sustainable use of its components cannot be ensured by exclusively applying instruments of domestic law on the basis of the traditional principle of territoriality. Even though pertinent natural resources are often locally or regionally limited, natural areas of settlement of fauna and flora cannot be delimited by state borders. Accordingly, the protection of respective ecosystems cannot be restricted to the territory of a single state but has to be organized on a transboundary level. The conservation of biodiversity is of global concern and therefore has been made subject of the 1992 Convention on Biological Diversity. However, the practical implementation of the CBD takes place at the local, national, and regional level. With regard to the implementation of obligations resulting from the Convention of Biological Diversity domestic law can already make a significant contribution to the local and regional protection of biodiversity. However, it reaches its limit where transboundary ecosystems relevant for the preservation of biological diversity are concerned.

While this is not a new insight, there's a lack of appropriate instruments in dealing with numerous situations in the cross-border context. However, most legal problems cannot be adequately addressed on a bilateral level. Thus, it is advantageous if states organise transboundary protection of biodiversity within the framework of a regional organisation. Due to the creation of European environmental law and its differentiation with respect to the protection of biological diversity Europe possesses a wealth of knowledge and experience with regard to both legislation and implementation of prescriptions of European law and their enforcement.

Likewise, the Southern African Development Community (SADC) has not only started to address environmental protection on a regional level but is now increasingly focusing on regional and thus transboundary protection of biodiversity. First steps for developing pertinent legal instruments have been taken, however, the realisation of the neighbourly cooperation is occasionally facing significant problems. In addition, law as an instrument for controlling behaviour is not as readily accepted as this is the case in Europe with its integration process which is sometimes too strongly law-oriented.

Numerous discussions with researchers and practitioners in South Africa have revealed that an institutionalised discourse between German universities and universities from the Southern African

region could address or eventually even solve a number of existing problems. With a view to law-making, this includes the catalogue of available norms within SADC but also norms based on international agreements concluded between SADC member States. Secondly, it is necessary to deal with the implementation of pertinent material and procedural standards as well as with their enforcement. At any rate, the SADC Tribunal has begun its work with a spectacular decision and promises to become a relevant actor in the future. Eventually, the division between the different disciplines both in research and teaching as well as in legal and political practice is striking which is quite astonishing considering the number of current problems. The expansion of trans-disciplinary teaching and research capacities at the universities concerned seems to be appropriate to effectively address these issues.

The protection of biodiversity is complemented by a focus on the sustainable use of its components. The envisaged partnership primarily deals with legal issues namely those being not only related to rules on access and benefit-sharing but also those aiming at the protection and the use-oriented processing of autochthonous (or indigenous) knowledge. Firstly, it has to be noted that to date the protection of traditional knowledge under international law is only inadequately safeguarded. Also, only few states have the legal instruments available to protect this knowledge from unjustified acquisition. However, the quest for a suitable legal setting must not be shelved, the more so as prior experience with these problems exists in southern Africa (Hoodia Kaktus). Irrespective of South Africa's participation in the TRIPS Agreement and other regional and universal instruments aiming at the protection of intellectual property, it may be generally observed that this sub-area of law has not been intensively explored by researchers and teachers yet.

Meanwhile, it has been commonly accepted not only by German development cooperation that the loss of biodiversity jeopardises the development potential of future generations worldwide and particularly threatens the economic, social and cultural basis of existence of developing countries. Consequently, the protection and conservation of biodiversity is one of the preconditions for sustainable development. Species diversity is particularly important for securing food supply, conserving water resources and soils, and adjusting to climate change. On numerous occasions, international law expresses that developing and industrialised countries bear a joint responsibility for the conservation of biodiversity. To this end, TraProBio can give a considerable contribution by helping states from a particular region to join forces in order to preserve the common basis for life.

The project adds another building block to the stabilisation of the cooperation between JLU and NWU. Furthermore, it promotes networking between Germany and South Africa as well as within the SADC member states. Last years' efforts provide an essential basis to ensure the sustainability of the proposed subject-related partnership between the participating universities.

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