

Kameri-Mbote | Paterson | Ruppel | Orubebe | Kam Yogo (eds.)

Law | Environment | Africa

Publication of the 5th Symposium | 4th Scientific Conference | 2018 of the Association of Environmental Law Lecturers from African Universities in cooperation with the Climate Policy and Energy Security Programme for Sub-Saharan Africa of the Konrad-Adenauer-Stiftung and UN Environment



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Table of contents

Foreword	9
Preface	11
Acknowledgements	13
The editors	15
The contributors	17
Chapter 1: Law, environment, Africa: introducing the imperatives, parameters and trends	21
<i>Alexander Paterson</i>	
PART I: CLIMATE CHANGE AND ENERGY	
Chapter 2: Climate change legislative development on the African continent	33
<i>Olivia Rumble</i>	
Chapter 3: Nigeria's commitments under the climate change Paris Agreement: legislative and regulatory imperatives towards ensuring sustainable development	61
<i>Oluwatoyin Adejonwo-Osho</i>	
Chapter 4: Bridging the gap between climate change and energy policy options: what next for Nigeria?	83
<i>Morakinyo Adedayo Ayoade</i>	
Chapter 5: Climate change, human security and the humanitarian crisis in the Lake Chad Basin region: selected legal and developmental aspects with a special focus on water governance	105
<i>Oliver C. Ruppel & Mark B. Funteh</i>	
Chapter 6: Forests, forest rights, benefit-sharing and climate change implications under Cameroonian law	137
<i>Christopher F. Tamasang</i>	
Chapter 7: Indigenous peoples and climate change in Cameroon	165
<i>Daniel Armel Owona Mbarga</i>	

Chapter 8: REDD+ and benefit sharing: an examination of the legal framework in Uganda	175
<i>Hadijah Yahyah</i>	
Chapter 9: Regulatory preparedness for non-motorised transport in Nairobi	201
<i>Edna Odhiambo</i>	
PART II: NATURAL RESOURCES GOVERNANCE	
Chapter 10: Wildlife conservation and community property rights in Kenya	223
<i>Patricia Kameri-Mbote</i>	
Chapter 11: Criminal law protection of wildlife reserves in Cameroon	247
<i>Marie Ngo Nonga</i>	
Chapter 12: Harnessing oil as natural resource wealth: a focus on the legal frameworks of Nigeria and Uganda	267
<i>Lanre Aladeitan, Robert Alex Wabunoha & Chidinma Therese Odaghara</i>	
Chapter 13: Access and benefit sharing: beyond the Nagoya Protocol and its ideals	293
<i>Andrew Muma</i>	
Chapter 14: Ecosystem services: legal issues on Nigeria's wetlands	315
<i>Erimma Gloria Orié</i>	
Chapter 15: The role of the Environment and Land Court in governing natural resources in Kenya	335
<i>Collins Odote</i>	
Chapter 16: Public participation in environmental decision-making in Cameroon – myth or reality?	357
<i>Jean-Claude Ashukem</i>	
Chapter 17: Utilising Kenya's marine resources for national development	375
<i>Kariuki Muigua</i>	
Chapter 18: The Environmental Management Act (2017) and natural resource regulation in Malawi: opportunities for and limitations to effective enforcement	393
<i>Gift Dorothy Mkanje</i>	

PART III: WATER GOVERNANCE, MANAGEMENT AND USE

Chapter 19: Pollution of water in South Africa by untreated sewage: addressing the governance issues <i>Michael Kidd</i>	413
Chapter 20: Kenya's Water Act (2016): real devolution or simply the 'same script, different cast' <i>Elizabeth Gachenga</i>	429
Chapter 21: Improving the legal protection of strategic water source areas: a South African perspective <i>Amanda Mkhonza</i>	453
Chapter 22: Institutional and legal challenges to realising clean and safe water for all in Uganda <i>Phiona Muhwezi Mpanga</i>	479
Chapter 23: The conflict between privatisation and the realisation of the right to water in Kenya <i>Nerima Akinyi Were</i>	497
Chapter 24: Policy, regulatory and institutional frameworks relevant to Ethiopian water governance <i>Mekete Bekele Tekle</i>	519
Chapter 25: Water resources management and environmental sustainability in west and central Africa <i>Joseph Magloire Ngang</i>	545
Chapter 26: Water security and environmental justice in Nigeria and South Africa: achievable concord or discordant alliance? <i>Irekpitan Okukpon</i>	561
Chapter 27: The Lake Chad Basin Water Charter: strengths and weaknesses <i>Emmanuel D. Kam Yogo</i>	587

PART IV: REGULATING SOCIAL AND ENVIRONMENTAL IMPACTS

Chapter 28: Making the case for gender and environmental considerations in the regulatory framework relating to the Uganda-Tanzania crude oil pipeline project <i>Godard Busingye</i>	607
Chapter 29: Integrating climate change in the environmental impact assessment process: challenges and prospects in Nigeria <i>Bibobra Bello Orubebe</i>	627
Chapter 30: The Environmental Management Act (2011): a basis for the growth of an environmental ethos and good environmental governance in Zambia? <i>Pamela Towela Sambo</i>	647
Chapter 31: Regulating environmental impacts associated with mining in Uganda <i>Emmanuel Kasimbazi</i>	665
Chapter 32: An analysis of environmental impacts of timber exploitation on indigenous communities' land in Cameroon <i>Esther Effundem Njieassam</i>	697

Foreword

One of the great privileges in being an academic is in learning new ways of approaching issues. Another is in collaborating with colleagues from our own and other countries. As Chair of the IUCN Academy of Environmental Law (the Academy), I have been privileged to meet and become friends with many of the contributors to this book. They have introduced me to many aspects of the interactions of law and the environment in Africa and, as this edited collection amply demonstrates, there is so much more for all of us to learn.

Our mission in the Academy is to advance understanding of, and capacity to research and teach environmental law across the world. Our annual colloquia and our open access, peer reviewed, eJournal along with our many edited collections on aspects of environmental law and on line teaching materials include contributions from African colleagues. Through these contributions, our colleagues have introduced many Academy members to the rich scholarship of African environmental lawyers. We have also learnt of the gaps in African literature and of the need to develop materials with which to educate the next generation of African environmental lawyers. The substantive volume that is 'Law | Environment | Africa' provides a rich contribution to this body of scholarship and a contribution that extends beyond the continent of Africa.

The volume addresses a range of issues which are common to every legal system. Questions such as how innovative new legislation actually is in practice, what the role of law is in developing a cultural of environmental respect and what the best policy, regulatory or governance frameworks might look like, arise across the globe. The areas of focus – climate change, natural resource governance, water governance and social and environmental impacts are pertinent to all corners of the globe.

While the impacts of climate change, for example, may vary across the continents, common lessons are evident from the experiences of all countries. Contributions in this collection which address climate change demonstrate, for example, the required legislative changes if ambitious targets to reduce greenhouse gases while continuing development are to be met. The potential severity of climate change impacts in Africa serve to highlight the types of legal measures necessary to mitigate that impact, or to help communities adapt to it. It is also clear that the measures needed to address these impacts include some that pose significant challenges to the way we currently organise ourselves, be that in terms of infrastructure planning (for example for transport) or in how we address particular sections of the population, such as marginalised groups.

Contributions in this collection thus highlight discourses that are echoed around the world. For example, the analysis of private and community rights addressed in chapters dealing with natural resource governance and water governance reflect broader legal

and political discourse of how rights should be organised. Those on public participation, access to benefits and environmental justice raise issues germane to both national and international law across the globe.

The relative dearth of globally available publications on environmental law in Africa compared to the physical presence and population of Africa in itself makes this volume extremely important. More than that, however, the volume holds lessons for environmental lawyers from across the globe and highlights areas in which inter-continental collaborations on environmental law may be beneficial.

Prof. Elizabeth A. Kirk
Chair, IUCN Academy of Environmental Law
Professor of International Environmental Law
Nottingham Trent University

Nottingham, October 2018

Preface

Many African countries have signed international treaties governing the environment and natural resources and have constitutional provisions on environmental law. Framework environmental laws and sectoral statutes on diverse aspects of the environment and natural resource management at the national level complement these. The need for analysis and critique of the content, implementation and enforcement of the laws cannot be overemphasised in such a dynamic field. The fodder for research and academic writing is readily available and it is gratifying to note that African scholars have taken up the challenge and provided much needed leadership in this regard.

This book is a celebration of the development of environmental law scholarship in Africa. Coming from a dearth of universities teaching environmental law in Africa until the early 2000s, the array of authors, diversity of subjects and representation of universities in the book demonstrates the power of dreams. This book's genesis is traceable to Professor Charles Odidi Okidi's dream to have an environmental law scholars from African universities network within the Association of Environmental Law Lecturers in African Universities (ASELLAU). Prof. Okidi leveraged his networks and sought support of the United Nations Environment Programme to bring together a group of researchers and scholars from different African countries in 2004. These scholars decried the paucity of environmental law scholarship and research from Africa and resolved to establish ASELLAU with the main objective of popularizing the teaching of environmental law in African universities. As the person charged to run with Prof. Okidi's dream, I must confess that this was a daunting challenge and I had no idea how to execute the task and what direction the dream would lead.

It is therefore my great joy and pride to observe the remarkable success recorded by the Association in both getting environmental law into the undergraduate and graduate curricula of African universities and growing the discipline in the region in less than two decades. This book is testament to that success. It illustrates the Association's prowess in enlisting committed law researchers working on diverse aspects of the environment – climate change; natural resource governance; water management and use; and regulation of social and environmental impacts. The capacity and agility of the scholars in the region is demonstrated in the variety and complexity of the subjects tackled in the book. They range from case studies of specific ecosystems and species within countries to broader natural resource governance issues applicable across different countries. The book also includes chapters dealing with innovations in national laws dealing with environment dispute resolution and interdisciplinary issues such as the human right to water and sanitation; natural resource management and indigenous communities; gender and environment; and resource management and development.

The authors include members of ASSELLAU and younger scholars who have taken up the discipline more recently, some under the tutelage of older members of the Association. The engagement of scholars across different generations sets a solid foundation for sustained research going forward. It is my expectation that this book will: promote environmental law scholarship in the continent, the sub-regions, the individual countries and institutions of higher learning in Africa; promote exchange of ideas within countries; contribute to policy discourses globally, regionally and nationally; and inform global scholarship and developments in environmental law.

I applaud the audacity of Professor Oliver Ruppel, the Founding Director of the Climate Policy and Energy Security Programme for Sub-Saharan Africa (CLESAP) of the Konrad-Adenauer-Stiftung for supporting the conference at which drafts of the papers included in this book were presented in Yaoundé, Cameroon in January 2018. As a founder member of ASSELLAU, Prof. Ruppel has also modelled leadership as an environmental law scholar and researcher.

Finally, I would be remiss not to acknowledge the mentorship and friendship of Prof. Okidi who has been rightly named the ‘father of environmental law in Africa’, in steering ASSELLAU forward over the years. While always throwing me into the deep end of things, he has been a great source of encouragement and inspiration, ensuring that I keep afloat when all forces seemed to conspire to get me to sink under the weight of things.

Prof. Dr. Patricia Kameri-Mbote (on behalf of the Editors)
Chairperson ASSELLAU

Nairobi, August 2018

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Selected presentations have now been captured in this remarkable book publication. The book's object is to explore, review and analyse recent developments located at the nexus of law and the environment in Africa. The collection comprises 32 chapters from legal experts from central, eastern, southern and western Africa. It is a great achievement to have the book published in the renowned legal series "Law and Constitution in Africa (*Recht und Verfassung in Afrika*)" with Nomos Law Publishers in Germany. The series is known to intensify existing efforts in strengthening and deepening scientific knowledge of legal and constitutional issues in Africa and to contribute to a lively cooperation of academia and practice on both continents – Africa and Europe.

A multi-authored publication such as this one is a great team effort. Therefore, special thanks go to my fellow editors and to all the distinguished contributors. Thanks also go to the Konrad-Adenauer-Stiftung (KAS) for making this publication financially possible. As a longstanding member of ASSELLAU, I herewith congratulate the association and Professor Patricia Kameri-Mbote (who is the chair of ASSELLAU) for the enormous impact on the development of environmental law in Africa over the past 15 years of ASSELLAU's existence.

Prof. Dr. Oliver C. Ruppel

Founding Director

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Yaounde, August 2018

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