

# 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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Patricia Kameri-Mbote | Alexander Paterson  
Oliver C. Ruppel | Bibobra Bello Orubebe  
Emmanuel D. Kam Yogo (eds.)

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## 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

## *Foreword*

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*

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*Professor of International Environmental Law*

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*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 (ASSELLAU). 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 ASSELLAU 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.

## Preface

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*

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