

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



Nomos



**Konrad
Adenauer
Stiftung**

Herausgeber/Editorial Board:

Hartmut Hamann, Professor of Law, Freie University Berlin & Hamann Rechtsanwälte, Stuttgart | Ulrich Karpen, Professor of Law, University of Hamburg | Oliver C. Ruppel, Professor of Law, University of Stellenbosch | Hans-Peter Schneider, Professor of Law, University of Hannover

Wissenschaftlicher Beirat/Scientific Advisory Council:

Laurie Ackermann, Justice (Emeritus), Constitutional Court of South Africa, Johannesburg | Jean-Marie Breton, Professor of Law (Emeritus), Honorary Dean, University of French West Indies and Guyana | Philipp Dann, Professor of Law, Humboldt University Berlin | Gerhard Erasmus, Professor of Law (Emeritus), Associate, Trade Law Centre, Stellenbosch | Norbert Kersting, Professor of Political Sciences, University of Muenster | Salvatore Mancuso, Professor of Law, Chair Centre for Comparative Law in Africa, University of Cape Town | Yvonne Mokgoro, Justice, South African Law Reform and Development Commission, Pretoria | Lourens du Plessis, Professor of Law, Northwest University, Potchefstroom | Werner Scholtz, Professor of Law, University of the Western Cape, Bellville | Nico Steytler, Professor of Law, Int. Association of Centers for Federal Studies, Bellville | Hennie A. Strydom, Professor of Law, University of Johannesburg | Christoph Vedder, Professor of Law, University of Augsburg | Gerhard Werle, Professor of Law, Humboldt University Berlin | Johann van der Westhuizen, Justice, Constitutional Court of South Africa, Johannesburg | Reinhard Zimmermann, Professor of Law, Managing Director of the Max Planck Institute for Comparative and International Private Law, Hamburg

Patricia Kameri-Mbote | Alexander Paterson
Oliver C. Ruppel | Bibobra Bello Orubebe
Emmanuel D. 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



Nomos



**Konrad
Adenauer
Stiftung**

Disclaimer

The contents of the articles, including any errors or omissions are solely the responsibility of the authors. Opinions expressed by the different authors, do not necessarily reflect those of the editors or of the Konrad-Adenauer-Stiftung. The editors did their best to acknowledge the usage of copyright protected material. In case any copyright violation should be detected, please contact the editors and any such error or omission will be rectified in a reprint or 2nd edition.

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.d-nb.de>

ISBN 978-3-8487-5287-4 (Print)
978-3-8452-9460-5 (ePDF)

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978-3-8487-5287-4 (Print)
978-3-8452-9460-5 (ePDF)

Library of Congress Cataloging-in-Publication Data

Kameri-Mbote, Patricia / Paterson, Alexander / Ruppel, Oliver C. / Orubebe, Bibobra Bello / Kam Yogo, Emmanuel D.

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

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

724 p.

Includes bibliographic references and index.

ISBN 978-3-8487-5287-4 (Print)
978-3-8452-9460-5 (ePDF)

1st Edition 2019

© Nomos Verlagsgesellschaft, Baden-Baden, Germany 2019. Printed and bound in Germany.

This work is subject to copyright. All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or any information storage or retrieval system, without prior permission in writing from the publishers. Under § 54 of the German Copyright Law where copies are made for other than private use a fee is payable to “Verwertungsgesellschaft Wort”, Munich.

No responsibility for loss caused to any individual or organization acting on or refraining from action as a result of the material in this publication can be accepted by Nomos or the editors.

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 <i>Alexander Paterson</i>	21
PART I: CLIMATE CHANGE AND ENERGY	
Chapter 2: Climate change legislative development on the African continent <i>Olivia Rumble</i>	33
Chapter 3: Nigeria's commitments under the climate change Paris Agreement: legislative and regulatory imperatives towards ensuring sustainable development <i>Oluwatoyin Adejonwo-Osho</i>	61
Chapter 4: Bridging the gap between climate change and energy policy options: what next for Nigeria? <i>Morakinyo Adedayo Ayoade</i>	83
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 <i>Oliver C. Ruppel & Mark B. Funteh</i>	105
Chapter 6: Forests, forest rights, benefit-sharing and climate change implications under Cameroonian law <i>Christopher F. Tamasang</i>	137
Chapter 7: Indigenous peoples and climate change in Cameroon <i>Daniel Armel Owona Mbarga</i>	165

Table of contents

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

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

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
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

Acknowledgements

Law | Environment | Africa is a publication of the Proceedings of the 5th Symposium and the 4th Scientific Conference of the Association of Environmental Law Lecturers from African Universities (ASSELLAU) in cooperation with the Climate Policy and Energy Security Programme for Sub-Saharan Africa of the Konrad-Adenauer-Stiftung (KAS), the United Nations Environment Programme (UNEP) and the University of Douala. This high level event was held at the Hilton Hotel in Yaounde, Cameroon from 11-12 January 2018. At the occasion, the participants hailed the conference as an historic one in Africa. The conference was held in both official languages of Cameroon, namely English and French, with parallel sessions. It was an opportunity for more than 50 legal experts from all over Africa to present their papers and discuss the latest issues pertaining to environmental law on the continent.

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

*Climate Policy and Energy Security Programme for Sub-Saharan Africa (CLESAP)
Konrad-Adenauer-Stiftung (KAS)*

Yaounde, August 2018

The editors

Prof. Dr. Patricia Kameri-Mbote

Professor of Law, Former Dean, School of Law, University of Nairobi, Kenya; Chair: Association of Environmental Law Lecturers in African Universities (ASSELLAU).

Prof. Dr. Alexander Ross Paterson

Professor of Law and Director, Institute of Marine and Environmental Law, Faculty of Law, University of Cape Town, South Africa.

Prof. Dr. Oliver C. Ruppel

Professor of Law and Director, Development and Rule of Law Programme (DROP), Stellenbosch University, South Africa; Founding Director, Climate Policy and Energy Security Programme for sub-Saharan Africa (CLESAP), Konrad-Adenauer-Stiftung, Yaounde, Cameroon; Distinguished Fellow Fraunhofer Center for International Management and Knowledge Economy (IMW), Leipzig, Germany; Professor Extraordinaire, University of Central Africa (UCAC), Yaounde, Cameroon; Strathmore Law School, Nairobi, Kenya; and European Faculty of Law, Nova University, Slovenia.

Prof. Dr. Bibobra Bello Orubebe

Professor of Law, Provost and Dean, College of Law, Novena University Ogume, Delta State, Nigeria.

Prof. Dr. Emmanuel D. Kam Yogo

Professor of Law, Department of Public Law, Faculty of Legal and Political Sciences, University of Douala, Cameroon and Associate Professor, Faculty of Law, Laval University, Canada.

The contributors

Dr. Oluwatoyin Adejonwo-Osho

Lecturer, Department of Public Law, Faculty of Law, University of Lagos, Nigeria.

Dr. Lanre Aladeitan

Senior Lecturer, Energy, Oil and Gas and Environmental Law; previously Head of Department, Department of Public and International Law, Faculty of Law, University of Abuja, Gwagwalada, Nigeria.

Dr. Jean-Claude Ashukem

Postdoctoral Fellow, North-West University, Potchefstroom Campus, South Africa.

Dr. Godard Busingye

Senior Lecturer of Public International Law, School of Law, Kampala International University, Uganda.

Prof. Dr. Mark B. Funteh

Associate Professor of Peace Studies, University of Maroua, Cameroon.

Dr. Elizabeth Gachenga

Deputy Vice Chancellor, Academic and Student Affairs, Strathmore University, Kenya.

Prof. Dr. Patricia Kameri-Mbote

Professor of Law; Former Dean, School of Law, University of Nairobi, Kenya; Chair: Association of Environmental Law Lecturers in African Universities (ASSELLAU).

Prof. Dr. Emmanuel D. Kam Yogo

Professor of Law, Department of Public Law, Faculty of Legal and Political Sciences, University of Douala, Cameroon and Associate Professor, Faculty of Law, Laval University, Canada.

Prof. Dr. Emmanuel Kasimbazi

Professor of Law and Chair, Environmental Law Centre, School of Law, Makerere University, Kampala, Uganda.

Prof. Dr. Michael Kidd

Professor of Law, School of Law, University of Kwazulu-Natal, South Africa.

Gift Dorothy Makanje

Lecturer in Law, Department of Foundational Law, University of Malawi.

Amanda Mkhonza

Lecturer in Law, Department of Public Law, University of Cape Town, South Africa.

Prof. Dr. Ayoade Morakinyo Adedayo

Associate Professor, Department of Jurisprudence and International Law, Faculty of Law, University of Lagos, Akoka, Nigeria.

Dr. Kariuki Muigua

Senior Lecturer, School of Law, University of Nairobi, Kenya; Senior Partner: Kariuki Muigua & Co. Advocates; Member of the National Environment Tribunal, Kenya.

Dr. Phiona Muhwezi Mpanga

Lecturer, School of Law, Makerere University, Kampala, Uganda.

Andrew Muma

Lecturer, School of Law, University of Nairobi, Kenya; Senior Partner: Muma & Kanjama Advocates.

Dr. Joseph Magloire Ngang

Senior Lecturer, University of Yaounde II – Soa, Cameroon.

Dr. Marie Ngo Nonga

Senior Lecturer, Faculty of Juridical Sciences and Politics, University of Yaounde II – Soa, Cameroon.

Chidinma Therese Odaghara

Lecturer, Environmental and Planning Law, Sub-Coordinator, Law Clinic, Faculty of Law, University of Abuja, Nigeria.

Edna Odhiambo

Tutorial Fellow, School of Law, University of Nairobi, Kenya.

Dr. Collins Odote

Senior Lecturer, Centre for Advanced Studies in Environmental Law and Policy (CASELAP), University of Nairobi, Kenya.

Dr. Irekpitan Okukpon

Research Fellow, Nigerian Institute of Advanced Legal Studies (NIALS), University of Lagos Campus, Yaba, Lagos State, Nigeria.

Dr. Erimma Gloria Orie

Senior Lecturer, National Open University of Nigeria, Lagos, Nigeria.

Prof. Dr. Bibobra Bello Orubebe

Professor of Law, Provost and Dean, College of Law, Novena University Ogume, Delta State, Nigeria.

Daniel Armel Owona Mbarga

Lawyer and Doctoral Candidate, Catholic University of Central Africa (UCAC), Yaounde, Cameroon.

Prof. Dr. Alexander Ross Paterson

Professor of Law and Director, Institute of Marine and Environmental Law, Faculty of Law, University of Cape Town, South Africa.

Olivia Rumble

Senior Lecturer, Environmental Law, University of Cape Town, South Africa; Director, Climate Legal.

Prof. Dr. Oliver C. Ruppel

Professor of Law and Director of the Development and Rule of Law Programme (DROP), Stellenbosch University, South Africa; Founding Director, Climate Policy and Energy Security Programme for sub-Saharan Africa (CLESAP), Konrad-Adenauer-Stiftung, Yaounde, Cameroon; Distinguished Fellow at the Fraunhofer Center for International Management and Knowledge Economy (IMW), Leipzig, Germany; Professor Extraordinaire, University of Central Africa (UCAC), Yaounde, Cameroon; Strathmore Law School, Nairobi, Kenya; and European Faculty of Law, Nova University, Slovenia.

Dr. Esther Effundem Njieassam

Post-Doctoral Research Fellow, South African Research Chair in International Law, University of Johannesburg, South Africa.

Dr. Pamela Towela Sambo

Lecturer; immediate past Assistant Dean (Undergraduate), School of Law, University of Zambia.

Prof. Dr. Christopher Funwie Tamasang

Associate Professor, Vice-Dean in charge of Research and Cooperation, Faculty of Laws and Political Science, University of Yaounde II, Cameroon; Member: IUCN Academy of Environmental Law; Member: World Commission on Environmental Law; Vice Chair: ASSELLAU in charge of the Central African Region.

Prof. Mekete Bekele Tekle

Associate Professor of Law, School of Law, Addis Ababa University, Ethiopia.

Robert Alex Wabunoha

Regional Coordinator, Environment Government, United Nations Environment (UNEP), Nairobi, Kenya; visiting Lecturer; formerly, senior environment lawyer, National Environment Management Authority, Uganda; Principle State Attorney, Ministry of Justice, Uganda.

The contributors

Nerima Akinyi Were

Tutorial Fellow, School of Law, University of Nairobi, Kenya.

Hadijah Yahyah

Lecturer, School of Law, Kampala International University, Kampala, Uganda.