

Oliver C. Ruppel | Katharina Ruppel-Schlichting (Eds.)

Environmental Law and Policy in Namibia

Towards Making Africa the Tree of Life

4th Edition



Nomos



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Foreword

It is a great pleasure to see that what has become a standard work in the field of environmental law and policy in Namibia is going into the next round with the fourth fully revised and expanded edition of *Environmental Law and Policy in Namibia – Towards Making Africa the Tree of Life*. The first, second and third editions of this publication attracted much attention among both lawyers and non-lawyers in Namibia, Africa and beyond, and with good reason. This is a sustainable effort indeed and I continue to commend the depth of the work and its positive impact.

A sustainable environment is essential to protect people from the short, medium and long term ravages of nature; man-made threats in nature; and the deterioration of the natural environment. Namibia faces a range of difficult environmental challenges including among others land degradation; water scarcity and pollution; deforestation; biodiversity loss; and climate change. Addressing these challenges requires, above all, unequivocal determination on the part of policy-makers. The law, as a subsequent step to policy and decision-making processes on the one hand and as a basis for enforcement and implementation on the other, is an important discipline in terms of environmental protection and is an essential tool to address environmental problems threatening our country, region and planet. Given the multi-disciplinary nature of environmental issues and the involvement of different Government institutions, policy makers and stakeholders, the afore-mentioned environmental challenges are covered by a variety of statutes and policies.

This book offers a multi-faceted insight into environmental law and policy in Namibia. It does this most successfully by taking stock of the existing legal framework and Namibia's commitment to environment-related issues at the local, national, regional, continental and international level. The mother of Namibian laws, our Constitution, is one of the few constitutions in the world to explicitly incorporate the protection of the environment. It is well reflected in this publication that we have achieved significant milestones in terms of environmental law and policy such as the ratification and implementation of several multilateral environmental agreements; the enactment of landmark pieces of national legislation such as the Environmental Management Act; as well as a broad environmental policy framework. Of course, the process is on-going and we must not rest on our laurels.

It is highly commendable that the editors and authors of this book have again eloquently managed to give an in-depth updated overview of sectoral and cross-sectoral legislation and policies relating to environmental concerns. The publication puts environmental law issues into the broader context of current and future societal needs and economic developments. The focus of the publication is on Namibia. It is, however,

notable that the book also puts a strong emphasis on the multi-faceted African legal structure and its particularities, including the environmental legal frameworks of the African Union and the Southern African Development Community.

This publication will be a valuable source of information and guidance for lawyers, judges, students, policymakers and all those members of the public interested in environmental law and policy.

I wish to cordially thank Prof. Dr. Oliver C. Ruppel and Dr. Katharina Ruppel-Schlichting, the Hanns Seidel Foundation, the Deutsche Gesellschaft für Internationale Zusammenarbeit and all who have contributed to the fourth edition of the book and assisted in making it a reality. It has grown to be a landmark and an important work for Namibia, which will inevitably contribute to further green growth, sustainable development and environmentally sound management in the interest of our people. Let all of us make environmental protection our responsibility!



Pohamba Shifeta
Minister of Environment, Forestry and Tourism, MP
Windhoek, January 2022

Preface

This fourth edition of the publication *Environmental Law and Policy in Namibia – Towards Making Africa the Tree of Life* comes at a timely moment both nationally and internationally as the country is tackling diverse and numerous environmental and developmental challenges while the world has come together at the 26th UN Climate Change Conference of the Parties (COP26) in Glasgow on 31 October – 13 November 2021 to accelerate action towards the goals of the Paris Agreement and the UN Framework Convention on Climate Change. The previous three editions of this book were published in 2011, 2013 and 2016, respectively, and all three were a great success. We therefore have sustained our commitment to this work and funded this fourth revised and expanded edition.

The Namibian Government has taken the lead to recognise the impact of the population with its economic activities on the country's natural environment and has also taken the initiative to adopt and domesticate ethical and humane legislation and policies to inclusively undertake, manage and monitor environmental management.

Namibia has made progress in fostering cross-sectoral and dynamic solutions to address the far-reaching effects of climate change, desertification and the depletion of biological resources. As such, this book stands as a comprehensive and telling compilation of the Namibian Government's commitment to tackle environmental challenges as not only users but also stewards of its endowments of natural resources.

Having supported the protection of the natural environment as a part of its worldwide activities for some decades now, the Hanns Seidel Foundation is committed to continuing its efforts for sustainable development and conservation of the natural resources. This book further intersects with many aspects of our Foundation's mandate to support political, economic and social development, especially in the Global South where economic development and environmental sustainability are often competing objectives.

Against this backdrop, the work of the editors and contributors is highly commended for demonstrating the interlinkages of the different sectors engaged in environmental management as well as the dynamic sphere of policy development and implementation guiding such efforts.



Dr. Susanne Luther
Director of the Institute for International Cooperation (IIZ)
Hanns Seidel Foundation
Munich, January 2022

Acknowledgements

Over the course of writing a book, one accumulates more debts than can be acknowledged in a few lines. A multi-authored publication such as this is an enormous team effort. Therefore, our special thanks go to all the distinguished contributors – both in Namibia and beyond. Upon conducted stakeholder consultations and while considering recent developments and thematic priorities in the field of law and policy, this fourth edition of *Environmental Law and Policy in Namibia* includes – besides substantial updates and revisions – some new Chapters and Sections. In order not to go beyond the constraints with regard to the length of this publication, some reductions of text were again necessary, and we are satisfied to know that these remain preserved and available to the interested reader in previous editions.

We are very grateful to those who contributed financially to this publication, that is the Hanns Seidel Foundation (HSS). “In the service of democracy, peace and development” – this is the motto of the Germany-based Hanns Seidel Foundation; this publication reflects this maxim and the aims of the foundation and its noble mission. Our particular gratitude goes to Dr. Clemens von Doderer, Head of Country Office of the HSS in Namibia, for his active involvement in making the fourth edition of this book a reality and for his valuable contribution as co-author.

This publication is also a tribute to German-Namibian development cooperation which acknowledges Germany’s special historical responsibility and to further strengthen the partnership between the two countries. Most relevant for this book, the focus of German-Namibian development cooperation is on sustainable economic development, natural resource management, climate, energy, and transport. Germany has supported Namibia in many fields, including environmental matters through bilateral cooperation. As early as 1991, Germany and Namibia concluded a cultural agreement, which *inter alia* incorporated cooperation in the areas of research and higher education. Environmental law and policy have also been on this agenda.

We cordially thank the Minister for Environment, Forestry and Tourism, Hon. Pohamba Shifeta, for his continued support! Last but not least, we would like to thank the numerous readers who provided us with valuable feedback on the first three editions of this book – for their positive response, but also for constructive suggestions for improvements.

Environmental Law and Policy in Namibia – Towards Making Africa the Tree of Life is always work in progress. This means that the various chapters in this book are regularly updated, reflecting the latest state of affairs at the time of writing the chapter – not necessarily at the time of publication. While legislation and its implementation is progressive in nature, the individual contributors have attempted to capture the latest

developments and case law in their respective chapters. In case that such developments have been overtaken by time during the editorial process in the finalisation of the publication before its publication, the reader can expect the next comprehensive update in the fifth edition of this book, which is envisaged for 2024/25.

The Editors, Prof. Dr. Oliver C. Ruppel and Dr. Katharina Ruppel-Schlichting
Stellenbosch, January 2022

The Editors

Oliver C. Ruppel is a full Professor of Law at Stellenbosch University (SU), South Africa and the Director of the Development and Rule of Law Programme (DROP), likewise at SU. He also serves as the Director of the Research Center for Climate Law (Clim:Law) at the University of Graz, Austria. He is a distinguished Fellow at the Fraunhofer Centre for International Management and Knowledge Economy in Leipzig, Germany; and Extraordinary Professor at the University of Central Africa, Yaoundé, Cameroon, at Strathmore Law School, Nairobi, Kenya, at the China-Africa Institute for Business and Law, Xiangtan University, China, and at the European Law Faculty, Nova University, Ljubljana, Slovenia. Before transferring to Stellenbosch University in 2010, he lectured at the University of Namibia (UNAM), where he established one of the worldwide 14 Founding Chairs in the Academic Programme of the World Trade Organization (WTO), Switzerland. Prior to this he served as Director of the Human Rights and Documentation Centre (HRDC), a national institute established by statute under the Namibian Ministry of Justice and UNAM.

He is a Member of the Academy of Sciences, Cameroon; Member of the Sahel Consortium (USA); Member of the Advisory Committee, Platform on Disaster Displacement (PDD), Geneva, Switzerland; Member of the International Conservation Union (IUCN) World Commission for Environmental Law (WCEL); Member of the Wildlife Justice Commission, The Hague, Netherlands; AR5 coordinating lead-author of the United Nations Intergovernmental Panel on Climate Change (IPCC); and Founding Director, Climate Policy and Energy Security Programme for sub-Saharan Africa of the German Konrad Adenauer Foundation. He graduated in law after studies at the Universities of Lausanne, Switzerland and Munich, Germany and holds a Master of Laws degree (LLM) from Stellenbosch University, a Doctor of Laws degree (LLD) from Comenius University, Slovakia, a Master of Mediation degree (MM) from the University of Hagen, Germany and a postgraduate Diploma in International Human Rights Law from Åbo Akademi University, Finland.

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The Editors

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Pieter Heyns Pr Eng studied at Stellenbosch University in South Africa and graduated with degrees in science and water engineering. He is a registered professional engineer in Namibia and a Fellow of the South African Institution of Civil Engineers. In 1973 he started his career as a civil servant in the construction division of Department of Water Affairs (DWA) in South Africa and was transferred to Namibia 1976 where he progressed through the ranks until he retired in 2007 as the Head of the DWA in the Ministry of Agriculture Water and Forestry. In 1987 he became the Director Resource Management and was accountable for 6 Divisions, of which one was the Division Water Law Administration. After the Independence of Namibia, he was the main driving force behind the establishment of water commissions between Namibia and the other riparian States on the internationally shared, perennial border rivers of Namibia. The main purpose was to enable Namibia to obtain an agreed, sustainable, equitable and reasonable share in the waters of those rivers. He prepared the first drafts of most of the water treaties that led to the agreements to establish water commissions on all the boundary rivers of Namibia, except the Kunene River, which had agreements in place since 1886. In the process he obtained sound knowledge of national and international water law in practice. He was a commissioner in five water commissions and obtained comprehensive experience in the management of transboundary water resources. He became a member of various national and international water management bodies and is a well-known professional in the water sector in Namibia, the SADC Region and elsewhere in the world. He was the chairperson of the Water Resources Technical Committee of the SADC Water Division, as well as a member of the founding steering committee of the Global Water Partnership and member of the African Advisory

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Manfred O. Hinz studied law and philosophy at the University of Mainz, Germany, where he graduated in law. He took his legal practitioner examination in 1964, the year in which he also obtained his PhD from the University of Mainz. After studying anthropology, sociology and African and Oriental languages at the same University, he became assistant lecturer, teaching anthropology and public law. In 1971, he was appointed full professor at the University of Bremen. In 1989, he went to Namibia where, after its Independence, he assisted the Ministry of Justice in its projects to restructure the traditional administration of justice and to make an inventory of customary law. He was later seconded to the office of the first Vice-Chancellor of the University of Namibia (UNAM) to help build the first institution for legal education on Namibian soil: UNAM’S Faculty of Law. He joined the Faculty upon its inception. He has served as Deputy Dean and Dean of the Faculty. Prof. Hinz held the United Nations Educational, Scientific and Cultural Organisation (UNESCO) Chair: Human Rights and Democracy in the Law Faculty’s Human Rights and Documentation Centre from 2000 to 2009. In 2009, Prof. Hinz retired from his full-time position at the University of Namibia. In 2010 he returned to Germany. Apart from holding the position of Professor at the University of Bremen, he is Adjunct Professor of Law and African Studies at the Jacobs University in Bremen since 2014. He has published widely in his areas of specialisation, particularly in the fields of legal and political anthropology, constitutional and international law.

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Peter Frank Koep holds a BA and a LLB from the University of Cape Town. He was admitted as an attorney in 1980 and established Koep & Partners in 1982. After his retirement as Senior Partner, he has been active as mediator and independent legal advisor with extensive knowledge of mining and energy law. He is a long-standing member of the Law Society of Namibia and previously was a Councillor of the Law Society of Namibia, convenor of the Committee on Human Rights, a member of the Board for Legal Education and a member of the International Bar Association. He was the founding member and subsequently President of Namibia Peace Plan 435, working

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