

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

Environmental Law and Policy in Namibia

Towards Making Africa the Tree of Life

4th Edition

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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 978-3-8487-8828-6 (Print)
978-3-7489-3356-4 (ePDF)

British Library Cataloguing-in-Publication Data

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

ISBN 978-3-8487-8828-6 (Print)
978-3-7489-3356-4 (ePDF)

Library of Congress Cataloging-in-Publication Data

Ruppel, Oliver C. | Ruppel-Schlichting, Katharina
Environmental Law and Policy in Namibia
Towards Making Africa the Tree of Life
Oliver C. Ruppel | Katharina Ruppel-Schlichting (Eds.)
839 pp.

Includes bibliographic references.

ISBN 978-3-8487-8828-6 (Print)
978-3-7489-3356-4 (ePDF)

4th Edition 2022 (the previous 3 Editions have only been published in Namibia)

© The Authors and Hanns Seidel Foundation

Published by

Nomos Verlagsgesellschaft mbH & Co. KG
Waldseestraße 3–5 | 76530 Baden-Baden | Germany
www.nomos.de

Production of the printed version:
Nomos Verlagsgesellschaft mbH & Co. KG
Waldseestraße 3–5 | 76530 Baden-Baden | Germany

ISBN 978-3-8487-8828-6 (Print)
ISBN 978-3-7489-3356-4 (ePDF)

DOI <https://doi.org/10.5771/9783748933564>



Onlineversion
Nomos eLibrary



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Table of Contents

Foreword	21
Preface	23
Acknowledgements	25
The Editors	27
The Contributors	29

PART I: BACKGROUND

Chapter 1: Namibia and its Legal Setup	39
<i>Oliver C. Ruppel and Katharina Ruppel-Schlichting</i>	
1 Namibia in a Nutshell: Facts and Figures	39
2 The Legal Setup in Namibia	42
3 The Laws	43
4 The Court System	44
4.1 The Supreme Court	44
4.2 The High Court	45
4.3 The Lower Courts	46
4.4 The Magistrates' Courts	47
4.5 The Community Courts	47
5 The Ombudsman	48
Chapter 2: Introducing Environmental Law	49
<i>Katharina Ruppel-Schlichting</i>	
1 Terminology	49
2 Foundations of Environmental Protection	51
3 Functions of Environmental Law	53
4 Historical Development of Environmental Law	54
Chapter 3: Namibia and its Environment	65
<i>Katharina Ruppel-Schlichting</i>	
1 Introduction	65
2 Major Environmental Concerns in Namibia	67
2.1 Land Degradation and Soil Erosion	68
2.2 Deforestation	69
2.3 Water Scarcity	69
2.4 Climate Change	70
2.5 Biodiversity Loss	71
2.6 Waste and Pollution	72

Chapter 4: Environmental Law in Namibia – an Overview	75
<i>Oliver C. Ruppel</i>	
1 Introduction	75
2 The Namibian Constitution	75
3 Development Framework	77
3.1 Namibia’s Green Plan	77
3.2 Vision 2030 and the National Development Plans	79
4 Policy Framework	82
4.1 Policies on Environment, Wildlife and Biotechnology	83
4.2 Policies on Land and Agriculture	84
4.3 Policies on Water	87
4.4 Policy on Forests	89
4.5 Policies on Tourism	89
4.6 Climate Change and Energy	90
4.7 Environmental Education	91
5 Selected Strategies and Action Plans	91
5.1 National Biodiversity Strategy and Action Plan	91
5.2 National Strategy on Wildlife Protection and Law Enforcement	92
5.3 Namibia’s Climate Change Strategy and Action Plan	93
5.4 Aquaculture Strategic Plan	93
5.5 Strategic Action Plan for the Implementation of Renewable Energy Policies	94
5.6 Forestry Strategic Plan	94
6 Statutory Law	95
6.1 Environmental Framework Legislation	96
6.2 Nature Conservation, Wildlife and Traditional Knowledge	98
6.3 Legislation on Water	101
6.4 Legislation on Fisheries and Marine Resources	102
6.5 Legislation on Land and Agricultural Production	103
6.6 Legislation on Forestry	104
6.7 Legislation on Energy and Mining	104
7 Roman-Dutch and Common Law	105
8 Customary Law	107
9 Criminal Aspects of Environmental Law	107

PART II: INTERNATIONAL AND REGIONAL ENVIRONMENTAL LAW

Chapter 5: Introduction to International Environmental Law	111
<i>Oliver C. Ruppel</i>	
1 Introduction	111
2 The Application of International Law in Namibia	111
3 Sources of International Environmental Law	113

3.1	International Conventions: Multilateral Environmental Agreements (MEAs)	113
3.2	Customary International Law	118
3.3	General Concepts and Principles of International Environmental Law	119
3.4	Judicial Decisions and Teachings	123
4	Multilateral Environmental Agreements Relevant to Namibia	123
Chapter 6: Environmental Law and Policy in the African Union		133
<i>Oliver C. Ruppel</i>		
1	Introduction	133
2	Structure of the AU	133
3	Environmental Issues Within the AU's General Legal Framework	136
4	Specific Environmental Conventions	137
4.1	The African Convention on Conservation of Nature and Natural Resources, 1968	138
4.2	The Revised (Algiers) Convention on the Conservation of Nature and Natural Resources, 2003	139
4.3	Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa	141
4.4	The Maritime Transport Charters	141
4.5	The African Nuclear Free Zone Treaty (Treaty of Pelindaba)	142
4.6	The Phyto-Sanitary Convention for Africa	143
4.7	The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa	143
5	Agenda 2063	143
6	The African Union's Judicial, Human Rights and Legal Organs and Bodies and the Consideration of Environmental Rights	144
6.1	The African Court on Human and Peoples' Rights and the African Court of Justice to become the African Court of Justice and Human Rights	144
6.2	The African Commission on Human and Peoples' Rights	145
6.3	The AU Commission on International Law	148
7	Selected Institutions and Initiatives Particularly Relevant for Environmental Protection	149
7.1	The African Ministerial Conference on the Environment (AMCEN)	149
7.2	Relevant Departments within the AU Commission	150
7.3	The Peace and Security Council (PSC)	151
7.4	The African Union Development Agency and the New Partnership for Africa's Development (AUDA-NEPAD)	151

Chapter 7: Environmental Law and Policy in the Southern African Development Community	155
<i>Oliver C. Ruppel</i>	
1 Introduction	155
2 Institutional Structure of SADC	155
3 Heterogeneity within SADC	156
4 Environmentally Relevant Legal Framework	158
4.1 The SADC Treaty	159
4.2 The SADC Protocols	159
4.3 SADC Vision 2050 and the Regional Indicative Strategic Development Plan (RISDP)	174
4.4 Selected Environmental Strategies and Declarations	177
4.5 The SADC Judicial Body	180

PART III: ENVIRONMENTAL MANAGEMENT, WASTE AND POLLUTION

Chapter 8: Environmental Management in Namibia	191
<i>Katharina Ruppel-Schlichting</i>	
1 Introduction	191
2 The Environmental Management Act No. 7 of 2007	193
2.1 Environmental Management Principles in the EMA	194
2.2 Ministerial Competencies	195
2.3 Institutions / Officials under the EMA	196
2.4 Environmental Plans under the EMA	197
2.5 Environmental Assessment under the EMA	197
2.6 Enforcement and Appeal under the EMA	204
2.7 Selected Practical Implications of the EMA and EMA Regulations	204
2.8 Proposed Amendments to the EMA	206
3 Concluding Remarks	207
Chapter 9: Pollution Control and Waste Management	209
<i>Katharina Ruppel-Schlichting</i>	
1 Introduction	209
2 International Law	210
3 National Law and Policy	212
3.1 Pollution under the Constitution	212
3.2 Common Law Aspects of Pollution	212
3.3 Framework Legislation: The Environmental Management Act No. 7 of 2007 (EMA)	213
3.4 Sectoral Legislation	215
3.5 National Solid Waste Management Strategy (2018-2028)	221
3.6 Waste Management at Municipal Level: The Example of the City of Windhoek	223

4	Concluding Remarks	226
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PART IV: BIODIVERSITY AND WILDLIFE

Chapter 10: Legal Protection of Biodiversity in Namibia	231
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Manfred O. Hinz and Oliver C. Ruppel

1	Introduction	231
2	Biodiversity in Perspective	231
3	International Environmental Law Pertinent to Biodiversity Protection in Namibia	235
4	Biodiversity Protection under National Environmental Law	239
4.1	The Constitution	240
4.2	Statutory Law	240
4.3	National Biodiversity Strategy and Action Plan	245

Chapter 11: Namibia's Wildlife Crime Legislation	247
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Willem Odendaal

1	Introduction	247
2	The Duty of the Namibian Government to Act	248
2.1	Article 95 of Namibia's Constitution	249
2.2	The Environmental Management Act No. 7 of 2007	249
2.3	Namibia's National Biodiversity Strategy and Action Plan	250
2.4	Obligations under International Agreements	251
3	Overview of Namibia's Legislative Framework	254
3.1	For Wildlife Crimes	254
3.2	The Nature Conservation Ordinance No. 4 of 1975	254
3.3	The Game Products Trust Fund Act No. 7 of 1997	257
3.4	The Controlled Wildlife Products and Trade Act No. 9 of 2008	258
3.5	The Protected Areas and Wildlife Management Bill (2017)	259
4	Key Issues with Namibia's Existing Legislative Framework	259
4.1	Expansion of the Legislative Framework	260
4.2	The Whistleblower Protection Act and Monetary Incentives for Information and Cooperation	261
4.3	Greater Coordination in the Prosecution of Wildlife Crimes is Needed	263
4.4	Judicial Reforms Are Needed to Enable Prosecutors to More Diligently Prosecute Wildlife Crimes	264
4.5	Communal Property Areas Need Improved Management	265
5	Recommendations for Reforming the Legislative Framework	265
5.1	Beyond the Poacher: Prosecuting Criminals Higher Up the Chain	265
5.2	Improving Coordination in, and Effectiveness of, the Prosecution of Wildlife Crimes	267
6	Conclusion	268

PART V: WATER ENVIRONMENT

Chapter 12: Water Related Policy and Statutory Law	273
<i>Pieter Heyns and Shirley Bethune</i>	
1 Introduction	273
2 Namibia's Water Environment in Context	274
2.1 Rainfall	274
2.2 Evaporation	274
2.3 Water Balance	274
2.4 Water Resources	275
2.5 Water Demand	276
2.6 Water Scarcity	277
3 The Challenge to Provide Water Services	278
4 Conception and Implementation of National Water Policy and Law	279
5 The Water Policy Framework	280
5.1 The Water Supply and Sanitation Sector Policy (WASP)	281
5.2 The National Water Policy (NWP)	283
5.3 The Water Supply and Sanitation Policy (WSASP)	286
5.4 The Draft Wetland Policy	287
6 The Statutory Framework	288
6.1 The Constitution of Namibia	288
6.2 The Water Act No. 54 of 1956	290
6.3 The Water Resources Management Act No. 24 of 2004	293
6.4 The Water Resources Management Act No. 11 of 2013	295
6.5 The Soil Conservation Act No. 76 of 1969	300
6.6 Territorial Sea and Exclusive Economic Zone of Namibia Act No. 3 of 1990	301
6.7 The Namibia Water Corporation Act No. 12 of 1997	302
7 Water Development Planning	305
7.1 Introduction	305
7.2 National Water Planning	307
8 Transboundary Water Management	313
8.1 Introduction	313
8.2 The Helsinki Rules	314
8.3 The United Nations Watercourses Convention	319
8.4 Theories of Sharing Transboundary Water	323
8.5 Customary and General Principles of International Law	324
8.6 The SADC Water Protocols	325
8.7 The SADC Regional Water Policy	327
9 Transboundary Water Agreements	328
9.1 Introduction	328
9.2 Water Commission Institutional Structure	329
9.3 The Kunene River Agreements	330
9.4 The Okavango River Agreement	334
9.5 The Orange River Agreements	334

9.6	The Zambezi River Agreements	338
9.7	The Cuvelai Watercourse Commission	340
Chapter 13: The Okavango River Basin – Resolving the Dichotomy Between Development and Environment		341
<i>Pieter Heyns</i>		
1	Introduction	341
2	Background	341
3	The Okavango River Basin	343
4	Development of the Eastern National Water Carrier in Namibia	346
5	Environmental Issues	348
5.1	The Omatako Canal	348
5.2	The Proposed Rundu–Grootfontein Pipeline Feasibility Study	350
5.3	The Proposed Divundu Hydropower Project	352
5.4	The Activities of the OKACOM	353
6	The Development Space	355
6.1	Development plans	356
6.2	Negotiating the Development Space	357
7	Conclusion	358
Chapter 14: Fisheries Related Statutory Law and Policy in Namibia		359
<i>Clinton Hay</i>		
1	Introduction	359
2	The Policy Framework	363
2.1	Namibia’s Marine Resources Policy: Towards Responsible Development and Management of the Marine Resources Sector (2004)	363
2.2	Namibia’s Inland Fisheries Policy: White Paper on the Responsible Management of the Inland Fisheries of Namibia (1995)	365
2.3	Namibia’s Aquaculture Policy: Towards Responsible Development of Aquaculture (2001)	367
3	The Statutory Framework	369
3.1	The Marine Resources Act No. 27 of 2000	369
3.2	The Inland Fisheries Resources Act No. 1 of 2003	371
3.3	The Aquaculture Act No. 18 of 2002	373
 PART VI: LAND, SOIL AND FORESTRY		
Chapter 15: Land, Soil and Agriculture from a Namibian and International Law Perspective		379
<i>Oliver C. Ruppel and Anielle von Finckenstein</i>		
1	Introduction	379
2	Soil Protection in the International Legal Framework	381
3	Soil, SDGs and the Right to Food	385
4	Soil and Global Climate Governance	387

Table of Contents

5	Soil Protection in the National Legal Framework	391
5.1	The Constitution and Land Tenure in Namibia	391
5.2	Policy, Legislative, and Institutional Framework Relating to Soil Protection: An Overview	393
5.3	Land and Agricultural Policies	395
5.4	Land and Agriculture Related Legislation	399
6	Concluding Remarks	403
	Chapter 16: Land-Use Planning and the Environment	407
	<i>Felicity F. Owoses</i>	
1	Introduction	407
2	The Concept of Land-Use Planning	408
3	Environmental Aspects of Land-Use Planning	410
4	Planning Levels	411
5	Land-Use Plans	411
6	The Land-Use Planning as a Process	412
7	Approaches to Land-Use Planning	413
8	Current Land-Use Policy and Legislative Framework	414
9	Legislative and Policy Framework on Land-Use Planning	415
10	Land-Use Planning Institutions and Administration	422
10.1	The National Planning Commission	423
10.2	The Ministry of Agriculture, Water and Land Reform	423
10.3	Ministry of Urban and Rural Development	424
10.4	Other Authorities, Organisations and Persons	424
11	Spatial Planning	425
11.1	National Spatial Development Framework	426
11.2	Regional Structure Plans	426
11.3	Urban Structure Plans	427
11.4	Zoning Schemes	427
12	Authorised Planning Authorities	429
13	Regional Planning	429
14	Land-Use Planning in the Coastal Zone	430
14.1	Policy, Legal and Institutional Frameworks	430
14.2	Status of Coastal Zone Management	431
14.3	The National Policy on Coastal Management	432
14.4	Defining the Coastal Zone	433
15	Concluding Remarks and Recommendations	434
	Chapter 17: Forestry Related Law and Policy	435
	<i>Clemens C.C. von Doderer, Jonathan M. Kamwi and Oliver C. Ruppel</i>	
1	Introduction	435
2	Constitutional Provisions Relevant to Forests	437
3	Relevant Regional Frameworks, Statutory Law and Policy	438
3.1	The SADC Protocol on Forestry and the Forestry Strategy	439
3.2	The Forest Policy of 1992	440

3.3	Namibia's Forestry Strategic Plan of 1996	440
3.4	2001 Development Forestry Policy for Namibia	441
3.5	<i>De Lege Lata</i> : The Forest Act No. 12 of 2001	441
3.6	<i>De Lege Ferenda</i>	447
3.7	The 2015 Forest Regulations to the Forest Act	448
3.8	The Community Forestry Guidelines of 2005	449
3.9	The Customary Law of Traditional Communities	449
3.10	The Environmental Management Act No. 7 of 2007	450
4	Concluding Remarks	451

PART VII: MINING AND ENERGY

Chapter 18: Mining Law and Policy in Namibia **455**

Meyer van den Berg and Peter Koep

1	The Environmental Management Act	455
2	Mining Laws and Policy	460
2.1	The Minerals (Prospecting and Mining) Act	460
2.2	The Minerals Policy	464
2.3	The SADC Protocol on Mining	465

Chapter 19: Energy Law and Policy in Namibia **467**

Detlof von Oertzen

1	Introduction to Namibia's Energy Industry	467
1.1	The Liquid Fuels Sector	467
1.2	The Electricity Sector	467
1.3	The Upstream Oil and Gas Sectors	468
1.4	The Renewable Energy Sector	468
2	Energy-related Regional and International Developments	469
2.1	Energy Security	469
2.2	Energy and Climate Change	470
2.3	International Regulatory Framework	472
2.4	Regional Regulatory Framework – the SADC Region	474
2.5	Support Mechanisms for the Deployment of Renewable Energies	477
3	Energy-related Laws and Policies in Namibia	480
3.1	The Petroleum Products and Energy Act (1990)	480
3.2	The Petroleum Exploration and Production Act (1991)	481
3.3	The White Paper on Energy Policy (1998)	487
3.4	The Atomic Energy and Radiation Protection Act (2005)	488
3.5	The SADC Protocol on Energy (2006)	489
3.6	The Draft Gas Bill (2001)	491
3.7	Vision 2030 (2004)	492
3.8	The Electricity Act (2007)	492
3.9	National Connection Charge Policy (2014)	494
4	Nuclear Fuel Cycle Policy (2014)	494

5	Net Metering Rules (2016)	495
6	Fifth National Development Plan (2017)	496
7	Harambee Prosperity Plan (2016)	496
8	National Energy Policy (2017)	497
9	National Renewable Energy Policy (2017)	498
10	National Independent Power Producer Policy (2018)	499
11	Draft Electricity Bill (2018)	500
12	Draft Namibia Energy Regulatory Authority Bill (2018)	502
13	Draft Off-Grid Electrification Policy (2019)	503
14	Draft Smart Grid Policy (2019)	504
15	Draft National Electrification Policy (2020)	505
	Chapter 20: Namibia's Electricity Sector	509
	<i>Detlof von Oertzen</i>	
1	Introduction	509
2	Supply Entities	509
3	Independent Power Producers	509
4	Embedded Generators	509
5	Distributed Generating Capacity	510
6	Emergency and Backup Generating Capacity	510
7	Off-grid Generating Capacity	510
8	Electricity Demand	511
9	Electricity Distributors	511
10	Revenues Generated	512
11	Electricity Price	512
12	Key Electricity Sector Stakeholders	512
	12.1 Electricity End-Users	512
	12.2 Ministry of Mines and Energy	513
	12.3 Electricity Control Board	513
	12.4 Namibia Power Corporation	513
	12.5 Electricity Distribution and Supply Entities	514
	12.6 Private Sector Entities	514
13	Namibia's Electricity Market Model	515
	13.1 The Single Buyer Market Model (2000 to 2019)	515
	13.2 The Modified Single Buyer Market Model (from 2020)	517
14	Private Sector Participation in the Electricity Industry	518
15	Procurement of Additional Generating Capacity	520
	15.1 Direct Negotiations	520
	15.2 Competitive Bidding and Tendering	521
16	Reflections on Namibia's Electricity Future	523
	16.1 Short-term Imperatives – 2021 to 2025	524
	16.2 Medium- to Long-term Imperatives – beyond 2025	526
17	Concluding Remarks	528

PART VIII: CLIMATE CHANGE

Chapter 21: Review of the Climate Change Situation in Namibia: Projected Trends, Vulnerability and Impacts	533
<i>Isaac Mapaure</i>	
1 Introduction	533
2 Namibia's Contribution to Greenhouse Gas (GHG) Emissions	535
3 Climate Trends and Projections	538
4 Potential and Actual Impacts of Climate Change	542
4.1 Climate Situation and Vulnerability	542
4.2 Agriculture	544
4.3 Biodiversity, Ecosystems and Tourism	546
4.4 Coastal Zone	550
4.5 Energy	551
4.6 Human Health and Well-Being	552
4.7 Fisheries and Marine Resources	554
4.8 Water Resources	556
5 Compliance, Mitigation and Adaptation to Climate Change: Summary of Selected Actions Taken	557
6 Concluding Remarks	560
Chapter 22: Climate Change <i>de Facto</i> and <i>de Jure</i>: Legal and Regulatory Aspects Relevant to Namibia	561
<i>Oliver C. Ruppel</i>	
1 Introduction	561
2 <i>De Facto</i> : Aspects of Human Vulnerability	562
2.1 Impacts of Climate Change	566
2.2 Future Risks and Opportunities	567
Box: Green Hydrogen from Namibia?	569
3 <i>De Jure</i> : Legal and Regulatory Aspects of Climate Change in Namibia	574
3.1 Legal Climate Change Action?	575
3.2 Constitutional Aspects of Climate Change	576
3.3 Implementing Article 44 of the Constitution: Legislation Relevant for Climate Change	579
3.4 Implementing Article 95(1) of the Constitution: Namibia's Climate Change Policy	580
4 Climate Law	581
4.1 International Climate Law	581
4.2 Domestic Climate Policy	584
4.3 Domestic Climate Law	586
4.4 Private Law Litigation	589
4.5 Neighbour Law and Nuisance Claims	594
4.6 Public Climate Litigation	594
4.7 International Climate Litigation	598
5 Conclusion	602

PART IX: CUSTOMARY LAW AND TRADITIONAL KNOWLEDGE

Chapter 23: Customary Law and the Environment 609

Manfred O. Hinz

1	Introduction	609
2	Post-Independence Conservation Policy in Namibia: Gateway for Customary Environmental Law	611
3	Customary Law and Customary Environmental Law within the General Legal System	614
4	Community Projects (Conservancies, Community Forests, Fishery Reserves) and Customary Law	617
5	BIOTA and TFO Research on Customary Law and the Environment	622
6	Traditional Conservationism	627
7	The Protection of Traditional Knowledge	630
8	Concluding Remarks	639

Chapter 24: Western Intellectual Property Rights Regimes and Traditional Knowledge Protection Systems in Africa 643

Eliamani Laltaika

1	Introduction	643
2	Defining Traditional Knowledge and Associated Genetic Resources	643
3	Biopiracy	645
4	Western Intellectual Property Regime versus Community Rights	647
5	The Convention on Biological Diversity: A New Era for GR Governance?	648
6	Intellectual Property in Plant Genetic Resources for Food and Agriculture and TK	650
6.1	The International Undertaking on Plant Genetic Resources	651
6.2	The TRIPS Agreement and UPOV	652
6.3	Historical Backdrop	652
6.4	The Pinch of IPR to Farmers	654
7	African Approach	654
7.1	The OAU Model Legislation on the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources	655
7.2	The Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore	656
8	The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefit Arising from their Utilisation: Too Little, Too Late?	657
8.1	Overview of the Protocol	657
8.2	Does the Protocol Make a Difference?	658
8.3	Too Little, Too Late?	658
9	The Need for a Paradigm Shift	658
10	Concluding Remarks	659

PART X: ENVIRONMENTAL ADJUDICATION

Chapter 25: Environmental Justice and Litigation	663
<i>Oliver C. Ruppel</i>	
1 Introduction	663
2 Environmental Justice and Advocacy	663
3 Administrative Procedures for Compliance and Enforcement	665
4 The Role of Namibian Courts in Environmental Matters	666
5 Criminal Law	668
6 Conflict Resolution	670
6.1 Environmental Litigation	670
6.2 Alternative Dispute Resolution (ADR) in the Field of Environmental Conflict	671
7 Concluding Remarks	673
Chapter 26: Instituting an Environmental Court or Tribunal: An Option for Namibia?	677
<i>Elize Shakalela</i>	
1 Introduction to Environmental Courts and Tribunals	677
2 Models of ECTs	677
2.1 Free-standing Environmental Court (EC) Model	678
2.2 Specialised Green Chambers	679
2.3 Green Judges	680
2.4 Tribunals	680
3 ECTs in the Context of Namibia's Judiciary and the Environmental Management Act	681
4 Push Factors for Establishing an ECT in Namibia	682
4.1 Principle 10 of the Rio Declaration	682
4.2 Development Agencies	683
4.3 The Judiciary	683
4.4 Other Factors	683
5 The Significance of Establishing an Environmental Court / Tribunal in Namibia	684
5.1 ECTs as Effective Tool to Enforce Environmental Law Timeously	684
5.2 Option to Operate as a Multi-Door-Court-House	685
5.3 Comprehensive <i>Locus Standi</i>	686
5.4 Improving Access to Environmental Justice	686
5.5 An African Example: The Environment and Land Court (ELC) of Kenya	688
6 Conclusion	690
Chapter 27: The Ombudsman and the Environment	693
<i>Katharina Ruppel-Schlichting</i>	
1 Introduction	693
2 Legal Foundations	694

3	Basic Characteristics of the Ombudsman in Namibia	695
4	The Environmental Mandate of the Ombudsman	698
5	Investigation, Enforcement and Reporting Procedures	702

PART XI: CROSS-CUTTING ISSUES

Chapter 28: Trade, Environment and Sustainable Development **709**

Oliver C. Ruppel

1	Introducing the International Trade, Environment and Development Debate	709
1.1	The Trade Perspective	709
1.2	The Environmental Perspective	709
1.3	The Development Perspective	710
1.4	Sustainable Development: The Answer to the Dilemma?	710
2	The Role of Trade for Sustainable Development and the Reduction of Poverty in Africa	713
3	Regional Integration and Natural Resources in Southern Africa	716
4	The WTO and the Environment	719
4.1	The Primary Objectives of the WTO	721
4.2	The 2001 Doha Declaration and the Environment	722
4.3	The Committee on Trade and Environment	724
4.4	WTO Agreements and Environmentally Relevant Provisions	725
4.5	The WTO's Dispute Settlement Body	737
4.6	Some Environmental Case References	738
4.7	The WTO and the North-South Divide	752
4.8	Climate Change and WTO Law	755
5	Multilateral Environmental Agreements (MEAs) and the Multilateral Trading System	757
6	The Trade and Investment Environment in Namibia	760
7	Cotonou and Post-Cotonou Agreement	762
8	Concluding Remarks	763

Chapter 29: Human Rights and the Environment **767**

Oliver C. Ruppel

1	Introduction	767
2	Human Rights Categories	768
3	Constitutionality of Environmental Human Rights?	770
3.1	The Preamble	771
3.2	Fundamental Rights and Freedoms	772
3.3	Article 6: The Right to Life	774
3.4	Article 8: Respect for Human Dignity	774
3.5	Article 10: Equality and Freedom from Discrimination	777
3.6	Article 15: Children's Rights	778
3.7	Articles 18 and 5: Administrative Justice	779
3.8	Article 19: The Right to Culture	779

3.9 Article 25: Enforcement of Fundamental Rights and Freedoms	781
3.10 Article 95(1): The Environmental Principle of State Policy	782
3.11 Article 100: Sovereign Ownership of Natural Resources	783
3.12 Article 144: International Law	784
4 Concluding Remarks	787
Bibliography	789

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,

Foreword

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

Acknowledgements

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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Detlof von Oertzen is the Director of VO Consulting, which is an independent specialist consulting firm active in the energy, environment, and radiation sectors. Born in Windhoek in 1962, he holds a PhD in highenergy nuclear physics from the

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