

Oliver C. Ruppel | Harald Ginzky (eds.)

# African Soil Protection Law

Mapping out options for a model legislation for improved sustainable soil management in Africa – a comparative legal analysis from Kenya, Cameroon and Zambia



Nomos



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## Table of contents

<b>Foreword</b>	<b>17</b>
<b>Preface</b>	<b>21</b>
<b>Acknowledgements</b>	<b>25</b>
<b>Lead authors</b>	<b>29</b>
<b>Contributing authors</b>	<b>30</b>
<b>Executive summary</b>	<b>31</b>
<i>Harald Ginzky &amp; Oliver C. Ruppel</i>	
1 The project	31
1.1 Preparatory work	31
1.2 Project design	32
1.3 Selection of project countries	32
1.4 Processing method	33
1.5 Cooperation with the Pan-African Parliament	33
2 Project results	35
2.1 Setting the scene	35
2.2 Proposed options	36
2.2.1 Framework legislation	36
2.2.2 Climate change, land and soil	37
2.2.3 Agriculture	37
2.2.4 Livestock	38
2.2.5 Industrial facilities	39
2.2.6 Mining	40
2.2.7 Infrastructure	41
2.2.8 Urbanisation	41
2.2.9 Clarity of land tenure	42
2.2.10 Control of foreign investors	43
3 Institutional arrangements	44
4 Procedures and procedural rights	46
5 The role of science	47
6 Global, continental and regional cooperation	48
7 The way forward	49

<b>Country report for Cameroon</b>	<b>53</b>
<i>Christopher F. Tamasang (lead author), Cyril Effala (contributing author) &amp; Ivo T. Tassah (contributing author)</i>	
1 Country information	53
1.1 Geography and climatic conditions	53
1.2 Economy	55
1.3 Society	56
1.4 Information on the organisational structure of Cameroon	58
1.4.1 Legal system and legal tradition	58
1.4.2 Competence of legislation	59
1.4.3 Competence of law enforcement	60
1.4.4 The Constitution, statutory and customary law	60
2 Soil degradation	61
2.1 The state of the environment	61
2.2 Different types of soil and their vulnerability in terms of degradation	61
2.3 Main drivers of soil degradation	63
2.3.1 Agriculture	63
2.3.2 Mining	65
2.3.3 Wildfires, farming, hunting, and cattle rearing	66
2.3.4 Industrial sites	66
2.3.5 Urban sprawls	67
2.3.6 Demographic growth rate	68
2.3.7 Weather and climate factors	69
2.3.8 Topographic constraints	71
2.3.9 Land-grabbing	71
2.3.10 Other causes or drivers of soil degradation	72
2.4 Key actors in soil degradation	75
2.5 Conclusion	75
3 General information on public soil legislation	76
3.1 Policy frameworks, government strategies, action plans, etc.	77
3.1.1 International policies relevant to soil protection	77
3.1.2 National policies relevant to soil protection	82
3.2 Relevant international law for the protection of soils	88
3.2.1 Relevant international soft law commitments	89
3.2.2 Relevant international hard law instruments	89
3.3 Relevant national legal provisions for the protection of soil	90
3.3.1 The Constitution	90
3.3.2 Legislation on land tenure	91
3.3.3 Public environmental law	101
3.3.4 Environmental monitoring	108
3.3.5 Cross-cutting issues	113
3.4 Relevant ministries and state institutions and their responsibilities	121
3.4.1 Ministry of Agriculture and Rural Development	122
3.4.2 Ministry of State Property, Surveys and Land Tenure	122

3.4.3	Ministry of Environment, Protection of Nature and Sustainable Development	122
3.4.4	Ministry of Forests and Wildlife	123
3.4.5	Ministry of Economy, Planning and Regional Development	123
3.4.6	Ministry of Urban Development and Housing	124
3.4.7	Ministry of Trade	124
3.4.8	Ministry of Mines, Industry and Technological Development	124
3.4.9	Ministry of Scientific Research and Innovation	125
3.4.10	Ministry of Livestock, Fisheries and Animal Industries	125
3.4.11	Institute of Research for Agricultural Development	125
3.4.12	Inter-Ministerial Committee for the Environment	126
3.4.13	National Consultative Commission for the Environment and Sustainable Development	126
3.4.14	Regional and local authorities	126
3.4.15	National Council for Planning and Sustainable Development of the Territory	126
3.5	Conclusion	127
4	Legislation on main drivers of soil degradation: Strengths and weaknesses	127
4.1	Agriculture	128
4.1.1	Relevant legal provisions	128
4.1.2	Enforcement issues	133
4.1.3	Monitoring	134
4.1.4	And what's more?	134
4.2	Mining	135
4.2.1	Relevant legal provisions	136
4.2.2	Monitoring	137
4.2.3	The role of foreign investors	137
4.3	Industrial development	139
4.4	Demographic growth, urban sprawl and land-planning regulatory frameworks	142
4.5	Climate change law and soil degradation	144
4.6	Land tenure insecurity: Relevant legal provisions and associated problems	145
4.6.1	Ordinance No. 74/2 of 6 July 1974 establishing the rules governing state lands	146
4.6.2	Ordinance No. 74/1 of 6 July 1974 establishing the rules governing land tenure	146
4.6.3	Decree No. 76/166 of 27 April 1976 establishing the terms and conditions for the management of national lands	150
4.6.4	Circular No. 001/CAB/PM of 1 April 2014 relating to measures applicable to investors on access to land	150
4.6.5	Law No. 85/009 of 4 July 1985 relating to expropriation on grounds of public utility and the modalities for the payment of indemnities	151
4.6.6	Traditional law	152

## Table of contents

4.6.7	Conflicts and means of resolution	154
4.6.8	Land tenure legislation and associated land-grabbing	157
4.6.9	Relationship of landownership and environmental responsibility	158
4.7	Wildfires, hunting and cattle rearing	161
4.8	Conclusion	162
5	Lessons learnt and recommendations	164
5.1	Positive lessons learnt and opportunities for soil protection	164
5.2	Negative lessons learnt	165
5.3	Recommendations	167

## Country report for Kenya 177

*Patricia Kameri-Mbote (lead author), Irene Kamunge (contributing author) & James Kipkerebulit Yatich (contributing author)*

1	Introduction	177
2	Country information	178
2.1	Religion	179
2.2	Climatic conditions	179
2.3	Population	180
2.4	Literacy levels	181
2.5	The economy	181
2.6	National debt	182
2.7	Kenya's political system and governance	182
2.8	Legislative authority	184
2.9	Environmental dispute resolution	184
3	Main drivers and causes of soil degradation	187
3.1	Kenya soil profile	188
3.2	The main drivers of soil degradation	190
3.2.1	Agriculture	190
3.2.2	Mining	192
3.2.3	Industrial activities	193
3.2.4	Soil erosion	193
3.2.5	Unregulated urban and infrastructural development	195
3.2.6	Climate change	196
3.2.7	Brownfield sites	197
3.3	Other threats to soil	198
3.3.1	Topographic features	198
3.3.2	Soil contamination	198
3.3.3	Soil compaction	199
3.3.4	Salinity and sodicity	199
3.3.5	Soil erodibility	199
3.3.6	Poor rangeland management	200
3.3.7	Loss of forest cover	200
3.3.8	Biodiversity loss	201
3.3.9	Poverty	201

3.3.10	Encroachment of fresh water and wetland ecosystems	201
3.4	Key actors in soil degradation	202
3.4.1	Investors	202
3.4.2	Government	202
3.4.3	Farmers	203
3.4.4	Pastoralists	203
3.5	Conclusion	203
4	Background on soil legislation	203
4.1	Historical perspective	203
4.2	Colonial laws, policies and plans	205
4.2.1	Crown Lands Ordinance, No. 21 of 1902	205
4.2.2	Crown Lands Ordinance, 1915	206
4.2.3	Native Lands Trust Ordinance, 1938	207
4.2.4	Agricultural Policy, 1944	207
4.2.5	African Courts Ordinance, 1951	208
4.2.6	Swynnerton Plan, 1954	208
4.3	Selected soil conservation initiatives in post-independence Kenya	209
4.3.1	National Soil and Water Conservation Project	210
4.3.2	Permanent Presidential Commission on Soil Conservation and Afforestation	212
4.4	Types of conservation measure that have been used in Kenya	213
4.4.1	Terraces	213
4.4.2	Conservation agriculture	213
4.4.3	Cover crop for soil fertility and erosion control	214
4.4.4	Green manure	214
4.4.5	Agroforestry	215
4.4.6	Hedges	215
4.4.7	Improved fallows	215
4.4.8	Vegetation strips	216
4.4.9	Conservation and regeneration measures	216
4.4.10	Contour farming	216
4.4.11	Trash lines	216
4.4.12	Cut-off drains, retention and infiltration ditches	217
4.5	Conclusion	217
5	Legislation on the main drivers of soil degradation	217
5.1	International instruments relevant to soil protection	219
5.1.1	Convention on Biological Diversity	220
5.1.2	Strategic Plan for Biodiversity (2011–2020) and Aichi Biodiversity Targets (2020)	220
5.1.3	United Nations Convention to Combat Desertification	221
5.1.4	Land degradation-neutrality	223
5.2	Regional policies and instruments	225
5.2.1	African Convention on the Conservation of Nature and Natural Resources, 1968	226

## Table of contents

5.2.2	Action Plan of the African Union/New Partnership for Africa's Development Environment Initiative	227
5.2.3	NEPAD's Initiative for the Resilience and Restoration of African Landscapes	227
5.2.4	Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region, 1985	228
5.3	National policies	228
5.3.1	National Environment Policy, 2014	228
5.3.2	National Land Policy, 2009	229
5.3.3	National Land Use Policy, 2017	230
5.3.4	National Climate Change Action Plan, 2013	231
5.4	National Laws	231
5.4.1	The Constitution of Kenya, 2010	231
5.4.2	Environmental Management and Coordination Act, 1999	235
5.4.3	Forest Conservation and Management Act, 2016	249
5.4.4	Water Act, 2016	251
5.4.5	Climate Change Act, 2016	251
5.4.6	Land laws	252
5.4.7	Agriculture, Fisheries and Food Authority Act, 2013	264
5.4.8	Crops Act, 2013	267
5.4.9	Irrigation Act, 2019	267
5.4.10	Plant Protection Act, 2012	268
5.4.11	Mining Act, 2016	268
5.4.12	Environment and Land Court Act, 2011	273
5.4.13	Fertilizers and Animal Foodstuffs Act	273
5.5	Jurisprudence on environmental protection	273
5.6	Conclusion	278
6	Lessons learnt and recommendations for future legislation	279
6.1	Lessons learnt	279
6.2	Recommendations	285
6.3	Elements of a soil-specific legislation	286

## Country report for Zambia 295

*Pamela Towela Sambo (lead author), Andrew Nkunika (contributing author) & Nelly Zulu (contributing author)*

1	Introduction	295
1.1	Geographic and climatic information	295
1.2	Historical background, demographic information and education	296
1.3	Main economic activities	299
1.3.1	Mining	299
1.3.2	Agriculture	299
1.3.3	Manufacturing	301
1.3.4	Energy	302
1.3.5	Construction	303

1.3.6	Tourism	304
1.4	Gross national product	304
1.5	National debt	305
1.6	Foreign investments	307
2	Information on government organisational structure	308
2.1	Legal system / tradition	309
2.2	Competence of legislation and enforcement	310
2.3	Role of traditional entities	311
2.4	Religious considerations	313
3	Main drivers of soil degradation	314
3.1	Mining and soil sustainability	315
3.2	Unsustainable agricultural practices	316
3.2.1	Overstocking and overgrazing of animals	316
3.2.2	Wrong use of fertilizers and pesticides	318
3.3	Deforestation	319
3.4	Climate change effects	321
3.5	Poverty and demographic growth	322
3.6	Urbanisation	323
3.7	Weak governance systems	324
4	Relevant legislative framework on the main drivers of soil degradation	325
4.1	Constitutional provisions on soil sustainability	325
4.2	Mining legislation	327
4.3	Agricultural legislation	332
4.3.1	Fencing Act, Chapter 190	333
4.3.2	Agriculture (Fertilizers and Feed) Act, Chapter 226	333
4.3.3	Land tenure system	333
4.3.4	Environmental Management Act, 2011	337
4.3.5	Forests Act, No. 4 of 2015	340
4.3.6	Urban and Regional Planning Act, No. 3 of 2015	341
4.3.7	Local Government Act, No. 2 of 2019	342
4.3.8	Solid Waste Regulation and Management Act, No. 20 of 2018	342
5	Relevant policy framework on the main drivers of soil degradation	343
5.1	Vision 2030	343
5.2	Sustainable Development Goals	345
5.3	Seventh National Development Plan	346
5.4	Draft National Land Policy, 2017	347
5.5	National Policy on Environment, 2009	347
5.6	National Climate Change Policy, 2016	348
5.7	National Agricultural Policy, 2016	350
6	Relevant international soil commitments	351
6.1	Regional commitments	353
6.1.1	Common Market for Eastern and Southern Africa	353
6.1.2	Southern African Development Community	354
6.1.3	African Union	354
6.2	Multilateral environmental treaties	355

## Table of contents

7	Cross-cutting issues	356
7.1	Environmental impact assessments	357
7.2	Public participation	358
7.3	Access to information	359
8	Law concerning foreign investors	361
9	Competence of environmental enforcement	362
9.1	The Environment Fund	362
9.2	Environmental audits	363
9.3	Environmental monitoring	364
9.4	Prevention orders	364
9.5	Protection orders	365
9.6	Restoration orders	365
9.7	Compliance orders	366
9.8	Cost orders	366
9.9	Civil and criminal prosecution	367
10	Lessons learnt and recommendations	368

## **Mapping out options for model legislation for sustainable soil management in Africa** **379**

*Harald Ginzky, Patricia Kameri-Mbote, Oliver C. Ruppel, Pamela Towela Sambo & Christopher F. Tamasang*

1	Introduction	379
2	Setting the scene	380
2.1	Africa in natural, historical, economic and political terms	381
2.2	Importance of soil	382
2.3	Main soil threats, degradation drivers and challenges	383
2.3.1	Agriculture	383
2.3.2	Mining	383
2.3.3	Industrialisation	383
2.3.4	Urbanisation	384
2.3.5	Weather and climate change	384
2.3.6	Topographical constraints	384
2.3.7	Poverty	385
2.3.8	Poor law implementation and enforcement	385
2.3.9	Illegal or illegitimate foreign investment in land	385
3	Framework for soil legislation	385
3.1	International framework	385
3.2	National framework	386
3.3	The country studies' findings	386
3.4	Recommendations	387
3.4.1	Objective and value of framework legislation and political buy-in	387
3.4.2	Constitutional provisions	389
3.4.3	Soil-related policies	389

3.4.4	Overarching soil provisions	390
3.4.5	Penalties and sanctions	391
4	Climate change, land and soil	391
4.1	Intergovernmental Panel on Climate Change findings	391
4.2	Recommendations	396
5	Agriculture	396
5.1	Agriculture – crop growing	396
5.1.1	Cameroon	396
5.1.2	Kenya	397
5.1.3	Zambia	398
5.1.4	Public law	399
5.1.5	Findings	400
5.1.6	Recommendations	401
5.2	Agriculture – livestock	403
5.2.1	Summary of three country reports	403
5.2.2	Public law	403
5.2.3	Findings	404
5.2.4	Recommendations	406
6	Industry, mining, infrastructure and urbanisation	406
6.1	Industrial facilities	406
6.1.1	The country studies’ findings	407
6.1.2	Recommendations	409
6.2	Mining	412
6.2.1	The country studies’ findings	412
6.2.2	Recommendations	415
6.3	Infrastructure	416
6.3.1	The country studies’ findings	416
6.3.2	Recommendations	417
6.4	Urbanisation	418
6.4.1	The country studies’ findings	418
6.4.2	Recommendations	419
7	Clarity of land tenure	420
7.1	The country studies findings	420
7.2	Recommendations	422
8	Control of foreign investors	423
8.1	The country studies’ findings	424
8.1.1	Cameroon	424
8.1.2	Kenya	426
8.1.3	Zambia	426
8.2	Recommendations	427
9	Institutional and procedural aspects	428
9.1	Institutional arrangements	428
9.1.1	Competent authorities: Responsibilities, coordination and internal procedures	428
9.1.2	Recommendations	429

## Table of contents

9.2	Institutional setting and more effective procedures	431
9.2.1	Drafting legislation in institutional settings is important and demanding	431
9.2.2	Coordination and clear distinction of competencies are essential	431
9.2.3	Decentralisation of responsibilities is key	432
9.2.4	Determination of appropriate level	432
9.2.5	Further mechanisms to avoid poor law enforcement	433
9.2.6	Specific control mechanisms of communities' chiefs	433
9.2.7	Optional: extension of water authorities to water and soil authorities	434
9.2.8	National circumstances need to be considered and accordingly adapted	434
9.3	Procedures and procedural rights	434
9.3.1	Environmental impact assessment	435
9.3.2	Access to information	435
9.3.3	Public participation	436
9.3.4	Access to justice	437
9.3.5	Recommendations	437
10	The role of science	438
11	Global, continental and regional cooperation	441
11.1	The African Union	441
11.1.1	Vision 2063	442
11.1.2	African Convention on the Conservation of Nature and Natural Resources	443
11.1.3	The African Ministerial Conference on the Environment	444
11.1.4	The African Continental Free Trade Area	444
11.1.5	New Partnership for Africa's Development	446
11.2	Regional Economic Communities	446
11.3	Recommendations	448
12	Outlook	449

## **Soil protection across Africa: Taking a glimpse at Namibia, Uganda, Mozambique, Nigeria, Ghana and South Africa** 453

*Oliver C. Ruppel, Katharina Ruppel-Schlichting, Larissa-Jane Houston & Yvonne Nana Afua*

1	Introduction	453
2	Namibia	454
3	Uganda	458
4	Mozambique	460
5	Nigeria	461
6	Ghana	463
7	South Africa	468
8	Africa relevant international regulatory framework on soil	475
9	Conclusion	478

<b>The Pan-African Parliament of the African Union: Composition, mandate and partnerships, and its quest for sustainable development</b>	<b>485</b>
<i>Oliver C. Ruppel &amp; Larissa-Jane Houston</i>	
1 Introduction	485
2 Composition	487
3 Mandate	488
4 Functions and powers	489
5 Partnerships	490
6 Quest for Sustainable Development	493
<b>Soil protection and the right to food: Sustainability implications for global climate governance and world agricultural trade?</b>	<b>499</b>
<i>Oliver C. Ruppel</i>	
1 Introduction	499
2 Soil and the right to food	500
3 Soil and global climate governance	502
3.1 UNFCCC	502
3.2 Paris Agreement	503
4 Soil agronomy, circular bioeconomy and supply chain management	508
5 World agricultural trade	511
5.1 World Trade Organisation	512
5.2 Trade in agriculture under the WTO	513
5.2.1 The 1947 General Agreement on Tariffs and Trade (GATT)	513
5.2.2 The WTO agreements on agriculture, subsidies and countervailing measures	517
6 Conclusion	521



## Foreword

It is with great pleasure that I write the Foreword for this eminent publication. The protection and sustainable management of soils are preconditions for sustainable development, the fulfilment of the Sustainable Development Goals (SDGs), and ultimately the survival of humankind. Without sufficient tracts of fertile soils, there is no food security and no chance to mitigate climate change. Degraded soils result in hunger, famine, migration and, under certain circumstances, even wars.

SDG 15 stipulates that we protect, restore and promote sustainable use of terrestrial ecosystems, manage forests sustainably, combat desertification, stop and reverse land degradation and halt biodiversity loss. It is important to underline that land preservation, and thus the sustainable management of soils, is required to achieve most of the SDGs.

It is clear that the African people depend heavily on fertile soils to earn a livelihood for themselves and their children. Thus, it is the Pan-African Parliament as the representative of the African people – and particularly its newly established SDG Alliance – which has to play a vital role in protecting the soils of Africa more effectively in the interest of present and future generations.

Core instruments to achieve sustainable soil management are effective soil protection legislation and governance. The drafting of model legislation on sustainable soil management for Africa to serve as a blueprint – approved by the Pan-African Parliament – for all members of the African Union would be a significant step forward. Article 17 of the African Union Constitutive Act requires that the Pan-African Parliament enlist “the full participation of African peoples in the development and economic integration of the continent”. Moreover, the Pan-African Parliament is invited to recommend model legislation to the members of the African Union in the interest of the people.

This publication presents the results of the project comprising three country studies on current soil protection legislation in Cameroon, Kenya and Zambia. The results have been analysed and condensed into general recommendations for more effective soil protection regulations and provide an instructive and instrumental baseline for the development of such model legislation in the near future.

On 10 October 2019, an important cooperation agreement was signed between the Pan-African Parliament, Stellenbosch University (through its Development and Rule of Law Programme), and the German Environment Agency (Umweltbundesamt). As signatory of this memorandum of understanding (MoU), Stellenbosch University entered the realm of academic diplomacy and policy development.

On behalf of the Pan-African Parliament, the MoU was signed by its President, the Rt Hon. Roger Nkodo Dang. On behalf of Stellenbosch University, the MoU was signed by Professor Eugene Cloete (Vice-Rector: Research, Innovation and Postgraduate Studies) and Professor Oliver Ruppel (Director: Development and Rule of Law Programme). Professor Ruppel and the Pan-African Parliament have already gone a long way in cooperating on the issue of climate justice for Africa. On behalf of the German Environment Agency (UBA), which is Germany's central federal authority for environmental matters under the supervision of the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, the MoU was signed by (then) UBA President Maria Krautzberger. Dr Harald Ginzky from UBA was a strong proponent of the MoU between the three parties.

The main objective of the partnership is to implement the Sustainable Development Goals of the United Nations 2030 sustainability agenda effectively. As a first project, the partners teamed up on the issue of land degradation neutrality (SDG target 15.3) and sustainable soil management on the continent. The project was supported financially by the German Ministry for Development Cooperation, through the Deutsche Gesellschaft für Internationale Zusammenarbeit. Its aim was to develop model legislation for sustainable soil management in Africa.

On 6 March 2020, the Pan-African Parliament SDG Alliance discussed the results of the aforementioned project and pledged its support for the development of model legislation as a crucial instrument to achieve sustainability in the interest of the African people. The plenum of the Pan-African Parliament has endorsed this support.

The results are set out in this publication, taking into account, first, the practical knowledge of policymakers; second, in-depth insights of natural scientists of the African Soil Partnership and further African scientific institutions; and, third, the inputs of representatives of civil society organisations. This methodological approach has grounded the results in real life, while simultaneously gaining the consent of the relevant actors.

For the development of a specific 'model law', this kind of involvement of all still needs to be intensified, by first reaching out to all the regions of sub-Saharan Africa, to national and regional policymakers, to responsible people in the villages (local chiefs), to natural scientists and to civil society organisations. Broad awareness of the importance of sustainable soil management and comprehensive support for strengthened legislation and governance are the key ingredients which could render such model legislation effective and successful.

The SDG Alliance will be working with all the permanent committees of the Pan-African Parliament, as SDGs apply to all of them. On behalf of the SDG Alliance, I would like to thank our partners and congratulate the editors and authors of this publication, which will guide us on the way forward.

Jacquiline Amongin

Member of Parliament of the Republic of Uganda

Chairperson of the Parliamentary Forum on Water, Sanitation and Hygiene

Member of the African Union Pan-African Parliament

Chairperson of the Pan-African Parliament Alliance on SDGs

Kampala, Uganda, December 2020



## Preface

### One World – No Hunger: Sustainable soil management in and for Africa

Through the One World – No Hunger initiative, the German Government has committed itself to doing its utmost to eradicate hunger all over the world using a joint and collaborative approach. The initiative One World – No Hunger which was launched in 2014, and which has never been more pertinent, addresses its main objective, fighting hunger and malnutrition, by combining measures from the areas of food security, rural development and the promotion of agriculture. We need to acknowledge that degradation of soil and land is constantly accelerating. We are losing ground, every year a plot the size of Italy, when ground is so urgently needed to produce food, to fight climate change, to host biodiversity and to provide people with a living – and thus to avoid societal, political and, especially, military tensions.

The non-discriminating nature of the Covid-19 pandemic has left us with no doubt that we are all in the same boat; that we all live in the same world. Owing to our close economic interrelationships and interdependence, on one hand, and our high mobility, on the other hand, the virus has reached almost every corner of the world. Governments have been forced to shut down social life as well as economic activities. The effects have been dramatic all over the world, but the countries of the Global South are likely to be hit hardest. For the first time in years, the number of hungry people around the globe has increased over the last few months.

Africa, home of about 1.2 billion people, with its abundant nature, culture, history and arts, has been hit severely by the Covid-19 pandemic. The reasons are diverse and multifactorial. Insufficient financial resources, weak health and welfare systems, poverty throughout many societies, insufficient digitalisation, poor law enforcement, and political or military tensions are all contributing to a less positive outcome. However, it cannot be denied that external effects, such as reduced income due to diminished exports of raw material, flight of capital at levels never encountered before and illegal or illegitimate land acquisition have impaired the situation in many African countries.

Thus, African states are looking for ways and means to deal with the Covid-19 crisis, to improve living conditions in general, and to flatten its way to sustainability. Certainly, sustainable soil management is one way forward. “Soils are the bedrock of all ecological functions” is an expression adopted by project team members who are

committing themselves to work in and for Africa. All of these ecological functions coalesce in the fertility of soils, which is a precondition for the eradication of poverty, the alleviation of hunger and malnutrition and the halting of climate change. Thus, the maintenance and enhancement of the fertility of soils are essential to prepare African societies for sustainability, to render living conditions acceptable for all and to provide a long-term perspective for the youth and future generations.

The project “Mapping out options for model legislation for sustainable soil management in Africa” has been innovative, encouraging and forward-looking. It is somewhat like a spark in the darkness of the pandemic crisis – mainly for the following four reasons. First, the project seems to be the first one to approach the issue of promoting sustainable soil management from a legal and governmental perspective. Thus, it focuses on one of the core steering tools of societal development, which often has been somewhat disregarded.

Secondly, the bottom-up approach has allowed for the convincing recommendations of the project. On one hand, the main drivers of the project have been the African experts who have written the country studies for Kenya, Cameroon and Zambia. On the other hand, the involvement of local stakeholders has certainly enriched the analysis and has rendered the legal recommendations realistic and up to date.

Thirdly, through close cooperation with the Pan-African Parliament, and in particular its Alliance for Sustainable Development, an effective link to the policy world has been established. Therefore, it could well be envisaged that the instructive recommendations will soon be placed on the political agenda in various African parliaments. In addition, it needs to be stressed that the Pan-African Parliament has committed itself to work towards a model law for sustainable soil management and aims – as a starting point – to present this model to all national parliaments. In this pursuit, the Pan-African Parliament has requested the project team to assist with the implementation of this objective.

Fourthly and finally, this project has demonstrated sufficient quality and experience to serve as a best practice example for other regions in the world. A workshop held in 2019 in New Delhi, India, where project team members presented initial findings, was just a first step towards a global exchange of views, approaches and concepts to improve regulatory instruments for sustainable soil management.

The results and in particular the recommendations of the project are now summarised in this book by the NOMOS Publishing House – which will fortunately be open access and therefore publicly available. We wholeheartedly thank the editors of the publication and partnering project leaders, Prof Dr Oliver Ruppel of the Development and Rule of Law Programme (DROP), Stellenbosch University, South Africa, and Dr Harald Ginzky, German Environment Agency (UBA), Germany. The idea of the project was actually born on African soil in Nairobi, Kenya, in 2018. After a joint workshop on African soil law, the partners decided to branch out further on the topic. Ever since, the project leaders have developed and managed this project with their reliable,

enthusiastic and inspiring leadership, and we thank them for their groundbreaking efforts.

Furthermore, we would like to congratulate all the team members, and in particular the academic lead authors, Prof Dr Patricia Mbote, Kenya; Prof Dr Christopher F. Tamasang, Cameroon; and Dr Pamela Towela Sambo, Zambia, for their engagement and excellent contributions. The same applies to the expert advisors Mr James Yatich from the Kenyan Ministry of Agriculture, Livestock, Fisheries and Irrigation; Mr Laurent Effala from the Cameroonian Ministry of Environment, Nature Protection and Sustainable Development; and Mr Andrew Nkunika from the Zambian Ministry of Justice. Thanks also go to all the additional supporters –from the academic or administrative world – for making this project a success.

The “Mapping out options for model legislation for sustainable soil management in Africa” has been instrumental in getting a step closer to this objective, which is essential for human beings all over the world and in particular in Africa. We certainly look forward to a second project phase by the partners in supporting the Pan-African Parliament to develop a model law on sustainable soil management – drafted in close cooperation with African and European experts – expressing the core idea of the underlying initiative, One World – No Hunger.

Martin Jäger

State Secretary, Federal Ministry for Economic Cooperation and Development,  
Germany

Prof Dr Dirk Messner

President, Federal Environment Agency, Germany

December 2020



## Acknowledgements

It was August 2018 when we, the Editors of this book, were sitting with Walter Engelberg of the Gesellschaft für Internationale Zusammenarbeit on the beautiful terrace of the Windsor Golf and Country Club Hotel in Nairobi, Kenya, having lunch during an international workshop. It was already the second day of the workshop titled *Implementing land degradation neutrality in Africa: Means, legal instruments and institutional challenges?* This lunch meeting sparked the underlying idea that eventually led to the project which spawned this publication.

With about 40 legal and governance experts, mostly from Africa, the Nairobi workshop was already the second of its kind. The first one took place in Kampala, Uganda, in 2017. Both workshops had been co-organised by the German Environment Agency (UBA) and the Climate Policy and Energy Security Programme for sub-Saharan Africa of the Konrad-Adenauer-Stiftung (KAS).

During our discussions, Walter Engelberg and we agreed – deeply affected as we were by our marvellous view over the subtle green plains of that land – that it was time to take the next step and initiate a project to analyse the existing legislation on soil protection in Africa, to synthesise it and to come up with options for a model law on sustainable soil management.

More than two years later, we can now present the result of this second step with the publication of this book. The project *Mapping out options for model legislation for sustainable soil management in Africa* – which was funded by the GIZ on behalf of the German Federal Ministry of Economic Cooperation and Development (BMZ) – kicked off at the end of 2018 and was concluded in April 2020. This period constituted a fruitful learning experience for the two of us, enriching our perspective on soil in the wider African context, for which we are most grateful. We were enlightened about existing legislation, knowledge of processes and actors, implementation issues, and cultural and societal backgrounds and variations. It was also a period of making new friends and of meeting many experts and committed people. All in all, we worked in, with and for Africa.

A project such as this one, with a multi-authored publication as outcome is an enormous team effort. With many partners from different countries, our thanks go first and foremost to all the distinguished coordinating lead authors, Prof Dr Patricia Kameri-Mbote (Kenya); Prof Dr Christopher Funwie Tamasang (Cameroon); and Dr Pamela Towela Sambo (Zambia).

Moreover, we are very grateful to the project's expert advisors, Mr James Yatich, Director of the Department of Land Reclamation, Kenyan Ministry of Agriculture, Livestock, Fisheries and Irrigation; Mr Laurant Effala, Head of the Legal Unit,

## *Acknowledgements*

Cameroonian Ministry of Environment, Nature Protection and Sustainable Development; and Mr Andrew Nkunika, Permanent Secretary of Legislative Drafting, Zambian Ministry of Justice.

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We are indeed very appreciative to Prof Dr Dirk Messner, President of the German Environment Agency (UBA) for ‘blessing our publication’ with a Foreword together with Mr Martin Jäger, State Secretary of the Federal Ministry of Economic Cooperation and Development.

Our special thanks go to our funding project partners from Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ): Mr Walter Engelberg, Member of the Projects Steering Committee and Teamleader, Sector Project Soil Protection, Combating Desertification, and Sustainable Land Management; Ms Stefanie Preusser, Project Controller, Sector Project Soil Protection, Combating Desertification, and Sustainable Land Management; and Ms Juliane Wiesenhuetter, Teamleader (successor of Walter Engelberg), Sector Project Soil Protection, Combating Desertification, and Sustainable Land Management.

We are indeed grateful for the partnership with the Pan-African Parliament and humbled by the meaningful engagement with this esteemed body. Our sincere thanks go to all the members of the Pan-African Parliament Sustainable Development Goal Alliance and, of course, to H.E. Roger Nkodo Dang, President of the Pan-African Parliament; the Honourable Jacqueline Amongin, Member of the Pan-African Parliament and Chairperson of the Pan-African Parliament Alliance on SDGs; the Honourable Kone Dognan, Member of the Pan-African Parliament and Chairperson of the Committee on Agriculture; and Mr Galal Ari, Committee Clerk of the Pan-African Parliament. We look forward very much to the continued partnership between the Pan-African Parliament, DROP and UBA under the memorandum of understanding (MoU) between the three partners.

It is important to mention the constant and strong support for the project by the UBA leadership, namely the former President Maria Krautzberger; the current President Prof Dr Dirk Messner; as well as Dr Wolfgang Seidel, Head of the Presidential Division; Dr Lilian Busse, Head of Division II – Environmental Health and Protection of Ecosystems; Dr Christoph Schulte, Head of Department II 2 – Water and Soil; and Dr Jörg Rechenberg, Head of Section II 2.1 – General Aspects of Water and Soil. Special thanks further go to many colleagues who have contributed substantially, namely Ms Kirstin Marx; Ms Anne Klatt; and Mr Frank Glante.

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Chair: Department of Microbiology and Director: Stellenbosch University Water Institute, Faculty of Science, Stellenbosch University; Prof Dr Nicola Smit, Dean of the Faculty of Law, Stellenbosch University; Dr Katharina Ruppel-Schlichting, Project Coordinator, Development and Rule of Law Programme (DROP) and Research Fellow, Stellenbosch University Water Institute, Stellenbosch University; Ms Tania van der Merwe, Finance Manager, Development and Rule of Law Programme (DROP) and Stellenbosch University Water Institute, Faculty of Science, Stellenbosch University; and Ms Larissa-Jane Houston, Mr Georg Junger, and Ms Nicola Taljaard, all being Research Assistants at the Development and Rule of Law Programme (DROP), Stellenbosch University.

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The Editors:

Prof Dr Oliver C. Ruppel, South Africa

Dr Harald Ginzky, Germany

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## Lead authors

### **Dr Harald GINZKY**

Legal Advisor, German Environment Agency, Germany; Editor in Chief, International Yearbook on Soil Law and Policy; and Senior Fellow, Development and Rule of Law Programme (DROP), Stellenbosch University, South Africa.

### **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 Oliver C. RUPPEL**

Professor of Law and Director, Development and Rule of Law Programme (DROP), Faculty of Law, Stellenbosch University, South Africa. Professor for Climate Law, Institute for Public Law and Political Science, University of Graz, Austria and Co-Director, Research Centre for Climate Law (ClimLaw: Graz). Professor Extraordinaire University of Central Africa (UCAC), Yaoundé, Cameroon; Strathmore Law School, Nairobi, Kenya; China-Africa Institute for Business and Law, Xiangtan University, China; and European Faculty of Law, Nova University, Slovenia. Founding Director, Climate Policy and Energy Security Programme for sub-Saharan Africa, Konrad-Adenauer-Stiftung, Germany; founding WTO Chair-holder, World Trade Organisation (WTO) and University of Namibia.

### **Dr Pamela Towela SAMBO**

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

### **Prof Dr Christopher Funwie TAMASANG**

Associate Professor and Vice-Dean in charge of Research and Cooperation, Faculty of Laws and Political Science, University of Yaoundé II, Cameroon; Coordinator of the Masters of Laws programme in English; Former Sub-Director for Environmental Legislation in the Ministry of Environment, Protection of Nature and Sustainable Development, Cameroon; Member: IUCN Academy of Environmental Law; Member: World Commission on Environmental Law; Vice Chair: ASSELLAU in charge of the Central African Region.

## Contributing authors

### **Mr Laurent Cyrille Aimé EFFALA**

Head of Legal Unit, Ministry of Environment, Protection of Nature and Sustainable Development, Cameroon.

### **Ms Larissa HOUSTON**

Project Assistant at Research Centre for Climate Law (ClimLaw: Graz). PhD Candidate at University of Graz, Austria. 2020 Research Assistant at the Development and Rule of Law Programme (DROP), Stellenbosch University, South Africa. She holds a BCom LLB degree from Rhodes University and an LLM degree from Stellenbosch University, both in South Africa.

### **Ms Irene KAMUNGE**

Director Legal Services at the National Environment Management Authority, Kenya. She holds a Master of Law in Environment and Natural Resources, a Bachelor of Law of the University of Nairobi, and a Diploma in Law from Kenya School of Law and is an advocate of the High Court.

### **Dr Yvonne NANA AFUA**

Senior Lecturer in Law, Gimpa Law School, Greenhill, Accra, Ghana. She holds a BA in Law and French from the University of Ghana, an LLM in the Law of International Trade from the University of Cape Town, and a PhD in International Environmental Law and the Law of International Trade from the University of Cape Town, South Africa.

### **Mr Andrew NKUNIKA**

Permanent Secretary Legislative Drafting at the Ministry of Justice, Zambia.

### **Dr Katharina RUPPEL-SCHLICHTING**

Attorney, international legal consultant, researcher and project manager. Senior Fellow at the Stellenbosch University Water Institute (SUWI), South Africa.

### **Mr Ivo T. TASSAH**

Researcher at the Department of Economics and Environmental Sciences, Ministry of Scientific Research and Innovation, Cameroon.

### **Mr James Kipkerebulit YATICH**

Director at the Department of Land Reclamation, Ministry of Agriculture, Livestock and Irrigation, Kenya.

### **Ms Nelly ZULU**

Researcher at the School of Law, University of Zambia.