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Law and Constitution in Africa | 41

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



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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.

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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.

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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

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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

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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,

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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.

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December 2020

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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 synthetise 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).

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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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