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International Legal Expert Workshop

**Legal Instruments to implement the objective „Land Degradation
Neutral World“ in international law, especially under UNCCD**

Berlin, 8th of December 2014, 09.00 – 18.00

Prof. Dr. Oliver C. Ruppel

University of Stellenbosch, South Africa

Coordinating Lead Author Chapter 22 (Africa)

5th Assessment Report, Working Group II

Intergovernmental Panel on Climate Change (IPCC)

ipcc
INTERGOVERNMENTAL PANEL ON climate change



Greetings



ENVIRONMENTAL LAW AND POLICY IN NAMIBIA SECOND EDITION 2013

Since Independence, environmental law has become an important branch of the law in Namibia. Over the past years new legislation has been passed and environmental law and policy has gained momentum practically and academically. Internationally, environmental law has also emerged from a soft law instrument to a key negotiating platform in international diplomacy.

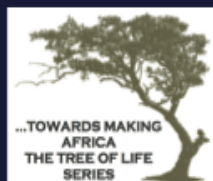
Key features of this work are: national environmental law and policy; international environmental law, also focusing on environmental law within the African Union (AU) and the Southern African Development Community (SADC); environmental management; water and land law; conservation of biodiversity; mining and energy law, including renewable energy law; customary law, common law and criminal law aspects of environmental law; intellectual property rights and traditional knowledge; climate change; environmental justice and human rights; international trade, sustainable development and the environment; and environmental journalism.

This publication is expected to be valuable for students, researchers, academics, legal and environmental practitioners, judges, government officials and anyone interested in this field – be it from Namibia, Africa or beyond.

EDITORS

Oliver C. Ruppel
Professor of Law, Faculty of Law, University of Stellenbosch, South Africa

Katharina Ruppel-Schlichting
Director, Legal Research and Development Trust of Namibia (LRDT)



ENVIRONMENTAL LAW AND POLICY IN NAMIBIA
SECOND EDITION

RUPPEL & RUPPEL-SCHLICHTING (eds)

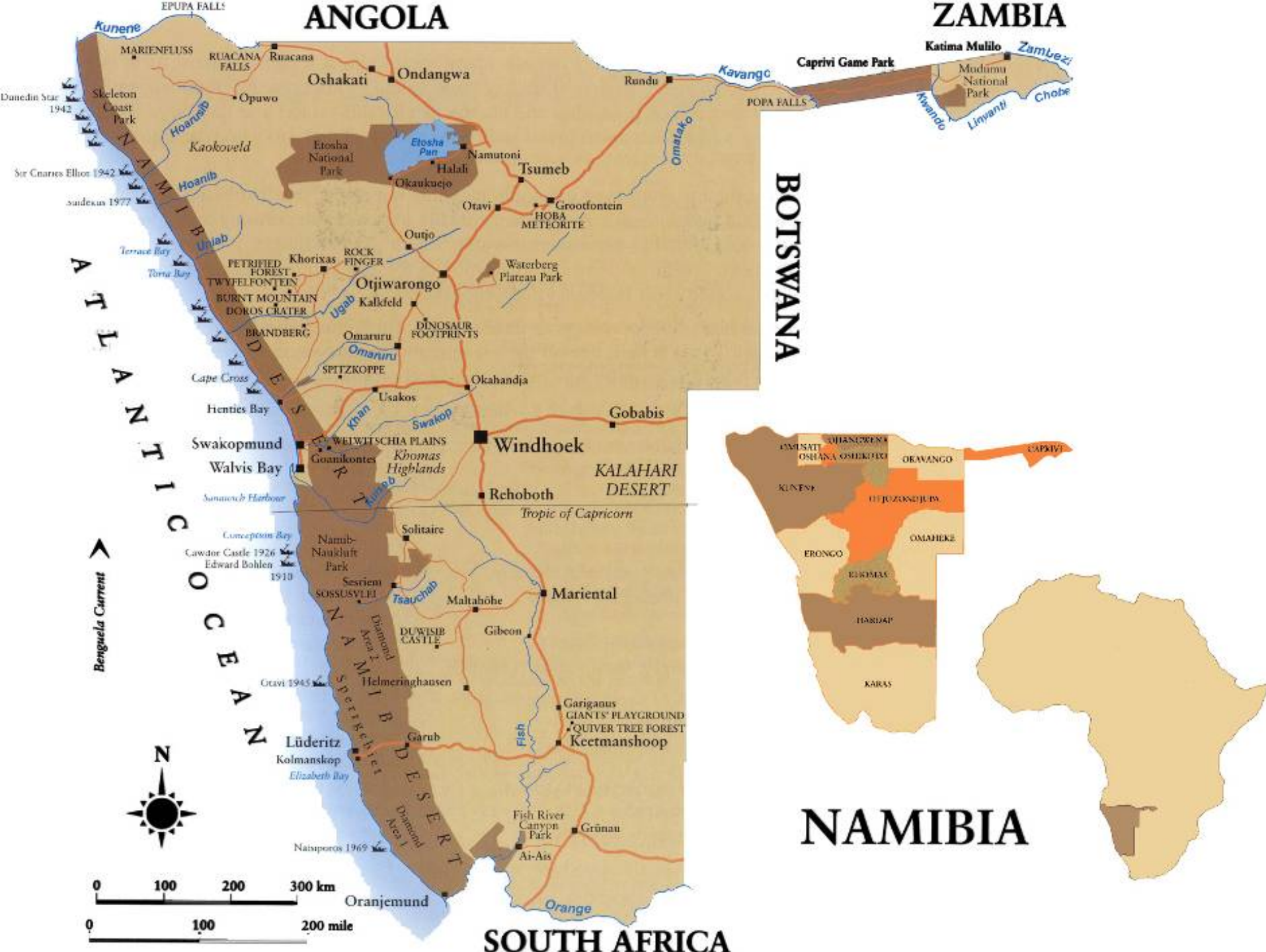
ENVIRONMENTAL LAW AND POLICY IN NAMIBIA

TOWARDS MAKING AFRICA THE TREE OF LIFE

Fully Revised Second Edition

Edited by

OLIVER C. RUPPEL
&
KATHARINA RUPPEL-SCHLICHTING





Brief History



- Namibia (South West Africa) became a German Imperial Protectorate in 1884
- In 1920, the League of Nations mandated Namibia to South Africa
- South Africa imposed it's laws and from 1948, apartheid policy
- Namibia obtained full independence from South Africa in 1990



Namibia has



- a pristine natural environment
- rich biodiversity, coupled with good governance and excellent infrastructure
- ecologically fragile environment
- facing challenges, especially in terms of poverty
- and environmental – land related - conditions



Water and Waste Management





Degradtion / Soil Erosion / Desertification





Deforestation





Rangeland Degradation Overstocking / Overgrazing

© Prof Oliver C Ruppel





Climate Change



WATER



ECOSYSTEMS

BIODIVERSITY





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climate change





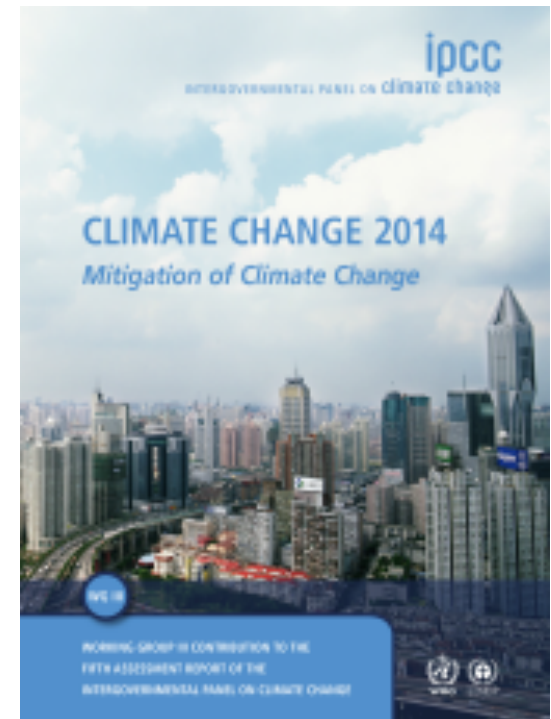
IPCC AR5 CLIMATE CHANGE 2013/2014



WG I Contribution: Climate Change 2013: The Physical Science Basis

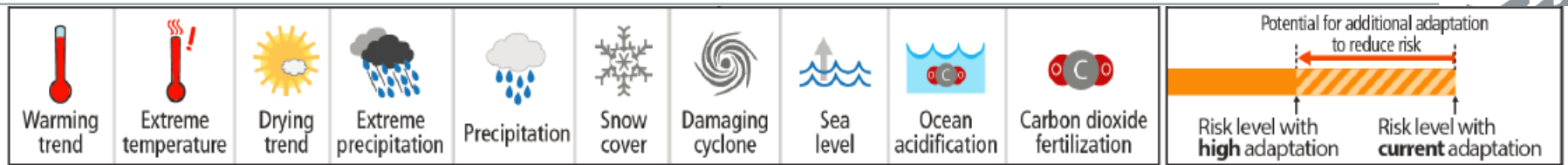


WG II Contribution: WG III Contribution: Climate Change 2014: Impacts, Adaptation and Vulnerability Climate Change 2014: Mitigation of Climate Change





Key Risks: Africa



Africa				
Key risk	Adaptation issues & prospects	Climatic drivers	Timeframe	Risk & potential for adaptation
Compounded stress on water resources facing significant strain from overexploitation and degradation at present and increased demand in the future, with drought stress exacerbated in drought-prone regions of Africa (<i>high confidence</i>) [22.3-4]	- Reducing non-climate stressors on water resources - Strengthening institutional capacities for demand management, groundwater assessment, integrated water-wastewater planning, and integrated land and water governance - Sustainable urban development			Very low Medium Very high
			Present	
			Near-term (2030-2040)	
			Long-term (2080-2100)	2°C 4°C
Reduced crop productivity associated with heat and drought stress, with strong adverse effects on regional, national, and household livelihood and food security, also given increased pest and disease damage and flood impacts on food system infrastructure (<i>high confidence</i>) [22.3-4]	- Technological adaptation responses (e.g., stress-tolerant crop varieties, irrigation, enhanced observation systems) - Enhancing smallholder access to credit and other critical production resources; Diversifying livelihoods - Strengthening institutions at local, national, and regional levels to support agriculture (including early warning systems) and gender-oriented policy - Agronomic adaptation responses (e.g., agroforestry, conservation agriculture)			Very low Medium Very high
			Present	
			Near-term (2030-2040)	
			Long-term (2080-2100)	2°C 4°C
Changes in the incidence and geographic range of vector- and water-borne diseases due to changes in the mean and variability of temperature and precipitation, particularly along the edges of their distribution (<i>medium confidence</i>) [22.3]	- Achieving development goals, particularly improved access to safe water and improved sanitation, and enhancement of public health functions such as surveillance - Vulnerability mapping and early warning systems - Coordination across sectors - Sustainable urban development			Very low Medium Very high
			Present	
			Near-term (2030-2040)	
			Long-term (2080-2100)	2°C



will be felt most acutely
by segments of the population
who are already
in vulnerable situations...

This publication brings together various articles that shed light from different angles on the relationship between customary law and practice, and the concept of human rights and gender equality.

The insights into customs that are of specific relevance for the role and status accorded to women – such as polygyny, lobola, and rules of inheritance – and which are still a living reality in many traditional communities in Namibia, provide the basis for legal and socio-economic considerations. These legal considerations address the gap between customary and statutory law in Namibia, recent relevant developments in the process of law reform, and judicial reflections on women and custom in Namibia. The presentation of various research findings reflects that education and the promotion of women's rights still have to be put very high on the agenda in order to actually achieve the constitutionally guaranteed equality between women and men. For this purpose, the publication gives a short introduction into the existing legal framework in terms of women and custom in Namibia.

The publication of these articles intends to promote a discourse and offer inspiration to the various stakeholders in the legal fraternity, academia, government, traditional authorities, civil society, and the 'enlightened' citizen (male and female) at large, to promote and secure the protection of women's rights and gender equality, and – wherever possible – preserve valuable cultural practices at the same time.



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SOUTH AFRICA NAMIBIA



Women and Custom in Namibia

OC Ruppel (Ed.)



Women and Custom in Namibia

Cultural Practice versus Gender Equality?



Edited by Oliver C Ruppel

An ancient African Proverb says "It takes a village to raise a child". The basic meaning of this is that raising a child is not only the parents' responsibility, but a communal effort as well. To enhance this effort and to protect children from harm, they are granted specific human rights touching on every aspect of their lives.

Children's Rights in Namibia brings together various articles that shed light from different angles on the protection and promotion of children's rights. Inter alia, the book aims at determining the extent to which Namibia complies with its obligations under national and international law, the extent to which the various institutions and statutory enactments aimed at affording the necessary respect and protection to children's rights in Namibia exist, and the extent to which such rights are implemented successfully. The articles not only cover methodological aspects of implementing children's rights but more practically refer to issues such as adoption, citizenship, access to information, majority, the best interest of the child, child labour, teenage pregnancy, and custody and guardianship. Specific aspects of Namibian customary law in this context have also been addressed, considering that Namibia is a country with a pluralistic legal system.

Further issues addressed in this publication relate to certain law reform activities, restorative justice, child suggestibility in the Namibian justice system, understanding the perpetrators of violent crimes against children, children's accessibility of social assistance benefits, access to information for orphans and other vulnerable children, and the model of an Ombudsman with a specific mandate for children. The article on the High Court of Namibia's Vulnerable Witnesses' Project has immediate relevance to children's rights, as is the one outlining the possible impacts of the 2010 FIFA World Cup, with its focus on child trafficking and child prostitution.

Children's Rights in Namibia intends to nobly serve the purpose of deepening the understanding of children's rights in general, and in Namibia in particular, strengthening their rights as full members of society and protecting and promoting their dignity.



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MACMILLAN
EDUCATION NAMIBIA



Children's Rights in Namibia

OC Ruppel (Ed.)



Children's Rights in Namibia



Edited by Oliver C Ruppel

BIODIVERSITY AND THE ANCESTORS:

**CHALLENGES TO CUSTOMARY
AND ENVIRONMENTAL LAW**

CASE STUDIES FROM NAMIBIA

EDITED BY

MANFRED O. HENZ AND OLIVER C. RUPPEL



Case studies in environmental and customary law from southern Africa

Edited by
Manfred O Hinz Oliver C Ruppel Clever Mapaire





- reflects the country's history
- product of different legal sources
- object of fascination (legal pluralism)
- several types of law or legal traditions operate simultaneously



Legal Hierarchy in Namibia



1. Constitution = Supreme Law Art. 1 (6)
2. Roman Dutch Law and elements of English Common Law, Art. 66 Constitution
3. African Customary Law, Art. 66 Constitution
4. Legislation, Art. 140 Constitution
5. International Law, Art. 144 Constitution



German Law?





Common law and Customary Law
shall remain valid to the extent that
they do not conflict with the
Constitution or statutes

(Art. 66 of the Constitution)



Article 95: Promotion of the Welfare of the People

“...maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and the utilisation of living natural resources on a sustainable basis for the benefit of all Namibians...”



Article 100: Sovereign Ownership of Natural Resources

“Land, water and natural resources below and above the surface of the land and in the continental shelf and within the territorial waters and the exclusive economic zone of Namibia shall belong to the State if they are not otherwise lawfully owned.”



Land / soil degradation in Namibia



- threatens environmental quality and has a negative economic impact
- one of the major concerns
- land is the basis for survival
- farming has deep cultural and social meaning
- about 70% of the Namibian population depends on agricultural activities for a livelihood



Agriculture

- The National Agricultural Policy
- The National Drought Policy and Strategy
- The Regional Planning and Development Policy
- The National Seed Policy

Land

- Land-use Planning: Towards Sustainable Development Policy
- The National Land Use Planning Policy
- The National Land Policy
- The National Resettlement Policy
- The National Land Tenure Policy



Land and Soil relevant legislation – not conclusive

- **Environmental Management Act No. 7 of 2007**
- **Nature Conservation Ordinance No. 4 of 1975**
- Agricultural (Commercial) Land Reform Act No. 6 of 1995
- Agricultural Pests Act No. 3 of 1973
- Communal Land Reform Act No. 5 of 2002



Land and Soil relevant legislation – not conclusive



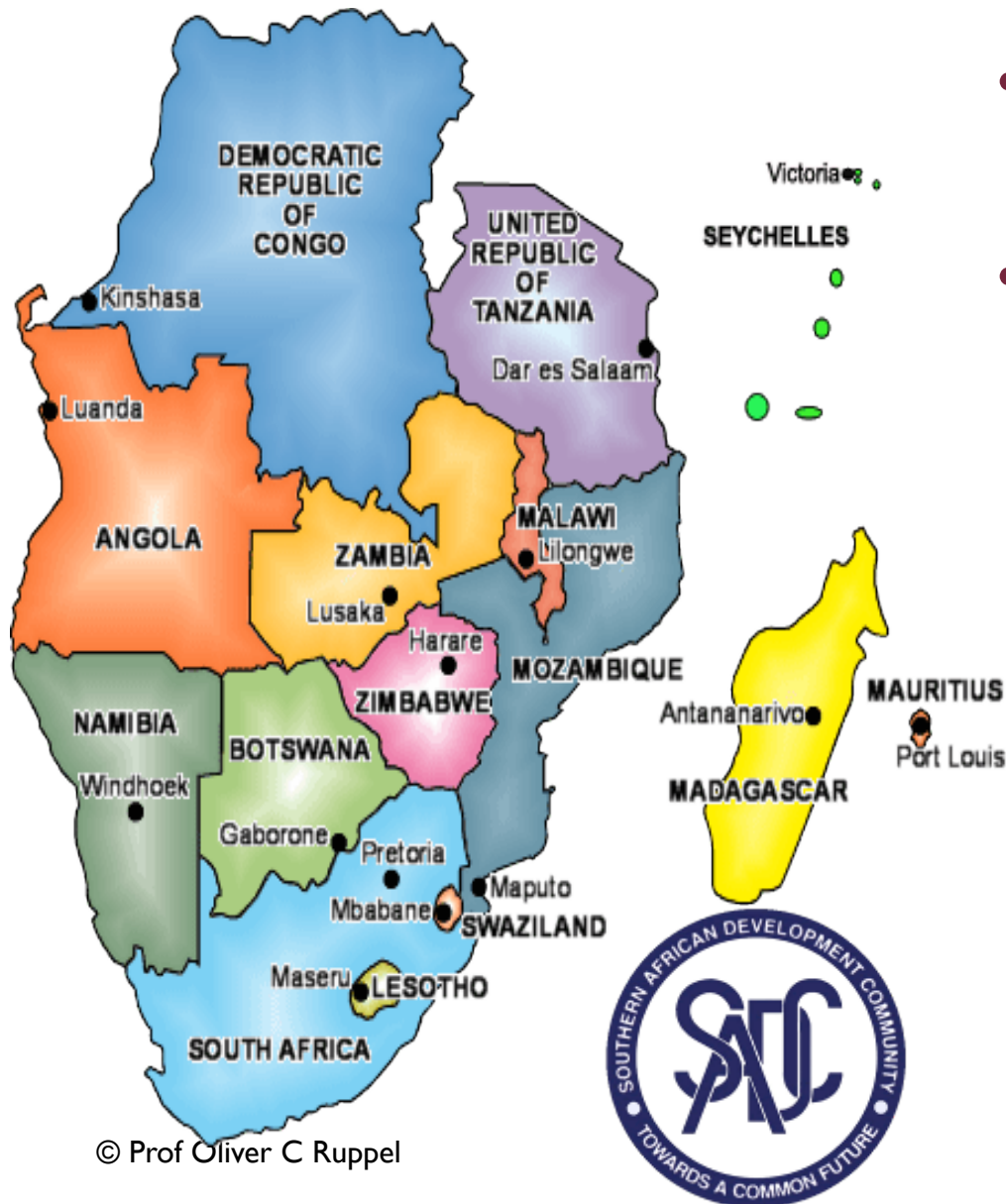
- Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act No. 36 of 1947
- Forest Act No. 12 of 2001
- Hazardous Substances Ordinance No. 14 of 1974
- Minerals (Prospecting and Mining) Act No. 33 of 1992
- Soil Conservation Act No. 76 of 1969



Article 144 of the Constitution

“Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.”

Monist approach: Public international law is *ab initio* part of the law of Namibia. No transformation or subsequent legislative act is needed



- established in Windhoek in 1992
- 15 Member states: Angola, Botswana, the Democratic Republic of Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe



all over the SADC legal framework

The SADC Treaty

The SADC Protocols

Other legal instruments



Art 5 SADC Treaty: Objectives of SADC

- Art 5.1.(a): to promote sustainable and equitable economic growth and socio-economic development...
- Art 5.1.(g): to achieve sustainable utilisation of natural resources and effective protection of the environment



Areas of Cooperation



Various areas of cooperation have been identified by the SADC Treaty (Article 21.3) potentially relevant for land and soil protection:

- a. food security, land and agriculture;**
- b. infrastructure and services;
- c. trade, industry, finance, investment and mining;
- d. social and human development and special programmes;
- e. science and technology.
- f. natural resources and environment;**
- g. social welfare, information and culture; and
- h. politics, diplomacy, international relations, peace and security.



- stresses the close nexus between ecological land degradation and poverty
- directs country parties to prepare national action programmes
- ...but...





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Thank you for your attention!

ruppel@sun.ac.za

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