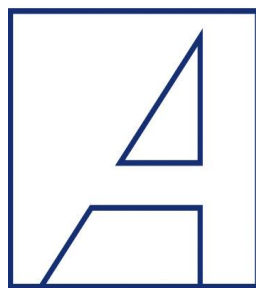




**Kampala  
International  
University**



**Konrad  
Adenauer  
Stiftung**



# **Outcome Document**

**International Workshop “Legal instruments for the  
effective protection and sustainable management of  
soils”**

**Organized in cooperation between the German Environment Agency (UBA),  
the Konrad-Adenauer Foundation – Climate Policy and Energy Security  
Program for Sub-Saharan Africa -, Makerere University and Kampala  
International University**

**Kampala, Uganda 26 -27 September 2017**

The Workshop on “Legal instruments for the effective protection and sustainable management of soils” was held at the Hotel Africana, Kampala, from 26<sup>th</sup>- 27<sup>th</sup> of September, 2017. The Workshop was attended by about 50 experts from African countries and abroad. Representatives from UNCCD, FAO, IUCN, UNEP, the African Soil Partnership and GIZ attended the Workshop.

Keynote addresses were provided by;

- Ms. Petra Kochendörfer, Chargé d’Affaires a.i., German Embassy in Kampala;
- Prof. Dr. Oliver C Ruppel, Director of Konrad-Adenauer Stiftung (Climate Policy and Energy Security Program for Sub-Saharan Africa);
- Vincent Frerrio Bamulangaki Ssempijja, Hon. Minister of Agriculture, Animal Industry and Fisheries, Government of Uganda.

The Workshop sought to address several thematic issues of key relevance to the role of international, regional and domestic legal instruments in promoting the effective protection and sustainable management of soils. Below is a brief summary of the key content of these discussions.

## **Sustainable Management of Soils – General Aspects**

1. The protection and sustainable management of soils is a precondition for sustainable development and more so for the survival of humankind. Without sufficient areas 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 in wars.

2. Land preservation and thus the sustainable management of soils is required to be able to achieve the majority of the Sustainable Development Goals of the UN 2030 Sustainable Development Agenda.

3. UNCCD has unanimously agreed on the following definition of “Land Degradation Neutrality” (LDN) which is crucial to determine the right actions to achieve sustainable management of soils:

LDN is “a state whereby the amount and quality of land resources necessary to support ecosystem functions and services and enhance food security remain stable or increase within specified temporal and spatial scales and ecosystems.”

LDN is to be regarded as a key concept in this context.

4. From a *science* point of view, sustainable management of soils is a global concern. Statements and decisions by the international state community, e.g. the Rio+20 outcome document or during COP 12 UNCCD, also show that the sustainable management of soils is politically regarded as common challenge of humankind. However, as yet this is not expressed in a corresponding *legal* principle such as common concern of humankind. Such a legal principle would clearly underline the need of more responsible and consolidated actions on all levels for a sustainable management of soils.

5. Although the effects of soil degradation are global, an appropriate management of soils must be implemented locally. The challenges are multifactorial including ecological, social, cultural, economic, political and legal aspects. Actions must therefore primarily be of local nature.

6. The initiative “Economics of Land Degradation” has shown that preventive measures are far more cost-effective than actions of restoration or rehabilitation.

## **Factual Challenges in Africa on Soils**

7. African states face specific factual challenges concerning their soils and lands.
8. Although Africa the continent with the least land degradation, the pressure on soils is currently enormous and continuously increasing due to a range of factors including poverty, over-exploitation, population growth and climate change.
9. As the agricultural productivity is still low in Africa, food security has not yet been achieved.
10. Drivers of unsustainable soil management include overstocking, overgrazing, water erosion, landslides, and over-application of agro-chemicals. The poor population often depends on land and other natural resources for immediate needs which is an additional driver for land degradation.
11. Soils in Africa are inherently vulnerable due to low level of resilience.
12. The following aspects impose serious impediments to sustainable soil management in Africa:
  - Data on soils are often not available or inadequate.
  - Soil research results are often unavailable to farmers and are not sufficiently implemented in daily agricultural practices.
  - The level of investment is often low.
  - Sustainable soil management is not yet commonly observed as a crucial instrument to achieve sustainable development. It has not been imposed as a legal requirement in many aspects of African law.

## **Soil Protection Regulatory Concepts and Challenges in Africa**

13. Based on the analysis of Ugandan and Namibian environmental law and a comparison of these laws with German regulatory approaches the following observations were made with regard to soil protection regulation in Africa.
14. There are usually several law and regulatory approaches being at least indirect relevant for soil protection. However, regulations are fragmented and/or do not follow a coherent and consistent policy.
  - So far, sustainable soil management is not a legally established objective.
  - There is no clear obligation to restore or rehabilitate degraded land.
15. In some African countries environmental legal standards and obligations are not directly implemented and enforced on customary land.
  - Traditional authorities are regarded as custodians of the natural resources, including land and soils.
  - Examples however demonstrate that local communities due to their internal priorities are not necessarily the best protectors of soils.
  - It was recommended that environmental law provisions should be enforced on customary land.
16. A particular need was seen to establish effective policies and laws on the use of fertilizers.

17. The intervention clause of the German Nature Conservation Act was discussed as a model for implementing the Land Degradation Neutrality-concept, also in African legislation. The German Intervention clause requires three steps of decision making: (1.) prevent/avoid, (2.) physically offset; (3.) assessing and weighing the competing interests, plus mandatory monetary compensation. This one rule captures the LDN concept and also corresponds to the UNCCD's "LDN response hierarchy".

- As a precondition for an effective use of the German Intervention clause, data are required for the determination of the baseline and the assessment of degradation and restoration processes.
- Moreover, indicators must not be too technical.

18. Restoration/offsetting requirements must not be interpreted as a "license to degrade".

19. The German example emphasizes that planning instruments are required for LDN implementation, in particular to enforce the neutrality requirement.

20. Standards and requirements for sustainable soil management must be site-specific taking into account the different settings in African countries.

21. Actual impediments in many African countries, like lacking capacities which cause insufficient and inappropriate enforcement, must be overcome.

## **Relevance of Land Rights/Tenure in Africa to Sustainable Soil Management**

22. Clarity on land rights must be seen as a prerequisite for sustainable soil management in Africa. This is also important for medium or even long-term investments.

23. The land right systems are very different in African states. Thus one fits all-approach does not exist. Usually the following three land types are known: state land, private land and customary/tribal land.

The terms customary land and tribal land could be used interchangeable.

24. Land tenure security (in form of western land titling/registration) is often low in Africa. In Uganda only 10 % of the land is formally registered. In Kenya 67 % of the land is customary in nature.

25. There was agreement that an effective land titling system is the key for land security in particular as the economic interest in land is constantly increasing, including for foreign investors.

- A need was seen to clarify the requirements of customary land in the various communities. Cultural aspects have to be taken into account as the concept of customary land varies amongst the various communities.
- It is to be considered that according to customs and traditions land could carry more value than the pure substance, inter alia religious or emotional values.
- The procedure of land titling should involve "local communities" as stakeholders.
- The procedure should be simple, cost-effective and inclusive.
  - The registration process in Uganda seems to be very time consuming and demanding.
  - The registration process in Kenya establishes a deadline which seems to contradict the concept of inclusiveness.

26. Access to land and land rights could raise gender issues.

27. “Land grabbing” is seen as a major issue in many African countries. “Land grabbing” was understood as being an “unfair” land acquisition. “Unfair land acquisition” could be both legal and illegal.

28. Foreign investment is commonly regarded as important and helpful if it is performed in a fair manner.

29. A need was seen for regulatory concepts and additional actions to deal with unfair land acquisition. Two situations were distinguished:

- Type one: unfair use of unclear land rights.
- Type two: unfair use of corruption potentially on all levels (state level, regional governance or municipalities)

30. Measures were discussed to deal with the two types of unfair land acquisition.

31. There was consensus that an effective land titling system is very important to allow for clarity on land rights. The procedure of land titling needs to be transparent and participatory in order to avoid corruption.

32. Two additional measures were discussed:

- The foreign investor has to bear the burden of proof when it comes to who actually owns a certain piece of land.
- The country of origin of the investor should be responsible for the foreign investor to act in a fair manner.

## **The Need for an African Soil Convention**

33. Sem Shikongo (from the Ministry of Environment of Namibia) in his “words of welcome” in the first volume of the “International Yearbook of Soil Law and Policy” raised the question whether an international Soil Regulation for Africa would be a reasonable approach.

34. The 1968 African Convention on the Conservation of Nature and Natural Resources sets out general obligations. It contains specific provisions on soils, including to establish a land-use plan and thereby promoting sustainable land use and inter alia the prevention of soil erosion. The 1968 Convention however lacks in the establishment of an institutional framework to steer implementation and compliance.

35. In 2003 a revised African Convention was signed by 41 states. It also sets out soil specific regulations. In particular it established a secretariat and a conference of Parties. The revised African Convention got into force in 2016 after attaining the 15<sup>th</sup> ratification, and in 2017, has attained the 16<sup>th</sup> ratification from Liberia.

36. Several African States have included soil related actions in their “nationally determined contributions” (NDC) under the 2016 Paris Agreement (e.g. Algeria, Kenya, Botswana, Ghana).

37. REED+ also is a method to address soil issues which are relevant at national level by internationally stimulated actions.

38. Advantages of a specific African soil instrument could be an improved coordination, joint actions and technical cooperation in particular with regard to the implementation of LDN (e.g. indicator development).

39. Three possible options to address African soil needs at the international level:

- An African specific protocol under UNCCD
  - Problems: There is no enabling clause under UNCCD for protocols and the management would remain on international level.
- Ratification of revised African Convention
- Mainstreaming existing international soil provisions by stressing the African perspective

40. Whether a regional environmental convention for Africa is reasonable must be discussed further as for example the ratification and implementation of the revised African Convention was very slow and even now, the number of current ratification (16 out of 54 signatories) limits its actual output..

41. It seems to be particularly promising to use the NDC as a means to promote soil related actions in Africa. Drought, water scarcity and food security are major challenges which all are based on soils. Soils are moreover of eminent importance for mitigating climate change. This is more so because, while under the Paris Agreement, NDCs are voluntary for developing countries, the submission of NDC targets by each country amounts to an international legal commitment. This is, however, subject to provision of technical and financial support through the Paris Agreement. However, there is need for African countries, when addressing sustainable land and soil management, to also focus on the intersect with contiguous neighbors in order to address land degradation across international borders, using the climate change legal framework.

## **Future of International Soil Regulations**

42. Existing international soil regulation is very fragmented. Although UNFCCC, UNCCD and CBD all deal with soil issues, no coherent concept exists. Based on this assumption it was asked whether and what additional international soil related provisions may be required or useful.

43. The need of an international soil regulation has been particularly promoted by IUCN, providing several groundbreaking publications and draft international instruments. The discussion has intensified since 2015 by the successive “Global Soil Weeks”, having taken place in Berlin, and the newly agreed objective of a “land degradation neutral world”.

44. Although soils are locally bound they carry various ecological services which could have transboundary effects, such as being essential for food security, climate change and biodiversity. Although not agreed in a legally binding manner, the sustainable management of soils is de facto as a common concern of humankind.

45. Technically speaking an international instrument on soil issues could be established as a stand-alone treaty, as protocol to either the CBD, UNFCCC or UNCCD, or as a non-binding instrument.

46. The necessary contents of such an international instrument must be further discussed.

- The draft soil protocol lists, *inter alia* principles, rights and obligations of states, technical cooperation, organizational structure and dispute settlement.
- There was a proposal to design the soil related obligations driver and thread specific.
- It was discussed whether a compensation obligation of the Industry states for the long-lasting negative effects of colonialism should be included.
- Further, measures for extra-territorial use of land were seen as necessary.

47. The LDN target setting program of UNCCD was introduced as an important tool to promote LDN. 134 states are engaged in the program. First, experience needs to be evaluated in order to improve the conceptual approaches.

48. The need of additional international soil related provisions was challenged because the political will for an additional international treaty is lacking, the negotiation of such provisions would be too time-consuming, the endeavor would distract from the key task to implement LDN and existing norms are expected to be solely duplicated.

49. Several other proposals were put forward as first steps:

- Use of existing provisions in UNCCD, UNFCCC and CBD to promote soil issues.
- Establishment of a soil framework treaty which is based on the exiting international regulation: the new treaty should establish the links amongst the existing provisions.
- Development of model soil legislation for the national and local level
- Awareness raising and scientific information dissemination

## **Outlook and Next Steps**

50. The Kampala Workshop was seen as very timely and constructive, but as a first step only. The Workshop was successful in raising awareness for the “soil challenge”. However, further engagement was seen as crucial. As next steps and measures the following were recommended:

51. Platforms for discussions were seen as very important. Such platforms could also be used to establish networks for cooperation. The “International Yearbook of Soil Law and Policy” published by SPRINGER was highlighted as such a platform.

52. The need to outreach to policy makers was stressed. One option for an Africa wide policy debate would be to engage the Environment Committee of the African Parliament in the debate.

53. Strengthening the cooperation with natural science was also emphasized. The African Soil Partnership could provide the required scientific input. In this context the cooperation between African universities was mentioned. Funding for the establishment of such cooperation would be required.

54. Further analysis of current regulatory approaches in African countries seems to be needed. Law comparison was seen as a helpful tool to identify gaps and loopholes in existing legislation and to develop appropriate concepts for the implementation of the LDN objective.

55. Models from other – even non-African – legislation like the German intervention clause should be considered.

56. Concepts for solving the land rights impediments for sustainable soil management were seen as an essential task.

57. A workshop on soil issues in Africa in the near future which takes an interdisciplinary perspective was proposed. The workshop should provide input from science and legal experts in order to further specify models for the implementation of the LDN objective.

58. Cooperation with Technical bodies was considered to be of great value for the funding of the various actions.

59. Policies must be established to ensure a better transfer of scientific knowledge on sustainable soil management to the daily routines of African farmers.

60. Soil awareness and soil knowledge are key factors. To this end the curricula of schools and universities should include soil aspects.