**Draft**

# Environmental Law Has Secured Its Place in African scholarship And Practice

**By**

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## 1. INTRODUCTION

Environmental Law, is arguably one of the fastest growing fields of scholarship. The field is growing fast in both, practice in terms of legislation and treaty-making, and in scholarship as found in teaching, research and publication. In general, the field would be expected to have slower growth in Africa than would be the case in, say, in Europe and in United States.

Yet, in fact, the field has been growing quite fast in Africa. Without using any measuring scale we are able to assert in this paper that environmental law is easily in evidence in Africa. Section 2, which follows this introduction, discusses the assumption at one point in the United States, that Third World or Group of 77 which includes all African countries, are hostile or at war with any notion of environmental protection.

In addition, and more specifically, the section dispels the misconception in certain quarters of that teaching of environmental law was, at least until 1980's, inconceivable in Africa.

The section clarifies how the Secretary General of Stockholm Conference got Founex Report to clarify the very concept of environment and that the Third World countries, did set out the correct global understanding of the concepts of environment, environment and development and, implicitly, environmental law.

Section 3 discusses environmental law, in practice and at the level of national governments, highlighting examples is constitutional entrenchment of environmental protection, adoption of framework environmental laws and environmental statutes including such features as settlement of environmental disputes. There is, here, an inter-play between governments, universities and inter-governmental institutions.

Section 4 highlights the role of academy, specifically programmes of universities. What is particularly satisfying is the pan-African environmental law initiative is having influence outside Africa.

Section 5 lifts the discussion to continental level. It will be refreshing to see how one of the first initiatives by the Organization of African Unity (now simply African Union) rejected, the colonial day London Conventions of 1900 and 1933 and actually adopted the 1968 African Convention. Later they updated even that one to the level of 2003 Maputo Convention.

It was considered desirable that this paper should highlight and recognize the work of individual African scholars and practitioners specialized in environmental law. Such recognitions are notable; we decided to identify a few unique performers in Section 6.

With the foregoing accounts we must conclude in Section 7 that environmental law has secured its place in African scholarship and practice.

## 2. BACKGROUND

The global recognition of increasing environmental degradation and necessity that the world community should take remedial measures came at the United Nations General Assembly in 1968 when the Swedish delegation successfully proposed that a conference on environment be held at Stockholm in June 1972. The Secretary General of the United Nations designated Maurice Strong, a Canadian Statesman, to be the Secretary General of the Conference of Human Environment. As the agenda of the Conference unfolded by early 1971, the world's Group of 77 which comprised the so called developing countries, and which included African countries, addressed the Secretary General with the argument that there was a narrow focus on problems of industrialized countries centering on adverse consequences of the practices of adverse consequences of urban squalor and application of technologies. In other words, the agenda was not broad enough to include the needs of the Group of 77 such as management of resources to promote development, matters of safe human settlement and poverty eradication; and promotion of social justice. The Group of 77, or Third World Countries, submitted that they would not attend Stockholm Conference because the agenda did not include their priorities.

These objections were quickly misunderstood in some quarters. For instance, one Alan Richard Kasdan quickly, and with a play on words, published an article entitled "Third World War-Environment versus Development"[1] In fact, Kasdan saw little chance of compromise between the conference agenda and the position of the Group of 77. He postulated a war between interests of the Third World and the conference agenda reflecting the concerns of industrialized countries.

[1] *Record of the Association of Bar of City of New York*, Volume 26 (1971) pp 454-464.

In fact there was to be way forward. The Maurice Strong constituted a panel of twenty-seven senior experts in the fields of both development and environment to meet at Founex, near Geneva, Switzerland, from 4 to 12 June 1971. With the experts were observers from various United Nations agencies most directly concerned with the two themes. In his introduction to what has since been known as Founex Report, the Secretary said: "The report delineates clearly and cogently many of the principal issues which will confront governments of more industrialized and developing countries when they assemble at Stockholm in June 1972… and a historic turning point in the 'development-environment' dialogue."[2] From then on, no one postulated a war between environment versus development. In point of fact, even though the Stockholm Conference retained the anthropocentric title of human environment the global discourse shifted their titled to their new lexicon of environment and development. The developing, including African countries, had forced a shift in paradigm on all matters environmental.

Recall that after Stockholm Conference the United Nations General Assembly resolved that after 20 years, that is in 1992, there should be a follow up conference. It was resolved that the theme should be Environment and Development and a special World Commission on Environment and Development under the chair of Gro Harlem Brundtland. The Commission with 21 members out of whom 12 were from Group of 77 produced that celebrated report: ***Our Common Future: World Commission on Environment and Development.***[3] Incidentally, out of the 12 members from Group of 77, five were from Africa, meaning that Africans had, at least numerically, a fair representation in the panel that shaped the global theme which was environment and development.

[2] United Nations Conference on Human Environment, *Development and Environment* Report submitted by the Panel of Experts Convened by the Secretary-General of the United Nations Conference on the Human Environment, Founex, Switzerland, A/CONF.48/PEDE/REPORT 4-12 June 1971 p.5

[3] Later Published by Oxford University Press, 1987.

The Commission report, also known as Brundtland Commission Report, had two core recommendations which dominated the outcome of the 1992 Conference on Environment and Development: First, that environmental exigencies must be built into all development planning and management. This is popularly known as the principle of integration.

Secondly, that all countries, and peoples, should use their natural resources to meet development needs of the present generation but without jeopardizing the interest of future generations to enjoy the same. This is also known as the principle of intra- and intergenerational equity, which is at the core of the principle of sustainable development, as a goal.

In the foregoing paragraphs we have demonstrated Africa has been at the forefront of evolution of modern environmental concepts and principles. We can similarly submit that African scholars advocated integration of environmental exigencies into development planning and management and sustainable development long before World Commission on Environment and Development and the 1992 United Nation Conference on Environment and Development.[4] Considerably ahead of Brundtland Report and Rio Conference there were African scholars advocating integration of environment into national economy[5] and sustainability[6] of national development.

[4] Key features of "The Results From Rio" including the celebrated Rio Principles of Environment and Development are reprinted in the Journal *Environmental Policy and Law*; Vol. 22 No. 4 (August 1992) 300 pages. For Rio Principles see pp. 268-269.

[5] Okidi, C.O. "Management of Natural Resources and Environment for Self Reliance" in *Journal of Eastern African Research and Development*; Vol. 14 (1984) pp. 92, 102-107.

[6] Okidi C.O. "The Role of Environmental Law in Sustainable Development in Africa". A Presentation at the Commonwealth Law Conference Aukland, New Zealand April, 1990 13 pages. (Unpublished. Copy is in author's file)

Determination of the threshold of sustainability is a scientific construct. On the other hand protection of the threshold of sustainability, once it is determined is jural because it is environmental law defined as the ensemble of norms derived from common or civil law doctrines; provisions from constitutions, statutes, general principles of law and treaties whenever designed to protect sustainability of natural resources and the environment within which they exist.[7]

[7] See also Okidi, C.O. "Concept, Function and Structure of Environmental Law," in Okidi C.O., P. Kameri-Mbote and Migai Akech (Eds) *Environmental Governance in Kenya: Implementing the Framework Law* (Nairobi: East African Educational Publishers) 2008. Pp 3, 6-7.

## 3. ENVIRONMENTAL LAW AT AFRICAN GOVERNENTS LEVELS

Sometime in 1980's I attended a dinner for a mega-conference on environmental law in New York. At the time of introductions I said I was teaching environmental law at a Kenyan University. Some of the participants were astonished giving the observation that information they had was that African governments were hostile to matters of environmental protection, including environmental law. Their understanding was that African governments welcomed industrial pollution and the idea of cleaning up later.

Clearly such people were in the same league with Alan Kasdan who thought that question on environmental conference were, to Third World countries, a Third World War. Actually, they just lacked information. This writer had been teaching environmental law, at masters degree level, since 1979. In 1980 I published an article on "Environmental Law in African Universities" in a European journal.[8] And I suspect that there were courses on environmental Law in other African universities.

We shall come back to discussion of teaching and research on environmental law a little later. Meanwhile, let us look at various aspect of adoption of environmental law at the level of governments to show that the discipline had a prominent place in Africa. Such evidence can be found at the level of constitutions and statutes.

In legal scholarship entrenchment of a subject matter in national constitution suggests the highest level of commitment to that subject in national governance.[9] In the present instance we find the comparative study by Carl Bruch, an environmental law scholar from Environmental Law Institute in the Washington DC, undertook comparative

[8] Okidi, Odidi, "Environmental Law in African Universities" in *Environmental Policy and Law* Vol. 6 No. 1 (Feb. 1980) pp. 18-22.

[9] See the discussions in Brandl, Ernst and Hartwirz Bungert, "Constitutional Entrenchment of Environmental Protection: A Comparative analysis of experience abroad" in *Harvard Environmental Law Review* Vol. 16 (1992) pp. 14 *et seq* and Okidi, C.O. "International Perspective on the Environment and Constitutions" *The South African Journal of International Environmental Law and Policy* Vol. 3 No. 1 (March 1996) pp 39-69.

studies of constitution in Africa, Asia and Latin America, focus on environment.[10] Of some thirty African constitutions he studied he found constitutional provision on *locus standi* or right sue on environmental violations; environmental rights, generally and right to life. We must note that right to life has been interpreted to include what happens during the course of life. The ruling by the Supreme Court of Pakistan in a matter where the public would be exposed to excessive electromagnetic waves may be applicable in all commonwealth countries.[11]

Since the year 2007 when Bruch's book was published, it is likely that new constitutions will have been adopted with environmental rights and duties entrenched. An example to that effect is the Constitution of Kenya, 2010 which has expansive constitutional provisions on environment.

Below the level of constitutions are what are well-known as framework environmental laws. Traditionally, most countries enacted sectoral or departmentally functional statutes. Early 1970's there emerged framework or basic laws with legal mandates to coordinate the functioning of the sectoral status and to intervene where the sectoral agencies failed to operate as required by law. The chief executive officer, or the authority, works with a board with power to oversee the work of the sectoral agencies. A country was deemed to have modern environmental law if it has enacted framework environmental statute whatever the level of sophistication.

An essential component of the framework laws environmental impact assessment, an invention of the United States history of environmental legislation. When, during later 1960's the U.S Congress realized that sectoral environmental laws, standing alone, were

[10] Bruch, Carl, *Constitutional Environmental Law: Giving Force the Fundamental Principles in Africa* (Nairobi: United Nations Environment Programme (UNEP) 2007.

[11] In the case of *Shehla Zia and Others (Petitioners) v. WAPDA* (Respondent) Human Rights Case No. 15-k of 1992 PLD 1994 Supereme Court 693. Reprinted in *Compendium of Judicial Decisions on Matters Related to Environment.* National Decisions Vol. 1 pp 323, 333 (United Nations Environment Programme, 1998).

ineffective for reasons mentioned above they set out to find a solution. They came up with the concept of environmental impact assessment (EIA) as an action forcing mechanism and agreed that where a proposed project exceeded a certain threshold of sustainability and therefore likely to have adverse impact on the environment, the project proponent should demonstrate how, such possible adverse impacts would be prevented or mitigated. The U.S Congress built that into their now famous Environmental Policy Act, 1969 which came into force in January 1970.

In the United States there is no federal framework environmental law but the practice of EIA became part of the practice of various countries that adopted framework laws. In actual practice, such countries incorporated principal aspects of EIA in the framework law and then guided by enabling provision in the law, they adopt environmental impact regulations separately. That has been the practice in many African countries. To date there are approximately 40 African countries which have enacted framework environmental laws with EIA regulations.

The United Nations Environment Programme has published eight volumes of environmental laws of African countries. Of the eight volumes the first is exclusively for framework laws and EIA regulations. In addition, there are two supplements of the EIA Regulations which were produced subsequently.

Apart from the statutes developed by the African countries on own initiative African countries have also enjoyed the support of the Project of Environmental Law and Institutions in Africa (PADELIA)[12] The project funded by the donation of The Netherlands (Dutch) Government had the express mandate to develop environmental laws that seek to incorporate principles of sustainable development expected as a follow up to (1992) United Nations Conference on Environment and Development.

[12] Generic title of the project is UNEP/UNDP/Dutch Joint Project on Environmental Law and Institutions in Africa.

That project is discussed in reasonable details by Elizabeth Maruma Mrema in her paper entitled "Away from Traditional Project Management: Lessons from the Programme for the Development of Environmental Law and Institutions in Africa (PADELIA)"[13] In its two phases the project covered a total of 13African countries, namely: Botswana, Burkina Faso, Malawi, Mali, Kenya, Mozambique, Lesotho, Niger, SaoTome and Principle, Swaziland, Senegal, Tanzania and Uganda.

As implied in the title to the paper, the project took a big departure from the traditional approach whereby developing countries welcomed experts flying in, help draft the statutes and fly out. In this project national team constituted task forces who were guided by project Task Manager to review national environmental problems, warranting legislative interventions then review existing national environmental statute. The national task forces then held consensus building workshops to extrapolate recommendations for enactment of new environmental laws. Thereafter, national experts, identified by the task force draft appropriate laws which are also subjected to consensus – building workshops, before handed over to drafting and parliamentary procedure.

In this way any legislation adopted by parliament is truly national, with nationals who fully understand its legislative history. As a consequence there are chanced of greater acceptability efficacy of the law.[14]

[13] That author is the immediate former Director of Law Division of UNEP and was The Second Task Manager of PADELIA. The Paper is Chapter of *Blazing the Trail: Professor Charles Odidi's Enduring Legacy in Development of Environmental Law* Edited by Professor Patricia Kameri-Mbote and Dr. Collins Odote (School of Law University of Nairobi 2019) pp.68-94.

[14] See for instance *The Making of Framework Environmental Law in Kenya* (United Nations Environment Programme and African Centre for Technology Studies 2001) 213 pages and Okidi, C.O. "Background to Kenya's Framework Environmental Law" in Okidi, C.O., P. Kameri-Mbote and Migai Akech (Eds) *Environmental Governance in Kenya: Implementing the Framework Law* (Nairobi: East African Educational Publishers 2008) pp. 126-141.

Rigorous workshops were held to appraise problems of regulation of effluents from industries. Participants from several African countries, including industrialized South Africa gave presentations on problems and prospects of promoting compliance with environmental standards. Dr. Cleophas Migiro from Tanzania gave convincing paper as to why cleaner production mechanism is desirable for mitigation of climate change.[15]

Similarly, Francis Okello, a senior executive of a Kenyan bank and chairman of Institute of Bankers gave a reasoned paper on lender liability for environmental injuries caused by industries they fund.[16] The point here is that the topics for discussion on environmental protection were developed by local Africans.

Participants from the project countries were similarly emersed in discussion of implementation of environmental treaties. The theme of conventions related to biological diversity was chosen because of their wide-ranging character. As with above topics presentations by participants were compiled into a book distributed for reference in the project countries.[17]

The project allocated a fair amount of time for judges from the countries to discuss diverse judicial decisions on matters related to environment. The project was intent on giving the exposure to both judges and practicing lawyers. But a greater emphasis was placed on judges because if legal practitioners press them and they pass ill-advised decisions correcting such errors may be difficult or take a long time.

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[15] Migiro, Cleophas, "Cleaner Production Technologies and Industrialization for a Sustainable Environment" in UNEP, *Industries and Enforcement of Environmental Law in Africa. Industry Experts Review Environmental Practice"* pp. 83-95.

[16] Okomo-Okello "The Role of Bankers in the Promotion of Compliance with Environmental Law by Industries" in *Industries and Enforcement of Environmental Law in Africa op.cit* pp.106-118. There are several other related papers in this important book.

[17] UNEP, *Handbook on Implementation of Conventions Related to Biological Diversity in Africa* (UNEP, Nairobi) December 1999.

Judges and advocates attending colloquia organized under the project had opportunities to discuss judgments and decisions relating to doctrines and concepts related to environmental law from different jurisdictions. The following are such examples:

***Locus Standi*** - 14 cases discussed are distributed as follows:
One case from United States, Five cases from South Africa
Four cases from Kenya, One case from Phillipines
One case from Bangladesh, One case from Malaysia and
One case from Tanzania

**Environmental Impact Assessment**
Six Cases all from United States of America

**Public Trust Doctrine**
Six cases: One from India, Two from Pakistan and Three from Kenya

**Precautionary Principle**
Five cases: One from United Kingdom, One from Pakistan and Three from Australia

**Polluter Pays Principle**
Two Cases: One from South Africa and One from India

**Riparian Rights**
One from India and One from Kenya

**Police Powers and Compulsory Acquisition**
Three Cases: One from United States and Two from New Zealand

**Place of Culture in Environmental Law**
Six Cases: Four from New Zealand; One from Australia and One from Tanzania

**Planning Controls**
Seven cases: Three from New Zealand; One from Uganda; One from Sri Lanka; One from South Africa and one from Bangladesh.

**Choice of Forum**
Three Cases: One from Canada, One from United Kingdom and One from Ghana

**Problems of Enforcement**
Three cases: Two from India and one from Antigua and Bermuda

**Burden of Proof**
Two Cases: both from United States

**Rights of Local Communities to resources**
Four cases: One from Kenya; two from South Africa and one from Sri Lanka

One doctrinal case from Pakistan entitled: In Re Human Rights Case (Environment Pollution in Beluchistan, Human Rights Case No. 31-K/92 (Q) Constitution of Pakistan create very heated debate because a judge acted *suo moto.* The judge had notice a newspaper controversy about improper dumping of radioactive wastes likely to endanger public health. The judge summoned local chief-secretary and gave orders against the action likely to violate Article 9 of the Constitution of Pakistan (1973).

**International Decisions**

**Eight cases were discussed**

Of international judgments discussed the ICJ *Case Concerning Gabcikovo-Nagymaros Project* (Hungary *v* Slovakia) 1997, particularly the separate but concurring opinion of Judge Weeramantry captured imagination of most African judges. The judge developed an argument that the doctrine of sustainable development was as old as history itself. Later a three judge Kenyan Bench in **Peter K. Waweru v. Republic** in High Court Case (Misc. Civil Application No. 118 of 2004) quoted from Judge Weeramantry rather generously. Two out of three judges had just participated in the colloquium under the project when they decided **Peter Waweru case.**

The project compiled and published six volumes *of Compendium of Judicial Decisions on Matters Related to Environment*. Four volumes were of national decisions and two volumes were of International decisions. These obtainable from United Nations Environment Programme (UNEP). Copies were distributed to project countries.

One more point which is a clear plus for African countries in environmental legislation is their interest in the technical subjects of settlement of disputes. Their use of environmental courts and tribunals is noteworthy. Kenya first had land and environment as a Chamber of the High Court. This was, the influence from New South Wales, in Australia. Judge Brian Preston, the presiding judge of land and environment court in New South Wales attended two of the judicial colloquia referred to above and his presentation and discussion which followed might have influenced Chief Justice of Kenya. Initially the concept started as a Chamber and then a full-blown court, made so by an act of Parliament.

The second one was establishment of Environmental Tribunal as a forum to appeal against unsatisfactory administrative decisions. The two ideas have been persuasive enough to attract scholarly researchers from an American university.[18]

For countries which only a few year ago were rumoured to be hostile anything to do with environmental regulations what we discussed above is sign of tremendous commitment to environmental law at the level of governments.

[18] See a book by George (Rock) Pring and Catherine (Kitty) Pring, *Environmental Courts and Tribunals*. A Guide for Policy Makers. (Published by United Nations Environment Programme Nairobi) See also Muigua, Kariuki. *Alternative Dispute Resolution and Access to Justice in Keya* (Nairobi, Glenwood Publishers Ltd) 2015.

## 4. ENVIRONMENTAL LAW AT AFRICAN UNIVERSITIES

Earlier in this essay we observed the remarks at an environmental law function in New York where some people were surprised that environmental law courses were being taught in Nairobi. They explained their impression that in Africa people were strongly averse to any idea of environmental regulation. And that was in mid-1980's. In point of fact, University of Nairobi had offered a course on environmental law at Master of law degree level since 1979. One of the students who took the course then had proceeded to completed PhD in environmental law in 1995 and returned to teach rising to the level of full professor in the year 2011, and teaching even more courses.

Moi University's School of Environmental Studies developed a postgraduate interdisciplinary programme in environmental studies in 1988 and included environmental law as a required course at both, Master's and PhD. level.[19] But all along there was no forum in Africa where universities could showcase the courses in environmental law which they were teaching.

In December 2003 University of Nairobi Senate approved establishment of Centre for Advanced Studies in Environmental Law and Policy (CASELAP) as exclusively postgraduate and an interdisciplinary faculty level programme.[20] CASELAP is, teaching MA and PhD in environmental law concomitantly with any environmental law taught in the University's School of Law.

It was CASELAP which, in collaboration with United Nations Environment Programme (UNEP), convened a Symposium of Environmental Law Lecturers from African

[19] See Moi University Calendar, 1988/89 and 1989/19 pages 291-363.

[20] Oguge, Nicholas O. "Consolidating Scholarship and Research in Sustainable Development: The Centre for Advanced Studies in Environmental Law and Policy (CASELAP) in Kameri-Mbote and Collins Odote (Eds) *Blazing the Trail: Professor Charles Okidi's Enduring Legacy in the Development of Environmental Law*. (School of Law, University of Nairobi 2019) pp. 141-154.

Universities.[21] It was at that Symposium that lecturers from University of Asmara, Eritrea, University of Zimbabwe and University of Ghana at Legon reported that they had introduced courses undergraduate courses in Environmental Law as early as 1996. At University of Nairobi elective courses including environment and natural resources, law of the sea and land use planning law were available in the final year LLB programmes. Similarly, Makerere and Uganda Christian University were offering a course on environmental Law and Policy to LLB students. But Makerere was also offering LLM and LLD degrees in environmental law. The conference was also informed that courses on environmental law and biotechnology were offered at undergraduate level at Delta State University in Anambra Nigeria. Similarly undergraduate course and senior level directed study were offered at Ahmadu Bello University in Zaria. But LLM and Ph.D in environmental Law are also offered at Ahmadu Bello University, school of law.

In South Africa there was a full-fledged Institute of Marine and Environmental Law at University of Cape Town. But University of Sierra Leone was offering environmental law course at LLB level. In Tanzania University of Dar es Salaam offered five environmental law courses to LLB students.

We are aware that the foregoing list is not exhaustive. Nor do we believe that all lecturers teaching environmental law in Africa attended Nakuru Symposium. For instance, Professor Christopher Tamasang was not there to report environmental law in Cameroon. But he was active in subsequent Africa environmental law colloquia.

[21] See Reflections of African Scholars on Environmental Law; Proceedings of the Symposium of Environmental Law Lecturers held at Merica Hotel, Nakuru, Kenya from 29th September to 2nd October 2004. Unpublished report is available at Libraries of University of Nairobi School of Law and CASELAP. See also Okidi, C.O. "Capacity Building in Environmental Law in African Universities" in Benedickson, Jamie, Ben Boer, Antonio Herman Benjamin and Karen Morrow, (Eds) *Environmental Law and Sustainability after Rio* (Edward Elgar 2011) pp 31-46.

A scholarly community always desires outlets for their scholarly research. Publishing books is a common practice. But often times scholars utilize journals as outlets of specific papers which must come out speedily. Journals will survive only where there are such concise papers. In Africa journals known to carry environmental law articles include:

*University of Nairobi Law Journal; East African Law Journal; University of Malawi Students Law Journals; Journal of Law and Social Justice; East African Law Review; Journal of Law and Development; Nyerere Law Journal; East African Journal of Peace and Human Rights; Makerere Law Journal and Zimbabwe Law Review*.

Before we conclude discussions on Nakuru Symposium it is important that we digress to yet another great environmental law event in Kenya during October 2004.

University of Nairobi was to host Second Colloquium and Collegium of IUCN Academy of Environmental Law from 4th to 8th October 2004. It was by design that Nakuru Symposium be held back to back with the colloquium. That was so designed by the present author who was co-founder of the Academy and at the same time organizer of Nakuru symposium as well as the Second Colloquium of the Academy. The purpose was to facilitate maximum attendance of African scholars attending Nakuru Symposium to also attend the Colloquium of the Academy.

The plans worked out. Out of the 31 papers presented and published at the prestigious colloquium and published 16 papers were by African Scholars nearly all of whom had attended the Nakuru Symposium.[22] Clearly African scholars made an impressive showing at the global environmental colloquium. Such colloquia remained annual scholarly event, most likely interrupted in 2020 by the pandemic of coronavirus. It was scheduled to be at Gronigen University in the Netherlands in July 2020 but may now be held in 2021.

[22] Scholarly papers presented at the Colloquium of the Academy were selected on scholarly basis, edited and published as a book. See Chalifour, Nathalie J., Patricia Kameri-Mbote, Lin Heng Lye and John R. Nolon (Eds) *Land Use Law for Sustainable Development.* (Cambridge University Press 2007) Scholars who presented papers in this book were from Africa, Asia, Australia, Latin America and North America.

Before African environmental law scholars moved to IUCN Academy Colloquium concluded their Nakuru Symposium spelling out their future plans. Among other objectives the scholars committed themselves to promote research and teaching of Environmental Law in African Universities; to adhere to global standard of scholarly excellence; to liaise with national governments in development of environmental laws and policies which promote sustainable development.[23]

Finally they resolved to establish Association on Environmental Law Lecturers in African Universities (ASSELLAU) with a secretariat at University of Nairobi's Centre for Advanced Studies in Environmental Law and Policy (CASELAP) at least in the formative stages.[24] The Director of CASELAP who was also the organizer of the Symposium requested Professor Patricia Kameri-Mbote to take charge of establishment and operationalization of ASSELLAU.

Fortunately, ASSELAU did not create scholars. There were African legal scholars specialized in environmental law and who were ready for a forum. ASSELLAU became an immediate forum. After Nakuru meeting and the IUCN Colloquium their next meeting was in Entebbe, Uganda in September 2006. At that point they distinguished between business and scientific session.

Since Entebbe ASSELLAU met every other year. The last meeting was in Younde, Cameroon in August 2018 attended by 35 scholars, each with a paper. The quality papers were edited and published.[25] The enthusiasm with which ASSELLAU members and other

[23] For these highlights see Okidi *op cit* pp. 39-40.

[24] Kameri-Mbote, Patricia "Building An Army of Environmental Law Scholars: Professor Charles Odid Okidi's Legacy" in Patricia Kameri-Mbote and Collins Odote (Eds) *Blazing the Trail: Professor Charles Okidi's Enduring Legacy in the Development of Environmental Law* (University of Nairobi School of Law 2019) 95-108 gives the details of the Work of ASSELLAU.

[25] Kameri-Mbote, P, Alexander Peterson, Oliver C. Ruppel, Bibobra Bello Orubebe and Emannuel D. Kam Yogo (Eds) *Law Environment Africa* (Nomos, ASSELLAU & Konrad Adenauer Stiffrung 2019).

environmental law scholars have embraced their scholarly work has led an author to characterize them as an army.

Finally, ASSELLAU has had influence beyond Africa. It has been invited to work with Middle East Environmental Law Scholars to start a similar organization in the Middle East and North Africa. In fact the new association was launched at an environmental law conference on 4 and 5 November 2018 at Hamad Bin Khalifa University in Doha, Qatar.

## 5. ENVIRONMENTAL LAW AT AFRICAN REGION LEVEL

The objective of this section is simply to show that the continental organization of Africa has shown interest in environmental law from the beginning. In fact it did. The dawn of independence of most African countries in 1960's found there had, in fact been adopted first, a Convention on the Preservation of Wild animals, Birds and Fish in Africa signed in London on 19th May 1900. This had been superceeded by yet another Convention Relative to the Preservation of Fauna and Flora in their Natural State sign in London on 8th November 1933. As one would guess, independent African states would not wish to have a "hands-off" agreement on natural resources. So in 1968 African countries meeting in Algiers under aegis of Organization of African Unity (OAU) signed a new African Convention Conservation of Nature and Natural Resources. This was a reasonably modern agreement signed by 38 African states and ratified by 30 states. The key difference was that newly independent African countries wanted *conservation* of their natural resources where conservation as distinct from preservation implied utilization of renewable natural resources sustainably and to avoid waste of non-renewable resources. Preservation, on the other hand, implies hands-off the resources.

The OAU kept alert to environmental matters particularly in 1980's when there was rather rapid development of global environmental agreements. Recall for instance that the United Nations Convention on the law of the Sea was adopted in 1982; the

International Tropical Timber Agreement in 1983; the Vienna Convention on the Protection of the Ozone Layer, 1985; The Montreal Protocol on Substances that Deplete Ozone layer, 1987 and the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, 1989. Before this litany of agreements there was the 1973 Washington Convention on International Trade on Endangered Species of Fauna and Flora.

Basel Convention was immediately objectionable to African countries as it dealt only with transboundary movement of hazardous wastes. African countries were deeply concerned with the broader issue importation of hazardous wastes into Africa. So in 1991 African countries successfully pushed for adoption of Bamako Convention on the Ban of Imports into Africa and of the Control of Trans-boundary Movement and Management of Hazardous Wastes within Africa. African countries pushed for that convention to enter into force on 22nd April 1998. There was clearly a huge evidence of positive environmental sensitivity by African countries.

The big range of environmental agreements in 1980's prompted the OAU to look inwards at what its own organs were saying in environmental matters. So in July 1987 a consultant reported that there had been an overwhelming range of resolutions adopted on marine environment, water resources conservation and management, drought and desertification, wildlife management disposal of industrial and municipal wastes and problems of human settlement.[26]

It was the wide range of environmental law activities during 1980's and 1990's that prompted OAU to activate the process of revision of the 1968 Conventions as had been considered already. By July 2002 the first draft revision was presented African Ministerial

[26] Okidi, C.O. An Appraisal of Selected Sub-Regional Agencies and Institutional Machineries for the Control of Environmental Degradation in Africa. Unpublished Consultancy Study Submitted to ESCAS Department, Organization of African Unity October 1987.

Conference on Environment (AMCEN). Finally the Revised African Convention on the Conservation of Nature and Natural Resources was adopted by the Summit of African Union in Maputo, Mozambique on 11th July 2003.[27]

The revised Convention took into account new developments in treaty law as described above as well as the soft law developments from the 1992 U.N Conference on Environment and Development. In fact one can consider it suitable for a framework environmental law of Africa. If that was to be the case then all agreements regional and continental, in Africa would be harmonized, and made to be in conformity with the July 2003 Maputo Convention.

## 6. INDIVIDUAL RECOGNITION IN ENVIRONMENTAL LAW

As governments and universities get acknowledged for their work in environmental law there are also individuals who have received global recognition for their special contribution to environmental law. The well-known global recognition is The Elizabeth Haub Prize for Environmental Law which was established in 1974. The main driving force for this Award is the International Council of Environmental Law (ICEL) whose principal architect was Dr. Wolfgang Burhene. The award scheme funded by Elizabeth Haub Foundation worked in collaboration with Free University of Brussels from 1974 to 2006 and thereafter, from 2007 ICEL and Stockholm University to honour those who made outstanding contribution to Environmental Law.

Selection of the awardees has been done by eminent jurists, scholars and practitioners who sat annually to review areas of exceptional contribution to environmental law and select suitable awardees. Oftentimes, the award goes to one person. At times there are

[27] For history and the text of Maputo Convention see IUCN, *An Introduction to the African Convention on the Conservation of Nature and Natural Resources.* IUCN Environmental Policy and Law No. 56 (IUCN Gland Switzerland: IUCN Environmental Law Programme, 204).

more than one as was the case in 1975 when the panel selected three awardees. The prize, every year, comprises a gold medal and monetary prize.

There have been five recipient of the award from Africa. The first one was Professor Charles Odidi Okidi from Kenya whose notable contribution was a book entitled *Regional Control of Ocean Pollution: Legal and Institutional Problems and Prospects* (Sijthoff Noordoff 1978) which provided a blue print for UNEP's Regional Seas Programme. He received the Award in 1984.

The second recipient from Africa was Dr. Andronico Oduogo Adede from Kenya who received the award in 1990. He played an important role as Legal Advisor to Kenya delegation in Stockholm Conference. Later he was the Legal Advisor to International Atomic Energy Agency and was instrumental in drafting negotiation and conclusion of post-chenorbyl accident treaties.

The third recipient from Africa was Professor Mohamoud Ali Mekouar from Morocco who received the award in 2002. He made major contributions to environmental law when he was Chief of Development Law Services of Food and Agriculture Organization of the United Nations. He gave assistance to more than 50 countries in developing their environmental laws.

The fourth recipient was Thomas Mensah from Ghana who received the award in 2006. He was recognized for his contribution to development of laws relating to sea-going vessels when he worked with International Maritime Organization (IMO).

The fifth recipient from Africa was Donald Wacieni Kiniaru from Kenya who was honoured in 2009. He was recognized for his several years as Deputy Director and then as Director of Law Division of UNEP. In that capacity he provided leadership in

development of several environmental law instruments as well as policies such as The Montevideo Programme.

There has been a sixth Elizabeth Haub Award to Africa. But this time it is for Environmental Diplomacy. It was awarded to Macharia Kamau of Kenya for his role as Chair in the negotiation of Millenium Development Goals in 2015.

Elizabeth Haub awards are specific and rather law key as compared to Nobel Prize which takes rather political and highly visible profile. We must note here that the first ever Nobel Prize on environmental advocacy was one by Professor Wangari Mathai of Kenya. Coincidentally, announcement of the Award to the Professor was made on the evening when the Second Colloquium of IUCN Academy was concluded. The last public event where Professor Mathai had officiated was giving opening address to the Second Colloquium of the IUCN Academy of Environmental Law.

## 7. FINAL REMARKS

This paper started by demonstrating that it was those who thought that to the Group of 77 sound environmental management would be Third World War that had misconception of what environmental management would entail. At the same time those who assumed that environmental law would not be taught in African Universities were actually ill-informed.

It has been demonstrated that African governments have, over the years accepted environmental legislation from statutes and their implementing regulations to constitutional entrenchment. There is also deep appreciation of treaty obligation to the extent that African countries moved to repeal colonial treaties, which were concluded in colonial times and further ensuring that environmental treaties applicable to Africa are updated.

Teaching of environmental law is at the same level as in other parts of the world and there is evidence that it all started in 1970's. When opportunities arose for participation in scholarly conferences, African scholars gave a reasonable account of themselves. And African scholars seized opportunities to establish a regional forum where they could share ideas from time to time. They also recognize importance of research as a way to generate information which can enhance capacity to support governments legislative development and scholarship. It is further remarkable that the continental movement of African environmental law scholars has been replicated in the Middle East.

Clearly then, environmental law is known to African scholarship and practice in a big way.