Outcome Summary Document

Compiled by Dr. Harald Ginzky, Prof. Dr. Oliver Ruppel,

Dr. Robert Kibugi and Walter Engelberg

March 2019

Workshop "Implementing Land Degradation Neutrality in Africa: Means, legal instruments and institutional challenges?"

Organized in cooperation between the German Environment Agency (UBA), the Konrad-Adenauer Stiftung – Climate Policy and Energy Security Program for Sub-Saharan Africa -, the GIZ and University of Nairobi

14 to 15 August 2018

Location: Windsor Hotel, Nairobi

The international workshop “Implementing Land Degradation Neutrality (LDN) in Africa: Means, legal instruments and institutional challenges?“ was held on 14/15 August 2018 at the Hotel Windsor in Nairobi, Kenya. The workshop was attended by about 40 experts from African countries and abroad. Representatives of the African Soil Partnership, of the New Partnership for Africa´s Development (NEPAD) and the African Union as well as of International Union for the Conservation of Nature (IUCN), the United Nations Environment Programme (UNEP) and the United Nations Convention to Combat Desertification (UNCCD) attended the workshop.

The workshop was officially opened by Prof. Kiaie Mwarua, Dean of the Law Faculty of the University of Nairobi. He underlined the timeliness of the workshop due to increased illegitimate land acquisition practices and the interfaces of land degradation with climate change and food security.

During the opening podium discussion keynotes were provided by:

- Hon. Jude Njomo, Pan African Parliament on behalf of Hon. Senator Janet Ongera, Pan African Parliament
- Prof. Patricia Kameri-Mbote, Professor of Law, University of Nairobi
- Dr. Francis Tetteh, African Soil Partnership
- Alexander Juras, UNEP
- Mamadou Diakhite, NEPAD African Union
- Hon. Justice Antony Ombwayo, Environment & Land Court, Kenya

In the keynotes the following aspects were addressed and emphasised:

- Sustainable soil management is a cross-cutting issue and has interfaces with i.e. environment conservation in general, climate change, property ownership, agriculture, chlorophyll influence, public health-pests, wastes and extractives.
- Market demands and trends could greatly impact the healthy status of soils. There is a particular need to promote technological innovation based on the assessment of those demands and trends.
- Access to land and land property rights need to be fully understood for the establishment of an effective regime on sustainable soil management.
- A stronger involvement of women is required in the planning, decision making and monitoring of land use activities such as agriculture.

The overall objective of the workshop was to discuss the current state of affairs and how existing deficiencies and shortcomings in terms of institutional and organisational aspects, knowledge and science as well as capacity for an effective soil protection policy and legislation in Africa could be overcome. The workshop addressed several dimensions in light of this question. The major outcomes are briefly summarised below:

Sustainable Development Goals: General Aspects

1. Sustainable soil management is a precondition for sustainable development in Africa and worldwide as the degradation of soils is a cause for hunger, migration and even wars. 23 % of the terrestrial surface is already affected by degradation which actually concerns about 1.5 billion people.

2. The world community has committed itself to the 2030 sustainable development (SDG) agenda. Target 15.3 obliges states to strive to achieve a land degradation neutral world by 2030. As soil is an elementary part of land, this objective currently is the most important anchor in international law for sustainable management of soils.

3. UNCCD has established itself as the international lead organisation for the implementation of the LDN objective. Projects on LDN voluntary target setting have been launched in more than 110 countries.

4. UNCCD has furthermore worked out the “Scientific Conceptual Framework for Land Degradation Neutrality“, which should provide a conceptualised model approach on how to best implement the LDN objective at national or regional level.

https://www.unccd.int/sites/default/files/documents/18102016_Spi_pb_multipage_ENG_1.pdf

5. The following principles should, inter alia, govern application of the framework, and thus prevent unintended outcomes during implementation of LDN:

- Maintain or enhance land-based natural capital. Neutrality is thus only the minimum objective.
- Protect the rights of land users.
- Integrate planning and implementation of LDN into existing land use planning processes and apply the response hierarchy: Avoid degradation > Reduce degradation >Reverse degraded land.
- Establish an effective participatory process for all relevant stakeholders.

Factual Challenges on soils in Africa

6. About 65% of arable lands, 30% of grazing lands and 20% of forests are already degraded in Africa.

7. Land, or soil, is the main resource base for many people in Sub-Saharan Africa, especially the rural population.

8. With an estimated population growth for SSA from the current 900 million to 1.4 billion by 2030, the region’s soils are expected to experience increasing pressure as a natural resource to provide for the needs of its people.

9. As the main challenges for the African continent and the soil protection were identified: demographic growth, deforestation, urbanization, weak land/soil governance and governmental coordination and interaction between the different sectors resulting in non-effective soil management, lack of awareness of importance of soil, lack of institutional capacities and inefficient enforcement.

10. The aforementioned challenges have in particular negative impacts on migration of population, mainly women and youth, on orientation on exports crops and monocrops.

11. It has to be taken into account that the level of land degradation significantly varies between the African countries and regions.

12. For small scale farmer reduction in soil loss or long-term environmental degradation are not tangible inducements to adopt sustainable soil management practices when their immediate concern is simply feeding their families.

13. Adoption of sustainable soil management technologies by smallholder farmers is conditioned by risk, thus their commitment must ensure both short-term and long-term economic benefits.

14. Sub-Saharan Africa nevertheless has the potential to position itself as champion in terms of increasing food production and security, achieving land restoration, and increasing agricultural resilience to climate change.

Soil Protection Regulatory Concepts and Challenges in Africa

15. The outcomes of the four presentations held during the workshop are subsequently documented. The presentations concerned:

- Kenyan water and soil law;
- Land cover policies in Cameroon;
- Regulation on persistent organic pollutants in Kenya;
- German concepts on LDN implementation.

16. The Kenyan Constitution of 2010 promotes sustainable and productive management of natural resources.

17. In addition, Kenya has established a specific environment and land court (ELC).

18. There is no specific constitutional, policy or legal tool that deals with soil protection in Kenya. It is embedded within the environmental, agricultural and water statues including policies and legislation. There is however a constitutional obligation on the government to take action to eliminate harmful environmental practices.

19. Although land in Kenya belongs to people collectively as a nation, communities or individuals, the Land Registration Act confers absolute proprietorship with all rights and privileges on the land owner. This has created the perception that the land owner is not obligated to abide by certain legal requirement concerning the use of his land. However, the police power of the Kenyan state to regulate land use is founded in the constitution, and this could, with modifications in legislation, be applied directly to govern soil health. The 2009 National Land Policy has clarified that the dual existence of the freehold and the absolute proprietorship causes confusion.

20. Soil as natural resource is thus not explicitly and sufficiently integrated in Kenyan legislation.

21. Land cover policy in Cameroon could set incentives for sustainable soil management. It needs to be supported by economic instruments and tools in order to raise awareness for the importance of the maintenance of fertile soils.

22. The use of persistent organic pollutants (POPs) could have detrimental effects on soils. Sources of emissions of POPs are very diverse requiring to regulate the whole use chain from the production, the use of POPs in industrial facilities and in agricultural activities and finally the waste management.

23. The Rotterdam and the Stockholm Convention set appropriate international standards for the production, use, management and trade on POPs. Some open questions remain. Kenya has ratified the Stockholm Convention in 2004 and sent its first National Implementation Plan 2007.

24. Kenyan law is not prepared to thoroughly deal with these challenges in order to avoid particularly negative effects on soils by POPs.

25. A better coordination in Kenya is needed in order to effectively deal with the potentially negative effects of POPs.

26. The analysis of German environmental law shows that there are not sufficient legal instruments in place to implement thoroughly the LDN objective. However, there are some positive regulatory concepts which may potentially be used by African legislation too.

27. First, the so-called intervention clause of the German Nature conservation act requires that negative effects on nature by human activities needs to be offset. This has to be implemented on project level. This would fit with the “compensation idea” of the LDN objective.

28. Second, according to the EU industrial emissions directive, an operator of an industrial facility is obliged to re-establish the initial status of soil and groundwater under and close to his slot in case of significant detrimental effects during the operation of the facility. By this obligation the law establishes a strong economic incentive to avoid such negative effects (=land degradation).

29. German environmental law contains several planning instruments including spatial planning, urban planning as well as planning instruments for nature conservation, water management and what is more. A specific planning instrument to implement the neutrality concept on land degradation is yet to be established.

30. In addition, a banking concept of already finalised restoration measures in order to compensate future degrading activities such as soil sealing due to habitation and infrastructure has been proposed.

Deficiencies with regard to an enabling environment for more effective soil protection regimes in Africa

31. The workshop focussed on the question which deficiencies and shortcomings exist in Africa with regard to establish an enabling environment for more effective soil protection regimes in Africa and how these could be overcome.

32. Several aspects were differentiated and intensively discussed:

- Legislation;
- Institutional and organizational arrangements, capacity;
- Awareness raising;
- Funds/resources;
- Science-Policy Interface;
- Traditional knowledge;
- Data availability.

- **Legislation**

33. Generally, there is no dedicated, comprehensive and coherent soil policy in place, which could inform law. No comprehensive soil protection law has been issued. Soil relevant provisions are very much fragmented.

34. The land ownership concept in most African states poses a significant barrier to sustainable soil management as land ownership is perceived as an absolute use (and misuse) right on the respective land slot. Soil related provisions are thus not effectively implemented and enforced.

35. Gender inequality in land right issue needs to further be addressed to prepare for an enabling environment.

36. Overarching principles for land and soil protection legislation such as prevention, precaution, obligation to rehabilitee and planning approaches need to be worked out and agreed upon.

- **Institutional and organisational arrangements, capacity**

37. Competent institutions are in a relatively weak position, in particular with regard to implementation and enforcement.

38. The competences are often shared by several ministerial entities. However, the communication and cooperation with regard to legislation, implementation and enforcement between these entities needs to be developed further.

39. Usually these entities face a substantial under-staffing which hinders the necessary implementation and enforcement.

40. The division of labour between central and local entities needs to be clarified in order to avoid duplication of work and the challenge of “no one being in charge”.

41. Public participation and access to environmental information is not sufficiently developed.

- **Funds/resources**

42. Capacity building is required on all levels: government level including legislators, policy makers, executive enforcement and judiciary as well as civil society organizations and right holders.

43. Drafting, implementation and enforcement of future soil protection legislation require personal resources. These resources must be in place to be successful.

44. It could be particularly effective to train the trainers in order to increase the knowledge basis. Continuous measures on capacity building are required. It is not a one-off exercise.

45. Moreover, platforms which bring together all levels, all perspectives and stakes could be an appropriate format, in particular if run in a participatory and interdisciplinary manner.

46. Materials to be disseminated should be adequate for the audience to be addressed taking into account i.e. language, culture and context. Information on ecological background and “economics of land degradation” are of crucial importance.

47. Judges and other court officials require training and tailored workshops or initiatives to help develop the requisite capacity because of the wide jurisdiction of the ELC.

- **Awareness raising**

48. The effect and economic cost of land degradation is underestimated at all level of government mainly because it is a slow steady process and its effects acknowledged only at the point of where rehabilitation costs are high.

49. Adequate information on sustainable soil management are of eminent importance with regard to education in schools and universities, preferably integrated in the respective curricula.

50. Information on status of soils and appropriate measures to achieve sustainable soil management are key.

51. Policy makers need to be involved from the beginning. The overall benefit of sustainable soil management for the society as a whole must be discussed and determined from the beginning, involving the relevant policy makers.

- **Science-policy interface**

52. The cooperation of science and competent authorities needs to be developed further. An institutional form of uptake of new scientific knowledge needs to be established.

53. Scientific information on sustainable soil management, in particular with regard to agricultural measures, is usually not made available for farmers, in particular small-scale farmers.

- **Traditional knowledge**

54. Traditional knowledge is often neglected and not appropriately valued. Traditional knowledge opportunities are not factored into soil protection legislation.

55. A conceptual approach how to collect, evaluate, synthesize and make publicly available traditional knowledge is yet to be established. Research institutions should be involved in such an endeavour.

- **Data availability**

56. Soil information at national level is often inadequate, outdated, not in digital format and not georeferenced.

57. Data availability is further restricted by intellectual property often held by private institutions that are not willing to share data for national use, or data needed to be paid for prior to use.

Assistance by Regional – African – Institutions, including UNEP

58. In the following section concepts are discussed how regional bodies such as the African Union or UNEP could assist African states to promote an “enabling environment”.

59. It was recommended to develop an assessment toolkit which would enable African states to evaluate whether and how international obligations and guidelines are transposed into national law and whether and to which extent the national law

provides for an effective regulation on soil protection, sustainable management of soils and the implementation of the LDN objective.

60. UNEP has worked the report “Towards a pollution-free planet”. UNEA 3 also dealt with this theme in 2017 and approved a resolution on “mapping of soil pollution”. Insufficient dumpsites, misuse of pesticides and fertilizers as well as inadequate industrial installation may be sources of soil/land pollution.

61. According to the UNEP resolution of 2017, Member states are invited to develop and implement appropriate policies, stakeholder should be in particular involved in gathering and delivering the required information. UNEP should draft a report on soil pollution, work out a technical guidance how to deal with soil pollution and should assist research, cooperation and awareness raising.

62. The New Partnership for Africa´s Development (NEPAD) is running several projects whose overarching objective is to maintain and increase the status of natural resources in Africa in quantitative and qualitative terms. The following programmes and initiatives could be mentioned in this regard: The comprehensive Africa Agricultural Development Programme (CAADP), TerrAfrica, African Forest Landscape Restoration Initiative (AFR100) and Great Green Wall for the Sahara and Sahel Initiative (GGWSSI).

Land degradation and NDC by African States

63. Climate change and soils are strongly interlinked. Climate change will negatively affect the quality and the availability of soils. At the same time, soils are a major sequester of carbon.

64. A significant turn to – permanent – sustainable management of soils could potentially allow for an important uptake of carbon – both to mitigate climate change and to improve soil quality.

65. Improved soil quality and sustainable management of soils could be an important vehicle for ensuring food security on the African continent. It might additionally offer the chance to increase significantly the export of food products thus raising additional income.

66. UNFCCC only tackles land use issues marginally. Although the Paris Agreement does not expressively mention “land” or agriculture” there seems to be a stronger focus on land use as a potential source and sink of CO2 emissions.

67. The Nationally Determined Contributions (NDC) – requested by the Paris Agreement - are the tool to document the current national activities on climate change. It is recommended to involve the land use sector in order to achieve two or even three objectives by one means: to mitigate climate change, to maintain and protect fertile soils and to ensure food security in African states.

68. When drafting respective national climate change legislation several aspects concerning existing deficiencies (as mentioned above) might be addressed in a “soil friendly” manner.

Outlook and next steps

69. Participants felt that the workshop was crucially important, and work should be continued.

70. A need was seen to reach out to policy makers and gain their support for better legislation and for an enabling environment for sustainable soil management.

71. A coherent soil policy and law was seen as crucial. Soil as natural resource should be put at the heart of such a policy and legislation.

72. In addition, a change of the overall narrative is required in order to explain the costs of land degradation and to highlight the economic benefits of sustainable soil management.

73. Soil policy and law must be sector specific. The interests of small-scale farmers must be particularly taken into account.

74. An integrated approach on such legislation involving all expertise, all perspective and stakes is of paramount importance.

75. LDN as an internationally agreed objective should be integrated in the legal networks using the approved terminologies, nomenclature and methodologies.

76. In order to support African societies to strengthen sustainable soil management, the development of a model legislation on sustainable soil management could be an important step forward.

77. Awareness raising is key. Appropriate curricula in universities are of great importance in this respect.

78. Scientific information must be the basis of sustainable soil management. An appropriate organizational structure of research and science as well as an elaborated networking amongst African research institutions are key.