

## Tilburg University

### Foreword

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## Foreword

The African Charter on Human and Peoples' Rights, adopted in 1981, was the first major international human rights instrument which explicitly recognizes the right to a general satisfactory environment (Article 24), followed in 1988 by the adoption of the San Salvador Protocol to the American Convention on Human Rights with its right to a healthy environment (Article 11). To date, these still are the only human rights instruments which recognize the full scope of the right to a healthy environment. The European Convention on Human Rights, despite many years of debate, does not have a right to a healthy environment, which forces the court to discuss environmental cases from the perspective of other human rights, such as the right to family life. Despite the fact that Africa has been leading way, so to say, legal scholarship on human rights and the environment in Africa is scarce.

This is a shame for three reasons. First, the world has many things to learn from African debates on human rights and the environment. African perspectives, in some respects, are quite different from European, Asian or American perspectives, with their emphasis on the role of community and of various indigenous concepts like Ubuntu, and with their acknowledgement of the fact there is only a thin line between humans and non-humans, such as animals, plants, rocks and spirits. Over the past ten years or so, the emergence of Earth System science and Earth System governance has forced environmental law and policy scholars around the world to rethink the very foundations and principles of environmental law and governance. We have come to realize that current environmental law and governance is not equipped to protect our planet. Earth forms one integrated system whereas our legal and governance systems are fragmented in many different ways (spatial, temporal, sectoral). African indigenous concepts and principles show us a way forward towards a more holistic approach with full recognition of interests that appear non-human at first but in fact are not: in an integrated system, non-human interests can be very much human interests as well.

Second, the African continent is confronted with environmental problems that need to be resolved quickly. Rapid economic and population growth is predicted for the coming decades in Africa. Environmental pressures connected to the extraction of natural resources, climate change and other issues, will hamper such development. Africa is in the position to undergo sustained population growth without associated environmental degradation, unlike Europe, North America and large parts of Asia before them. Human rights might very well offer an effective legal framework that sets the boundaries for future economic development. Therefore, it is important that the potential of this framework is explored, developed and implemented.

Third, many promising young environmental law scholars are emerging across Africa. Their emerging scholarship should be seen and used by scholars around the world. African scholars have an important role to play in the development and improvement of environmental law.

In no less than 24 chapters, this book does all of the above. A wealth of information, insights, thought provoking ideas and radical new pathways are presented by a large group of African legal scholars. As such, this book will both offer both inspiration and a solid background for environmental law and human rights law scholars from Africa and beyond.

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