

**SUB-REGIONAL TRAIN THE TRAINERS COURSE FOR THE JUDICIARY IN
ENVIRONMENTAL LAW**

MOUNT KENYA SAFARI CLUB

NANYUKI, KENYA

5TH TO 8TH SEPTEMBER 2005

DAY ONE- 5TH SEPTEMBER 2005

8.00 – 9.00 Registration

9.00 - 10.00 Official Opening

(i) Welcoming Remarks

Ms Sylvia Bankobeza, on behalf the United Nations Environmental Programme, welcomed participants to Kenya and to Mount Kenya Safari Club for the Train the Trainers Programme. Much as the trip from Nairobi to Nanyuki may have been four hour long and bumpy, the environment Mount Kenya Safari club provides is ideal for the important work ahead. Ms Bankobeza expressed her pleasure that all the participants have agreed to come over to develop a training programme that can be used in so many countries.

Ms Bankobeza took time to introduce Dr. P. Kabudi (the UNEP Consultant) and her UNEP colleagues Mrs. Elizabeth Mrema and Mr. Robert Wabumoha to participants. She invited participants to improve the draft training manual, which Dr. Kabudi had prepared by providing feedback and input during the duration of their stay at Mount Kenya Safari

club. Participants were particularly requested to enrich the draft manual with experiences and examples drawn from their respective countries.

(ii) Opening Statement by Mr. Bakary Kante [Director, Division of Environmental Policy Development and Law (DPDL)]

Mrs Elizabeth Mrema on behalf of Mr. Bakary Kante presented this Opening Statement.

Mr. Bakary took the opportunity to first welcome all the participants to the magnificent setting of Mount Kenya Safari club. He noted the three decades after the Stockholm Conference on Human Environment, there has been tremendous increase of environmental law and policy at global, regional and national levels. The increase has involved Heads of Governments. Members of parliament were also involved in the process of ratifications, voting of funds in support of international obligations, adoption and in enforcement of national laws. Over time, saw the involvement of Non-Governmental Organizations and Civil Society in the lobbying and monitoring the implementation of environmental activities, negotiation and development of laws. Judiciary has not been fully involved in even where there were gaps requiring intervention of judiciary. He explained that the Train the Trainers Programme is one of the concerted moves to collaborate and sensitize the judiciary, as a key player. UNEP has initiated major global, regional and national capacity building programmes for judges and other legal stakeholders.

From the keynote presentation by the Director, participants to address the following salient matters highlighted should evaluate draft training manual, which Dr. Kabudi had prepared:

1. To what extent the manual would be used to assist the judiciary uphold positive interpretation through their environmental related rule of law and in the evolving law of sustainable development;

2. Whether judiciary is empowered to become an important partner in environmental management and thus plays crucial role in the implementation and enforcement of environmental law;
3. Ensure that the judiciary in its decisions promotes sustainable development by balancing environmental, social, and development considerations;
4. Judicial training as necessary capacity building before national training programmes;
5. Use the opportunity to share and test the materials and tools which UNEP has earlier developed and prepared for the judiciary to facilitate the task of judiciary over environmental cases;
6. whether train pilot train of trainers package covering few countries on environmental law and litigation, coupled with necessary legal materials and tools; will enable the conducting of similar tailor made programmes for their judges, magistrates and other legal stakeholders at national level;
7. whether participants equipped with tools to keep abreast recent developments in environmental law, policy, implementation and enforcement [increased access to environmental information]

(iii) Introductions

Diverse work experiences and current professions

Diverse work experiences and current professions were discerned from introductions of participants,

- Military officers who changed profession to becoming senior judges, law teachers, legal practitioners and consultants.
- Law graduates who combined law practice with university teaching

Expectations

Participants had diverse expectations,

- Broadened outlook on the area of environmental law

- Sharing of experiences in environmental law with other participants from diverse parts of Africa

Purpose of the “Train the Trainers Course for the Judiciary in Environmental Law”

The first day of the course [Monday, 5th September 2005] was devoted to introduction of domains of learning, adult learning and the art of training and facilitation.

Dr. P.J. Kabudi, the Consultant, explained the Purpose of the “Train the Trainers Course.” The course was designed to build and enhance capacity in environmental law through awareness training and dissemination training materials. The idea was, participants would return back to their respective countries imbued with skills to train others. The course was also meant to create a chance for the sharing and bringing to their attention of environmental law and policy and the role of judiciary, related stakeholders in the enforcement and implementation of environmental law cases. In the final analysis, it was hoped the course would develop human resource capacity of the judiciary, which will contribute, to improvement of the quality of their respective decisions.

A number of outputs were expected from the course. The Consultant identified the outputs as including identified,

- (i) informing and enhancing the capacities of trainers on existing international and national environmental laws, policies and principles;
- (ii) imparting skills on ways to sensitize and training judiciary and other stakeholders in their respective countries;
- (iii) empowering the trainers with training modules and materials for conducting respective national training programmes;
- (iv) exploring mechanisms in law and practice to enhance successful conduct of environmental cases; and
- (v) exploring how best to incorporate into training manual all those papers that were presented by resource persons.

Before exploring the domains of learning so important for the course, the Consultant explained the general themes underpinning each day of the four-day training package. He described theme ONE as constituting the laying of the foundation. Building of the walls in terms of implementation of MEAs, procedural issues, judgment and remedies and use of internet constituted theme number TWO. The third theme was described as roofing. Roofing materials covered such important areas as environmental jurisprudence, frontiers of environmental law and principles and drawn lessons.

Domain of Learning

The Consultant spent sometime explaining the Domain of learning and grappled with the question whether judges are assumed to know and hence require no further training in environmental law issues. Pedagogy, an important aspect of domain of learning was explained. Pedagogy is an art as well as a science of teaching. The main concern though is pedagogy as an art, it involves creative aspects, instructional designs, development of presentation skills and how to impart and convince trainees to accept trainer's point of view. As an art, pedagogy is both acquired and inborn. The Consultant emphasized that by understanding domain; trainers would be in a better position to plan what to train and portion to cover.

To elaborate the importance of employing an appropriate pedagogy, the Consultant highlighted the domains of learning developed by Benjamin Bloom. These are made up of cognitive, affective and psychomotor domains. Cognitive (thinking) domain has such intellectual outcomes as knowledge that is acquired, perceived or obtained by reading.

The "Affective Domain" involves determination of how much value we place on something, our attitude, beliefs, behaviours and emotions. Attitudes are developed and shaped by the surrounding environment.

According to Bloom, psychomotor domain is shaped and developed by systematic practice. These are skills, actions and manual manipulations of abilities. The trainer may for example inspire the trainees.

Adult Learning

Consultant also carried the participants through philosophies underlying adult learning and how to train the judges, magistrates who are adults and already learned. Trainers were introduced into some of the characteristics of adult learners,

- autonomous and self-directed;
- have accumulated a foundation of life experiences and knowledge, family responsibilities and previous education;
- are problem-centred, goal oriented; and are practical;
- bring more to training and take more;
- often skeptical about new information; and
- receptive if they are perceived to be useful to training.

Trainers were asked to explore best ways to take full advantages of these characteristics for the benefit of training and learning. These characteristics impact on how a trainer would decide in different training sessions depending on the type of trainees a trainer has.

Consultant encouraged the trainers to know their adult trainees. Learning must make sense, i.e. trainers should employ different strategies to train. He explained that for the purpose of learning, adults could be divided into reflective, creative, practical or conceptual thinkers.

Reflective thinkers view new information subjectively. They relate new information to their past experiences. They often ask why. On the other hand, creative thinkers would like to play first with new information, asking why, trouble shooting and create their own solutions and short cuts.

Practical thinkers would seek simplest, most efficient way to do their work. They are invariably not satisfied until they know how useful the new information is.

Adult learners falling under the “Conceptual thinkers” group would only accept new information after looking at the big picture surrounding the new information. They would like to know how things work, not just the final outcome. They would learn concepts related to the information, which are not included.

Apart from grouping the adult learners into reflective, creative, practical and conceptual thinkers, the Consultant emphasized the importance of adopting various learning styles to suit different circumstances. Visual learners prefer graphics and illustrations. Auditory learners on the other hand process new information when spoken. Kinesthetic learners learn through written assignments. Environmental learners operate best if the right learning environment is created; proper sitting arrangements inspire them to learn. Consultant exhorted the need explore the best learning styles or a combination of styles to suit various adult learners. Adults are as much a resource persons as trainers would be. Trainers should learn from the trainees. Trainers are therefore encouraged to respect established values, beliefs, opinions and resource making up adult trainees.

Discussions that followed the Consultant’s presentations centred on a such salient matters as,

- Attention span of adult learners
- Need to inculcate interest in trainees
- Frankness of the facilitator where he or she does not have an answer to a question posed
- Participatory learning
- Very few trainees and trainers did not learn environmental law at college
- Role of symbolism in adult learning
- How best to take advantage of stare judicial principle of *stare decisis* for the benefit of the environment
- Advantages or shortcomings of mixing the training of judges and magistrates.

- It was pointed out that on some previous occasions, some judges have refused to accept that judges too may be sensitized to environmental matters. Active request by East African Court of Justice to be sensitized into environmental jurisprudence is a clear indication that judiciary is open to sensitization.

Facilitation as an art

The Consultant spent the afternoon of the first day of training elaborating on the art of facilitation. He begun by pointing out that the training manuals are different from textbooks. Training manuals only guide and cannot replace textbooks. Manuals must all the same be handy. Course participants were reminded that the draft manual should remain flexible to incorporate recommendations of trainees, learning materials and various concrete conditions pertaining in their various jurisdictions.

The Consultant explained facilitation as a process of empowering the adult learners. The empowered adult should be in a position to use and utilize what is acquired. The adult learner should also be empowered to use resources that are available and within respective resources.

In facilitating, a number of skills and techniques are needed to enable learners to appreciate the problem. Appreciation of the problems at hand will enable the designing of solution, testing of these solutions, evaluating them and beginning all over if not successful. Trainers were requested to tease out discussion as much as they could.

A facilitator therefore is not so much a master of ceremonies. He must be a professional person who enables the training to take place successfully. As a professional undertaking, facilitation faces a number of challenges,

- to learn from participating trainees and accepting to be humbled by knowledge;
- of keeping the mind open to new ideas;
- of retaining humility
- of self-examination, self-evaluation and learning from mistakes.

From the foregoing challenges, the Consultant pointed out that a good trainer,

- must both know the subject matter and its essence;
- must listen to others and learn;
- demonstrate enthusiasm;
- flexible without sacrificing goals and principles;
- adapts to changing needs of trainings;
- learns quickly both the subject and the surrounding environment;
- likes to help;
- imbued with sense of humour, respectful and dignified;
- sensitive to the feelings of individuals and the group;
- should not feel intimidated and presents information well in front of others.

Consultant then explained the essentials for effective facilitation. Successful facilitation is predicated upon prior establishment of needs assessment, participants' assessment and inviting the participants before hand.

The Consultant underscored the importance of establishing the participants' needs and how best to take full advantage of each participant's knowledge, resourcefulness and other abilities each participant may bring. The aim here is to draw the best out of each to constitute a good team of trainees. Participants need to know well in advance such small details as their transport, weather, provisional programme, venue, travel arrangements and itinerary.

Planning for training may determine the success of the training. Consultant reminded participants that planning is difficult and facilitators should look for a place where participants would feel welcome and comfortable. Resources and equipment for training should be prepared in advance and knowledge of the subject matter to be taught be ready in advance of the training. Time at facilitator's disposal need be established and ways to adhere to it planned.

The Consultant then went through various methods of training (i.e. interactive, and participatory; magisterial; and Socratic), conduct of training, techniques of training.

Consultant's day one presentation was followed by yet another round of exciting discussions, comments, elaborations and recommendations for the improvement of the draft training manual. The salient discussion points revolved around:

- participants in training sessions being as much resources as facilitator. Facilitator should be prepared to climb down and acknowledge resourcefulness and contributions made by the trainees;
- each facilitator should strive to work with resources and materials at hand, leaving room for innovation.

Evaluation of First Day

Dr. George Wamukoya conducted first-day evaluations. He underscored the utility of elaborate paired introductions, which constituted part of the Opening Session. These introductions were described to be innovative, well done and well designed to extract information about participants and their respective expectations. Expectations of participants came out very clearly and ranged from skills to knowledge utility of the course.

The scope of the session were described to be very clear on what was desired in terms for example of skills or knowledge. The day-long programme was well arranged having begun on skills then logically building into course content.

On the art of training and facilitation, Dr. Wamukoya was of the view that it was opportune and well designed to assist the trainees. He all the same saw the need to get extracts of the domains as part of those aspects of educational psychology.

Though flexibility is important, time management was not well done. He also pointed out the limited time made it impossible to have plenary discussion after every topic that was

presented. Limited time also made it hard to get hands-on experiences and expertise available amongst the participants.

On overall plane, Dr. Wamukoya noted that the first day brought out skills, upon which participants can build on. Commended the Consultant for his excellent work done with commitment and passion. The Consultant was able to make eloquent presentation, exhibited extensive knowledge and carried participants along with his examples. Consultant's ability did not become tired, but was humorous and made participants desire to continue beyond allotted time.

DAY TWO, Tuesday 6th September 2005

Mr. Rex Shana (Director/Principal Judicial College, Zimbabwe) chaired the second day session.

The Session begun with the summary of Day One session that were presented by Mr. G. Chizhande, Regional Magistrate, Harare (Zimbabwe). He begun his summary by expressing the daunting task of summarizing in fifteen minutes, proceedings of a long and detailed day. Mr. Chizhande gave a brief account of what transpired during opening address, lively introduction session where participants were paired, coming out with detailed background information about the participants. He noted that majority of participants did not take environmental law at respective colleges but went into the subject later to become experts.

The session Chairman thanked Mr. Chizhande for his excellent summary. He reminded the participants that the first day was grounding the training and the following second day had the following objectives:

- agreement on definitions and identification of leading environmental problems in Africa;
- determination of the functions and scope of environmental law;

- application of Common Law and Civil Law in the development of environmental law in Africa;
- contemporary legislative framework for environmental management.

Presentations in days two up to four were designed to be discussed for their probable input to the draft training manual. The Chairman recommended a slight amendment of the programme to accommodate inability of Prof. Y. Tsegaye (Faculty of Law, Addis Ababa University) to attend. Prof. Tsegaye was slated as a resource person to present on a topic “Principles of Environmental Law and their Application by the Courts”.

Leading Environmental Problems of Africa

Ms Mercy Ohene (Director, Judicial Training Institute, Ghana) presented this topic. She began by expressing her humility to stand before so many distinguished judicial officers and academics to lead a discussion on an equally important area of environmental problems facing Africa. Ms Ohene requested forbearance if nervous. She explained how she was not introduced into environmental law during her years at university. That she was only introduced into this area of world concern when she was called upon to discuss a programme on environmental training in Ghana. She had to learn fast.

Ms Ohene’s presentation was divided into two parts. The first part was devoted to leading environmental problems. Decline of forests, bush fires, destruction of water catchments forests, unbridled urbanization, mining- were identified as leading to desertification, ground water pollution with wastes impacting on ecosystems with a devastating effect.

The second part was designed to be participatory in as much as it sought the views of the participants on environmental problems facing their respective countries.

Discussions following Ms Ohene’s presentation pointed out the following,

- industrialization, plastic materials, transboundary movement of hazardous wastes are amongst the problems facing Africa;

- lack of alternative sources of energy has resulted in charcoal burning and consequent depletion of forest cover;
- uncontrolled cultivations over semi arid areas not suited for farming;
- excessive use of chemicals rendering land into waste;
- parceling out of forested lands for agricultural and settlements;
- How Africa should adapt to climatic changes.

Function, Content and Foundation of Environmental Law-

This topic was led by Mr. George Sarpong, Senior Lecturer, Faculty of Law, University of Ghana.

Mr. Sarpong begun by bringing greetings from Accra. He pointed out that although he was brought in as a resource person, he decided to transform himself into a learner in light of so much information he found at the course.

He presented:

- an overview of the environment and environmental problems,
- concerns for the environment;
- the nature, content and scope of environmental law;
- current status of environmental law.

From definitions, Mr. Sarpong noted, the environment is the sum total of our being and surroundings. These range from our habitats, food we eat, air we breath, our land, water resources and their attendant impact on our lives. He pointed out reasons for our concern over our environment as including,

- potential of our technologies inflicting lasting harm;
- evidence of disruptive human activities on earth's supporting systems.

The presenter identified four recurring elements that appear to comprise the legal elements of the concept of sustainable development. The need to preserve natural resources for the benefit of future generations; and equitable use of natural resources taking into account the needs of other states, were amongst the four recurring elements.

Discussions that followed raised a number of issues,

- whether proliferation of declarations, treaties etc blur and complicate focus on enforcement;
- possibility of clustering key existing treaties and enactment of domestic laws along the clustered treaties;
- synergy of secretariats of environmental treaties as a step towards clustering of important environmental treaties
- mainstreaming into laws of traditional beliefs, customs and traditions which were used in the past to protect the destruction of the environment;
- some nice-sounding constitutional provisions not being given effect of;
- whether lack of political behind the multiplicity of treaties which States know that they will not implement;
- existence of many pieces of domestic legislation designed to protect the environment, which are routinely ignored. Whether we should expect that treaties ratified will fare better;
- some of advantages of a State party to ratify a treaty- there are some treaties which provide funds to ratifying states to redress environmental problems;
- the number of framework national environmental laws in Africa has reached 40 and growing in number.

Development of Environmental Law in Common Law and Civil Law Perspectives and their Application in Africa

Ms P.M. Ayua, Director of Studies, National Judicial Institute, Nigeria led discussions over this topic.

The presenter examined the development of environmental law in both the Common Law and Civil Law perspectives and their application in Africa. She noted that different legal traditions of African nations have been influenced the development of constitutional and environmental provisions they have. Apart from highlighting the importance of environment to man, the presenter revisited the distinction between Common Law and Civil Law traditions, surveyed development of environmental law and importance of synergy of Common and Civil laws for the benefit of Africa.

During the discussions that ensued, it was pointed out that Common Law and Civil Law systems prevail in Africa because African countries had no advantage of allowing their own African legal system and culture to grow into mainstream laws applicable across the board. The importance of Africa taking full advantage of both Common and Civil Law systems was emphasized.

Human Rights and Environmental Issues

Mr. Frederick Mudenda, Lecturer in Law, School of Law (University of Zambia) led the discussion on this topic.

The presenter pointed out the existence of a direct functional relationship between protection of the environment and promotion of human rights. The presentation was designed to explore how human rights and the environment relate, and extent environmental rights are recognized in existing international treaties.

Quoting Justice Weramantry of the International Court of Justice, Mr. Mudenda agrees that protection of the environment , a vital part of contemporary human rights doctrine, is a *sine qua non* for numerous human rights such ads the right to health and the right to life itself.

The resource person concludes his presentation by reminding us all that there is very limited support in international law for existence of right to environment as a free

standing human right attaching either to individuals or peoples. That the use of existing human rights to protect the environment is likely to be inadequate to achieve the level of environmental protection necessary to remedy current environmental problems and prevent future ones. He exhorted States to include environmental related human rights in their national constitutions because these rights will become easily enforceable by national courts.

Discussions that followed centred on the following,

- whether the right to live in a clean environment is a human right;
- how to locate environmental law within the perspectives of the three generations of human rights;
- possibility of judges hardening into environmental law the directive principles of state policy;
- concern over placing an item in the constitution and pronouncing under another provision that the item is not justiciable;
- Failure of executive to trust the judiciary making work of judiciary difficult over environmental areas.

Framework Environmental Management Laws in Africa: Salient Issues

Mr. Baraka `Kanyabuhinya, Assistant Lecturer, University of Dar es Salaam led discussions `on this important topic.

It was pointed out that framework pieces of legislation invariably provide skeletal provisions of basic norms. They set minimum standards to be followed. Each State shapes its framework law in accordance with political, social and cultural setting prevailing in the State in question. In most States, these pieces of framework legislation make provisions for cross-cutting issues like EIA and environmental Audit.

Evaluation of Day Two

Mr. Rex Shana, Director/Principal Judicial College, Zimbabwe, led this evaluation. He began by detailing summary of the proceedings of the first day and brief summary of topics covered by the five speakers who took the floor. Concluded the evaluation by reiterating the fact that objectives set for the day were attained.

Group Work Assignment

Participants were then divided into four groups. Each group was assigned a specific work to perform and make plenary presentation on the third day. Each group was detailed to prepare for the facilitation of training of a group of 20 judges in any select country. In facilitating the training, groups were requested to prepare detailed synopsis of the training outlining objectives and outputs. Topics for each group were

- Group I- Leading Environmental Problems in a country selected by the group;
- Group II- Functions and Scope of Environmental Law;
- Group III- Application of Common Law and Civil Law in Environmental Law in Africa; and
- Group IV- The Relationship between Human Rights and Environmental Law.

Participants were informed that group work and resulting presentations would be used to improve the draft manual.

DAY THREE- WEDNESDAY 7TH SEPTEMBER 2005

Mr. G. Chizhande (Regional Magistrate, Harare Zimbabwe) chaired the third day session. The day began by group presentations and the facilitator received written reports from the four groups.

Implementing Multilateral Environmental Agreements at National Level

Mr. R. Chikwanda (Lecturer, University of Zimbabwe) led the participants through this important topic.

Mr. Chikwanda defined the term 'implementation' to refer to the process of incorporating MEAs into national jurisdictions. The term is closely related to 'enforcement' which is the practical judicial and or administrative realization of legal provisions within the municipal legal systems.

The presenter noted that the current drive by the international community is shifting towards national implementation of commitments undertaken at international level. He pointed out that the developing countries face many challenges in their attempt to implement MEAs. Some of these challenges are listed in 2000 Global Outlook Report published by UNEP.

Presentation concludes by surveying the extent some of the international environmental principles have been incorporated at municipal level in Zimbabwe, South Africa and Malawi.

Plenary discussions that followed Mr. Chikwanda's presentation revolved around,

- extent the 40 pieces of framework legislation on environment have incorporated the so many MEAs;
- need to avoid confusing 'implementation of MEAs' with 'enforcement of MEAs';

General Principles of International Environmental Law and their Application by Courts

Ms Elizabeth Maruma Mrema (Chief, MEAs Support and Cooperation Branch UNEP Division of Environmental Conventions) led discussions on this topic.

In great details, Ms Mrema lucidly identified and explained key principles of international environmental law, their incorporation into international and national legislation; and application by both international and national courts.

The salient matters covered by Ms Mrema include,

- Historical development of international environmental principles;
- Principles of International Environmental Law (e.g. Polluter Pays Principle, Precautionary Principle, Common but Differentiated Responsibility, Sustainable Development, Inter-generational Equity, and Participatory/procedural rights);

Plenary discussion that followed Ms Mrema’s presentation dwelt on such matters as,

- Science informing the law and the contribution of scientific findings and warnings to the emergence of international environmental law;
- State obligations flowing from soft (environmental) laws;
- Reaction of developed world to “Common but Differentiated Responsibility” principle, and whether this principle would give room to developing countries not comply with their environmental obligations.

Procedural Issues in Environmental Cases

Ms. M. Sekoai (Deputy Registrar of the High Court and Court of Appeal, Lesotho) made a presentation on this topic. This presentation generated plenary discussions on various salient issues. These discussion issues included,

- the question of *locus standi*;
- concern over technicalities which are at times used to defeat substantive environmental justice;
- the need to include representatives of the Attorney General in future trainings of judicial officers;
- need for special rules of court to assist judicial officers deal with environmental cases.

Judgment and Remedies in Environmental Cases

Justice Charles A. Wilson (Circuit Judge, Ghana) was a resource person assigned to this topic. He surveyed judicial remedies against environmentally harmful activities contained in civil cases, criminal cases, human rights and constitutional law approaches.

Justice Wilson pointed out the fact that the judiciary can play a more expansive role in a country where government agencies do not exist or are tardy and lax in observing the law. He concluded his presentation by pointing out that vindication of environmental rights forms part of a broader concept of social justice which transcend particular jurisdictions.

Enhancing Public Participation, Access to Information on Environmental Matter and Access to Justice

Mr. B.S. Maripe (Lecturer, University of Botswana) begun his presentation by pointing out that public participation, access to information and access to justice are pillars or building blocks to the attainment of justice in the environmental management process. He identified a number of reasons why public participation, access to information on environment and access to justice have lagged behind. These include,

- absence of political will to domesticate international principles;
- prioritization of physical and economic development over the concerns;
- the elevation of executive power over collective individual concerns;
- locus standi issue.

Mr. Maripe was concerned that States were comfortable with signing or sometimes even ratifying international instruments, but not incorporating them into their domestic laws. It is under this scenario where judiciary is supposed to intervene for the benefit of the

environment. But some judiciaries fail to intervene out of what Mr. Maripe termed as “judicial deference to the executive.”

The presentation was clear that the absence of political will should be made good by the judiciary. Judiciary must not always rely on the executive in order to protect rights in environmental issues.

Very lively discussions followed the presentation on enhancement of public participation and access to information,

- low literacy levels and the fact that most environmental texts being in English may operate to inhibit public participation;
- important role of NGOs, public Barazas and public spirited persons to sensitize the public on environmental matters, explain and translate environmental texts.

Some Reflection on Customary and Islamic Law

Though the programme did not make provision for reflection of the role of customary and Islamic law, the Consultant improvised to include an illuminating presentation by Dr. Bashir Yusuf Ibrahim (Department of Public Law, Ahmed Bello University- Zaria Nigeria).

In his reflection on customary and Islamic law, Dr. Ibrahim noted that there were customary systems and Islamic law that were normative in nature, with an impact on some local communities. These systems have certain values, which continue, in some areas to govern day to day activities of Africans.

The two systems have provisions which are protective to the environment. As an example, Dr. Ibrahim pointed out that under Islamic law God created the heavens and earth including what is in between. Having done so, invested mankind with trusteeship to manage the environment, utilize the resources while being mindful of the needs and

requirements of other creatures. Scholars have interpreted this Islamic injunction as requiring human beings to utilize the natural resources in a sustainable way.

From Islamic law perspective, Dr. Ibrahim pointed out that water is regarded in a very high esteem. Everything was made out of water and water is a source of life and preserves life. Contamination of water will spell the end of life. Along the same high regard requiring protection, Islamic principles treat air, land, soil, plants and animals.

Dr. Ibrahim narrated the many challenges faces resort to Customary and Islamic law to protect and preserve the environment,

- how to integrate these sources of law into mainstream conservation and protection principles;
- how legal experts may use customary and Islamic norms for the benefit of the environment.

Use of Internet for Legal Research, Environmental Cases, States and Materials

Recognizing the important role of Internet, the Course made space for a presentation by Mr. Z.N. Lukumay (Chief Training, Research and Statistics Officer, Tanzanian Judiciary). Mr. Lukumay guided participants through an elaborate presentation on how internet can assist in research and access of environmental materials. Participants were also informed that UNEP is currently assisting in developing national environmental related websites to facilitate access to environmental information.

Evaluation of Day Three and Group Work

Hon. Justice Kasanga Mulwa of the East Africa Court of Justice made evaluation of the day. Evaluation was immediately followed by group work. The four groups revolved round the following topics,

- Group I- Principles of Environmental Law and their Application by Courts;
- Group II- Procedural Issues in Environmental Cases
- Group III- Judgments and Remedies in Environmental Cases

- Group IV- Enhancing Public Participation, Access to Information and Access to Justice in Environmental Matters.

Groups were requested to prepare detailed synopsis of the training outlining objectives and outputs. These objectives and outputs were designed to improve the draft manual prepared earlier by the Consultant.

DAY FOUR- THURSDAY 8TH SEPTEMBER 2005

Mr. George Agyemong Sarpong (Senior Lecturer, Faculty of Law- University of Ghana) chaired this session. Presentations from the four groups were received. Apart from improving the draft manual, group work and resulting presentations were intended to-

- enable participants explore learning/training materials at their respective disposal;
- assist participants appreciate group dynamics and the behavioral aspect of various people coming together in a group;
- get the objectives and outputs as seen from perspective of participants.

Environmental Jurisprudence- Advancing Frontiers of Environmental Law

Hon. Justice P.K. Tunoi (Chairman, Judicial Training College, Court of Appeal of Kenya) led the discussions on this important topic. The presentation covered,

- the jurisprudential aspects of environmental law;
- environmental law in Kenya;
- a brief outlook of environmental law at international level; and
- the advancing frontiers of environmental law.

In his conclusion, Hon. Tunoi pointed out the need for States to consider developing consistent definitions and such actions as penalties, orders with a view of promoting a common approach to environmental protection.

Discussions that followed covered such matters of mutual concern as,

- need for the judges to register for further education beyond initial LL.B degrees. This will open them to some of the new legal developments like environmental law;
- development of inter-generational equity with an African perspective;
- wealth and diversity within Common law tradition and how it can be used to advance the frontiers of environmental protection;
- how to actualize the so many framework environmental laws which have been enacted so far.

Panel Discussion on Environmental Jurisprudence: Lessons Learnt

Hon. Justice A.S.L. Ramadhani (East African Court of Justice) chaired this panel. Other members of the panel were Hon. Justice N. Majara (Lesotho), Hon. Justice W. Kibru (Ethiopia), Hon. Justice C. Kajimanga (Zambia), Ms Hedwig Ong'undi (Kenya) and Dr. Bashir Y. Ibrahim (Nigeria).

The panel highlighted the following salient matters,

- general consensus on serious environmental problems like desertification which face Africa;
- existence of these problems leading to new corpus/body of law-environmental law. The increasing magnitude of the problem calls for appropriate international, regional and national response beyond reliance on the land laws, tort law, etc.
- minimal implementation is a problem due to various reasons like political commitment, resources etc
- role of the judiciary is important to ensure adequate implementation;

- litigating environmental cases faces a number of hurdles. These hurdles include rules of procedure, *locus standi*, and identification who a victim is for purposes of founding an action in court;;
- whether access to justice is limited to court appearances or involves public consultations as well;
- judges have immense powers and room to maneuver. Robust, innovative and activist judiciary invariably yields good results;
- role of judges in environmental law is not different from their other duties except that they face immense scientific information to decide upon, operate in a situation where Parliament and Executive may be slow or reluctant to intervene.

The panel discussion marked the end of presentations.

EVALUATION OF THE WHOLE TRAINING

This evaluation was led by:

1. Hon. Justice Moiyo M. Ole Keiwua, EACJ; and
2. Dr. I.H. Juma, University of Dar es Salaam.

The evaluation of the whole training took a broad overview because each day of the training had the benefit of daily evaluation.

The broad evaluation covered:

1. UNEP's expectations, which include the expectations of our Chief Justices;
2. Participants' Expectations;
3. Expectations of the Consultant;
4. Resource Persons: Evaluation of Topics Assigned.

Participants were of the unanimous view that the foregoing expectations were adequately met.

CLOSING CEREMONY

Closing ceremonies were presided over by Hon. Justice Moiyo M. Ole Keiwua (Judge President, East African Court of Justice).

The ceremony involved a word of thanks from UNEP, presentation of Certificates and a Vote of thanks from the participants.

On behalf of UNEP, Robert Wabunoha (Legal Officer, Division of Policy Development and Law, UNEP) thanked all participants for enthusiastic participation and frank evaluation of the course.

Ms. Phoebe Msuen Ayua (Director of Studies, National Judicial Institute, Nigeria) delivered the vote of thanks on behalf of participants. Ms Ayua expressed deep appreciation to UNEP for excellent organization and for the ideal venue that ensured that empowerment took place in an ideal working environment. Extended special thanks to Mr. Bakary Kante, Ms Mrema, Ms Bankobeza, Mr. Wabunoha and Ms Patronila Njuki of UNEP. Same special appreciation were extended to Dr. P. Kabudi the Consultant for his professionalism, efficiency which combined to ensure successful completion of the course.

Appreciation were also extended to justices of appeal, judges, academics who despite their very distinguished positions in society sat, discussed freely with others in a very cordial and respectful manner.

Ms. Ayua commended the attentiveness of participants, their frank contributions, jokes and light moments in the plenary and during group discussions.

Mention was also made of hospitality and friendliness shown by the employees and the Mt. Kenya Safari Club management.

In his brief remarks, Hon. Justice Moiyo M. Ole Keiwua (Judge President, East African Court of Justice) noted that the course has enabled the children of Africa to gather and mirror Africa's environmental problems. The course enabled a candid exchange of information to take place.