



United Nations Environment Programme

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PROGRAMME DES NATIONS UNIES POUR L'ENVIRONNEMENT • PROGRAMA DE LAS NACIONES UNIDAS PARA EL MEDIO AMBIENTE
ПРОГРАММА ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ ПО ОКРУЖАЮЩЕЙ СРЕДЕ

ADHOC ADVISORY COMMITTEE MEETING OF JUDGES, 31 August to 1 September, 2006; Geneva, Switzerland

Implementation of the UNEP Judges Capacity building Programme for the Judiciary and Related Legal Stakeholders – Training Materials which UNEP has been using so far.

a. **Introduction**

The Judiciary plays an important role in environmental management. This role range from upholding the rule of law in environmental matters, to interpretation of environmental statutes, the implementation and enforcement of environmental law, as well as in the promotion of sustainable development by balancing environmental, social, and developmental considerations in judicial decisions. Legal practitioners from both sides of the litigation system in prosecution and defending cases, play an important role in environmental law. Recognizing the importance of the role of the Judiciary and related legal stakeholders in environmental law, UNEP in response to the Johannesburg Principles adopted by the Global Judges Symposium on Sustainable Development and the Role of Law in August 2002, and in pursuance of UNEP Governing Council decision 22/17II on the Capacity Building of Judges and Other Legal Stakeholders in Environmental Law initiated global, regional and national capacity building programs for Judges and related legal stakeholders.

The first effort made by UNEP to widely consult Judges on the kind of sensitization programs that are suitable for the members of the judiciary was by convening the Judges Ad hoc Meeting for the Development of a Plan of Work for the Capacity Building of Judges, Prosecutors, and other Legal Stakeholders, in Nairobi, Kenya, from 30-31 January 2003. In this meeting UNEP was advised to work with selected members of the judiciary to develop simple and illustrative training materials that can be used by the members of the Judiciary for reference and for the sensitization programs of the judiciary and related legal stakeholders. In this regard, the UNEP Judges Advisory Group was constituted to oversee implementation of capacity building programs for judges and other related legal stakeholders. In the course of this year, UNEP has decided to convene the Adhoc UNEP Judges Advisory Group Meeting to

review the ongoing programs designed to implement the Johannesburg Principles and to seek advise on training materials developed for the judges capacity building programme.

The main purpose of the meeting is to ensure coherence in the kind of training materials UNEP uses all over the world while taking into consideration the specific needs and priorities of each country and sub-region and the differences in legal traditions when undertaking the programs. The Meeting will review the proposed draft training materials and the content and lessons learned in the course of undertaking training programs in environmental law for the judiciary and related legal stakeholders at the sub-regional and at the national level and advise UNEP on the same.

b. **Planning, Needs Assessment**

The implementation of the Johannesburg Principles, was also initiated by needs assessment and planning meetings where UNEP consulted judges from various legal systems to provide guidance on the kind of programs they need to be developed for the sensitization programs of judges and for related legal stakeholders. A series of 11 Sub-regional Chief Justices and Senior Judges Needs Assessment and Planning Meetings were held between May 2003 to February 2005 in different parts of the world to develop national capacity building programs for the judges and related stakeholders. The main purpose of this process was to involve the judiciary in identifying needs that are specific to countries' legal systems that UNEP and its collaborating partners can support. These programmes were also used to sensitize the participating judges with a number of informative presentations in environmental law. Judges also used these forums to contribute to the review of the materials being developed for the judges program as well as in developing and reviewing training modules. The invitation of Judges from other regions in some of these planning meetings brought in presentations on comparative law and enabled Judges attending these processes to have a broad understanding on how environmental law is handled in various jurisdictions.

c. **Train the Trainers Programme on Environmental Law**

A Sub-Regional Train the Trainers Program on Environmental Law for English speaking African countries was conducted from 5-8 September 2005, in Nanyuki, Kenya to equip trainers with skills in environmental law which they can impart when they go back home. The trainers included judges, magistrates, trainers from the national judicial training institutes and academicians from the universities of various countries who are now assisting UNEP to develop and implement capacity building programs at the national level. The topics considered in this first train the trainers programme for judges included both trainers related topics which were presented by the consultant Dr. Kabudi and substantive environmental law related topics which were given to some of the trainees from the Judiciaries, Universities in African countries, and from National Judicial Training Institutes.

The following topics were used in the Sub-Regional Train the Trainers Program on Environmental Law for English speaking African countries:-

- *Domains of learning,*
- *Adult learning,*
- *The Art of facilitation*
- *Leading Environmental Law Problems in Africa;*
- *Function, Content and Foundation of Environmental Law;*
- *Principles of Environmental Law and their application by Courts*
- *Development of Environmental Law in Common Law and Civil Law Perspective and their application in Africa*
- *Framework Environmental Management Laws in Africa: Salient Issues;*
- *Implementing Multilateral Environmental Agreements at National Level*
- *Human Rights and Environmental Issues*
- *Procedural Issues in Environmental Cases;*
- *Judgement and Remedies in Environmental Cases;*
- *Enhancing Public Participation, Access to Information on Environmental Matters and Access to Justice;*
- *Use of Internet for Legal Research, Environmental cases, Statutes and Materials;*
- *Environmental Jurisprudence – Advancing Frontiers of Environmental Law;*
- *Panel Discussion on Environmental Jurisprudence Lessons Learnt;*
- *Excursion trip;*

The feedback from the participants of this train the trainers programme was that they found the training program very useful, in that they can now undertake national training programmes in their countries and serve as the resource person. Those who made presentations found the input provided by the consultant, other participants, and UNEP facilitators enriching in terms of adding to the quality of their presentations. The presentations were going to be further improved and compiled in a training manual which the consultant prepared and finalized taking into account the feedback received from the meeting.

The list of background materials that were circulated to participants for this program included selected texts of environmental judgements covering a number of thematic areas; Some presentations from prominent lawyers from Asia, Africa and Europe on various environmental law topic; UNEP Environmental Global Assessment Reports indicating the State of the Environment in various parts of the world.

UNEP has already benefited from the value of organizing this train the trainers programs in terms of getting national contacts to work with when developing national or sub-regional sensitization programs for judges and related legal stakeholders. In Zambia, Ghana, Nigeria and Zimbabwe the trainers were very instrumental in deciding on topics for national follow up programs at the national level and in serving as resource persons.

The draft training manual is part of the documents which will be circulated for peer review by committee members in this meeting. Even as UNEP plans to publish this draft

as a training manual we are seeking advice on its quality to guide UNEP Judges capacity building programs in Africa and other parts of the world.

The Train the Trainers programs may be useful in other regions as well in terms of providing a stepping stone to national judicial programmes.

d. **National and Sub-regional Capacity building Programmes**

In response to the series of needs assessment and planning meetings UNEP is working with various partners to undertake a massive task of implementing programs at the national level which are aimed at sensitizing judges in environmental law as well as training of other legal stakeholders. The objective of the national training programmes for Judges and related legal stakeholders is to create awareness, training and to bring to the attention of the participants developments in environmental law and policy, and to enhance the role of the judiciary and related stakeholders in enforcement and implementation of environmental law. It is expected that this will also contribute to the improvement of the quality of decisions in environmental matters and enable the participants to articulate environmental issues when handling environmental cases through increased access to environmental information and improvement of the resolution of environmental disputes through access to justice.

The methodology used in the programs is designed to be interactive for the judiciary and other legal stakeholders to be responsive to the twin objectives of *informing* participants of the new approaches to environmental law, and *receiving from the participants* information on their experience and practices in this field. It will also assess the opportunities for building and enhancing capacity of the judiciary and other legal practitioners in their respective countries, building upon the advances made so far. This normally requires a judicious mix of presentations by resource persons including Judges, magistrates on their own specific sensitization programs, and resource persons from national institutions, as well as panel discussions. The programs are normally adjusted accordingly depending on the kind of participants whether they are judges or State-attorneys and legal practitioners.

The target group includes Judges, Magistrates, State attorneys, Prosecutors, Legal aid or public interest litigation NGOs, etc, for the purpose of enhancing their capacity to carry out their functions on a well informed basis with the necessary skills, information and materials with a view to mobilizing the full potential of the judiciaries for the implementation and enforcement of environmental law. In most cases the training of Judges and other categories of legal stakeholders is conducted separately.

In addition UNEP has developed training tools and various publications for reference such as the Judicial Handbook on Environmental Law and the Compendium of Summaries of Judicial decisions to be used as reference materials for the judges and related legal stakeholders.

The Challenge now is to ensure coherence in designing programs for countries and reaching out to countries with languages other than the English language. In response to demand the need to translate the Judicial Handbook on Environmental Law to other languages such as French and Spanish is immediate. An arrangement to reach out to the Arabic Judiciary with a different Handbook which is specifically focused on their legal system is also pending. UNEP will also consider opportunities which come through to translate the Judicial Handbook on Environmental Law to other languages as well.

The feedback we have so far received from the sub-regional and national programs so far conducted in countries in Africa, Latin-America, and Asia indicate that the program was very informative and useful in enhancing the work of Judges and related legal stakeholders. The challenge is to reach out to other countries in other regions to follow up on the needs expressed in planning meetings of their regions as well as their countries needs.

Guidance materials – Concept papers - Partners

UNEP has been guiding the process of designing programmes at the national level by drawing up concept papers for national or sub-regional partners to guide them in organizing sensitization/training programmes for the judiciary and for related legal stakeholders. The national partners differ from country to country but they have included the Ministries of Environment, or the Environmental Protection Agencies, National Judicial Training Institutes, Universities, International NGOs, as well as the UNDP Country Offices. Legal NGOs and the Academia from faculties of law of Universities in the countries have also played an important role in working with UNEP as local partners and resource persons at the national level in organizing training programmes. The environmental law lecturers in particular have contributed to the quality of training materials by designing presentations on the national legal system and procedures as well as analysing the jurisprudence of the country that judges and related legal stakeholders could easily relate with. Partners such as the Hans Seidel Foundation, the World Bank Institute, IUCN, the Environmental Law Institute and others have worked with UNEP to so-sponsor capacity building activities and to organize national and sub-regional capacity building programmes for judges.

Among the topics that various national training programs have selected from/considered include:

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- The state of environmental law (issues and problems behind core MEAs including illegal trade issues in MEAs)/ Implementing Multilateral Environmental Agreements at the National Level;
- A synopsis of Environmental Issues in the country;
- Functions contents and foundations of environmental law/ the legal and institutional framework for environmental management of a country;
- Procedural issues in Environmental Cases (views from the bench and views from the bar);

- Judgement and remedies (a comparative view)/ an analysis of environmental jurisprudence of a country/ litigation experiences;
- Polluter pays principle, user pays principle and precautionary principle.
- The Intergenerational and Intra generational equity principle;
- The criminal aspects of environmental law and procedural aspects in prosecuting environmental crimes in a country.
- Public Interest Litigation in Environmental Law Practice and Procedures in a country/Constitutional environmental law in a country, its evolution and future. Right to a clean and healthy environment, access to justice, and access to information. (A comparative view on experiences of other countries)
- The role of legal practitioners, Judiciary, civil society and communities;
- Issues of regional environmental law: Implementation of a regional /co-operation/environmental treaty and the implications on legal practice in a country.

This meeting will have a benefit of reviewing a broader list of areas which has been developed by the UNEP consultant in consultation with some members of the judiciary and to decide on the content and quality so that they can be used in future training programs. This list of suggested topics is provided in a separate document.

Selected Programmes by various National and Sub-regional Training Programmes

Below is an attempt to provide you with examples of the kind of topics the UNEP assisted/associated programs at the national and sub-regional level have selected from the list.

1. For example the **Nigeria Judges Programme which was organized in February 2006** among the topics listed in their concept paper they selected the following topics:-

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| <ul style="list-style-type: none"> • Environmental Challenges of Nigeria; • The Function, Content and Foundation of Environmental Law; • Principles of Environmental Law and their Application by Courts, • Development of Environmental Law in Common Law and Civil Law Perspectives and their Application. • The Framework Environmental Law of Nigeria; • Human Rights and Environmental Issues; • Procedural Issues in Environmental Cases; • Judgement and Remedies in Environmental Cases, • Environmental jurisprudence; • Implementing Multilateral Environmental Agreements at the National Level; |
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- Enhancing access to justice in environmental matters, public participation in decision making and access to information a panel discussion.

2. The **Sub-regional Judges Programme for Gambia, Ghana and Sierra Leone which was held in Ghana in March 2006** had the following programme in its agenda.

- The State of Environmental Law, issues and problems behind core MEAs
- Functions, contents and Foundations of environmental law including public interest litigation
- The legal and institutional framework for environmental management in Ghana, Sierra Leone and the Gambia
- Enhancing the role of members of the Judiciary, legal practitioners, and other legal stakeholders in environmental in our respective countries – A Panel Discussion
- Criminal and procedural aspects of prosecuting environmental crimes in Ghana, the Gambia and Sierra Leone
- Judgement and remedies in environmental laws.
- Implementation of Regional Environmental treaties and the implications on legal practices in Ghana, Ghana and Sierra Leone;
- The State of the environment and priority environmental issues of Ghana, Sierra Leone and The Gambia: Challenges and Solutions –Panel discussion.
- Way forward
- Evaluation.
- Closing

3. **In the North American Symposium on the Judiciary and Environmental Law; Pan American University of Mexico which was held in Mexico City, Mexico, 29-30 November 2005.** The topics which were selected to discuss the evolving role of the judiciary in several important areas of environmental law included:-

- Constitutions and the Public Trust Doctrine;
- Standards of Proof,
- Scientific Uncertainty and the Precautionary Principle;
- Trade, the Environment, and the Courts;
- The Use of International Legislation in Domestic Decisions;
- Environmental Law Training of the Judiciary.

This meeting was organized by the World Conservation Union (IUCN), the United Nations Environment Programme (UNEP), the Mexican National Judicial Institute, Pace University School of Law, the American Bar Association (ABA) Section of Environment, Energy and Resources and the North American Commission for Environmental Cooperation brought together members of the Judiciary from the three

North American countries (i.e., Canada, United States of America and Mexico) to discuss the evolving role of the judiciary in several important areas of environmental law. The Symposium welcomed judges and environmental law experts from the mentioned countries.

4. National Symposium of Judges and Prosecutors on the Enforcement of and Compliance with Environmental Legislation in Peru Lima, Peru, 30-31 January 2006, including presentations from Argentina, Brazil and Costa Rica.

- Environmental Law Application and the Valuation of Environmental Damage.
- Panel discussions took place on Criminal Legislation for the protection of the environment, Civil Liability for Environmental Damage, as well as round table discussions on Sectoral Judicial Regimes for Environmental Protection of the Mining, Forestry and Wild Fauna and Flora sectors as well as on Biological Diversity.
- The environment and the management of justice in Argentina,;
- the experience of environmental prosecution in Brazil, and the
- management of the criminal prosecution, in Costa Rica.

The workshop concluded with the presentation by the Peruvian judges and prosecutors of recommendations to establish an Environmental Prosecution System in the country.

5. Legal Practitioners Programme of Tanzania on Environmental Law and Policy, 3-4 August 2005.

1. The State of Environmental Law and Policy
 - Modern Environmental Law in Tanzania: Evolution from the Common Law and its application;
 - Evaluating Common Law Causes of Actions and Remedies;
 - Environmental jurisprudence in Tanzania: Precedents and lessons learnt;
 - The Role of Science in implementing environmental law
 - Environmental Law and Institutional Framework in Tanzania: Highlights of the Bill for National Environmental Management Act 2004.
 - Environmental Impact Assessment in Tanzania: concept, practice and procedure;
2. Taking stock from the Regional and International developments and Trends
 - Public Interest Litigation Experiences, in Tanzania, Kenya and Uganda;
 - Implementing Multilateral Environmental Agreements at the Domestic Level;
 - The Role of Courts in the Implementation of Environmental Law;
 - Procedural Issues in Environmental Cases; the views of the Bar.

Way forward, evaluation of the symposium, closing

6. Kenya National Judicial Colloquium on Environmental Law, Mombasa, 17-22 April 2006.

- Environmental Problems for which Kenya looks to the Judiciary
- Concept, structure and function of environmental law
- Common Law Foundations of Environmental and Relation to Sustainable Development
- Overview of the Kenyan Framework Environmental Law and its institutions;
- Precautionary measures (Environmental Impact assessment, environmental Audit and precautionary principle).
- Overview of experience from the Judiciary in Asia and the Pacific;
- The Use of criminal sanctions in enforcing environmental law;
- The Role of banks in promotion of compliance with environmental law;
- Environmental tribunals as a mechanism for Settlement of Environmental Disputes;
- The Judiciary and Environmental Law in Uganda;
- The Judiciary and Environmental Law in Tanzania;
- Transboundary Environmental Issues;
- The Judiciary and Public Interest Cases;
- Application of Public Trust Doctrine to Environmental Management;
- ICT Access to Environmental Law Information: A demonstration of ECOLEX and the Judicial Portal
- Field Trip-land rehabilitation project .

7. UNEP/Seychelles Judicial Forum on Environmental Law, Mahe, Seychelles, 27-28 February 2006

- State of the Environment in Seychelles including environmental policy, law, institutional arrangement, problem and the way forward.
- Principles and concept of environmental law;
- Development of Environmental Law and Institutions;
- Environment Jurisprudence: Judgements, Remedies and Procedure in Environmental Cases;
- Principles of Environmental Law and their applications in the Seychelles;
- Environmental Litigation Experiences in Seychelles, the Role of Attorneys and Legal Practitioners in Enhancing Implementation and Enforcement of Environmental Law;
- Criminal Aspects of Environmental Laws and Technicalities of Environmental Crimes;
- Implementing Multilateral Environmental Agreements at the National Level;
- The Role of Civil Societies in Environmental Litigation;

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