

Judicial handbook on Environmental Law

**Dinah Shelton and
Alexandre Kiss**

Introduction by Hon. Judge Christopher G. Weeramantry

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ISBN: 92-807-2555-6

Job No: DPD/0641/NA

This publication can be ordered from UNEP's online bookshop at: www.earthprint.com or by mail from Earth Print Limited Orders Dpt.

P.O. Box 119 Stevenage
Hertfordshire SG14TP
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Printed at the Publishing Section of the United Nations Office at Nairobi on environmentally friendly chlorine-free paper.

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MESSAGE

Deterioration of the Earth's environment increasingly threatens the natural resource base and processes upon which all life on Earth depends. *UNEP's Global Environment Outlook Year Book 2003* highlights the scope and variety of the problems. Over one billion people currently lack safe drinking water and sanitation, making water-borne diseases one of the leading causes of death, especially among children in poor countries. Two-thirds of the world's population now lives in areas of water shortages where, increasingly, desertification threatens the food supply. UN Habitat 2003 reported that more than 180 million people in Africa live in fragile areas where they compete for water and land. In marine waters, nearly three-quarters of all commercial fish stocks are being harvested faster than they can reproduce (FAO, 2002). More than 500,000 people in Asia die every year from diseases related to air pollution (WHO, 2003). Species are becoming extinct at an unprecedented rate, taking with them potential yet unknown sources of medicines, nutrition and other benefits. Munich Re, the world's largest reinsurance company, predicted in 2003 that the global economic loss due to extreme weather events would reach US\$30 billion annually by 2050. In sum, humans are rapidly exceeding the carrying capacity of the environment.

Without strong and multifaceted action by every person, the biosphere may become unable to sustain human life. At the least, coming generations will suffer deprivation and hardship unless current patterns of production, consumption and waste management are dramatically altered. Sustainable development needs to become the watchword and policy of all public agencies and officials and the responsibility of every person.

This handbook is intended to enable national judges in all types of tribunals in both civil law and common law jurisdictions to identify environmental issues coming before them and to be aware of the range of options available to them in interpreting and applying the law. It seeks to provide judges with a practical guide to basic environmental issues that are likely to arise in litigation. It includes information on international and comparative environmental law and references to relevant cases. Judges in each particular country will supplement this overview with more detailed information drawn from national experiences, laws and traditions.

The publication of the Judicial handbook on Environmental Law by UNEP is a response to the request made by the chief justices and other senior judges from some 100 countries who participated in eleven regional judges Symposiums on environmental law convened by UNEP during the period 1995-2002. The request was reiterated in the conclusions and recommendations that were submitted to the World Summit on Sustainable Development by the 2002 Global Judges Symposium held in Johannesburg.

The publication was developed through judicial consultative meetings that were convened by UNEP in Rome (June 2003), London (August 2003) and New York (June 2004).

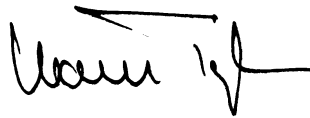
At the request of UNEP, the distinguished jurist and former Vice-President of the International Court of Justice, Judge Christopher G. Weeramantry, prepared an outline of the proposed publication, which was placed before the Commonwealth Magistrates and Judges Association Triennial Conference held in Malawi in August 2003. There it was discussed and approved as a sound basis for the preparation of the Judicial Handbook. The work on the preparation of the Handbook proceeded thereafter on this basis.

At the London judicial consultative meeting, two distinguished Professors of Environmental Law, Dinah Shelton and Alexandre Kiss, were requested to prepare the draft of the publication for judicial review by a team of eminent judges from developed and developing countries. The draft was revised and finalized by the Judicial Editorial Board at the New York consultative meeting held on 2-4 June, 2004, with the able research and editorial assistance of Melinda Mannheim.

It must be appreciated that the specific character of environmental problems will necessarily differ from one country to another and that environmental legislation and case law will thus also differ from jurisdiction to jurisdiction. Moreover, because of cultural variation and differences in socio-economic conditions, judges will at times bring different perspectives to the particular environmental problem before them. While this is so, judges may nonetheless find valuable instruction on how related matters have been addressed and managed in other jurisdictions.

The handbook is organized in two major sections. Part A, entitled “General Framework,” reviews some of the fundamental principles and approaches inherent in most environmental legal regimes and focuses on the role of the courts in furthering the rule of law in the environmental arena. Part B, entitled, “Principal Areas of Environmental Law,” offers a more detailed look at the features of the protection programmes that have developed around specific environmental and natural resource concerns (e.g., air, water, waste, endangered species, etc.), and is intended to serve as an initial reference for judges who encounter a particular kind of environmental case.

In short, the handbook attempts to identify a common core of law and policy most relevant to the world’s judiciary, in the hope that judges might be better equipped to discharge their key role in breathing life into those environmental requirements upon which the world’s collective heritage depends.

A handwritten signature in black ink, appearing to read 'Klaus Toepfer', with a stylized flourish at the end.

Klaus Toepfer
Executive Director

FOREWORD

At the 2002 Global Judges Symposium held in Johannesburg, South Africa, the world's judiciary spoke decisively to the need for the institutions of government, including the judiciary, to do their part to ensure the long-term sustainability of human activity. In this regard, it was determined that a programme of work was needed to prepare the judiciary and other governmental and nongovernmental actors to perform their vital functions in furtherance of environmental protection and stewardship. This Judicial handbook on Environmental Law represents a key step forward in this regard. Together with several other UNEP publications, including, most notably, UNEP's recently revised *Training Manual of Environmental Law*, its *Compendium of Summaries of Judicial Decisions in environment-related cases*, and its *Selected Texts of Legal Instruments in International Environmental Law*, this handbook should provide judges around the world with a set of useful reference materials on environmental law. These materials, augmented by local law and custom, should prove quite useful and instructive in addressing environmental disputes, particularly in developing countries where environmental law is relatively unformed at this juncture.

The completion of this handbook sets the stage for the next chapter in UNEP's programme of work – the development and delivery of capacity-building curriculums for judges around the world, particularly in developing countries. Efforts in this regard, which are already under way, will be informed by the content of this handbook. UNEP expects that the delivery of such capacity building programs will, in turn, lead to identification of additional topics that might profitably be addressed in this handbook. Accordingly, the handbook should not be seen as static product, but rather as a first expression in a dynamic process that will undoubtedly include subsequent editions.

As noted by the judges at the Johannesburg Symposium, judicial capacity-building cannot alone provide a meaningful hedge against environmental degradation. Rather, those elements of society that serve as the engine for developing environmental cases in the first instance – environmental inspectors and prosecutors, and nongovernmental entities – must also be readied for the task. Accordingly, UNEP is, in parallel with this judges initiative, working to increase the capacity of these other stakeholders in the environmental protection effort, again particularly in the developing world.

This said, UNEP is much indebted to the judicial community for the vision and leadership displayed in this initiative. It has, indeed, served as a catalyst for UNEP's broader capacity-building programme, a programme that envisions a sustainable future through the operation of the rule of law.



Bakary Kante
Director
Division of Policy Development and Law

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