



**United Nations  
Environment Programme**

# **JUDICIAL TRAINING MATERIALS ON ENVIRONMENTAL LAW**

**APPLICATION OF ENVIRONMENTAL LAW  
BY  
NATIONAL COURTS AND TRIBUNALS**



**Division of Environmental Law and Conventions (DELIC)**

## MESSAGE FROM THE EXECUTIVE DIRECTOR



I am pleased to present the Judicial Training Materials on Environmental Law developed by UNEP in close collaboration with a team of distinguished judges from around the world representing many legal systems and geographical regions. It has been developed pursuant to the UNEP Governing Council decision 22/17 B to support *“the improvement of the capacity of those involved in the process of promoting, implementing, developing and enforcing environmental law at the national and local levels such as judges, prosecutors, legislators and other relevant stakeholders, to carry out their functions on a well informed basis...”*

UNEP will continue to fulfill its abiding commitment to implement this decision and ensuring that this impressive publication contributes to engaging judicial officers and other legal stakeholders at regional and national levels to the further development, application and enforcement of the rapidly growing field of environmental law. This publication is a comprehensive resource which includes a set of ten presentations and an accompanying CD Rom containing the texts of several UNEP Environmental Law publications. I have no doubt that these materials would also be useful in the teaching of environmental law, especially at university level.

UNEP’s Global Judges Programme was conceived in the context of strengthening the Rule of Law in the area of sustainable development. The Rule of Law comprises an intricately inter-linked chain of fundamental ideas including equality before the law, the independence of the judiciary, transparency, consistency and accountability in the administration of law and the notions of equity, justice and fairness. The Rule of Law is also essential for the realization of sustainable development, which itself is founded on equitably balancing environmental, social and economic considerations in decision-making at all levels. The judiciary - as the universally recognized guardian of the Rule of Law - plays a crucial role in promoting sustainable development through the application, interpretation and enforcement of environmental law. As this publication eloquently demonstrates, courts of many countries have already shown sensitivity to promoting the Rule of Law in the field of environment and sustainable development.

On behalf of UNEP, I should like to express our deep appreciation to the Governments of the Netherlands, Norway and Belgium that have supported this programme with financial resources and call upon all our partners-governments, UN agencies and bodies, international and regional organizations - to join in a collaborative partnership with UNEP in strengthening the capacity of judges and legal stakeholders in promoting the realization of sustainable development through the Rule of Law.

Achim Steiner  
Executive Director

## FOREWORD

Over the past decade UNEP has, in partnership with Chief Justices and other Senior Judges from almost all the countries in the world, carried out a global initiative to engage the judiciaries in the pursuit of applying the Rule of Law to promote sustainable development. We have been much encouraged by the overwhelming support that these senior judges have given to the UNEP Global Judges Programme, which resulted in the adoption by the UNEP Governing Council of its decision 22/17 B on supporting capacity building of judges and other legal stakeholders in the field of environmental law.

This publication and the accompanying CD Rom responds to repeated requests from judges in almost all legal systems and regions of the world, for continued support from UNEP's Law Programme, in their efforts to sensitize judges at all levels to this rapidly growing area of law.

The outcome of this global initiative may be summarized as follows:

- Formation of a UNEP Global Alliance of Chief Justices and Senior Judges from over 100 countries, supportive of the UNEP Judges Programme, who have declared their commitment to carry out capacity building of Judges *at the national level* with the support of UNEP and its partner agencies.
- Creation of Regional Judges Forums for the Environment in Europe, Asia and the Pacific, Southern Africa, Eastern and Western Africa, the Arab States, the Francophone States and the Caribbean.
- Development of a significant collection of legal materials that respond to a continuing call from judiciaries and other legal stakeholders in developing countries, for urgently required books on environmental law. It has become evident that most lawyers, academics and students from many developing countries do not have access to books on environmental law.
- Mobilization of a consortium of partners for the UNEP capacity building programme on environmental law of judiciaries, prosecutors, and other legal stakeholders. The organizations and institutions that have collaborated with UNEP in the above programme include, UNDP, the World Bank Institute, United Nations University, UNITAR, IUCN and its Academy of Environmental Law, INECE, the Commonwealth Secretariat, the Francophone Secretariat, the Commonwealth Magistrates and Judges Association, the Asia Foundation, the Hanns Seidel Foundation, Secretariat of the Pacific Regional Environment Programme (SPREP), South Asian Co-operative Environment Programme (SACEP), Environmental Law Foundation of the UK, Environmental Law Institute and the Centre for International Environmental Law.
- Commencement of systematic national training of judges through national judicial institutions with support of UNEP and partner agencies. Such national judges training programmes have so far been held under UNEP auspices in Botswana, Kenya, South Africa, Uganda, Tanzania, Vietnam, Cambodia, Lao PDR, Seychelles, Ghana and Nigeria. This publication and the accompanying CD Rom would facilitate

the organization and conduct of more national judicial training programmes in the coming years.

Henceforth, the UNEP programme will focus primarily on activities at the regional, sub-regional and national levels with the aim of sensitizing judges and related legal stakeholders and building institutional capacity of judicial training institutions and environmental protection agencies. Our objective is to assist countries to strengthen and retain the necessary capacity to ensure that environmental law is incorporated into their on-going legal education programmes. We are committed to working in close collaboration with our partner agencies in pursuing this objective.

We look forward to making this material available as widely as possible, to judges and other legal stakeholders especially in developing countries and countries with transition economies, including the translation of materials into the official languages, of the United Nations and other languages, as necessary.

I wish to express our deep appreciation to the Chief Justices and other Senior Judges for the important contribution that they have made to the global and regional judges symposia and the review of the judicial training materials, and for their sincere commitment to collaborate with UNEP in the development and implementation of national activities on capacity-building in the area of environmental law.

I would also like to express my appreciation to Dr. Iwona Rummel-Bulska, the Principal Legal Officer and Chief of the Environmental Law Branch, for the outstanding contribution that she has made to the UNEP Environmental Law Programme and in developing these most impressive legal materials.

I sincerely hope that these Judicial Training Materials on Environmental Law will contribute to meeting the information and training needs of judges and other legal stakeholders. I look forward to working closely with governments, judiciaries and our partner agencies in achieving our shared objectives and goals in the area of capacity building in environmental law.

Bakary Kante  
Director  
Division of Environmental Law and Conventions

## PREFACE

The judicial training materials contained in this publication and accompanying CD Rom have been developed by UNEP in close partnership with the UNEP Ad-hoc Advisory Committee of Judges comprising senior judges representing many legal systems and geographical regions of the world. The close consultations with and engagement of this distinguished team of judges has made it possible for UNEP to ensure that the materials are responsive to the specific requirements of judiciaries in various legal systems and geographical regions of the world and apt and proper for use in UNEP's on-going regional, sub-regional and national judicial capacity building activities. This partnership has also helped to secure a high degree of coherence and consistency among the training programmes that are being undertaken in various countries and sub-regions around the world, while addressing the specific needs of different legal systems and traditions as well as language needs.

The judicial training programme contained in the publication and the CD Rom is supplemented by the valuable body of legal materials in environmental law developed by UNEP for capacity building of judges and other legal stakeholders, including, in particular, the UNEP Training Manual on International Environmental Law, the UNEP Judges Handbook on Environmental Law, the UNEP Guide to Global Trends in the Application of Environmental Law by National Courts and Tribunals, the UNEP Compendia of Summaries of Judgments in Environment-related cases, the UNEP Environmental Law website and the ECOLEX data base of UNEP, IUCN and FAO. Several of these publications directly relevant to judicial training have been included in electronic form in the CD Roms.

We are most encouraged in this work by the views expressed by members of the UNEP Ad-hoc Advisory Committee of Judges and other senior judges around the world, that there is a discernible increase in judicial decisions of national courts and tribunals in a number of countries in the field of environmental law, which they say, in several instances, could be directly responsive to UNEP's judicial capacity building programme. They have pointed to several specific instances in which the judges who have participated in UNEP environmental law training programmes have written landmark judgments in this field of law and also inspired other judges to apply and enforce national environmental laws. The views expressed by Judges in this regard are contained in the Report of the Second Meeting of the UNEP Ad-hoc Advisory Committee of Judges for the review of UNEP Judicial Training Materials, held in Geneva on 31 August -1 September, 2006, attached as an Annex to this Preface.

Against this background, the Judges have called for the further implementation of the UNEP Global Judges Programme with renewed vigour and resolve, focussing especially on the sub-regional and national levels, tailored to respective needs and in appropriate languages, conducted, wherever possible, through national institutions such as National Judicial Training Institutes and Universities, with the support of expert advice and materials from UNEP and other relevant organizations. In accordance with the recommendations of the UNEP Ad-hoc Advisory Committee of Judges, UNEP will make every endeavour to translate at least some of

these UNEP publications into UN official languages and other national languages in order to facilitate their effective use and encourage their adaptation to the specificities of other legal systems such as the civil and Arab law systems in the process of their translation. UNEP looks forward to working closely with donor governments, institutions and foundations as well as our partner agencies to facilitate the financing of these activities.

It is important to underscore the need for further augmenting these materials at national level with relevant country-specific legal materials to be developed by national experts. Ultimately, each judge will be applying and interpreting domestic environmental law in his or her own country, and it is therefore imperative that there should be tailoring of this training course to provide ample discussion of the respective judges' national laws and practices.

It must also be emphasized that while UNEP will continue to provide its leadership to the global judicial training programme, this area of work constitutes but one component of the overall UNEP capacity building programme in environmental law designed to facilitate the strengthening of legal capacities of all legal stakeholders, including judges, prosecutors, environmental lawyers, including those in civil society organizations, and the private sector, academics and enforcement officers. These materials are very likely to serve the information needs of many legal interest groups beyond the judiciary, especially in developing countries, in particular, lawyers, academics and students.

The Judicial Training Materials contained in the publication and CD Rom comprise ten Power Point Presentations on several themes of special relevance to adjudication of environmental disputes. Since judicial officers are the primary focus of this work, considerable effort has been made to illustrate the materials with relevant judicial decisions from various jurisdictions around the world. The growing jurisprudence of environmental law will also most likely serve the interests and needs of lawyers, academics, students and other users of these materials. The CD Roms contain, in addition to the ten Power Point Presentations, the texts of the UNEP Judicial Handbook on Environmental Law, the UNEP Compendium of Summaries of Environment-related Cases, the UNEP Training Manual on International Environmental Law and several other UNEP Environmental Law publications. The following are the themes of the ten Power Point Presentations.

1. Introduction
2. Major Environmental Problems
3. Role of The Judiciary in Promoting the Rule of Law in the Area of Sustainable Development
4. Scope and Content of Substantive Environmental Law
5. Scope and Content of National Environmental Law
6. How Environmental Law Cases Come Before Courts

7. Managing Environmental Cases
8. Evidence In Environmental Cases
9. Remedies In Environmental Cases
10. Resolving Environmental Disputes

On behalf of UNEP I wish to extend our deep appreciation and gratitude to a number of people who have been closely involved with us in the development of this publication and CD Roms. First of all, our grateful thanks go to the members of the UNEP Ad-hoc Advisory Committee of Judges who gave of their best to this work to ensure its high quality and suitability for use in judicial capacity building. These judges are:

- Hon. Vladimir Passos de Freitas, President, Federal Court of Appeal, Brazil
- Rt. Hon Lord Justice Sir Robert Carnwarth, Court of Appeal of England and Wales
- Hon. Justice Adel Omar Sherif, Deputy Chief Justice, the Supreme Constitutional Court of Egypt
- Hon. Justice Amedeo Postiglione, Supreme Court of Italy
- Hon. Justice Charles Kajimanga, Supreme Court of Zambia
- Hon. Justice Luc Lavrysen, Arbitration and Constitutional Court of Belgium
- Hon. Justice Scott Fulton, Judge of the Administrative Court of the USA Environmental Appeals Board
- Hon. Justice Brian Preston, Chief Judge of the Land and Environment Court of New South Wales, Australia
- Hon. Judge Donald Kaniaru, Chairman, National Environmental Tribunal, Kenya

I wish also to express our sincere appreciation to several distinguished academics who contributed to the development of the curriculum and the texts of the presentations, including Professors Ben Boer, Nicholas Robinson and Gregory Rose.

I should like to thank our Director, Bakary Kante, for his far-sighted vision, direction and leadership that has enabled us to make significant progress in advancing the UNEP environmental law programme in several new areas that are responsive to global, regional and national needs and priorities in the field of environment and sustainable development.

Finally, I express my grateful thanks to my colleagues in the UNEP Environmental Law Programme, especially Sylvia Bankobeza, and to our former colleague Lal Kurukulasuriya for the dedication and commitment with which they have helped in the development of this publication and CD Rom.

Dr. Iwona Rummel-Bulska  
Principal Legal Officer and Chief, Environmental Law Branch  
Division of Environmental Law and Conventions

## ANNEX

### **Report of the Second Meeting of the UNEP Ad-hoc Advisory Committee of Judges for the review of UNEP Judicial Training Materials Geneva, 31 August -1 September, 2006**

#### I. INTRODUCTION

The second meeting of the UNEP Ad-hoc Advisory Committee of Judges was held at the International Environment House, Geneva on 31 August and 1 September 2006 to review and finalise the UNEP Judicial Training Modules on the Application of Environmental Law by National Courts and Tribunals.

Dr. Iwona Rummel-Bulska, Principal Legal Officer and Chief of the Environmental Law Branch of the Division of Environmental Law and Conventions welcomed the participants and the Deputy Executive Director of UNEP, Mr. Shafqat Kakakhel. She outlined the work done by UNEP in the area of judicial capacity building and expressed the expectation that this meeting, following on the first meeting of the Ad-hoc Advisory Committee of Judges held on 7-8 June 2006, would help to review and finalise the UNEP Judicial Training Modules on the Application of Environmental Law by National Courts and Tribunals, so that these modules could be used in UNEP's on-going sub-regional and national judicial capacity building activities. She also gave

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