

---

## UNEP'S ROLE IN CAPACITY BUILDING IN ENVIRONMENTAL LAW

KANIARU, DONALD<sup>1</sup> AND KURUKULASURIYA, LAL<sup>2</sup>

<sup>1</sup>Deputy Director, Environmental Law & Institutions, Program Activity Center

<sup>2</sup>Chief, Regional Environmental Law Program, Regional Office for Asia and the Pacific.

United Nations Environment Program, UN Building, Rajadamnern Avenue, Bangkok  
10200, Thailand

### 1 Introduction

Endogenous and genuine capacity building for sustainable development elaborated by the United Nations Conference on Environment and Development in Agenda 21 demands a concerted and coherent approach linking a number of components and based upon systematic analysis. Genuine capacity building requires a systemic analysis which links several components. Among them are; establishment of environmental institutions and machinery; the development of policies and strategies; the preparation and enforcement of laws and regulations; the development and use of economic instruments and market-based incentives; mechanisms for gathering, assimilating and dissemination of information; training of human resources in relevant technical disciplines; the development of new analytical tools, such as, national environmental profiles, impact assessment, environmental accounting, environmental audits, environmental indicators, environmental education, community involvement, technology development and transfer, and financing.

The essence of UNEP's response to these challenges in the area of capacity building lies in a shift of focus from pollution control and environmental management to the broader area of sustainable development and the more concerted, coherent and consistent approach it has adopted, in partnership with relevant UN and other agencies, with emphasis on regional delivery. Environmental Law - both international and national - constitutes just one of these components of capacity building in this new context. By itself, even the best legal regime can not do much to advance the pursuit of sustainable development goals. However, as Agenda 21 points out, laws and regulations suited to country-specific conditions could be among the most important instruments for transforming environment and development policies into action if they are used - in conjunction with the requisite human and other resource capabilities. They include capacities for the development and application of appropriate policies, strategies and activities to achieve a clean environment, natural resource security and integration of environment and development.

#### 1.1 Activities to realize sustainable development

Capacity building in environmental law encompasses three distinct but closely interrelated areas of activity crucial to the realization of sustainable development. They are:

- The development of national policies and strategies for pursuing the goals of sustainable development upon which national legislative and institutional regimes must be based;
- Formulation, enactment, implementation and enforcement of country-specific national legislation and institutions for environmental management for sustainable development; and,

- Active participation of States in the negotiation and adoption of international legal instruments on sustainable development, and their effective implementation.

## 1.2 Need for adequate environmental laws in developing countries

Agenda 21 echoes the concerns expressed in several national reports to the United Nations Conference on Environment and Development, that the inadequacy and ineffectiveness of existing national environmental law is a major hindrance to effective environmental management for sustainable development. Agenda 21 also emphasizes the essential importance of the participation in, and the contribution by all countries, including the developing countries, to treaty making in the field of international law on sustainable development. It states, in Chapter 39, that many of the existing international legal instruments and agreements in the field of environment, have been developed without adequate participation and contribution of developing countries, and calls for provision of technical and/or financial assistance to enable these countries to effectively participate in the international law making process. It calls for developing countries to be given "headstart" support not only in their national efforts to implement international agreements or instruments, but also to participate effectively in the negotiation of new or revised agreements or instruments, and in the actual international operation of such agreements or instruments. Such support should include assistance in building up expertise in international law, particularly in relation to sustainable development, and in ensuring access to the necessary reference information and scientific/technical expertise.

The legal and institutional capacities to cope with the challenging tasks of achieving a cleaner environment, natural resource security and the integration of environment and development are often either lacking, or weak and inadequate in many developing countries. Further, the legislative and institutional mechanisms for the implementation of global and regional environmental conventions are all too often nonexistent or inadequate such agreements being implemented, generally, through administrative directives. Full and effective participation in treaty making processes is often hampered by inadequate information and perhaps also by inadequate consultations among relevant national institutions and interest groups.

## 1.3 Need for implementation and enforcement

Where governments have succeeded in developing environmental legislation and institutions which incorporate some modern concepts of conservation and natural resource management, these often remain unimplemented or inadequately implemented for several reasons. Principal among these are, the piecemeal formulation of legislation without adequate consultation among all relevant national institutions and interest groups to forge national consensus on the policies upon which to base such legislation, including, interrelationships among national, state, provincial and local institutions involved in the implementation of such legislation; lack of essential material resources, equipment and trained personnel; and inability to mobilize sufficient public interest and participation.

Environmental legislation is among the most pervasive elements of cross-sectorial importance in environmental management for sustainable development. Environment touches upon most sectors of development related activity, for instance water management, soil protection, agriculture development, livestock management, mineral activity, transport, energy generation and distribution, industrial development, forestry, fisheries, wildlife utilization, tourism, management of human settlements etc. In addition to having an important contribution in each of these individual sectors and in their interrelationships and integration, the development and implementation of sound and effective environmental law may involve interaction with legislation and administrative

practices and institutions even beyond these sectors. For example, it may be necessary in this process to coordinate the provisions, or the application, of environmental norms with the legal regimes dealing with property rights, land tenure, taxation, local government, customary institutions and practices, and with administrative practices in the areas of national planning, fiscal policy development, natural resource accounting etc.

Thus, a sound and implementable legislative and institutional regime at the national plane which is country-specific is indispensable for effective environmental management for sustainable development. It is particularly important not only to ensure that the network of environmental legislation and related institutions are substantively adequate and implementable, but also that the implementing agency/agencies have the capacity in terms of human and material resources to carry out their functions effectively. Laws which are not properly implemented simply serve to weaken the compliance morality of the population and undermine governmental policies and achievements in the environment and development field. Further, the full participation of all States in the development of international legal instruments, including global and regional conventions in the field of sustainable development, is essential for achieving wider adherence to, and efficient implementation of, such legal instruments.

Environmental law undergirds and guarantees actions taken by governments and aid donors to help achieve a cleaner environment, natural resource security, and the integration of environment and development. Giving legal backing to these policies and programs, provides those engaged in them with justification, stimulation and even protection since the agency or ministry concerned can have recourse to the law as a mandate for resource mobilization and action. It also provides a sound basis for implementation and enforcement of national policies. The relevant institutions can also serve a catalytic function, energizing governmental, administrative and public involvement in environmental management for sustainable development.

#### 1.4 Capacity building for developing countries and those in transition

Clearly, there is a need for a coordinated, cohesive, structured and sustained capacity building program to assist developing countries and countries with economies in transition to develop and effectively implement legal and institutional responses at both international and national levels to the new challenges for achieving environmental management for sustainable development. Having regard to the fact that the effect of having laws which are not implemented could be even worse than having no laws at all, it is essential that programs for the development of national legislative and institutional regimes culminate in galvanizing international cooperation for the mobilization of the requisite human, material and other resources to augment national efforts to realize effective implementation.

Following the mandate it received from the United Nations General Assembly Resolution 3436 (XXX) to “... *take measures designed to provide technical assistance to developing countries, at their request, for the development of their national environmental legislation ...*”, reiterated at successive sessions of its Governing Council, UNEP has provided assistance to some seventy five or more developing countries, at their request, to develop national environmental legislation and related institutions. Such assistance includes review of existing national legislation and related institutions, drafting of general and sectorial environmental legislation and/or elements for use in drafting legislation, preparation of legal components of national environmental and conservation strategies and legal advice on appropriate legislation and institutions for environmental management. Having regard to the comparative advantage it has in this field, Agenda 21 has identified as some of the priority areas on which UNEP should

concentrate: the “... *provision of technical, legal and institutional advice to governments, upon request, in establishing and enhancing their national legal and institutional framework, in particular, in cooperation with UNDP Capacity Building efforts ....*”

The wealth of experience and expertise that has been gathered over a period of some twenty years has firmly established UNEP as an acknowledged leader in the area of capacity building in environmental law. This was recognized in Agenda 21 (Chapter 38.22) which listed this activity as one of the priority areas on which UNEP should concentrate. The same has recently been echoed in the Secretary-General’s Report on the In-depth Evaluation of UNEP’s Program, endorsed by the Committee for Program Coordination, which listed capacity building in environmental law as one of two areas of capacity building on which UNEP should focus (Recommendation 14)<sup>1</sup>. A practical demonstration of this recognition is the lead role given to UNEP in the design and implementation of the Government of the Netherlands funded UNEP/ UNDP Joint Project in Environmental Law in Africa in partnership with the World Bank, IUCN and FAO<sup>2</sup>. Maintaining and further strengthening this leadership role is the principal responsibility of UNEP’s Environmental Law and Institutions Program Activity Center (ELI/PAC).

Assistance in the development of relevant sectorial legislation has also been rendered by several UN agencies such as FAO, WHO, UNESCO, etc. International organizations such as IUCN have also made a significant contribution in the development of national environmental legislation in several developing countries. The World Bank and Regional Development Banks have also assisted in development of sectorial legislation related to their loan agreements.

## **2 Essential Capacity Requirements in Environmental Law**

### **2.1 Goals and objectives**

The aim of capacity building in environmental law and institutions is to develop as appropriate, human and material resource capabilities of countries, particularly developing countries and countries with economies in transition, to achieve the following goals:

- To secure, in the light of their respective country-specific conditions, the development of national policies and strategies for environment and development, and facilitate their integration through appropriate legal and regulatory policies, instruments and enforcement mechanisms at national, State, provincial and local levels;
- To secure the effective implementation and enforcement of international and national legal and institutional regimes in the field of sustainable development; and
- To secure the effective participation of these countries in the negotiation of new international legal instruments in the field of sustainable development and the review, and where necessary, revision of existing instruments, their international operation and effective implementation at national levels.

### **2.2 Fundamental considerations in UNEP’s capacity building programs**

- Capacity building in environmental law must be integrated within the larger framework of capacity building for sustainable development.
- The programs must be appropriately designed and executed with a view to inspiring a greater interest in and commitment towards the use of environmental law as an instrument for translating sustainable development policies into action and enabling

---

national institutions and individuals to take appropriate initiatives, on a well informed basis, towards this end. They must be appropriately focused on the requirements of each target group, be result-oriented and be pursued on a sustained basis until results are achieved. Investments in capacity building have failed too often due to the absence of follow-up action.

- Capacity building should be directed at countries that demonstrate a serious and sustained commitment to pursuing the goals of environmental management for sustainable development, having regard to their respective absorptive capacities. Preference should be given to the Least Developed Countries and to those in which UN agencies and bodies and other international organizations have major activities on environment and development in general, and in capacity building in particular. Such programs should be carried out in languages which promote effective communication.
- Interagency cooperation and collaboration in the design and implementation of capacity building is emphasized in Agenda 21 with a view to avoiding duplication, enhancing effectiveness and promoting a holistic, cohesive and integrated approach to capacity building for sustainable development applying the best available expertise. Such collaboration is crucial to the success of capacity building in environmental law and institutions.
- An essential component of the strategy for capacity building, particularly in the legal and institutional field, is the central role to be assigned to national experts in these areas to steer the whole process. It is they who are the best judges of national needs and possible options for action as seen within their own particular national milieu. In addition, the full participation of national experts invests in them the authorship in the final product, which helps advance the implementation process. It also provides them with the much needed exposure and experience required to deal with national sustainable development issues with greater confidence and facility. External expertise, wherever possible from the region, should be used to support what is essentially a national undertaking.

### 2.3 Essential Capacity Building Requirements in the Area of National Legislation and Institutions

- Capacity to effectively integrate environment and development in policies and practices of each country. Towards this end, to promote consultative processes which leads to the forging of consensus on national policies and institutional regimes upon which national legislation is to be based.
- To review existing legal and institutional mechanisms, established, in most cases, long before the urgency for taking measures to achieve sustainable development became imperative, with a view to restructuring such regimes to promote the realization of the goals of sustainable development.
- To promote the development of appropriate, country-specific, legal and regulatory policies, legislation and enforcement mechanisms for the integration of environment and development, at national, state, provincial and local levels.
- Having regard to the need for countries to develop their own priorities, in accordance with their specific needs, to disseminate information and practices of States in the field of environment and development, including appropriate instruments and

compliance incentives, with a view to encouraging their adaptation and use, as appropriate, at national, state, provincial and local levels through national training programs and other means.

- To disseminate information on judicial decisions touching upon legal and institutional aspects of sustainable development to judicial officers, with a view to advancing the frontiers of environmental law for sustainable development through judicial interpretation and decisions.

## 2.4 Essential Capacity Building Requirements in the Area of International Legal Instruments

- Dissemination of information on scientific, technical, legal, institutional and other developments which constitute a backdrop to the development of international legal regimes for sustainable development.
- Promotion of national consultative processes leading to the examination of relevant issues from a wider national perspective, paying due regard to regional and global perspectives, and consequently, developing relevant national policies on a more informed basis.
- Assistance to participate in international negotiating processes of new or revised agreements or instruments.
- Assistance to implement international legal regimes, including development of appropriate legal, administrative and institutional mechanisms.
- Assistance to build up expertise in international law, particularly in relation to the broad range of legal and institutional issues connected with sustainable development, through appropriate training and education programs, as well as, dissemination of necessary reference information and provision of access to scientific and technical expertise.

## 2.5 Target Groups

To achieve the aims and objectives of capacity building in environmental law and to integrate it within the larger framework of endogenous capacity building for sustainable development, programs must be appropriately designed to respond to the specific requirements of the following target groups.

- **Policy-makers**, decision-makers and senior government officers, whether at the national or local level, responsible for the formulation of environmental and development policies requiring the assessment of the need for, and scope of, legislation and related institutions, and also, national positions for the development of international legal instruments.
- **Legal officers** and legal draftsmen with responsibility for the preparation of draft legislation in the field of environment and development, who would receive technical advice and professional enhancement support.

- 
- Authorities and agencies, and their individual staff members, that have responsibility for administering, implementing and enforcing laws relating to environmental protection, natural resource management and integration of environment and development, who will benefit from training, information networking and professional enhancement services.
  - Grassroots organizations, especially those representing local communities, women and youth, in addition to being stimulated to play a more active and fuller role in environmental management, decision making, and the development, implementation and enforcement of environmental law at the local level, could also provide an important source of traditional knowledge relating to environmental management for sustainable development.
  - Non-governmental organizations active in regard to the development and implementation of policy, legal and institutional aspects of environment and development. Their effective participation in the decision-making process and in environmental management tasks generally should be encouraged. The media should also be encouraged to play its role effectively to stimulate the development and effective implementation of environmental law.
  - The private sector, especially with regard to industrial compliance, should also be encouraged to take a leadership role in community activities aimed at achieving the objectives of sustainable development.
  - Universities and other institutions specializing in environment and development studies which have programs in environmental law and management should be further strengthened and in regard to the teaching of these subjects and their active engagement in offering assistance and training to national environmental institutions.
  - Developments in the field of environmental law, especially those attributable to judicial interpretation and decisions should be made accessible to members of judicial bodies with a view to promoting the harmonization of environmental law through the application of the doctrine of precedent in judicial interpretation and decisions.

### 3 New Approaches to Capacity Building in Environmental Law

The Post-UNCED context demands a heightened role for UNEP as the leading instrument of the international community to raise the world's conscience regarding actions that are creating negative environmental impacts and to catalyze the development and implementation of policy options to respond to urgent environmental issues, in the context of sustainable development. Capacity building to enable nations to pursue sustainable development paths is central to UNEP's mandate. It constitutes a linchpin of its restructured program, "UNEP: The New Way Forward", which is designed to respond to the new challenges of UNCED. The principal strategic elements of this new program are an integrated and coordinated approach, needs-responsive and result-oriented program design, partnership with UN and other agencies, and regional delivery.

Against this background UNEP's new strategies for capacity building in environmental law underscore the following fundamentals:

- Integration of capacity building in the legal and institutional field within the larger framework of endogenous capacity building for sustainable development as elaborated in Agenda 21 and towards that end, to harmonize ELI/PAC's capacity building activities in a multi-program approach with those of UNEP's other divisions, units and regional offices;
- Partnership with the secretariats of major environmental conventions, as well as other UN bodies, agencies and intergovernmental and non-governmental organizations active in the area of environmental law and institutions so as to ensure cohesion, complementarity and continuity of the program, avoid duplication of efforts and resources, and heighten effectiveness;
- Design and implement programs in partnership with national/regional experts, which respond to the specific requirements of each country/region, taking full account of their respective absorptive capacities and towards that end to fully engage the specialized knowledge of UNEP's regional offices regarding the needs and requirements of countries in each region in both the design and delivery of such programs; and
- Investing in national experts the full responsibility for developing and steering the process of legal and institutional development through national consultative and participatory processes, with UNEP in partnership with other agencies, facilitating their work through the provision of technical advice, and a range of legal information and material.

Within these key parameters, UNEP's capacity building activities in environmental law had been directed at the following:

- Identifying the existing gaps and shortcomings in domestic environmental law, its implementation and enforcement and in the related institutional structures, taking careful account of the work which has been undertaken in this respect by the governments and other international agencies, and the capacity of each country to develop and effectively implement country-specific legal and institutional regimes for environmental management for sustainable development;
- The provision of assistance for the formulation, enactment and enforcement of national environmental legislation and the establishment or enhancement of related institutional structures for effective environmental management to achieve sustainable development, covering general, cross-sectorial and sectorial issues and, including the implementation of international environmental agreements;
- The facilitation of advice and through interagency collaboration - in particular with UNDP's Capacity 21 and the World Bank's National Environmental Action Plans, - assistance required by the governments to effectively and efficiently implement the legislative and institutional regimes, including provision of equipment and other material resources required for carrying out effective environmental management, within the framework of the legal and institutional regime;
- Providing legal training and other human resource development programs in the field of environmental law and institutions, to enable the authorities and individuals dealing with these matters to discharge their functions with greater effectiveness and efficiency;

- Providing a network of information and resources to assist in the development and implementation of environmental legislation and related institutions including the development, adoption and application of environmental standards; and
- Enhancing the capacity to participate effectively in the negotiation, development and implementation of international environmental agreements.

## **4 UNEP's Activities in Capacity Building in Environmental Law**

### **4.1 National Legislation**

UNEP has substantially restructured its assistance program to focus on sustainable development issues, as against pollution control and environmental management, which was the principal focus of its pre-UNCED program. In addition, these activities are linked to bilateral and multilateral cooperation programs, such as the World Bank's National Environmental Action Plans in order to maximize synergies and ensure an integrated and systemic response to countries' needs. New areas being addressed in the development of national legislative and institutional regimes include, institutional mechanisms for integration of environment and development in decision making at national, state and provincial and local levels, economic instruments for promoting sustainable development, such as, Environmental Impact Assessment and green audits, industrial compliance and enforcement, public participation, including, citizens' suits, and innovative funding and dispute avoidance and settlement measures.

The previous practice of relying on foreign consultants to develop national laws has been replaced by investing the responsibility for this work on a representative Task Force of national experts. It is they who, through participatory and consultative processes, develop the necessary national legislative and institutional mechanisms in the context of the particular circumstances and administrative practices of their respective countries. Technical assistance, legal material and information is provided to the Task Force, as may be required, by ELI/PAC staff in collaboration with the partner agencies. Such programs have been carried out in more than twenty-five countries, at their request, during the three years since UNCED. These include: in Africa - Burundi, Central African Republic, Chad, The Gambia, Ghana, Kenya, Lesotho, Malawi, Nigeria, Sao Tome and Principe, Mozambique, Sierra Leone, Sudan, Tanzania and Zambia; in Latin America and the Caribbean - Barbados, Bolivia, Chile, Trinidad and Tobago; and, in West Asia and Asia and Pacific regions - Cambodia, Jordan, Kiribati, Lebanon, Oman, The Philippines and Sri Lanka.

### **4.2 Human Resource Development**

The strengthening of human and material resource capabilities of countries, especially developing countries and countries with economies in transition to develop and effectively implement environmental law at international and national levels in the new context of sustainable development is the avowed aim of UNEP's programs in this field. Activities in this area since UNCED include two Global Training Programs and four regional training programs. Two regional training programs and one at national level are planned for later this year. Several innovative measures have been included in the post-UNCED period to make these programs more focused and result-oriented. The regional and national programs, in particular, are focused on specific aspects of law of special relevance to them, such as, the workshop held in China on Industrial Compliance for countries in Asia with rapidly advancing economies, and those held in Western Samoa and Bahrain which focused on national environmental legislation of the Pacific Island States and West Asia, respectively. In designing each program, basic prerequisites are ensured,

i.e. adequate advance preparation of participants, appropriate teaching methodologies and focused and sustained follow-up action. Some innovative mechanisms have been introduced. Environmental problems and issues of concern to the participants are received in advance of the Program, which enables Resource Persons to focus on real issues, promote vibrant interaction and enhance the usefulness of the programs to the participants. Participatory and experiential teaching methodologies are applied having regard to the high level of participation that these programs attract. Follow-up programs are designed for each participant based on continuing support for accomplishing "special assignments" and for responding to their legal information/material requirements. Arrangements have also been made with UN agencies and bodies and other international organizations to provide necessary assistance to the trainees. A training-by-attachment program which provides a 4-6 week exposure to selected senior officials of developing countries and countries with economies in transition at UNEP's Legal Offices, Convention Secretariats and other UN agencies and bodies began in 1992. Eight participants from Egypt, Barbados, Fiji, Jordan, Malawi, Cuba, Mozambique, and Burundi have benefited from this program so far. With a view to strengthening the teaching of environmental law at universities, this program is being expanded to include University professors, who will be attached to Law Faculties of other Universities in their respective regions which have well developed teaching programs in Environmental Law.

The principal objective of the legal information and publications program is enhancing the information and knowledge base of those working in the field of environmental law in government, universities and other institutions, and the public generally, especially in developing countries and countries with economies in transition. It also provides an essential support service to UNEP staff, particularly those working in the legal and institutional field. Among the information tools of particular relevance developed since UNCED, are the Computerized Environmental Law Information Base (CELIB), which contains legal information collected by UNEP over a period of over twenty years in both international and national environmental law; the texts of over 200 International Environmental Conventions and Agreements, as well as the Register of Environmental Treaties. Two indexed compendia of national framework legislation and E.I.A. legislation have been compiled and a biannual bulletin serves to inform those interested in environmental law worldwide of UNEP's activities in this field. Collaboration with Convention Secretariats in the development and dissemination of information, and with other organizations, particularly IUCN, with a view to enhancing efficiency and avoiding duplication, constitute a cornerstone of this program.

## **5 Partnership**

Since UNCED, UNEP's Environmental Law Program has pursued collaborative partnerships not only with governments but with several UN agencies and bodies and international organizations, universities and professional bodies. The aim of such partnership is to draw on the experience of various UN and other organizations to mutually reinforce the effectiveness of the respective programs, to build upon the work already carried out by various agencies, and to avoid wasteful duplication. The UNEP/UNDP Joint Project on Environmental Law in Africa, funded by the Government of The Netherlands and implemented in collaboration with the World Bank, FAO, WHO and IUCN described elsewhere in this publication was the first major joint undertaking in this field and has paved the way for closer collaboration with these and other organizations in several other legal activities as well. This was followed by the signing of an Agreement for Cooperation in the Field of Environmental Law between UNEP and IUCN, which provides a framework for cooperation between the two organizations in several areas including development of international environmental law, legal training, and dissemination of legal information. Partnerships have also been forged with The United Nations Institute for Training

and Research (UNITAR) and The United Nations Commission on Human Settlements (Habitat) which have collaborated in the design and conduct of two major Global Training Programs in Environmental Law attracting participants from over 50 developing countries and countries with economies in transition. Over 450 applications were received for participation in these two Global Training Programs. UNEP is working in partnership with IUCN, the University of Singapore, The United Nations University (UNU) and ESCAP to develop and carry out regional capacity building programs at The Asia-Pacific Center for Environmental Law established at the University of Singapore. UNU's expertise is also being drawn into UNEP's initiatives to develop environmental law curricula and strengthen the teaching of environmental law in Universities particularly of developing countries. The two organizations regularly provide resource persons for each others' training programs in the field of environmental law, thereby, contributing to creating a judicious balance between the academic and practical aspects of environmental law in the training programs.

In its program for the development of international environmental law, UNEP is working closely with several recognized institutions active in the field, such as, the Foundation for International Environmental Law and Development (FIELD), the Center for International Environmental Law (CIEL), and the Environmental Law Center at the Georgetown University in Washington DC A workshop on Implementation and Compliance was convened in collaboration with FIELD early in 1995, and two workshops on the Development of International Law in the direction of Sustainable Development were convened jointly with CIEL and the Georgetown University Law Center later in the year. Relations with National Law Institutes are also being strengthened through joint sponsorship of mutual programs, as for example, the sponsorship of the Indian Law Institute's International Symposium on Environmental Law.

## FOOTNOTES

1. Document No. E/AC.51/1995/3
2. See Partnership in Action: UNEP/UNDP Joint Project on Environmental Law in Africa, in this volume.