LAND USE LAW FOR SUSTAINABLE DEVELOPMENT

This book surveys the global experience to date in implementing land use policies that move us further along the sustainable development continuum. The international community has long recognized the need to ensure that ongoing and future development is conducted sustainably. While high-level commitments toward sustainable development such as those included in the Rio and Johannesburg Declarations are politically important, they are irrelevant if they are not translated into reality on the ground. This book includes chapters that discuss the challenges of implementing sustainable land use policies in different regions of the world, revealing problems that are common to all jurisdictions and highlighting others that are unique to particular regions. It also includes chapters documenting new approaches to sustainable land use, such as reforms to property rights regimes and environmental laws. Other chapters offer comparisons of approaches in different jurisdictions that can present insights that might not be apparent from a single-jurisdiction analysis.

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with a Message from Kofi A. Annan,
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THE SECRETARY-GENERAL

MESSAGE TO THE SECOND COLLOQUIUM OF THE IUCN ACADEMY OF ENVIRONMENTAL LAW Nairobi, 4 October 2004

It gives me great pleasure to send my greetings to everyone who has gathered at the University of Nairobi for this timely colloquium of the IUCN Academy of Environmental Law on the theme of land use and environmental law.

Land use is at the heart of our hopes of achieving truly sustainable development. Yet in urban and rural areas alike, the pressures are immense.

According to the latest projections of UN-Habitat, the world's urban slums will double in population over the next 30 years, meaning that in just one generation, we could see 2 billion people living in conditions that deny their inhabitants the basic dignities of housing, health care, sanitation, education, transport, and employment. Already, nearly half the developing world's urban population lives in unplanned squatter settlements.

The challenges in rural areas are just as formidable. Deforestation and desertification are threatening ecosystems, biodiversity, and food security. Nearly 2 billion hectares of land are affected by human-induced degradation of soils, putting the livelihoods of nearly 1 billion people at risk. Safeguards must be put in place to ensure that intensification of agricultural production and increased use of agrochemicals, needed to satisfy the growing population in many developing countries, do not lead to further decline in environmental quality. Moreover, there is a need to regularize the tenure of the rural poor so they have the long-term security that comes with living on titled land.

Environmental law has a special role to play in addressing these issues. Law professors and legal experts can help national and local authorities devise legal regimes that enhance sustainable development instead of hindering it. You can help map out realistic and concrete land law reforms. You can share best practices and successful legal models. And through your teaching you can instill in new generations of legal practitioners an appreciation for the rule of law and its essential place in human affairs.

Both the Earth Summit in Rio de Janeiro and the World Summit on Sustainable Development in Johannesburg recommended strengthening the law for environment and development. I would like to thank you for your support of this cause, and also for timing your meeting to coincide with this year's observance of World Habitat Day. Please accept my best wishes for a successful colloquium.

Kofi A. Annan

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Foreword

Human settlements have been both the home and the hallmark of civilization since the first human beings congregated. This history of each part of the Earth is told through the cultural, economic, and social settings of cities, towns, and villages. City states continue to this day, and often the commercial and political life of large cities defines the policies of states. The world's cultural heritage is bound up in its human settlements. So, too, is the world's future.

In the latter years of the 20th century, the emergence of megacities signaled a reshaping of all aspects of both national life and international relations. There are models of planned urban growth, such as the brilliant development of the Pudong New Area in Shanghai, China, or the transformation of Singapore after the Second World War into a clean and green city, with extraordinary provisions guaranteeing the well-being of its citizens. These examples demonstrate that the environmental and social and economic pillars of sustainable development can be coordinated and advanced in tandem. Unfortunately, these examples are the exceptions. Many of the megaconurbations of millions of city inhabitants lack clean water, sewage systems, decent housing, educational opportunities, jobs, and parks and recreation. Despite major social and urban planning programs in cities across Brazil, favelas persist and grow in many states. Slums and shantytowns are a defining feature of major cities in many African, Asian, and South American nations.

Megaconurbations today produce air pollution, chronic health problems, water pollution, and a host of inevitable social problems. Their demand for electricity, food, potable water, and shelter extends deeply into the countryside. No city can be deemed self-sufficient, even if its local laws stop at its borders. Its economy imports most of what it needs to exist and is dependent on the effectiveness of laws in other localities that protect the watersheds that feed its water supply, or the farms that feeds its people, or the fuel that supplies its energy. Such urban centers export their chemical and hazardous wastes, their air pollutants, and their social problems far beyond their borders.

In a world of global trade, communications, and interdependent environmental needs, all regions have a shared stake in understanding how to guide land use and development so that it becomes sustainable. Yet, our regimes of nation states and intergovernmental relations mean that each stakeholder usually ignores the land use and environmental problems of other stakeholders. We live with a legal fiction that each nation must solve its own environmental degradation issues of its cities. Since land use laws are essentially national and local, and traditionally law has always been the principal instrument governing land use decisions, most legal scholarship about land use and

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cities is national. Little attention is paid to instances where the legal infrastructure is overwhelmed by rapid migration into slums or the emergency of civil strife. Little comparative legal analysis exists to let governments in one nation learn from the successes of others.

Environmental law encompasses the law that governs the uses of land, water, soils, air, forests, and all the natural resources that urban settlements require. The contributors to this book examine legal issues that are common across all nations. They inaugurate here a comparative environmental law analysis of the law of land use for sustainable development.

This volume contains reflections from scholars representing the legal systems from all regions of the world. The authors gathered, along with many other environmental law scholars whose papers and contributions could not be published in this volume, at the University of Nairobi, in Kenya, for the Second Colloquium of the IUCN Academy of Environmental Law. Without prompting, these legal experts volunteered papers that cover land use comprehensively. Topics include land use planning, settlement, implications of climate change, and food security. Although addressing land use locally, clearly these titles indicate that this book provides what amounts to a careful scholarly analysis of issues central to planetary sustainability.

The chapters of this book, and the primary materials published in its companion volume, ably edited by John Nolon, provide guidance for attaining the Millennium Development Goals adopted by the United Nations. Its themes illuminate how states can use legal tools to help realize the Millennium Development Goals of poverty alleviation and environmental sustainability. The book at the same time contributes to the foundations of learning and education about the law of land use for sustainable development.

Kenya and Africa broadly know well the need to enhance land use planning as a foundation for economic, social, and environmental development. The University of Nairobi selected the theme for the Second Colloquium, and the Planning Committee reached out to scholars in each part of Africa and around the world to make the Colloquium a solid success. There are many who deserve thanks for making this book possible. We were honored that Wangari Maathai, as Assistant Minister of the Environment of Kenya, opened the Colloquium; by the final day of our deliberations, she had become the Nobel Peace Prize Laureate for that year. The UN-Habitat program and the United Nations Environment Programme were key sponsors, whose financial and expert support is much appreciated. The fine support and cooperation of the Government of Kenya included the Kenya Wildlife Services, National Environment Management Agency, and other offices. The Vice Chancellor of the University of Nairobi, the Principal of the College, and the environmental experts on the Faculty of Law were strong and steadfast supporters of the Colloquium during the two years of time that went into preparing it. Their contributions are gratefully acknowledged. The assistance of the African Wildlife Foundation and that of the International Union for the Conservation of Nature and Natural Resources (IUCN) Environmental Law Centre were essential to the success of the colloquium. Above all, thanks are due to the many individuals from Kenya on the University of Nairobi organizing committee and the host committee, including Dr. Patricia Kameri-Mbote. Space precludes commending the many additional contributions. Their support underpins this book, without which it would not be.

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This book, then, is a forceful message to every level of readership in all regions of the world. Its publication underscores the credibility and growing legitimacy of the IUCN Academy of Environmental Law as a learned society, filling what has hitherto been a special gap, the absence of a global network of scholars engaged across all regions in the development of environmental law.

It has been a privilege to have cochaired the Second Colloquium of the IUCN Academy of Environmental Law on the Law of Land Use for Sustainable Development and to extend these heartfelt thanks to all involved.

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