



# Intermediate Course on Environmental Adjudication: Upholding Environmental Justice in Asia Pacific

## Course Syllabus

### Learning Objectives

This is an intermediary course on environment adjudication for lawyers and judges in the Asia-Pacific region. The goal of the course is to respond to the needs of legal professionals, particularly judges, from Asia and the Pacific to promote the protection of the environment and natural resources and to promote sustainable development in the region through improved implementation, adjudication and enforcement of environmental law.

The intermediate course builds on existing materials developed by UNEP for judges, namely the Judicial Training Materials on Environmental law, the Judicial Handbook on Environmental Law and existing course materials on the InforMEA portal and is a continuation of the course on “Introduction to Environment and Climate Law for Pacific Lawyers and Judges”. The intermediate course curriculum has been tailored for relevance to the Asia Pacific region. The development of the course is a collaboration between UNEP and IUCN Oceania Regional Office.

### Content & Duration

The course is divided in two parts, comprising of 5 Lessons each. It is designed as a short 2-day or approximately 10-hour course (1 hour per Lesson). This course length takes into consideration the challenging schedules of judges and is designed to encourage their participation. Participants can complete the course at their own pace, over a recommended period of up to two weeks. The course will be accompanied by further recommended reading materials, and will provide, where relevant, environmental and case law.

The participants may reference these additional materials at their convenience and according to their respective professional needs or interests. This course has benefited from the inputs of and review by experts in the region including Frances Disiga, Maria-Goreti Muavesi, Justice Brian Preston, Rowena Cantley-Smith, David Naylor, Miranda Forsyth, Maribel Valero, Jacob Phelps, and Matthew Baird.

## Completion Certificate

Take the quiz at the end of the course to assess your learning progress. You are required to answer at least 80% of the assessment questions correctly in order to obtain a course certificate.

Before obtaining the certificate you also need to submit the course survey (your feedback). This survey helps us to improve the course, develop new courses, and assess if you are achieving your learning objectives.

## Course Outline & Content

### **PART 1: UPHOLDING ENVIRONMENTAL JUSTICE**

#### **Lesson 1: Access to Justice**

This Lesson will assist participants in gaining a broad conceptual and practical understanding of access to justice. This Lesson explores *access to justice*, in conceptual and broad practical terms, and more specifically in terms of the right of access to environmental justice, and environmental rights and procedural guarantees. The interdependent and mutually reinforcing relationship between access to environmental justice, the environmental rule of law and sustainable development, and the normative framework supporting access to justice will also be addressed.

#### **Lesson 2: Mediation, Arbitration and Restorative Justice**

This Lesson will introduce the spectrum of conflict resolution and the different approaches available through mediation, arbitration and restorative Justice. It will assist judges and lawyers to understand why managing environmental conflicts and resolving environmental disputes effectively through mediation, restorative justice or arbitration is important and how they support Access to Justice on environmental disputes. Case studies are used to demonstrate the application of these approaches to environmental harm.

#### **Lesson 3: Legal Pluralism and Customary Practice as a Resolution Mechanism to Environmental Legal Issues**

This Lesson will assist judges and lawyers to understand the scope and limitations of legal pluralism in Asia Pacific and how customary law and practice can be used in the resolution of environmental disputes arising under State laws. Examples of use of customary law in environmental cases are provided.

#### **Lesson 4: Strategic Litigation Against Public Participation**

This Lesson introduces what is *strategic litigation against public participation* (SLAPPs) and what types of actions constitute SLAPPs. By exploring the growing use and impacts of SLAPPs globally and in Asia Pacific, as well as a range of formal and informal anti-SLAPP measures aimed at countering such abuses of law and procedure, this Lesson will provide an overview of existing formal anti-SLAPP measures, with illustrative examples of anti-SLAPP legislation and courts rules of States in Asia Pacific. Illustrative examples of informal anti-SLAPP measures being called on to counter the adverse effects of SLAPPs on Environmental Human Rights Defenders (EHRDs) in Asia Pacific will be provided.

#### **Lesson 5: Legal Protection of Environmental Human Rights Defenders**

Through this Lesson, judges and lawyers will gain a greater working knowledge and understanding of Environmental Human Rights Defenders. This Lesson focuses on Environmental Human Rights Defenders (EHRDs) and their valuable role in protecting the environment, ensuring respect for environmental human rights, and promoting and supporting the environmental rule of law.

### **PART 2: SUPPORTING ENVIRONMENTAL JUDGMENTS**

#### **Lesson 6: Adjudication of Environmental Impact Assessment Claims**

Through this Lesson, participants will learn what is Environmental Impact Assessment (EIA) and the role of courts in adjudicating EIA claims. The participants will have an understanding of both procedural issues and evidentiary issues that can be found in EIA cases, including examples of what remedies can be imposed for successful EIA claims.

#### **Lesson 7: What is Environmental Harm and how is it remedied?**

This Lesson will describe environmental harm and introduce key legal approaches to remedies in general, exploring the two main categories of legal responses to environmental harm: Legal responses that punish perpetrators, and deter future similar conduct and legal responses focus on remedies that seek to address environmental harm.

#### **Lesson 8: Liability and granting remedies for environmental harm**

This Lesson will introduce the different types of remedies for environmental harm usually offered in law. It also describes approaches for developing remedies, beyond monetary compensation, and various challenges practitioners may face with examples of solutions. The remedies outlined in this Lesson can be ordered in sentencing in administrative and criminal environmental cases or form a standalone order in civil cases.

### **Lesson 9: Sentencing in Environmental Cases**

This Lesson will provide an overview of how sentencing in environmental cases is determined and the different sentencing approaches. The participants will have an understanding of the factors to be considered for sentencing of environmental cases and be able to discuss and explain sentencing considerations for environmental cases. This Lesson will explore examples of environmental sentencing guidelines.

### **Lesson 10: Challenges and Solutions for the Enforcement of Judgments in Environmental Cases**

This Lesson will provide an understanding of the enforcement of judgements in environmental cases, and to identify the challenges of and solutions to enforcement of environmental judgements. The participants will gain an understand of good practices in the enforcement of environmental judgments.

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