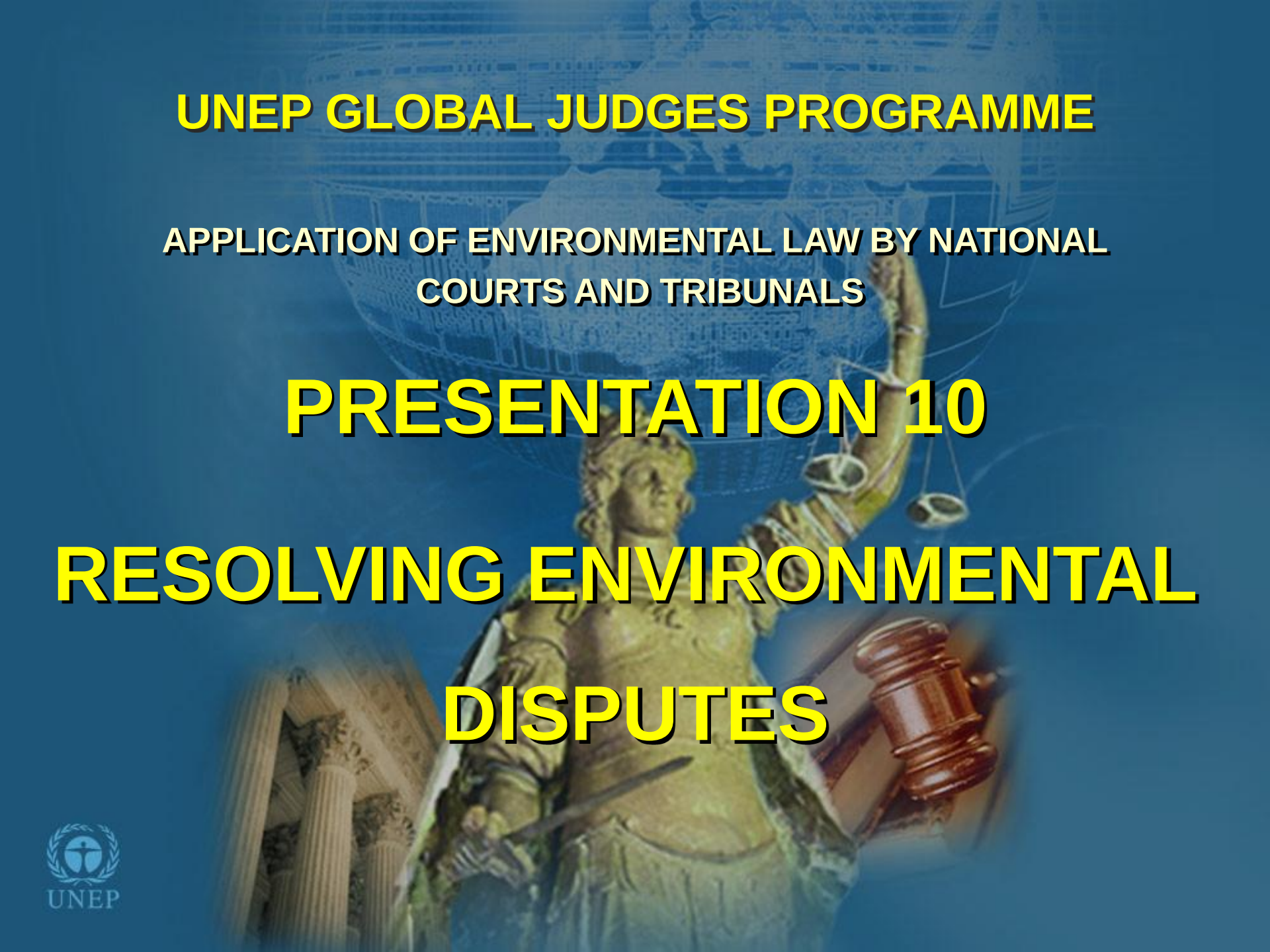
UNEP GLOBAL JUDGES PROGRAMME

APPLICATION OF ENVIRONMENTAL LAW BY NATIONAL COURTS AND TRIBUNALS

PRESENTATION 10

RESOLVING ENVIRONMENTAL DISPUTES



OUTLINE OF PRESENTATION

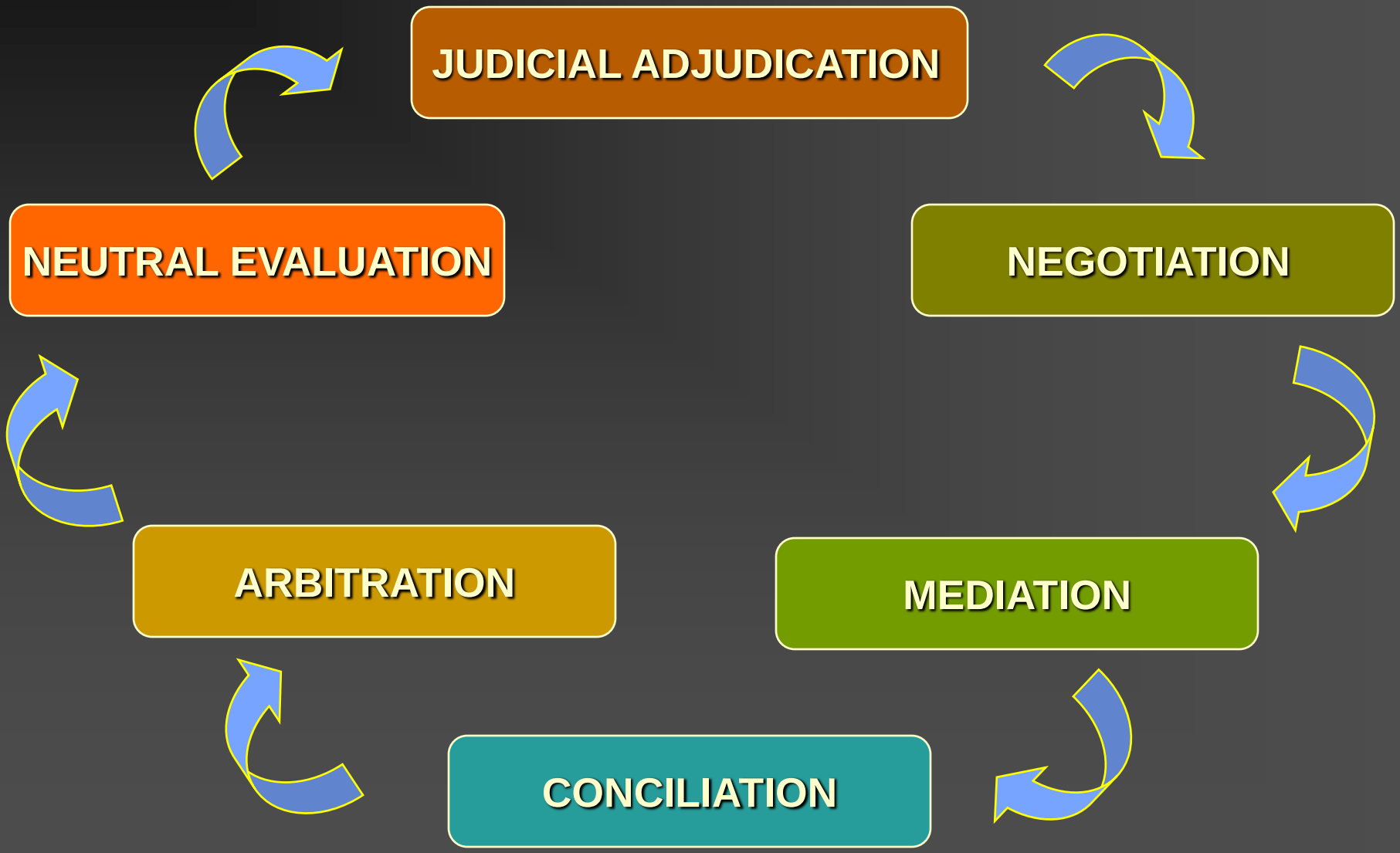
DISPUTE RESOLUTION TECHNIQUES

DISPUTE RESOLUTION BODIES

ALTERNATIVE DISPUTE RESOLUTION TECHNIQUES

- MEDIATION SERVICES
  - COMMERCIAL DISPUTES
  - COMMUNITY JUSTICE CENTERS FOR NEIGHBOURHOOD DISPUTES
- ARBITRATION
- NEUTRAL EVALUATION

DISPUTE RESOLUTION TECHNIQUES

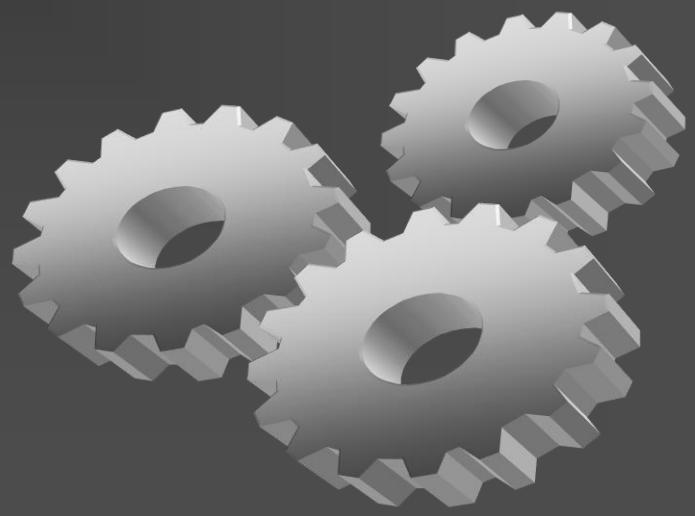


SPECIFIC BENEFITS OF ALTERNATIVE DISPUTE RESOLUTION

- Increase in efficiency
- Reduces time taken
- Encourages constructive approaches
- Gives sense of ownership to stakeholders
- Reduces ongoing disputation
- Courts can still enforce decisions reached through ADR

MEDIATION IN ENVIRONMENTAL DISPUTES

- Mediation is facilitated negotiation, by a third party
- Mediators' role is to assist parties to agree on a solution



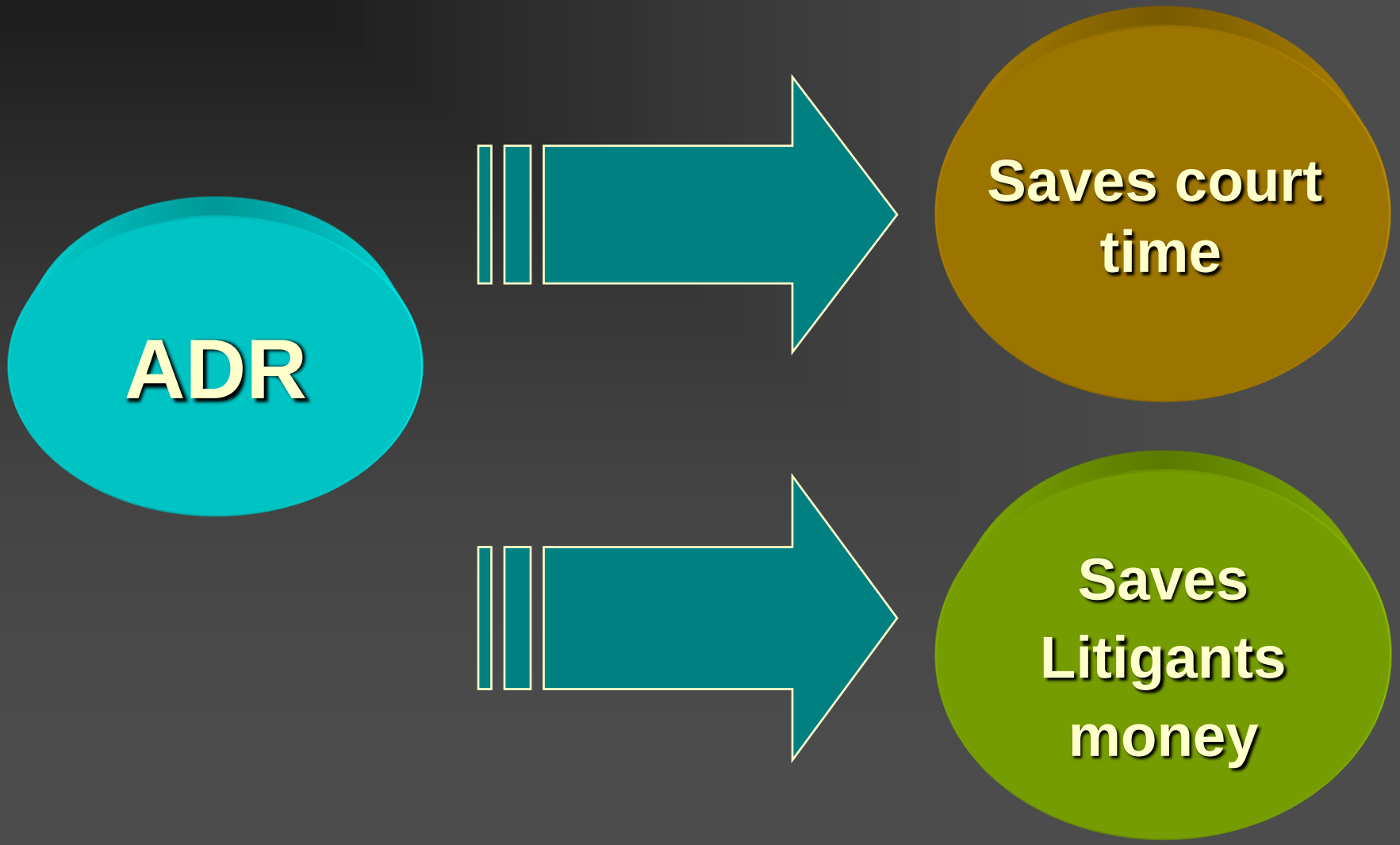
ARBITRATION IN ENVIRONMENTAL DISPUTES

- Arbitration is done by a neutral third party
- It is a quasi-judicial function
- Parties agree to submit to arbitration and to be bound by the result

WHEN SHOULD ADR BE DEPLOYED?

- Early in the process may be optimal
- But may bear fruit any time during the trial process
- ADR during appeal?

ALTERNATIVE DISPUTE RESOLUTION (ADR): THE BOTTOM LINE



DISPUTE RESOLUTION BODIES

- COURTS OF GENERAL JURISDICTION
- ADMINISTRATIVE TRIBUNALS
- SPECIALIST ENVIRONMENTAL COURTS
- TRIBUNALS FOR RESOLVING INTERNATIONAL ENVIRONMENTAL DISPUTES

COURTS OF GENERAL JURISDICTION

APPROPRIATE COURT

JURISDICTIONAL ISSUES

LIABILITY FOR PERSONAL HARM, PROPERTY DAMAGE AND ECONOMIC LOSS

ADMINISTRATIVE TRIBUNALS

ESTABLISHED BY STATUTE OR REGULATION

JURISDICTION

PROCEDURES

SPECIALIST ENVIRONMENTAL COURTS

a) LINKED TO THE DEVELOPMENT OF ENVIRONMENTAL LAW
b) COMPOSITION OF THE COURT
c) PROVIDE A COMPLETE AND EXCLUSIVE JURISDICTION WITH RESPECT TO:
- MERITS REVIEW
- JUDICIAL REVIEW
- CIVIL ENFORCEMENT
- CRIMINAL ENFORCEMENT
- MEDIATION
- NEUTRAL EVALUATION

d) SIMPLER PROCESSES
e) SPECIALISED EXPERTISE
f) FACILITATE THE USE OF EXPERTS TO ASSIST MAKING THEIR DECISIONS
g) WIDER ACCESS TO JUSTICE FOR THE PUBLIC
h) WIDER DISCRETION IN RELATION TO THE AWARDING OF LEGAL COSTS
i) PROVISION OF ALTERNATIVE DISPUTE RESOLUTION FACILITIES

POTENTIAL ADVANTAGES OF SPECIALIST COURTS

- More direct access to environmental justice: the one-stop shop
- Greater expertise; efficiencies in judicial administration of environmental cases
- Potentially wider discretion in relation to the awarding of legal costs
- Provision of Alternative Dispute Resolution facilities
- Better to develop environmental jurisprudence

POTENTIAL DISADVANTAGES AND CHALLENGES

- Possible loss of transferability from other areas of law
- Resource drain
- Loss of jurisdiction by courts of general jurisdiction
- Courts of general jurisdiction will still likely need to deal with collateral environmental dimensions of non-environmental cases
- Constructing appeal pathways
- Will environment court have criminal jurisdiction?

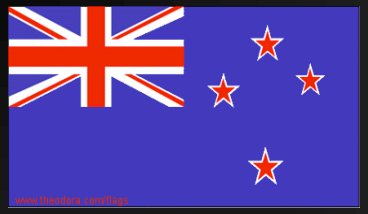
EXISTING SPECIALIST ENVIRONMENTAL COURTS AND TRIBUNALS

- There are now a range of specialist courts and tribunals, as well as “green benches” for environmental cases

  e.g. Brazil

- The following countries and jurisdictions have specialist courts:

  Australia, Bangladesh, India, Ireland, New Zealand, Sweden, Denmark, Canada: Ontario, USA: Vermont, Mauritius



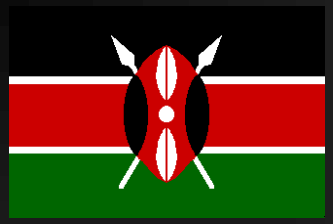
New Zealand

Environmental Court (1991)

Constituted by the Resource Management Amendment Act 1996

Not bound by the rules of evidence and the proceedings are less formal than the general courts

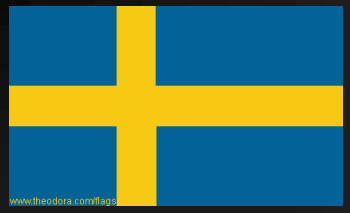
Mostly involves public interest questions



Kenya

National Environmental Tribunal (NET)

(under Environmental Management and Coordination Act, No. 8 of 1999 operational – January 2000.
First NET was appointed effective 2002)



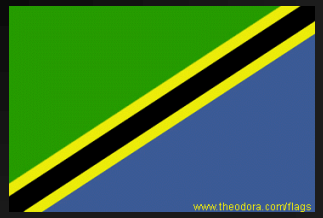
Sweden

Regional and Environmental Courts of Appeal

Environmental Supreme Court

Austria

Specialist Planning Appeals Tribunals



Tanzania

Environmental Appeals Tribunal

(Under Environment Management Act, 2004; came into effect February 2005)

TRIBUNALS FOR RESOLVING INTERNATIONAL ENVIRONMENTAL DISPUTES

- INTERNATIONAL COURT OF JUSTICE (EG. DANUBE CASE)
- INTERNATIONAL COURT OF JUSTICE: ENVIRONMENTAL CHAMBER ESTABLISHED IN 1993, BUT NOT YET USED
- EUROPEAN COURT OF JUSTICE
- PERMANENT COURT OF ARBITRATION

Danube Dam Case: ICJ

- Case Concerning The Gabcikovo-Nagymaros Project (Hungary/Slovakia)

SPECIAL ARBITRAL TRIBUNALS

- Trail Smelter Tribunal set up by special treaty in 1937 to arbitrate dispute on sulphur emissions from British Columbia to the State of Washington

CONCLUSION

MOVEMENT TOWARDS SPECIALIST COURTS

NEED FOR FLEXIBILITY IN ADJUDICATING ENVIRONMENTAL DISPUTES

RESTRICTION: ONLY APPLIES TO CASES THAT ARE BROUGHT UP AS "ENVIRONMENTAL CASES"

OTHER COURTS AND TRIBUNALS WOULD NEED TO EXAMINE THE ENVIRONMENTAL DIMENSION, IF ANY, IN CASES THAT COME BEFORE THEM.