



# **Training Curriculum on Environmental Law for Judges and Magistrates in Africa**

**A Guide for Judicial Training Institutions**

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## **FOREWORD**

The Training Curriculum and Manual on Environmental Law for Judges and Magistrates in Africa is a generic guide for judicial training institutions and programmes containing the key minimum course content. The training curriculum provides a generic regional curriculum with principles, norms, procedural requirements and guidelines within which judiciary institutions can develop tailor made curricula and action plans.

The development of this regional training curriculum and manual, with support from United Nations Environment Programme, was agreed upon by judicial training institutions, in Johannesburg, in January 2017 where a Plan of Action was adopted (attached annexed 1) and later endorsed in Yaoundé in February 2018 (attached annex 2). The message from the regional meetings is that there is need to have homegrown training documents to facilitate the progressive development and implementation of environmental law in Africa.

The training curriculum has 3 accompanying regional judicial training manuals: for English, French and Portuguese speaking countries. The framework manuals can also be adapted to suit national needs.

The overarching goal is to empower judicial training institutions in Africa in the development of training programmes on environment issues to equip Judges, Magistrates and Judicial Staff with knowledge and skills on adjudication of and resolution of environment cases in a manner that ensures environmental sustainability. To ensure sustainability in the training of judges and magistrates, it is necessary to build the capacity of trainers.

It is the expectation of the Africa Judicial Educators Network on Environmental Law that the use of the training curriculum and manual will contribute to sustainable development in Africa and consequently in the whole world.

Chairperson

Africa Judicial Educators Network on Environmental Law

## ACKNOWLEDGMENT

It is vital for development in Africa to be sustainable. Environment issues are central to the quest of sustainable development. Environmental law, being part of the environment pillar comes in to strengthen national efforts in the realization of environmentally friendly development. Increased awareness of environmental problems in Africa has resulted in greater political and social demand on the need to mitigate their environmental impacts.

For environmental laws to be supportive of sustainable development efforts, these laws have to be enforced and complied by putting in place proper mechanisms and appropriate institutional structures that will set in motion the much-needed action.

The judiciary in Africa is increasingly being a crucial partner in the promotion of compliance with and enforcement of international and national environmental regimes. Therefore, enhancing the capacity of Judges and Magistrates is critical to the envisaged realization of sustainable development.

We are committed to assisting countries to strengthen and retain the necessary capacity to adjudicate environmental disputes in a sustainable basis.

The United Nations Environment Programme wishes to acknowledge the cooperation of all the judicial training institutions and programmes that contributed to the successful preparation of the training curriculum and manual. We specially appreciate the active involvement and keen interest of the Chief Justices, Presidents of Supreme Courts and Judges in Africa during the review and adoption of these training documents.

Special thanks go to Dr. Freda Gicheru, Deputy Director of the Kenya Judicial Training Institute for supporting and guiding the preparation of the training curriculum and reviewing the training manual.

Finally, I express my grateful thanks to my colleagues in the United Nations Environment Programme, especially Robert Wabunoha, Susan Wekesa, Allan Meso for their dedication and commitment with which they have helped in the development of these publications.

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## **1.0 Introduction**

There is a strong case for strengthening judicial education on environmental law in Africa. First, environmental law is a relatively new branch of law having only recently become part of the curricula of legal training in universities. As such, most judges and magistrates who preside over environmental cases may not be adequately equipped with knowledge and skills to apply or interpret environmental law. Secondly, environmental law is complex as it integrates scientific, technological, economic, social and equity imperatives. This complexity calls for continuous training of judicial officers with knowledge and skills especially on the ever-evolving environmental issues. Thirdly, recent years have witnessed a growing proliferation of environmental treaties, statutes, regulation and bylaws. In many cases in Africa, constitutions have established and enshrined new environmental law principles and broadened the scope of social and economic rights. In addition, many new institutions are being established to deal with the growing range of environmental management challenges.

## **2.0 Overall Goal**

The overarching goal of this regional training curriculum is to equip judges, magistrates and judicial officers with knowledge and skills in adjudication of and resolution of environment disputes in a manner that ensures environmental sustainability.

## **3.0 Specific Objectives**

The specific objectives of this regional training curriculum are to:

- a) Guide the judiciary training institutions in developing environmental law training programmes;
- b) Equip judges and magistrates with practical and advanced skills in resolving environmental disputes;
- c) Develop a cadre of judicial officers with skills and expertise to ensure continuous training.
- d) Guide judicial educators in the development of training material on environmental law

## **4.0 Structure of the Curriculum**

The curriculum should be structured in modules and units each building to the other in terms of advancing complexity and themes. This guideline curriculum contains three modules that are fundamental to judicial education of environmental law. Jurisdictions are welcome to alter the structure so as to suit them. The structure is briefly as follows:

#### **4.1.1 Module one: Foundations of environmental law**

Covering the scope and content of environmental law; fundamental principles and concepts in environmental law; contemporary environmental matters in Africa.

#### **4.1.2 Module two: Procedural aspects in adjudication of environmental disputes**

Covering jurisdiction; evidence in procedural issues; access to environmental justice; evidence in environmental cases; remedies and sanctions; case management in environmental matters.

#### **4.1.3 Module three: Principle subject areas of environmental adjudication**

Covering environmental crime including wildlife and forest crimes; human rights and the environment; pollution; fresh water resources; marine and coastal resources; mineral resources.

### **5.0 Conduct of the Course**

Given the time constraints and competing demands associated with the work of judiciaries, the curriculum should be flexible enough to enable judiciary training institutes and judicial officers to choose the most suitable times. The idea is to ensure that whatever format is adopted is able to reduce the impact on other commitments the institutes and judicial officers might have. The course design must thus allow for flexibility - without the need for full time attendance. For example, it may be left to each jurisdiction to determine whether to package these modules as prepared or modify and have them conducted separately and within reasonable timelines.

It is further recommended that the modules be taught with varying degrees of detail and intensity as would suite different cadres of judicial officers. Accordingly, judicial officers appointed to specialized environmental courts may require more detail and intensified training than their other counterparts.

The curriculum should also ensure that adequate time is allocated for participants to participate in case studies, discussions and other exercises, with a view to enhancing understanding of the issues studied. Where practicable, judiciary training institutions will integrate a combination of distance learning and residential training. Most areas of training should be conducted with case studies, materials, and court decisions.

### **5.1.1 Certification**

The judiciary training institutions may decide to issue certificates of various forms in recognition of achievements by the judicial officers who attend the courses. They may also enter into partnerships for accreditation with other institutions of advanced learning and training in environmental law.

### **5.1.2 Course Materials**

Every training should be based on a study pack and the required set texts prepared beforehand for each module. In addition, participants should be encouraged to read from any wider sources available – including newspapers and documentaries which are a good place to find information concerning the environment. If there is formal assessment at any stage during the course, participants should be given the flexibility to determine and conduct their own research, and should be guided and facilitated to access relevant facilities.

In this regard, a **national training manual should be developed to be used alongside this training curriculum.** The training manual should provide a guide to the course materials including exercises and case law to be used.

## **6.0 Trainer profiles**

### **6.1 Similarity of professional background to participants**

Central to the success of the training workshop is the selection of trainers. It has been proven that trainers with a common professional background to that of the participants tend to have a better understanding of their training needs and are more effective when addressing them. For this reason, the composition of the target group is a factor to be considered when selecting the trainers of an implementing workshop. Judiciary training institutes will provide trainers and guest speakers who will be experts in the field of environmental studies.

### **6.2 Didactic competences and pedagogical skills**

It is also important to identify the right trainer for each unit. In the units where the emphasis is on practical issues, the involvement of a practitioner, lawyer or judge with personal experience in the issue would be ideal. If the focus of a presentation is the transmission of information or the introduction to concepts or a broader area of law, an academic or a suitable policy officer could also constitute a good option. In addition to professional qualifications, the quality of an implementing workshop will also depend on the individual trainers' instructive competences and pedagogical skills.

Trainers would have to provide the necessary information in a clear and structured manner, highlight the links between participants' daily work and the issues being discussed, retain some flexibility in order to adapt to the specific needs and interests of the end users attending the workshop as they become apparent, and be open and encouraging in discussing and exchanging views with them in the course of the session.

### **6.3 Linguistic, information and technology skills**

Other skills that potential trainers should ideally possess and which should be considered are the trainers' linguistic skills and their familiarity with IT products, as the use of technology would be required in at least some parts of the training (IT-training sessions, use of PowerPoint or other audio-visual material, the e-learning course, etc.).

### **6.4 Diversity in the group of trainers**

For the successful implementation of the workshop and in order to better address participants' training needs, some diversity among the trainers should be sought. Variety between speakers' professional backgrounds and gender would enrich the event, offering different perspectives on the issues, employing different teaching methods and ensuring a more comprehensive analysis of environmental law.

### **6.5 Motivation**

Finally, although not always easy to assess, the potential trainer's personal motivation could be a factor worth considering. For the implementation of a workshop on the basis of the training module, significant flexibility and commitment, as well as the willingness to interact with end users is expected from the trainers. Engaging experts, who have an interest in the project and are prepared to make the necessary effort for a successful outcome, would bring an added value to the workshop, while further motivating the participants.

## **7.0 Methodology**

The method of delivery that is used must recognize that judges and magistrates are independent adult learners and already possess certain level of skills. Consequently, the delivery method needs to adopt an experiential learning approach. This method is grounded in participatory dynamics which may be achieved through the following broad approach:

- a) Information being presented in the form of problem statements – at a factual level;
- b) Participating judges and magistrates being afforded time to work out the



- problem in groups or individually;
- c) Facilitators giving confirming points or points to consider;
- d) Facilitators refraining from prescriptive engagement or answers.

The following delivery methods may be useful:

### **7.1 Ice-breakers**

Icebreakers enable the learners to break the tension or unfamiliarity. Key icebreakers include, introductions and objectives. Discussing exceptions and fears, ground rules, among others.

### **7.2 Face to face presentation**

It is an optimal method for the provision of a large amount of information in a limited period of time. This method provides the trainer with the necessary time and flexibility to structure and present the content of the sub-session as s/he sees fit. Supporting material such as reference material, power point or other presentation tools should be employed during the lecture.

Enriching the lecture with practical examples could also be a means of emphasizing the link between theory and practice and better illustrating the application of the various legal instruments. Brief exercises or questions could also be formulated by the trainers, requiring participants to reflect and discuss them before presenting the answer. Time for question and answer sessions should in all cases be ensured for end users wishing to ask for clarification or further information and enhance interaction.

### **7.3 Workshop exercises**

The training also aims at providing participants with some practical experience in the particularities of the cases on environmental matters. In order to further highlight issues requiring special attention and allow participants to develop specific skills, it is important to ensure their involvement in this part of the training. For this reason, specially designed workshop exercises will complement each thematic unit. Another advantage of this method is that the preparation of an exercise constitutes an interactive way of learning. After having listened to face-to-face presentations or read background material, participants would appreciate a change of presentation technique.

### **7.4 Case studies prepared in working groups**

Before an exercise is handed over the trainer should start with a brief session in plenary, to introduce case studies and the main issues end users should deal with. Participants should subsequently be divided into smaller working groups and working

space provided for each of them. The trainer may allocate participants to the working groups, bearing in mind their diversity, to support their interaction. Judges and magistrates from different courts could be asked to work together.

Working groups should develop a working method and identify which member(s) of the group will be responsible for reporting the conclusions of their discussion to the other end users. The trainer leading the exercise should be present, following the interaction in each group to a certain extent and offering advice on time management, clarification and assist participants if they face major difficulties or their discussion becomes derailed.

Upon completion all participants should come together again to discuss and compare their conclusions. All groups should take the floor and present the results of their work, one case at a time. In conclusion, the trainer should summarize the main points raised in the discussion and give his own feedback, so that participants can confirm whether they successfully dealt with the case or whether there could be further improvement.

### **7.5 Information and Technology-supported learning**

Information and technology-supported learning can enhance the efficiency of training and give end users the opportunity to gain practical experience by making use of the possibilities the internet offers on issues related to environmental law generally. In this way, end users will have the opportunity of becoming familiar with the various environmental law websites (such as *ecolex* and *informea*) where they can acquire further information and advice on how to apply the environmental statutes covered by the workshop. By efficiently using these websites, participants will actively learn how to find the relevant legal texts and cases and receive assistance on the practical problems they may face when applying the law in this area.

## **8.0 Course Description**

The following provides details of the courses and their expected learning outcomes.

### **MODULE ONE: FOUNDATIONS OF ENVIRONMENTAL LAW**

This section of the curriculum is the substratum to the subject of environmental law. It also brings to the fore the context and background within which the adjudication role is carried out.

**i. Content:**

Scope and content of environmental law; fundamental principles and concepts in environmental law; contemporary environmental issues: opportunities and challenges in Africa;

**ii. Expected Learning Outcomes:**

On completion of this Module participants will be able to:

- a) Employ relevant legislation, norms, concepts and principles of environmental law in rendering judgments.
- b) Apply the law within the context of the contemporary issues unique to their jurisdiction.
- c) Prioritize environmental sustainability when dealing with environmental disputes

**iii. Content Description:**

**Unit 1: Scope and content of environmental law**

Meaning of environmental law; sources of environmental law -international, supranational law and national law including; constitutions, framework laws, sectoral laws, integrated legislation, case law, common law; customary international law; pollution laws, natural resource laws, planning laws, sustainable development laws, regulations; subnational-laws; impact of international law at the national level.

**Unit 2: Fundamental principles and concepts of environmental law**

Key principles of environmental law: prevention, precaution and polluter pays principles; inter and intra generation equity; sustainable use of natural resources; sovereignty and responsibility; public trust doctrine; concepts in environment management.

**Unit 3: Contemporary environmental matters in Africa:**

Africa's natural capital wealth; balancing environment and development in Africa; emerging environmental challenges in Africa including climate change; environmental degradation; biodiversity loss, illegal trade in wildlife and other products; pollution; importance of energy resources; environmental management systems in Africa; protection of oceans; fresh water; fisheries; extractives.

## MODULE TWO: PROCEDURAL ASPECTS IN ADJUDICATION OF ENVIRONMENTAL DISPUTES

This section builds upon the foundation level and discusses various procedural issues relevant to judges and magistrates in the adjudication of environmental law matters.

### **i. Content:**

Access to justice in environmental matters; evidence in environmental cases; remedies and sanctions; case management in environmental matters;

### **ii. Expected Learning Outcomes:**

On completion of this Module participants will be able to:

- a) Apply appropriate rules of evidence, and procedure in solving environmental disputes.
- b) Manage complex environmental disputes.
- c) Apply relevant remedies and sanctions to environmental disputes.

### **iii. Content Description:**

#### **Unit 1: Access to justice in environmental matters**

Jurisdiction, Principle 10 of Rio declaration (access to information, public participation and justice); public interest litigation and locus standi.

#### **Unit 2: Evidence in environmental cases**

General matters of evidence in environmental cases; scientific evidence; economic and sociological analysis; court and expert witnesses; standard and burden of proof; scientific and legal proof compared.

#### **Unit 3: Remedies in environmental cases**

Sustainability concepts relevant to remedies; remedies in environmental cases including injunctive relief and administrative decisions; environmental impact assessments; calculation of and compensation for environmental damage; judicial oversight of remedy implementation;

#### **Unit 4: Case Management in environmental matters**

Effective case management in environmental matters; essential features of effective case management in environmental matters; visiting the site and locality at issue; good practices in case management; management of experts; alternative dispute resolution mechanisms.

## **MODULE THREE: PRINCIPLE AREAS OF ENVIRONMENTAL ADJUDICATION**

This module discusses selected pertinent issues of water, land, air, flora and fauna in environmental adjudication.

### **i. Content**

Environmental crime; human rights and the environment; Adjudication of natural resource disputes; fresh water and fisheries resources; marine and coastal resources; wildlife; wetlands; mineral resources.

### **ii. Expected Learning Outcomes**

On completion of this Module participants will be able to:

- (a) Apply criminal law principles and procedures in adjudicating environmental crimes.
- (b) Apply legislation and case law to solve disputes around principle areas of environmental adjudication.
- (c) Apply relevant legislation and case law to resolve disputes on natural resource disputes.
- (d) Identify and apply human rights-based approaches to environmental protection.

### **iii. Content Description**

#### **Unit 1: Environmental crime**

Forms of environmental crimes including wildlife crime in Africa, practical aspects and challenges of adjudicating environmental crimes;

#### **Unit 2: The environment and human rights**

Human rights legal and institutional framework in Africa; categories of rights in environmental matters; emerging jurisprudence in constitutional and environmental rights.

#### **Unit 3: Adjudication of natural resource disputes**

##### **Unit 3 (a): Freshwater and fisheries resources**

Fundamental principles in freshwater resources use and related water pollution; freshwater and fisheries status in Africa; judicial intervention in freshwater and fisheries resources;

**Unit 3 (b): Marine and coastal resources**

Uses, threats and environmental impacts on marine and coastal resources; dumping of wastes; land-based pollution; protection of marine living resources (wildlife); Africa the oceans and seas; national and International instruments on marine ecosystems and pollution; marine environment and courts;

**Unit 3 (c) Wildlife**

Wildlife in the African context; uses and threats to wildlife; legal frameworks for protection of wildlife (plants and animals); legal frameworks and types of forests and critical habitats; types of crimes in forests; courts and wildlife.

**Unit 3 (d): Wetlands Resources**

Importance of wetlands in Africa and the associated challenges; legal frameworks on protection of the environment wetlands; courts interventions on the environmental impacts in wetlands

**Unit 3 (e): Mineral Resources**

The importance of mineral resources in Africa and Judicial interventions in mining and quarrying activities; Global and basic principles governing mining activities.