

-MODULE 3-

GENERIC ELEMENTS FOR PA LEGISLATION

-DEFINITIONS, SCOPE, PRINCIPLES, OBJECTIVES & INSTITUTIONS-

CONTEXT OF MODULE WITHIN BROADER COURSE

- This is the third Module in the Course.
- Prior to drafting any PA law, a thorough knowledge of the following contextual issues is required:
 - Overarching Constitutional Framework - that sets out the constitutional norms that should permeate the PA law and the powers and functions of the different branches and spheres of government.
 - Relevant International Obligations - that set out the international legal commitments that need to be enacted into the PA law.
 - Relevant Domestic Policies - that set the policy context for the PA law.
 - Relevant Domestic Laws - which should set the legislative context and with which the new PA law should be aligned/integrated.
 - Existing Institutional Framework - that should influence the form and nature of the institutions created in the PA law.
 - Consultation Process - that should be followed in drafting the PA law.
 - Legislative Options - that should inform the selection and integration of particular legal tools within the PA law and the decision as to whether the PA law should be a stand-alone law or be embedded in other relevant legislation.
- Most contemporary domestic legal frameworks governing PAs commence with the following set of provisions:
 - Definitions - defining key words and terms used in the law;
 - Scope and Application - outlining the scope and geographical application of the law;
 - Objectives & Principles - setting out key principles and objectives which inform the implementation of the law and specifically any decisions taken by authorities under the law; and
 - Institutional Arrangements - creating institutions tasked with implementing the law and prescribing the composition, powers and functions.
- A thorough knowledge of the above contextual issues and preliminary components is essential to anyone tasked with understanding, implementing, reviewing or drafting PA law.
- This Module therefore seeks to provide the Learners with an introduction to, and overview of, these contextual factors and preliminary provisions contained in domestic legal frameworks governing PAs.

OVERVIEW OF KEY CONTENT

In this Module the Educator will introduce the Learners to:

- **Pre-Drafting Preparations**
 - Constitutional framework
 - Relevant international obligations
 - Relevant domestic policies
 - Relevant domestic laws
 - Existing institutional framework
 - Consultation process
 - Legislative options
- **Definitions**
 - Nature & purpose
 - General rules on formulation
 - Important international definitions
- **Scope & Application**
 - Geographical & substantive scope
 - Relation to framework environmental laws
 - Relation to other resource laws
 - Managing areas of overlap/conflict between laws
 - Repeal/revision of old laws
 - Coordination & consultation between laws
- **Objectives & Principles**
 - Nature & purpose
 - How to formulate them
 - Nature of their content
- **Institutional Arrangements**
 - General considerations
 - Nature and level of authority
 - Advisory authorities
 - Management authorities
 - Co-management authorities
 - Coordination mechanisms

MODULE OBJECTIVES & OUTCOMES

- **Objectives**
 - Highlight important legal aspects to be taken into account in pre-drafting preparations.
 - Introduce Learners to the important role definitions play in PA legislation and the rules governing their formulation.
 - Clarify how the geographical and substantive application and scope of a PA law are prescribed.
 - Identify legal mechanisms for managing overlaps and conflicts between PA laws and other relevant laws.

- Distil the form, nature, authoritative weight and role of objectives & principles in a PA law.
 - Outline the different institutional arrangements one typically finds in a PA law and the manner in which the law prescribes the composition, powers, functions and relationship between these institutions.
- **Desired Outcomes**
 - Knowledge of the range of issues to be taken into account in pre-drafting preparations.
 - Understanding of the role definitions play in PA legislation and the rules governing their formulation.
 - Clarity on how the geographical and substantive application and scope of a PA law are prescribed in law.
 - Awareness of legal mechanisms for managing overlaps and conflicts between PA laws and other relevant laws.
 - Knowledge of the form, nature, authoritative weight and role principles and objectives play in a PA law.
 - Insight into the different institutional arrangements one typically finds in a PA law and the manner in which the law prescribes the composition, powers, functions and relationship between these institutions.
 - An ability to formulate and critically review the following types of provisions in a PA law:
 - Definitions provisions
 - Scope and application provisions
 - Objective & principle provisions
 - Institutional arrangements.

READINGS & RESOURCES

- *PA Law Guidelines* (Pgs 107-138)

STRUCTURE & DURATION OF MODULE

- This Module is structured into **two main components**:
 - **Seminar Presentation**
 - **Exercise**
- The approximate **duration** of the Module is 4 hours comprising of:
 - Seminar Presentation (2 hours)
 - Exercise (2 hours)

REFLECTIVE EXERCISES

In this Module the Educator has the choice of **two exercises**:

- **Exercise 1** - *Formulating Protected Areas Principles and Objectives*
 - **Nature of the Exercise**
 - Small Group Exercise.
 - Legal Drafting.
 - Presentation.
 - Discussion Forum.
 - **Purpose of the Exercise**
 - Build awareness of the nature, form and role of principles and objectives in a PA law.
 - Promote knowledge of legal mechanisms to achieve the tangible realisation/implementation of these principles and objectives.
 - Improve/build Learners' legal drafting skills.
 - **Methodology/Procedure**
 - Divide Learners into groups of four.
 - The Educator will introduce a particular scenario to the Learners (20 minutes).
 - Groups will be tasked with (1 hour):
 - Identifying 10 key principles/objectives that should be included in a PA law.
 - Thinking about tangible legal tools that could be used to promote the practical realisation/implementation of these principles and objectives.
 - Drafting a short page-long principle and objective provision to be included in a PA law.
 - The Learners will then come back together as a group and four groups will be tasked with presenting their provisions to the group - with their provisions being placed on a communal screen for all to see (4 x 10 minutes = 40 minutes).
 - The Educator will encourage the audience to critically review and supplement the examples presented by the two groups.
 - The Educator will consolidate the exercise by presenting a generic example of a legal provision dealing with objectives and principles (10 minutes).
- **Exercise 2** - *Exploring the Role of Definitions, Principles, Objectives and Institutions through the Protected Areas Law Matrix*
 - **Nature of the Exercise**
 - Individual Exercise.
 - Legal Analysis.
 - Completion of PA Law Matrix (Definitions, Principles, Objectives and Institutions).

- **Purpose of the Exercise**
 - Provide Learners with an opportunity to practically use their knowledge.
 - Get Learners reading and analysing PA laws.
 - Increase familiarity with the PA Law Matrix.
 - Possibly build up a repository of PA Law Matrix for more jurisdictions.

- **Methodology/Procedure**
 - The Educator will provide each Learner with:
 - A blank matrix.
 - A PA law from a particular country (a generic example will be provided but Educators will be encouraged to select a PA law relevant to their context or that of their audience).
 - Each Learner will be required to critically review the relevant law and complete the relevant components of the PA Law Matrix – ie those relating to definitions, principles, objectives and institutions (1 hour).
 - All Learners will then come back together as a group and the Educator will, drawing from the Learners' contributions, present a complete PA Law Matrix (which will have been provided to him/her or have been developed by him/her in advance) (1 hour).

NOTES FOR THE EDUCATOR

• **General Preparations for the Module**

- Read the main texts and the additional readings and resources.
- Work through the relevant Seminar Presentation and supporting Notes for the Educator.
- Tailor the Presentations to suit your purpose and audience.
- Read through the relevant Exercises.
- Tailor the Exercises to suit your purpose and audience.

• **Facilitation of the Module**

- The Educator may wish to consider the following factors in tailoring the Seminar Presentation to their specific context and audience:
 - Where this Module is presented as a stand-alone Module - the Educator may wish to insert a slide containing a photograph of him/herself and his/her contact details (after slide 1) and spend some time allowing each of the Learners to introduce him/herself.
 - Where the Learners have been previously introduced to Module 1 – the Educator may wish to remove slide 7 (dealing with Acknowledging Diversity).
 - In the context of the section dealing with Pre-Drafting Preparations: Key Preliminary Legal Issues/Factors, the Educator is encouraged to integrate specific examples of the following from their jurisdiction or that of their Learners to contextualise the discussion:
 - Constitutional Provisions (slide 10).
 - International Obligations (slide 11).
 - Existing Policies (slide 12).
 - Existing Laws (slide 13).
 - Institutional Framework (slide 14).
 - In the context of the section dealing with Pre-Drafting Preparations: (Procedure to be Followed), the Educator may want to supplement/replace the generic discussion of the consultation and formal approval process for a new law (slides 15-16) with the legal process applicable in their jurisdiction or that of their Learners.
 - In the context of the section dealing with Definitions:
 - Generic examples are used to illustrate general rules of drafting practice that should guide the use and formulation of definitions in a law (slides 24-26). The Educator is encouraged to replace these with examples from their jurisdiction or that of the Learners.
 - An array of some internationally recognised definitions contained international treaties and guidelines are contained reflected on slide 27 – and the Educator may wish to adapt these to reflect definitions drawn from those treaties/guidelines relevant to their context/that of the Learners.
 - In the context of the section dealing with Scope and Application (slide 29) – the Educator may wish to supplement the content and general lessons canvassed in the Notes for the Educator – with specific examples of legal provisions drawn from their jurisdiction or that of the Learners.
 - In the context of the section dealing with Objectives and Principles (slides 31-34) the Educator is encourage to adapt the content to

- include examples from their jurisdiction or that of their Learners to illustrate the lessons on how to formulate them and the differences in the nature of their content. The Educator may even wish to utilise group work within the Seminar – handing out examples of different PA laws from different countries in class and asking the Learners to reflect on the manner in which they formulate the application and content of objective and principle provisions.
- In the context of the generic case study introducing the section on Institutional Arrangements (slides 36-43), the Educator may:
 - Exclude it from the Seminar Presentation entirely if he/she is dealing with a well-capacitated audience.
 - Exclude it from the Seminar Presentation and convert it into a Reflective Exercise to be undertaken by Learners in groups/individually following the Seminar Presentation.
 - Replace the generic factual scenario with an actual case study drawn from/relevant to the Learners' context.
 - In relation to the remaining slides dealing with Institutional Arrangements (slides 44-53), the Educator is encouraged to adapt the content to include examples from their jurisdiction or that of their Learners to illustrate the legal issues relating to institutional arrangements in PA laws.
 - If the Educator will also be presenting Module 5 (Management) to the Learners – the Educator may wish to deal with the content on the slides on Management Authorities (slide 51) and Co-Management (slide 52) briefly as these two issues are comprehensively dealt with in Module 5 (Management).
 - The Educator should be aware that the content dealt with in Module 3 links with that contained in several other Modules in the Course, most notably:
 - **Module 1** (Setting the Context) - which deals comprehensively with key management principles and objectives that should be reflected in Objective and Principle provisions in a PA law.
 - **Module 2** (Governance Principles and Approaches) – which deals comprehensively with several legal factors impacting on PA governance, types of PA governance and possible legal tools for promoting voluntary PA governance types in formal PA systems - that should be scoped in pre-drafting preparations.
 - **Module 4** (Planning, Types, Establishment, Disestablishment and Alteration) - which deals comprehensively with several legal issues relating to PA planning and categories of PAs - that should be scoped in pre-drafting preparations.
 - **Module 5** (Management) - which deals comprehensively with legal issues relating to designating management authorities, drafting and approving management plans, recognising and promoting different institutional relationships in a PAs such as single management and co-management, zoning, monitoring and reporting - that should be scoped in pre-drafting preparations.
 - **Module 6** (Regulation, Impact assessment, Compliance & Enforcement, Financing) - which deals comprehensively with legal mechanisms for enabling both state and non-state actors

to play a compliance and enforcement role in a PAs and highlights different incentive and financing mechanisms for all PA Governance Types - that should be scoped in pre-drafting preparations.

- **Module 7** (International & Regional Law) - which deals comprehensively with relevant international conventions and institutions that may have a role to play in informing and supporting pre-drafting preparations and influencing domestic formulations of definitions to be included in the PA law.
- **Modules 8 & 9** (Connectivity Conservation) - which deal comprehensively with legal issues and instruments that seek to promote connectivity within and between PAs - that should be scoped in pre-drafting preparations.
- **Modules 10 & 11** (Marine Protected Areas) - which deal comprehensively with legal issues relating to MPAs - that should be scoped in pre-drafting preparations for PA laws governing MPAs.

ASSESSMENT EXERCISES

• Nature and Guidance on Use of Exercises

- The Educator is provided with a series of essay-style assessment questions that are designed so as to broadly cover the content the Module.
- The questions may be utilised for assessment purposes or as an opportunity for Learners to consolidate their knowledge.
- The questions cover both theoretical and practical issues.
- No mark allocation for the questions has been provided.
- All of the questions are of equal weighting.
- It is recommended that in an exam-type setting, Learners should have 1 hour to answer each question.
- The answers for the questions can be drawn directly from the Seminar Presentation and the accompanying Seminar Notes.

• Assessment Questions

- *Question 1*

Your country is in the process of drafting a new PA law. You are tasked by the Minister of the Environment to prepare a memorandum in which you outline key issues that need to be considered prior to beginning drafting the new PA law. Prepare this memorandum for the Minister.

- *Question 2*

Prepare an essay in which you outline the nature, purpose and general legal drafting rules applicable to formulating definitions in a law. Blend examples into your essay in order to illustrate good and bad examples of compliance with these legal drafting rules.

- *Question 3*

PA laws can seldom be drafted and implemented in isolation from many other relevant sectoral natural resource, land use and development laws. It is therefore essential to clearly delimit the scope and application of the PA law and the manner in which it relates to possible overlapping or competing legislation. Prepare an essay in which you consider the array of legal issues that should/could be provided for in a PA law to promote the above.

- *Question 4*

Most contemporary environmental laws include a set of objectives and/or principles that outline the objective/purpose of the law and guide its implementation. Write an essay in which you reflect on the form and content of these principle and objective provisions contained in PA laws, the key legal issues that should be taken into account when formulating them.

- *Question 5*

Every good PA law should make provision for an array of institutions/authorities responsible for implementing different components or functions under the law. The nature and role of these institutions/authorities differ substantially. Prepare an essay in which you outline the different forms of institutions/authorities typically provided for in a PA law and their respective functions, powers and duties. Include in your discussion an analysis of possible statutory mechanisms that could be included to promote necessary cooperation between the various institutions.