



**REGIONAL CAPACITY DEVELOPMENT TECHNICAL ASSISTANCE
STRENGTHENING CAPACITY FOR ENVIRONMENTAL LAW IN THE
ASIA-PACIFIC: DEVELOPING ENVIRONMENTAL CHAMPIONS
TRAIN-THE-TRAINERS PROGRAM**

**28 May – 01 June, 2018
Colombo, Sri Lanka**



Role Play Exercise: Mediation

**Session 7, Tuesday 29 May and
Session 12, Wednesday 30 May**

Introduction

Role playing allows students to practice legal representation of different interest groups concerning the same facts. Role plays can be designed for dispute resolution within formal settings such as courts and tribunals or for situations where alternative dispute resolution mechanisms are employed.

Role plays can be based on a fictitious scenario, with roles allocated to different interest groups or they can be based on actual cases. Further, they can be based on a mixture of fact combined with fiction. Professors can choose between these types of role play scenarios, depending on what is most appropriate in the circumstances.

The chosen fact situation here is a hypothetical scenario, but is based on a situation that has arisen in many countries. This role play exercise has been designed to encourage the participants to examine the same fact situation from the perspective of the different parties involved, by applying the law from their own jurisdictions and engaging in a mediation process (as an exercise in alternative dispute resolution).

This role play will be conducted in two parts. The first part is an introduction to the role-play scenario, together with instructions on how to conduct the exercise. It will take place during session 7 on Day 2, Tuesday 29 May between 2.30 and 3.15 pm. In this session, the participants will be divided into groups, given time to read and discuss the fact situation and must then prepare their negotiating positions.

The second part of the exercise is the conduct of the role-play mediation itself. This will occur in session 12 on Day 3, Wednesday 30 May between 3.30 and 5.00 p.m. After the role play has finished, there will be an opportunity for reflection and feedback on the role play and a discussion on whether and how the participants might incorporate a role play into an environmental law course.

Instructions

1. The participants will be divided into 6 groups, each of which will constitute one of the parties involved in the fact situation.
2. Two mediators will be appointed (from amongst the participants and, possibly, the trainers) to lead the mediation and should prepare for their role while each group is preparing its presentation for the role play.
3. Each group should choose a reporter who will take notes of their preparations on behalf of the group, and be prepared to summarize the group's discussions on a white board or on a computer.
4. Each group should choose two participants to represent them in the mediation.
5. Each participant is expected to take some part in the group preparatory discussions and the actual role-play exercise (e.g., by assisting the two, chosen representatives as necessary).
6. The TTT trainers will be available for clarifications and advice during the preparation of the presentations to be made by each group in the role play.

Hypothetical facts:

In 2012, the National Human Settlement and Housing Development Authority (NHSHTDA) purchased an area of land in Kandy on which a company had operated a chemical manufacturing plant for the previous fifteen years. The company shifted its operations to another site outside Kandy.

In 2013, NHSHTDA arranged for the clearance of all industrial buildings from the land it had purchased and then declared the land to be suitable for the construction of a residential housing scheme. At this time, NHSHTDA also prepared and published a map showing the location of sites it had identified for proposed residential development in Kandy, and noted which of these sites (including this one) had previously had industrial activities undertaken on them.

Later in 2013, NHSHTDA sold the land to a real estate development company that planned to contract builders to construct a residential housing scheme on the land.

At this time, the recently established National Environmental Authority (NEA) within the Ministry of Natural Resources and Environment Conservation, having noticed the map of former industrial sites prepared by NHSHTDA, decided to develop guidelines for the assessment of potentially contaminated sites in Kandy. However, it did not take any action to warn other government agencies or the purchasers of former industrial sites that these

sites might not be suitable for residential development due to industrial pollution of the soil and groundwater.

In 2014, the real estate development company presented its plans to the Kandy City Development Committee (KCDC) to construct a residential housing scheme on the land and obtained a construction permit from the KCDC.

The real estate developers then contracted builders to construct the residential housing scheme. After having developed the land, they sold all of the housing allotments during 2015-16.

In 2017, the residents who owned houses in the new scheme were shocked to learn that their lives may be at risk, due to the chemical contamination of the housing estate land. Following complaints by them to the NEA about their recent ill health, the NEA has conducted an investigation that indicates the residential land has been contaminated with antimony. This is a metalloid that can cause irritation in the eyes, nose, throat and skin, and which can lead to heart attacks. The NEA investigation also reveals that antimony is present in the drinking water of the residents. The case is by no means an isolated one, and highlights a worrying trend with respect to residential projects being developed on land formerly used for industry in Kandy.

The residents are now suffering health impacts which they believe are due to living on the contaminated site, given they were all healthy before they moved into the housing scheme. Many of them have suffered from irritation in the eyes, nose, throat and skin, particularly older people and younger children. Five residents have suffered heart attacks in the past year and three men have recently died as result. The residents have sought assistance from the NEA but have been told that the Authority does not have the resources to treat the contamination or otherwise help them in relation to this matter.

The residents would like to meet with the real estate developer, the National Environmental Authority, the Kandy City Development Committee, the National Human Settlement and Housing Development Authority and the original owners of the chemical plant to discuss how to resolve their problems.

The parties have all agreed to come to a mediation to try to resolve this dispute. The six parties are:

- 1) The residents who own houses within the housing scheme
- 2) The real estate developers
- 3) The National Environmental Authority (NEA)
- 4) The National Human Settlement and Housing Development Authority (NHSHDA)
- 5) The Kandy City Development Committee (KCDC)
- 6) The original owners of the chemical plant.