

# Session 2

# Environmental Law Principles in Cambodia

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# Environmental Law Principles

- This Presentation will examine the key environmental law principles relevant to Cambodia
- The ENR Code contains 13 general principles.
- Legal Basis: International Conventions

- **List of International Conventions to which Cambodia is a member state :**
- ASEAN Agreement on Transboundary Haze Pollution
- Agreement on the Establishment of the Global Green Growth Institute
- United Nations Framework Convention on Climate Change
- Convention on Wetlands of International Importance Especially as Waterfowl Habitat
- Vienna Convention for the Protection of the Ozone Layer, 22 March 1985
- Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal
- Stockholm Convention on Persistent Organic Pollutants

- Convention on Biological Diversity
- Kyoto Protocol on Climate Change
- Montreal Protocol on Substances that Deplete the Ozone Layer
- The Four Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer
- Cartagena Protocol on Biosafety to the Convention on Biological Diversity
- Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety
- Nagoya Protocol on Genetic Resources of Convention on Biodiversity
- Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES)

# Environmental Law Principles

- Sustainable Development
- The Principles of Public Participation and Access to Information and Justice
- The Polluter Pays Principle
- The Precautionary Principle
- The Prevention Principle
- Inter-Generational and Intra-Generational Equity
- Evidenced-based decision-making



# Sustainable Development

- The international community recognized sustainable development as the overarching paradigm for improving quality of life in 1992, at UNCED.
- Principle 4 of the Rio Declaration provides:  
“In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”

# **The Principle of Public Participation and Access to Information and Justice**

- The principle of public participation is based on the fundamental human right to hold and express opinions and to seek, receive and impart ideas.
- Individuals (especially women), trade unions, non-governmental organizations, business organizations and other civil society organizations, are able to actively participate in national and international decision making.



# The Principles of Public Participation and Access to Information and Justice

- Public participation in issues relating to the environment can be conceived not only as a human right, but also as a need fundamental to the decision-making process.
- Principle 10 of the Rio Declaration sets out the fundamental elements for good environmental governance in **three “access rights”**: 1) access to information, 2) public participation, and 3) access to justice

# The Principles of Public Participation and Access to Information and Justice

- Access to information promotes:
  - Openness and transparency in decision making
  - More efficient and effective environmental regulations
- Access to information empowers and motivates people to participate in an informed and meaningful manner.
- Participatory decision-making enhances the ability of governments to respond to public concerns and demands, to build consensus, and to improve acceptance of and compliance with environmental decisions because citizens feel ownership over these decisions

# The Principles of Public Participation and Access to Information and Justice

- Access to justice
  - Protecting the rights to access to information and participation
  - Questioning decisions
  - Competent legal bodies to protect environmental rights
  - Independent and expeditious judicial processes for environmental damage
- Access to justice facilitates the public's ability to enforce their right to participate, to be informed, and to hold regulators and polluters accountable for environmental harm.



# The Polluter Pays Principle (PPP)

- The PPP states that whoever is responsible for damage to the environment should bear the costs associated with it.
- Historical Background:
  - The PPP was first mentioned in the recommendation of the OECD of 26<sup>th</sup> May 1972.
  - In 1992 in Rio , PPP was laid down as Principle 16 of the UN Declaration on Environment and Development.
- Today, PPP is understood in a broad sense:
  - Covering pollution prevention and control measures
  - Covering liability to clean up costs of damage to the environment.
  - PPP is an overarching principle of environmental responsibility. It corresponds to strict liability.

# Polluter Pays Principle



*Indian Council for Enviro Legal Action v Union of India* (1996) 2JT (SC) 196. The Supreme Court of India observed in consideration of the polluter pays principle;

*“We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country”.*



*Indian Council for Enviro Legal Action v Union of India (1996) 2JT (SC) 196: (1996 AIR SCW 1069).*

*Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity....*

*The 'Polluter Pays' principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.*

# Precautionary Principle

- Precautionary: Actions should be taken so that the risk of damage is avoided despite a lack of certainty of harm
- Principle 15 of the Rio Declaration:
  - “ In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation ”.



# Precautionary Principle

- UN Framework Convention on Climate Change Art.3:

“The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. **Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures** to deal with climate change, should be cost effective so as to ensure global benefits at the lowest possible cost... “ .

# The Prevention Principle

- It is frequently impossible to remedy environmental injury ( irreversible situations )
- Prevention: Actions should be taken in order to prevent damage ( before damage has occurred).
- An obligation of prevention also emerges from the international responsibility not to cause significant damage to the environment extra territorially, but the preventive approach seeks to avoid harm irrespective of whether or not there is transboundary impact.

# The Prevention Principle

- Historical background: “Trail smelter Case”:
- The Facts of the case :

The village Trail is located in British Columbia, Canada, near the border to USA, at the Columbia River. At this place a smelter is located where zinc and lead are smelted in large quantities since 1896. At the time when the decision was taken , about 5.000 to 7000 tons of sulphur dioxide were emitted monthly, causing serious damage to agriculture, forests and private property in The USA.

# The Prevention Principle

- Arbitral Tribunal dated on 11 March 1941: The decision taken by the Court is that there is a principle of international law, that there is state responsibility for environmental damage caused to other states.
  - Principle 21 Stockholm Declaration 1972:  
“States have the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction “.
- This was reaffirmed by principle 2 of the Rio Declaration 2002.
- Now not limited to other states but to prevent harm before it occurs both within and outside the State’s boundaries.

# Prevention Principle



- *Vellore Citizens Welfare Forum v Union of India* AIR (1996 SC 2715), the petitioners filed a petition in the public interest under Article 32 of the Constitution of India, directed against the pollution caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. The Supreme Court of India noted that:

*“though the leather industry is of vital importance to the country as it generates foreign exchange and provides employment avenues it has no right to destroy the ecology, degrade the environment and pose as a health-hazard”.*

# Prevention and Precaution

Prevention	Precaution
Knowledge based Risk can be calculated	Uncertainty : Risk cannot be calculated
Danger	Risk
Occurrence of damage is probable if no measure is taken	Occurrence of damage is uncertain and cannot be predicted clearly.
Regulatory framework defines substantial Criteria , eg. Emissions	Regulation through procedural requirements
Definition of acceptable risk is primarily science based.	Social acceptance of the risk is considered.

# Principle: Inter-Generational and Intra- Generational Equity

- Equity thus includes both “inter-generational equity” (i.e. the right of future generations to enjoy a fair level of the common patrimony) and “intra generational equity” (i.e. the right of all people within the current generation to fair access to the current generation’s entitlement to the Earth’s natural resources).

# Stream flowing in to Manila Bay.





- Some national courts have referred to the right of future generations in cases before them. For example, the Supreme Court of the Republic of the Philippines decided, in the *Minors Oposa case* (Philippines - Oposa et. al. v. Fulgencio S. Factoran, Jr. et al. G.R. No. 101083), that the petitioners could file a class suit, for others of their generations and for the succeeding generations. The Court in considering the concept of inter-generational responsibility, further stated that **every generation has a responsibility to the next to preserve that rhythm and harmony necessary for the full enjoyment of a balanced and healthful ecology.**

# Principle: Evidence Based Decision Making

- Decision-making concerning the environment and natural resources shall be transparent and evidence-based, using the best available information. The information may be scientific and technical and may also be gathered from community and indigenous knowledge.

**Thank you for your kind attention**