

# **UNEP GLOBAL JUDGES PROGRAMME**

**APPLICATION OF ENVIRONMENTAL LAW BY NATIONAL  
COURTS AND TRIBUNALS**

## **PRESENTATION 5**

# **SCOPE AND CONTENT OF NATIONAL ENVIRONMENTAL LAW**

# OUTLINE OF PRESENTATION

CONSTITUTIONAL PROVISIONS

NATIONAL LEGISLATION

SUB-LEGISLATION AND REGULATION


EIA, LICENSING, PERMITTING

POLLUTION CONTROL

CONSERVATION AND SUSTAINABLE  
USE OF NATURAL RESOURCES

CONSERVATION OF CULTURAL  
AND NATURAL HERITAGE

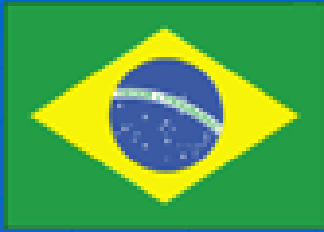
# CONSTITUTIONAL RIGHTS AND OBLIGATIONS

- 
- Right to life
  - Right to clean and healthy environment
  - Right to development and property rights
  - Obligation to protect environment

# CONSTITUTIONAL PROVISIONS ON THE ENVIRONMENT







# BRAZIL

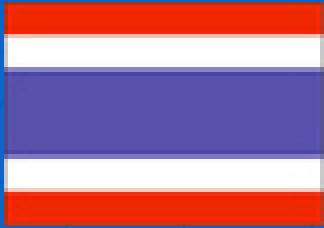
Ch. VI, Art. 225: Everyone has the right to an ecologically balanced environment, an asset for the common use of the people and essential to the wholesome quality of life. This imposes upon the Public Authorities and the community the obligation to defend and preserve it for present and future generations.



# INDIA

- Part 4 , Art.37: “Application of the principles contained in this Part. – The provisions contained in this part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.”
- Part 4, Art. 48A: “Protection and improvement of environment and safeguarding of forests and wild life. – The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.” [Inserted by the Constitution (42<sup>nd</sup> Amend.) Act, 1976, s. 9 (w.e.f. 3-1-1977).]
- Part 4A. Art. 51A: “Fundamental duties. – It shall be the duty of every citizen of India –  
(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures ... “ [Inserted by the Constitution (42<sup>nd</sup> Amend.) Act, 1976, s. 11 (w.e.f. 3-1-1977).]

*(Constitution of India of Nov. 26, 1949, as amended up to the constitution (52<sup>nd</sup> Amend.) Act, 1985. 7 constitution of the Countries of the World (OCEANA) 33-239 (A.P. Blaustein & G.H. Flanz eds.))*



# THAILAND

*(Constitution (No. 13) of the Kingdom of Thailand, effective Dec. 22 1978 (replacing Interim Constitution No. 12 of Nov. 9, 1977). 15*

*Constitutions of the Countries of the World (OCEANA) 1-14 (A.P. Blaustein & G. H. Flans eds.)*

## Ch. III, Sec. 33:’ ....

The expropriation of immovable property shall not be made except by law specifically enacted for the purpose of .... Exploitation of national resources, ... land reform, or other public interests ....”

Ch. V, Sec. 65: The State should conserve the balance of environment and eliminate pollution which jeopardizes the health and hygiene of the people.”

Ch. V, Sec. 69: “The State should have demographic policy appropriate for natural resources, economic and social conditions, and technological progress for the purpose of economic and social development and for the security of the State.”



# GUYANA

*(Constitution of the Cooperative Republic of Guyana, Act No. 2 of 1980. 6  
Constitutions of the countries of the World (OCEANA) 25-26 (A.P. Blaustein  
& G.H. Flanz eds.))*

- Art. 25: “Every citizen has a duty to participate in activities designed to improve the environment and protect the health of the nation.”
- Art. 36: “In the interests of the present and future generations, the state will protect and make rational use of its land, mineral, and water resources, as well as its fauna and flora, and will take all appropriate measures to conserve and improve the environment.”



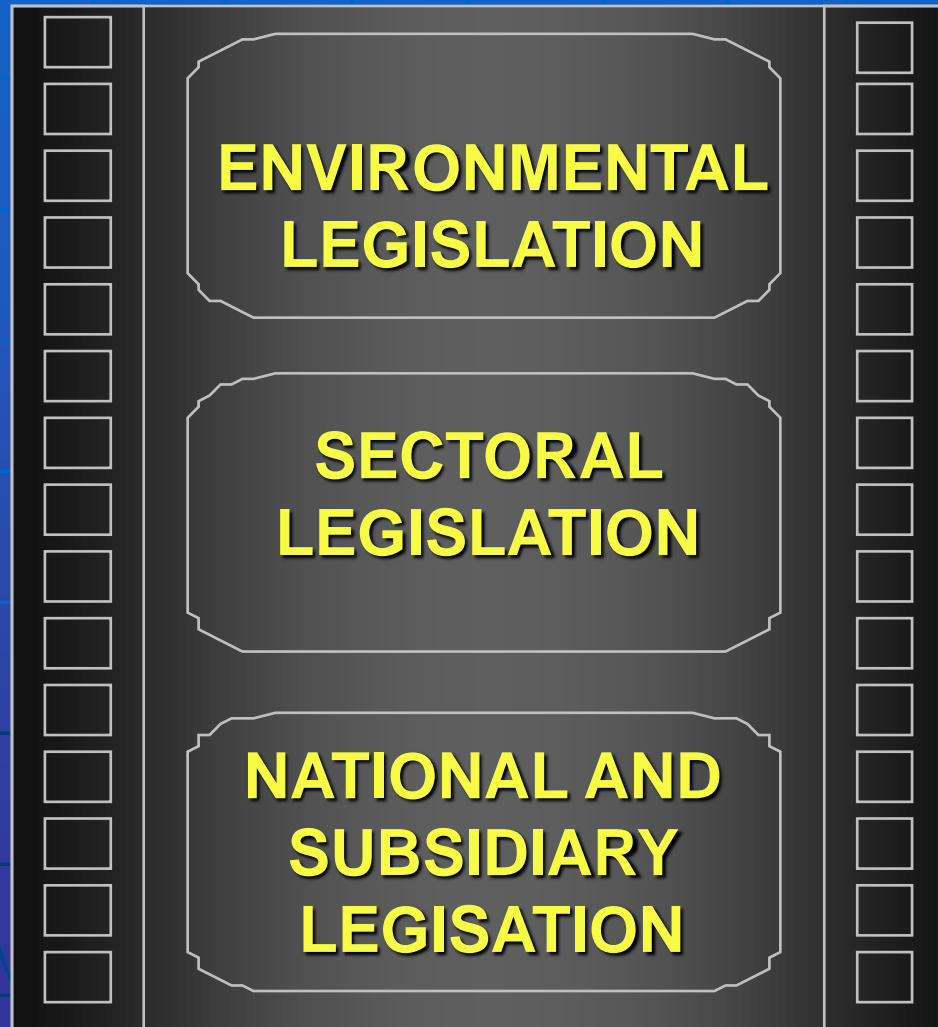


# PHILIPPINES

*(Constitution of the Republic of Philippines, adopted Oct. 15, 1986, effective upon ratification in the plebiscite. 12 Constitutions of the Countries of the World (OCEANA) 1-227 (A.P. Blaustein & G.H. Flanz eds.))*

- Art. XII, Sec. 2: “All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development and utilization of natural resources shall be under the full control and supervision of the State .....”
- Art. XII, Sec. 3: “Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks....  
Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.”

# FRAMEWORK AND SECTORAL LEGISLATION



# FOCUS OF ENVIRONMENTAL LEGISLATION

•**SOIL DEGRADATION**

•**CONSERVATION OF CULTURAL HERITAGE**

•**HAZARDOUS WASTE AND CHEMICALS  
MANAGEMENT**

•**LAND CONTAMINATION**

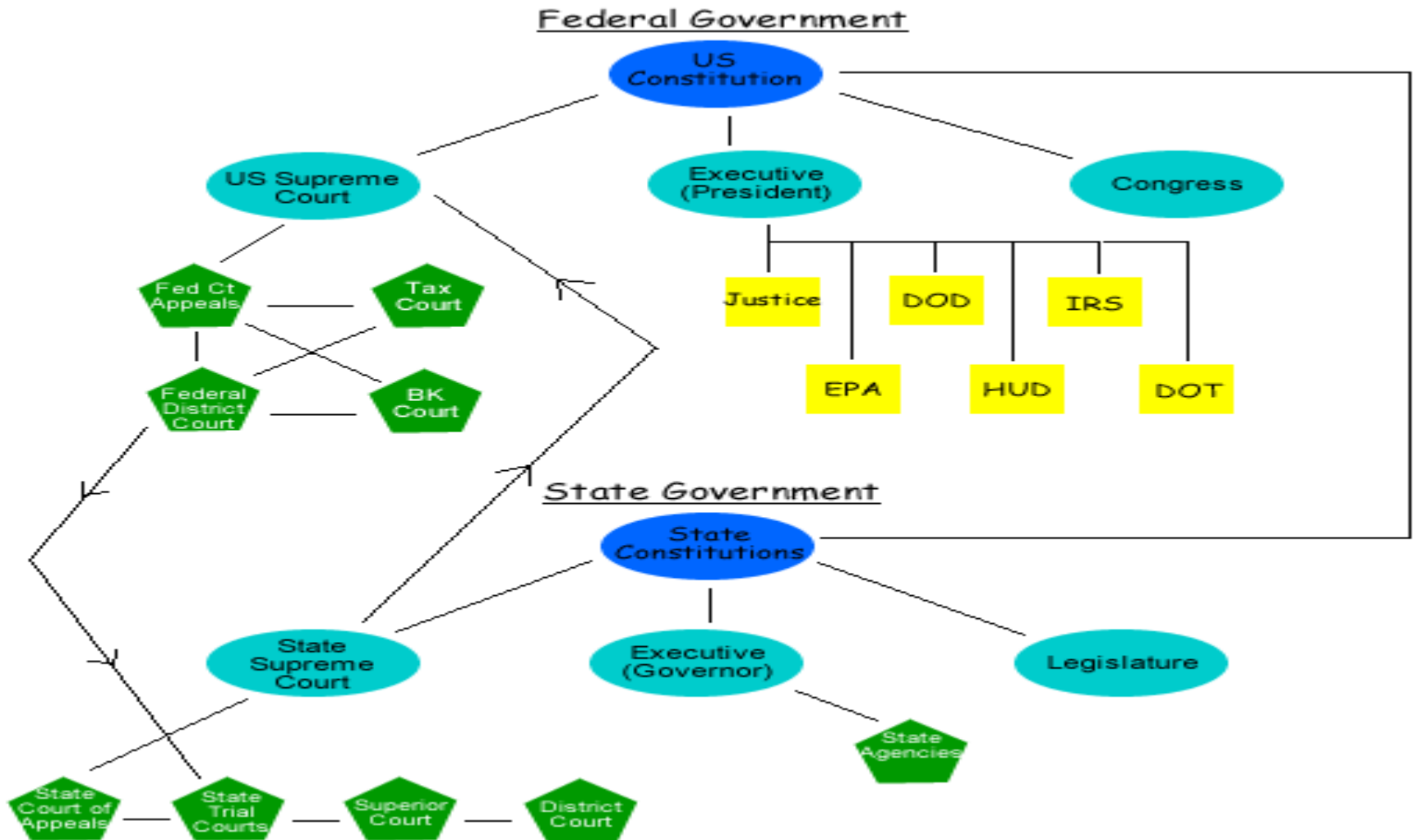
•**AIR POLLUTION**

•**WATER POLLUTION**

•**CONSERVATION AND SUSTAINABLE USE  
OF NATURAL RESOURCES**

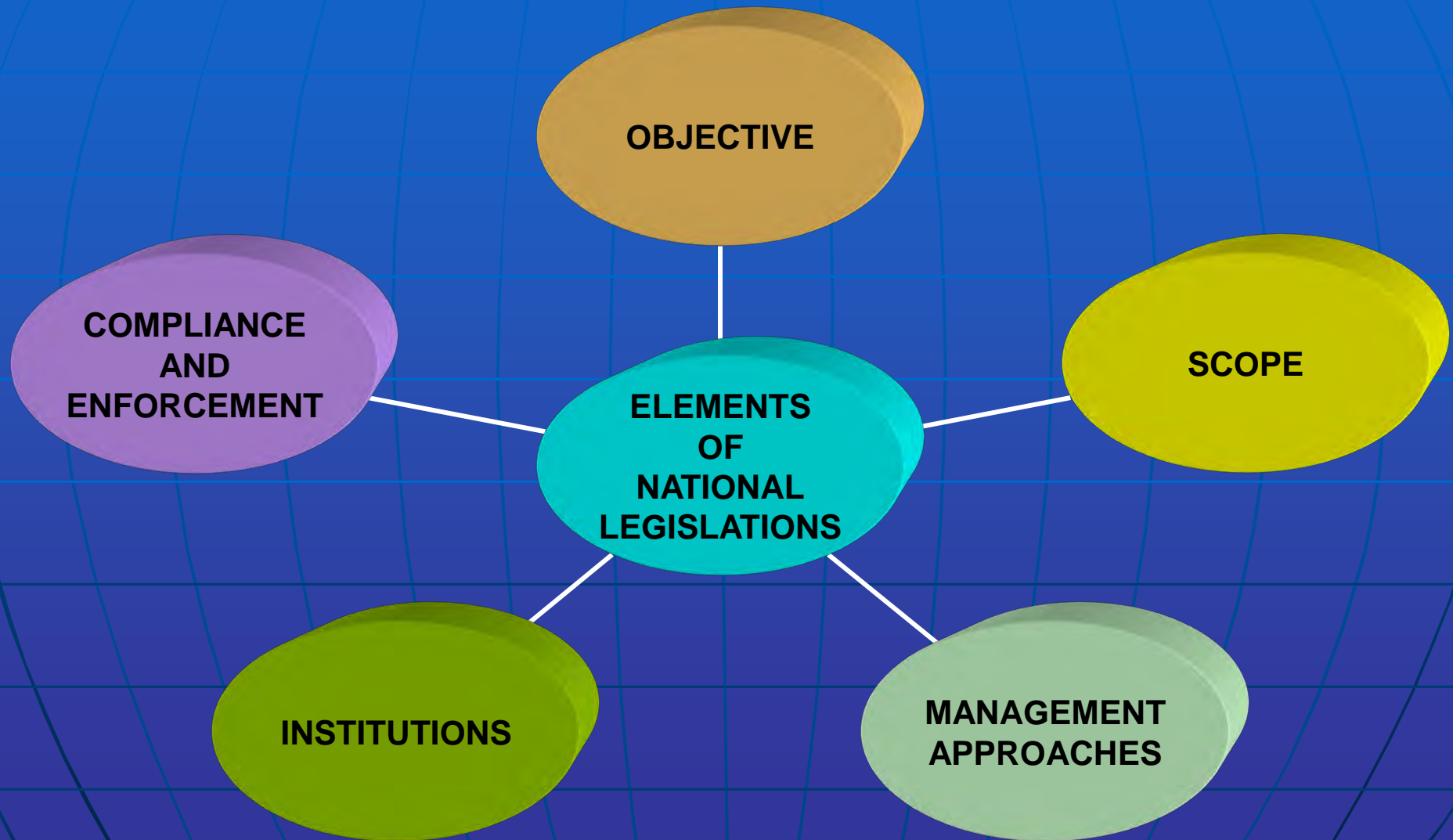
•**NOISE POLLUTION**

# NATIONAL AND PROVINCIAL/STATE AND LOCAL ENVIRONMENTAL LAW

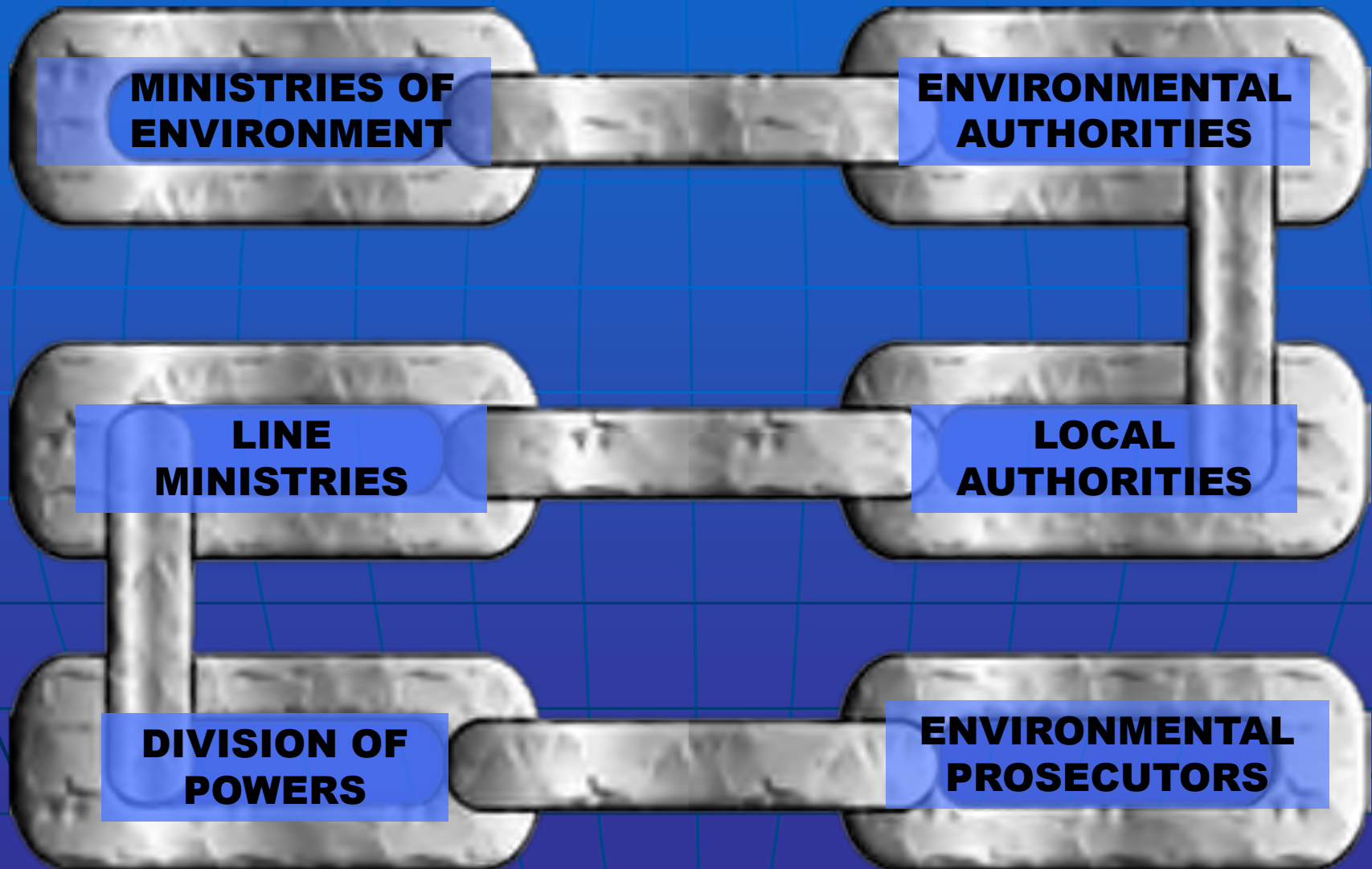




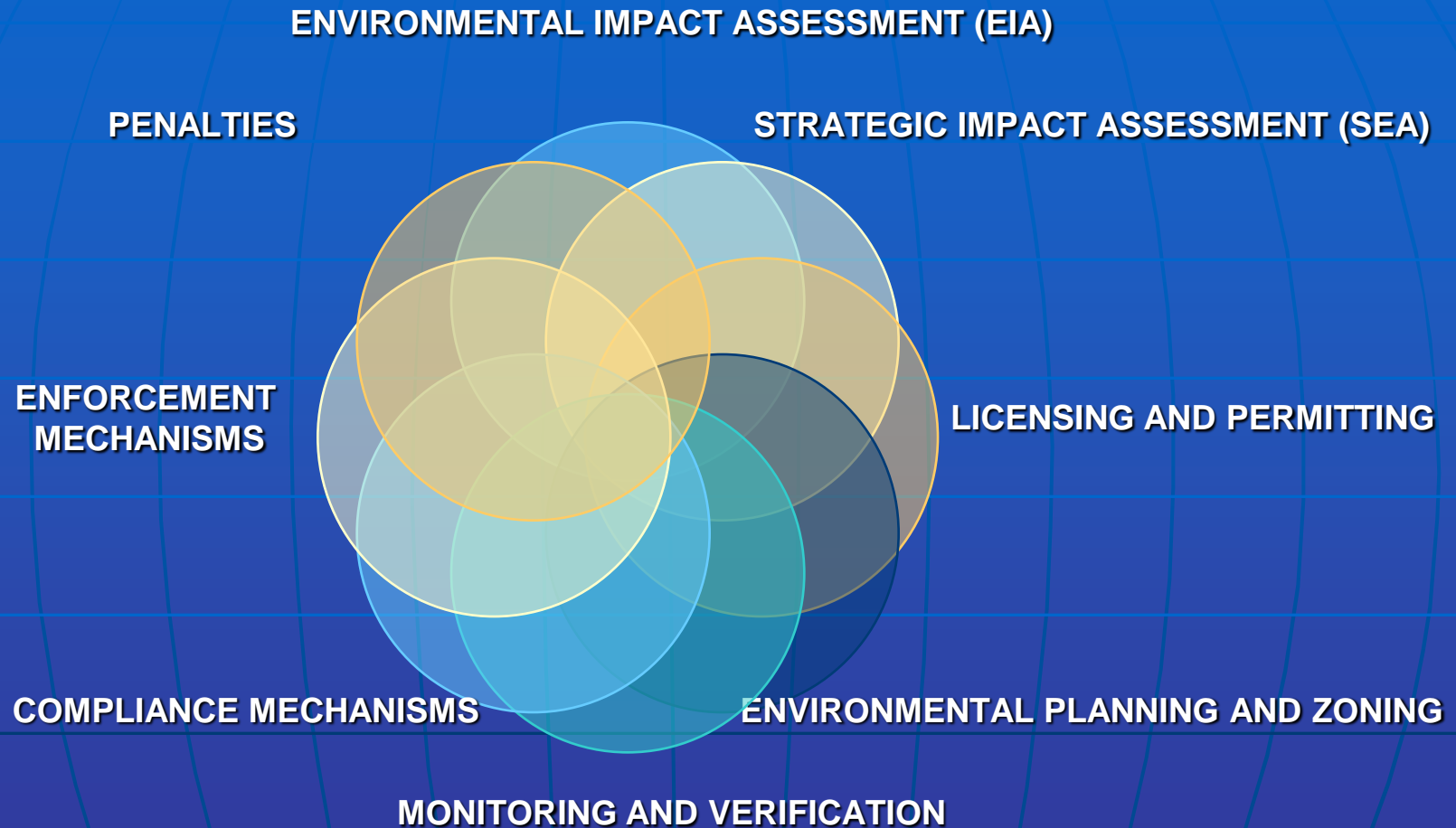
# KEY ELEMENTS OF ENVIRONMENTAL LEGISLATION



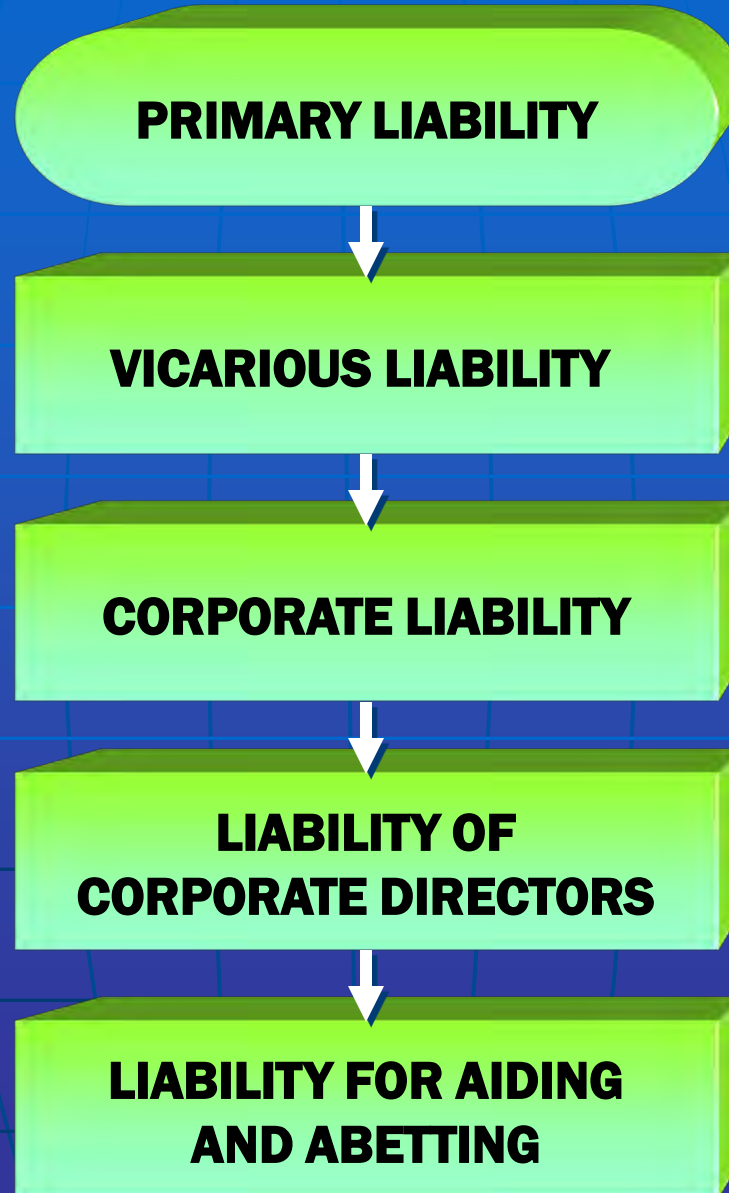
# ROLE OF ENVIRONMENTAL INSTITUTIONS



# REGULATORY MECHANISMS

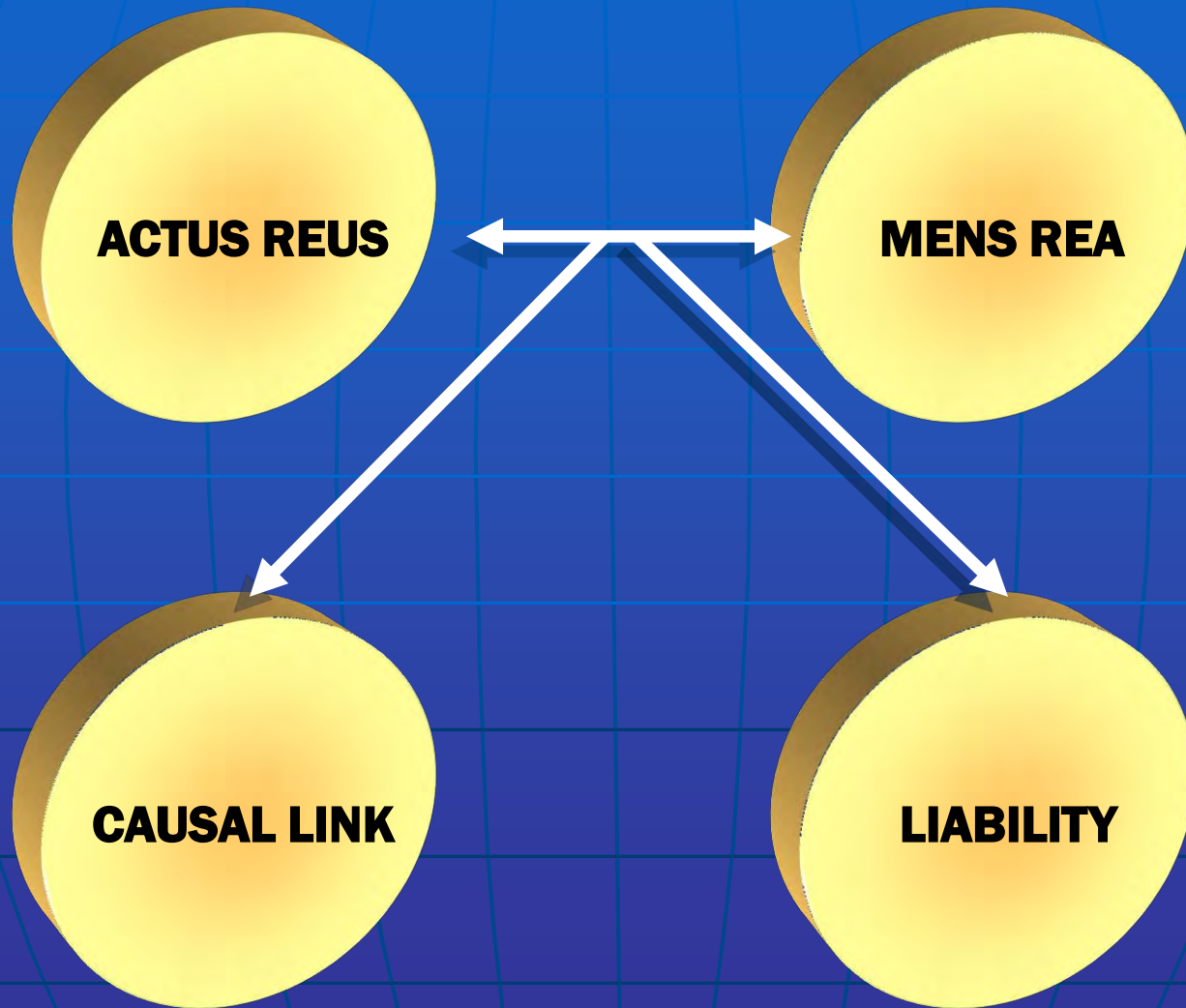


# LIABILITY CONCEPTS





# TRADITIONAL APPROACHES TO LIABILITY



# ***MENS REA*; THE MENTAL ELEMENT**

- The *mens rea* element may be required:
  - In full: for wilful criminal violations
  - In part: for negligence-based violations
  - Not at all for strict liability offences

# DEFENCES TO *MENS REA* OFFENCES

- No exercise of control
- Reasonable precautions taken
- Exercise of due diligence



# **ENVIRONMENTAL LEGISLATION: SOME AREAS OF EMPHASIS**

- Sectoral legislation
- Air, water and land pollution control statutes
- Natural resource management statutes
- Heritage protection statutes
- Environmental impact assessment
- Legislation to improve Multilateral Environmental Agreements



# POLLUTION CONTROL LEGISLATION

- 
- Water & Air Pollution Control
  - Industrial Pollution Control
  - Waste Management & Disposal
  - Land Degradation
  - Marine Pollution Control

# **POLLUTION CONTROL LAWS**



**METHODS OF REGULATION**

**STANDARD SETTING**

**MONITORING AND VERIFICATION**

**LIABILITY FOR VIOLATIONS**

# EXAMPLE: AIR POLLUTION

# AIR POLLUTION CONTROL LEGISLATION

- Provides for the setting of ambient air quality standards and best technology requirements
- Establishes a regime for issuance of licenses and permits consistent with technology requirement and geared to meeting ambient standards
- Establishes monitoring and reporting obligations
- Provides authority for government to inspect, monitoring and enforcing standards
- Establishes offences and penalties

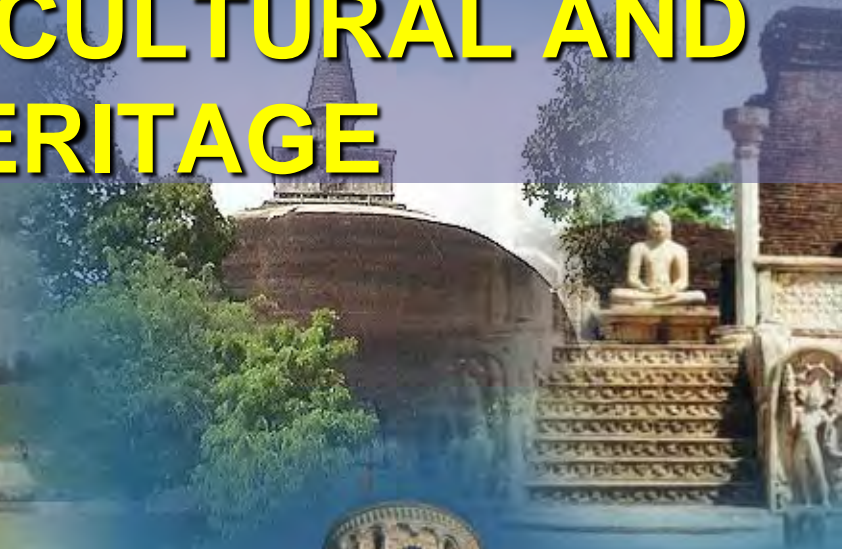


# CONSERVATION OF NATURAL RESOURCES



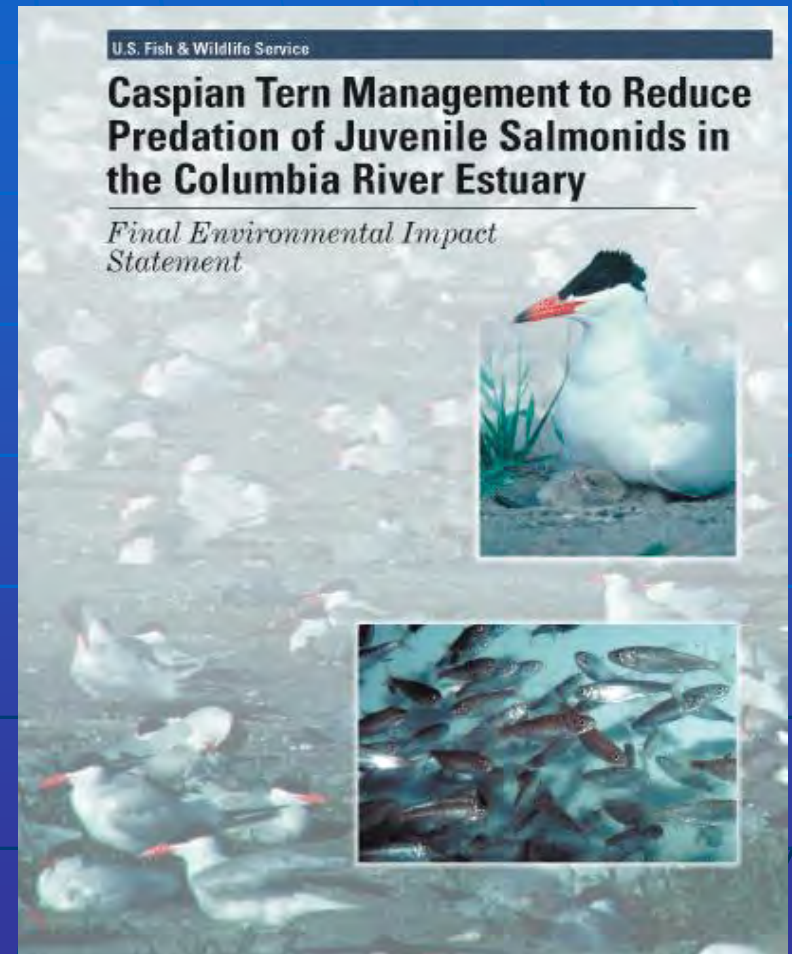


# CONSERVATION OF CULTURAL AND NATURAL HERITAGE



# ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

- EIA is a systematic process for the examination and evaluation of the environmental effects of proposed activities that are considered likely to affect the environment





# CANADA

## R v Blackbird Holdings Limited & George Crowe (Controlling Shareholder)

- Contract to dispose of waste material
- Buried drums leaking chemicals
  - human carcinogens
- Water wells on the property contaminated



### Held

- The accused found guilty- under the Water Resources Act and Environmental Protection Act
- Extensive clean up required at taxpayers' expense

The background of the slide is a photograph of the New York City skyline, featuring the Empire State Building prominently on the right side. The text is overlaid on this image.

# UNITED STATES

## Scenic Hudson Preservation Conference v Federal Power Commission

- Set aside licence to construct a pumped storage hydroelectric project on the Hudson River
- Under the Federal Power Act, a prospective project had to meet the statutory test of being best adapted for improving or developing a waterway

### **Held**

- The Commission had failed to undertake a thorough study of alternatives
- The Commission's Order set aside



# ANTIGUA AND BARBUDA

## The Barbuda Council v Attorney General & Others

- Breach of an interim injunction prohibiting sandmining
- An arrangement where the Ministry of Agriculture would mine the sand and sell it to a company which was forbidden by order from mining it

### Held

- An attempt to get around the order of court
- Sentenced to prison for one month



# BRAZIL

## Ministerio Publico v Orlando Linden and Hermes Gildo Masera

- Alleged that actions of former and the present Municipal Prefects had led to illegal waste dumps
- Caused environmental degradation and led to health hazards

### Held

- Sufficient documentary evidence to support the allegations of environmental damage
- Criminally liable for the environmental damage



# CHILE

## Pedro Flores y Otros v Corporation Del Cobre (CODELCO)

- Copper tailing wastes deposited on the beaches of Chanaral
- The pollution destroyed all animal and plant life and the potential for development of the port community
- UNEP survey (1983) listed Chanaral as one of the most seriously polluted areas of the Pacific Ocean

### Held

- The court granted the plaintiff's petition to enjoin Codelco for activities damaging the marine environment



# KENYA

## Rogers Muema Nzioka & 2 others v Tiomin Kenya Ltd

- Defendant - licences to prospect for minerals
- Plaintiffs – local inhabitants
  - Orders to restrain defendants from mining
  - Licences threatened health & environmental security
  - Environmental impact report inappropriate

### Held

- Environmental factors not taken into account
- Injunction granted





# NEW ZEALAND

## Contact Energy Ltd v Waikato Regional Council

- Appeal against refusal of consent for a proposed geothermal power station
- The Tauhara Hapu sought exclusive possession of the Tauhara geothermal resource

### Held

- The modified proposal - sustainable management of natural and physical resources
- The resource consents should be granted subject to conditions imposed by the court





# **CONCLUSION**

**NEW FIELD OF LAW**

**ENVIRONMENT DIMENSION OF EVERY SECTOR**

**CONSTITUTIONAL RIGHTS**

**STATUTORY ENVIRONMENTAL LAW**

**JUDICIAL VIGILANCE**