



FORUM V
Chemical Safety
for Sustainable Development
IFCS
Budapest, Hungary
25-29 September 2006

Plenary Information/Discussion Session on Tools and Approaches for Applying Precaution in the Context of Chemicals Safety

Information Request for Background Paper

Dear Colleague,

A Forum V Plenary Open Information/Discussion Session has been organized to advance open dialogue and understanding about how precaution is applied in practice with regards to chemical safety to protect health and environment and implementation of goals identified in IFCS declarations and recommendations and the SAICM Overarching Policy Strategy (OPS). A Forum V Thought Starter paper presents the rationale, objectives and organization of the session.¹

Through a series of practical case examples, the session will explore tools and approaches for applying precaution in chemical safety decision-making as well as commonalities and differences in these approaches. Following these presentations, guided discussion with delegates will occur, with the goal of identifying some key commonalities and differences in approaches and providing practical next steps for the future.

To ensure adequate thinking occurs in individual countries before the start of Forum V and thoughtful discussion at the Forum, an Information Background Document will be provided to delegates in advance of Forum V. This Backgrounder Document will summarize information collected on how governments and other organizations domestically apply precaution in chemicals management including:

- A collection of structured information requested from governments and organizations to provide examples of tools and frameworks for how they have applied precaution in the context of domestic chemicals safety efforts.
- Interviews with selected active members in IFCS to understand differences in how precaution is applied and some of the controversies in its application; how they are applying precaution in chemicals management including tools and approaches and the types of tools and processes that would support precautionary decision-making in the context of chemicals management.

¹ Thought Starter: Forum V Plenary Open Information/Discussion Session On Tools And Approaches For Applying Precaution In The Context Of Chemicals Safety, Prepared By: Forum Standing Committee (IFCS/FORUM-V/01-TS
http://www.who.int/ifcs/documents/forums/forum5/meet_docs/en/index.html)

Information Request

The purpose of this structured information collection process is to collect examples of tools, approaches and frameworks for applying precaution (or making decisions in the face of uncertainty) with regards to national chemical safety efforts. The goal is to understand similarities and differences in how precautionary decisions (or decisions in circumstances of uncertainty) are made across countries; what tools and approaches countries use to apply precaution in chemicals management; how policy, regulatory and scientific processes support precautionary decision-making in the context of chemicals management; the challenges and needs for applying precaution in the context of chemicals management; and varying perceptions with its application.

This information will be collected via the template questionnaire (Annex) which consists of specific and more open-ended questions. We ask that you fill in the template as thoroughly as possible. *Please provide any links or additional supporting materials that provide information on particular policies, tools, or activities.*

Process of soliciting information

The request for information submissions is being sent to the entire IFCS mailing list. Submissions are welcomed from everyone and government staff are encouraged to coordinate submissions through the IFCS National Focal Point (see IFCS website for list of designated NFP: <http://www.who.int/ifcs/focalpoints/en/>).

We ask that submissions be returned by **20 July 2006**. Please return completed form to:

IFCS Secretariat
Email: ifcs@who.int
Fax: +41 22 791 4875

If you have any questions, please do not hesitate to contact us.

Thank you for your willingness to participate in this important effort.

Sincerely,

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Annex

IFCS Forum V
Plenary Information/Discussion Session on Tools and Approaches for
Applying Precaution in the Context of Chemicals Safety

Information Request for Background Paper

Structured Questionnaire

Background Information

Country: Brazil

Ministry/Agency/Institute/Organization: ACPO - Associação de Combate aos POPs

Contact Person: Ms. Zuleica Nycz and Mr. Jeffer Castelo Branco

Contact Details:

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For telephone and fax numbers, please indicate country and city codes:

Tel : 55 13 3234 6679

Fax : 55 13 3234 6679

Please submit completed questionnaire by 20 July 2006 to:

IFCS Secretariat
Email: ifcs@who.int
Fax: +41 22 791 4875

Please note: Unless you indicate otherwise in your response, these submissions will be posted on the IFCS website.

Please provide any links or additional supporting materials that provide additional information on particular policies, tools, or activities.

National chemicals policy or management:

1. How is the concept of precaution explicitly or implicitly (in terms of decision-making under conditions of uncertainty) incorporated in national chemicals policy or management in your country/organization?

Please check all that apply.

- | | |
|--|--------------------------|
| In the country constitution ? | X |
| In legislation? | X |
| In agency/ministry/organization policy? | <input type="checkbox"/> |
| In specific guidance documents for risk assessment or risk management? | <input type="checkbox"/> |
| Applied in specific cases but no particular policy? | X |
| Not applied at all? | <input type="checkbox"/> |

Please provide greater detail (1 para).

Several Brazilian jurists interpret the international treaties related to human rights ratified by the National Congress as equivalent to Brazilian Constitutional Amendments (Art. 5th, paragraph 3rd). However it is necessary to comply with rules of certain complex and extensive juridical process to internalize the international rule.

Brazilian Constitution Amendment 45/2004 provides that international treaties and conventions on human rights may only be incorporated to the internal Law (to have status of a formal constitutional rule) when they were approved by the National Congress (Art. 49, I, CF) as required to other laws (Art. 60). Therefore, the international treaties ratified by this country shall follow the same complex and extensive procedure required to the approval of any other Brazilian internal law.

In Brazil the Precautionary Principle is implicit in some laws and resolutions, including the Resolutions of the National Environmental Council and other state environmental councils that require its application mainly in the risk elimination issues. However, such adoption is only implicit and consequently insufficient to invert cases in which the principle was not taken into account by public policies and executive acts.

Besides there is a huge contradiction within the Brazilian legislation in relation to the Precautionary Principle. As an example, the Federal Constitution, Art. 225, Item VII sets up that the fauna and flora shall be protected with practices that *do not put theirs ecological function at risk*. Even so, the National Congress approved the Law no. 11.105, of March 24th 2005 that liberated the seed production and culture of glyphosate-resistant transgenic soy, a clear breach of the Precautionary Principle.

The Precautionary Principle is not internalized in the governmental environment agencies, what may be easily verified by analyzing the licenses that are granted in the country every day.

The Precautionary Principle is the main argument of NGOs that work in the chemical security area, but the environmental and health authorities prefer to adopt the prevention for foreseeable damages, instead of applying the precaution to avoid activities that offer risks that may configure irretrievable damages.

Frequently there is some confusion in Brazil between the Precautionary Principle and the Prevention Principle, and it is possible to find several jurists conceiving both principles differently, without a common understanding among them. For a great part of the Brazilian Social Movement it is clear that when treating the **Prevention Principle**, it is working within the strict scope of the science, for which the major part of the risk can be calculated and measures can be taken to prevent it. In this context, the burden of proof shall be presented by interested parties who desire to contest the prevention measures. Yet the **Precautionary Principle**, that is a noblest concept, is applicable (or should be) when determinate action may offer RISK of causing damages to the environment and public health. In this case, the non-action decision should be taken even that the mechanisms of the uncertainty are not totally clear. So, the burden of proof shall be presented by the responsible for the intended action.

Tools and approaches for applying precaution:

2. What are some of the key tools and approaches used by your country/organization in applying precaution (or making decisions in circumstances of uncertainty) in the context of chemicals safety?

We have not observed a discussion at an expected level to treat such problems and attain the correct understanding of the Precautionary Principle by competent authorities or civil society itself. We have observed that such principle is more divulged in the juridical procedure of the Public Civil Actions than in the elaboration and respective actions of the environmental and health policies.

The legislation is presently the main instrument of the civil society, but the application of the Precautionary Principle in practical actions is still very incipient, and the judicial results show the lack of a deep and careful understanding of the Principle.

- a. Is there a defined approach to applying precaution or decision-making under uncertainty?

Yes No

We have not knowledge of any defined and concrete approach (protocols, norms, orders, TORs) which adopts explicitly and vigorously the precautionary principle by the Brazilian environmental authorities.

If yes, can you outline the elements of that approach or provide references to it?

- b. Is precaution integrated in other decision-making processes, tools and approaches such as;

Please check all that apply.

- Data collection?
- Prioritization of substances for risk management actions
- Uncertainty characterization?
- Socio-economic analysis (e.g., social impact, proportionality/cost-benefit assessment, trade concern)?
- Risk assessment and risk management options?
- Screening, comparison of alternatives, informed substitution?
- Stakeholder and Public involvement?
- Other

For those boxes checked, please briefly provide greater detail or links to additional information.

The application of the Precautionary Principle in the risk management actions

does not attend an efficient level. The criteria are based on a prevention concept under the logic of the remediation or minimization of the damage that was previously and officially permitted. There is not an effective governmental guidance to orient officers as to the acceptance of risks that may cause irremediable damages to environment and health.

Ministry of Health intends to promote a risk assessment course next month, and some NGOs are willing to participate and know the scope of the governmental risk assessment to compare with the practical actions.

The Precautionary Principle is well internalized in the non-governmental organizations proposals at the Chemical Security area, but is necessary to enhance the level of discussion to define the implementation of rules and principles which grounded the Brazil Federative Constitution.

c. How are gaps in knowledge addressed?

Please check all that apply.

- Though conservative risk assessment assumptions
- Through safety factors
- Through modeling techniques
- Through an assumption that lack of information is indication of potential harm
- Through requesting additional research
- Gaps are not addressed

For those boxes checked, please briefly provide greater detail or links to additional information.

In Brazil the premises applied in the risk assessment are very conservative, since that accept maximum levels of exposure, including cancerous and hormonal interfering substances, and consider "normal" the establishment of "permitted maximum standards" in the environmental resolutions.

Authorities have also difficulty to understand that even those maximum limits of atmospheric emissions may cause irreparable damages, directly or by chemical interaction. In such case they should acknowledge it and impose that the civil and penal responsibility of the potentially polluting activity is not limited to the compliance with the acceptable levels or standards of emission.

As a consequence of this mistake, the judicial experts in general admit naturally that people may be contaminated by POPs, even that the international code of diseases sets up the symptoms of the contamination as a disease and there is an International Convention on POPs (Stockholm) that appoints the related risks to health.

Even some experts from the Public Prosecutor of Labor have not full understanding of the high risk of maintaining workers at areas totally contaminated with POPs. A known case is the Rhodia plant (Rhonê-Poulenc) in Cubatao, State of Sao Paulo. Many workers were poisoned there with hexachlorbenzene (among other organochlorate compounds) due to their exposure to the contaminated labor environment. They were withdrawn from the exposure in 1993, since the plant was closed. But afterwards they had to go back to work at this plant, despite the medical recommendation to avoid exposure of chemical substances. Even such medical counter-indication based on the examination of their organisms, some workers were designated by the company to the decontamination operations of such areas. Such workers were re-examined in several occasions to verify the levels of hexachlorbenzene in their blood stream. The exams showed that the levels of POPs fell down in a first moment during the period that the plant was closed, but nowadays they are rising and the authorities are hesitant as to this issue. This is an example of total lack of consideration of the Precautionary Principle by the authorities, even that it is established in several international treaties ratified by Brazilian government, as the Stockholm Convention on POPs and the Convention no. 139 of the International Labor Organization of June 24th 1974. Besides, such situation breaches the Article 6 of the Brazilian Federal constitution which establishes that the rights to education, health, labor, dwelling, leisure, security, social security, maternity and infancy protection and assistance to destitute people shall be assured.

It follows the results of the hexachlorbenzene analysis in the blood serum of workers that were firstly withdrawn from the plant but had to come back to work at contaminated sites:

Results in microgram/deciliter (µg/dl)

Worker A

Year	Results
1992	4.50
1996	2.22
1998	3.47
2002	1.53
2003	1.13
2005	4.98

Worker B

Year	Results
1992	1.0
1996	4.05
1998	1.5
2002	0.38
2003	1.07
2005	1.70

In general NGOs are pressing to increase the security level, mainly when their appeals for care and application of Precaution have failed. But the authorities' decisions are usually according to the risk tolerance rationality, even that the foreseen damages be irreparable.

With this governmental choice to implement prevention measures instead of Precaution, the gaps in knowledge are in everywhere without solution, and environmental and health risks from chemical substances are increasing more and more.

3. Please provide details of a particular case (or example) where precaution was applied (or decisions made in the face of uncertainty) in the context of chemicals management?

There are many petitions lodged by the non-governmental organizations to the governmental authorities and Public Prosecutor about the toxic waste transfer between States of the Brazilian Federation, asking for the enforcement of the Stockholm Convention provisions.

- a. What stimulated/initiated the precaution process/action?

Please check all that apply.

- | | |
|-------------------------------------|--|
| <input type="checkbox"/> | Government concern over hazards and/or exposures |
| <input checked="" type="checkbox"/> | Stakeholder concerns over the particular threat |
| <input checked="" type="checkbox"/> | International policy requirements/pressures |
| <input checked="" type="checkbox"/> | Negative impacts/experience(s) from not acting on a previous chemical risk |
| <input checked="" type="checkbox"/> | Other |

For those boxes checked, please briefly provide greater detail or links to additional information.

We understand that cases as Rhodia in Cubatao, Sao Paulo, Cidade dos Meninos, in Duque de Caxias, Rio de Janeiro, Shell in Paulinia, Sao Paulo, are emblematic examples of the State omission and that today are used by civil society to stimulate the compliance with the Precautionary Principle.

Other example is the partnership that the Sao Paulo Government and the Baviera, Germany, intends to sign to re-introduce domestic waste incineration. The bad experiences in the past clearly indicate that the precautionary principle should be considered by both States, what should make them to adopt, instead of incineration, other cleanest technologies. Same risks are foreseen in the project named "Usina Verde" (Green Plant), an urban waste incineration process that is being assessed by the Clean Development Mechanism under the Kyoto Protocol.

- b. What process was used to make the decision? (please briefly describe the process

or tools used to make the decision)

Some manifestations and pressure by civil society may attain the full application of the Precautionary Principle. This happens in some cases of denounces and defenses in public audiences of environmental licensing processes. But is more common that the economic interests influence the public policies and the decisions be made without taking into consideration the Precautionary Principle.

c. Were there positive or negative impacts of this process/action?

Please check all that apply.

<u>Positive</u>		<u>Negative</u>	
Ecological or Health benefits	<input checked="" type="checkbox"/>	Ecological or health impacts	<input checked="" type="checkbox"/>
Economic benefit	<input checked="" type="checkbox"/>	Economic impacts	<input checked="" type="checkbox"/>
Improved government/industry image	<input type="checkbox"/>	Substitutes/alternatives did not work	<input type="checkbox"/>
Improved government/public morale	<input type="checkbox"/>	Negative public reaction	<input checked="" type="checkbox"/>
Improvements to scientific tools/decision processes	<input type="checkbox"/>	Other?	<input type="checkbox"/>
Other?	<input type="checkbox"/>		

For those boxes checked, please briefly provide greater detail or links to additional information.

Positive

The pressure from NGOs, for example, against the toxic waste transfer between Federation states has reached positive results, avoiding unnecessary risks to present and future generations.

Other role of NGOs has been the pressure for an opening discussion in CONAMA (National Environmental Council) about these transfers, with wide participation of the society in the decision-makings requiring the application of Basel Convention at an internal level among the Federation States.

The requirements of precaution application in the environmental health area have brought best results in the prevention approach, obligating companies to invest in human resources development, best industrial processes and products, even that civil society pressure still faces much resistance from the economic sector.

Negative

When the dialogue does not work:

There is a strong possibility of occurring impacts to health when the approval of new polluting projects or their enlargement in saturated areas is given without taking into account the Precautionary Principle. There is not, for example, an official protocol that allows reducing the licensing for non-intentional sources of POPs listed in the Stockholm Convention that is one of the NGOs' proposals.

The industry sector alleges that the environmental restrictions based

on the Precautionary Principle cause loss of labor positions, unemployment and decrease in taxes collection. On the other hand, NGOs argue, among many others reasons, that no-action based on precaution avoids primarily high direct costs of environmental remediation and/or recovery and other costs pertinent to public health damages that generally are imposed on the taxpayer, i.e., the society as a whole. Costs from environment impacts are also intangible ranging from the irreparable loss of biodiversity to social degradation/disaggregation of families and communities, and consequent environmental injustice for all. The pressure to enhance social and environmental conditions has allowed the creation of new professional activities, the development of new industrial processes and technologies, generating new labor positions and income in the environmental management area, and improving the life quality of people in general.

It is important to note that productive processes based on prevention stimulate a market niche for end-of-pipe pollution-control techniques; on the contrary, it is necessary to apply precaution against irretrievable and imminent risks.

CONAMA (National Environment Council) was created by the National Environment Policy Law to be a deliberative and consulting council, as provided by Law no. 8028/90, article 6th, I. CONAMA may also be harmful for the full enforcement of the Precautionary Principle if norms and standards be set up without rigorous control criteria. Unfortunately, the standards may become flexible as the economic interests prevail. To avoid it is necessary to create an effective social control mechanism of CONAMA that influences the discussions of resolutions and mechanisms/methodologies towards the Precautionary Principle application. Furthermore is important to follow the implementation of other legal instruments that provide reduction and elimination of toxic substances in the environment.

The negative perception by population in relation to environmentalists normally is connected with the private sector cooptation practice on politicians and people less aware of the importance of the precaution, that are induced to accept polluting plants with the promise of employment and other immediate benefits without consistent social and environmental gains.

d. Were there any unintended consequences from this process/action?

Positive – please describe

There may be an effective acceptance of precaution principle by society in the public audiences when it is possible to demonstrate that the environmentalists' criticisms and proposals are based on technical and scientific grounds. In general these objectives are reached when more qualified environmentalist groups may participate in the meetings. Unfortunately, due to poor citizenship education and lack of material resources, among other problems, there is a small number of environmentalist groups with these qualifications in Brazil.

Negative - please describe

The environmental licensing process for polluting activities is not always a democratic process. It is very common the generalized cooptation of local people and leaders to take position against the environmentalist proposals, seduced by promises of employment and other benefits. The debates are many times aggressive and without technical basis, replete with many moral and sometimes physical offenses against the environmentalists.

4. Are there any particular cases in your country/organization where precaution was not applied (decisions not made in the face of uncertain chemical risks) resulting in adverse impacts?

Yes No

If yes, briefly describe if and how decision-making processes have been modified as a result.

Examples of situations where the precautionary principles was not applied and the results were not modified through any process of decision-making:

1. Authorization of the transgenic soy seed cultivation in the whole Brazilian territory.
2. Approval of the sewage sludge in agriculture with few restrictions and lack of governmental inspection capacity (such failure is present in all cases listed here).
3. Dredging of contaminated estuaries using the respective sediments in civil building or the simple disposal at high sea compromising health and marine fauna.
4. Construction of buildings by government on contaminated areas or landfills, inclusive the construction of housing condominiums with sediments dredged from rivers with high level of contamination.
5. Enlargement of polluting enterprises in saturated areas.
6. Projects of implantation of thermoelectric plants in saturated areas.
7. Re-introduction of domestic and/or hospital waste incineration plants.
8. Projects of siderurgy and petrochemical pole implantation in the Brazilian Pantanal, region considered the greatest swampland of the planet and a Natural Heritage of Humanity.
9. Failure in planning and acting effectively and immediately to remediate contaminated areas.

10. Bauxite mining, aluminum processing and production, contaminating the Amazon Basin in the State of Para, next to the important Biosphere Reserve of the Central Amazonia.

11. Few months ago the Brazilian government constituted an inter-ministerial workgroup in order to discuss on the elimination of chrysotile, and despite of many data indicating problems to health in the present, outlining a worst scenario in the future, the government did not consider the Precautionary Principle or take a firm decision to eliminate the inevitable risk that the continuous use of such substance may represent.

The sole voice contrary to such high risky companies has been the environmentalist NGOs and/or Public Prosecutor, not always supported by the communities affected by these decisions, since that the sector who works against the Precautionary Principle has a huge influence on governments and communities.

5. Does your government have processes in place to re-examine decisions made based on precaution or made in the face of uncertainty as additional data are available?

Yes

No

If yes, briefly describe the process and how this process may be used to modify decisions, decision-making process, or tools.

We have not seen the above mentioned statement since the commissions and chambers created to assess proposals of legislation or issue/review licenses have taken decisions that are more political and less technical. The NGOs have then the uncomfortable role to denounce to the public that the Precautionary Principle is being neglected to favor the private interests in detriment of the environment and human health protection.

Lessons Learned from applying precaution in chemicals management

6. What are some of the biggest challenges to your country's (organization's) application of precaution in the context of chemicals management or in chemicals management decision-making in the face of uncertainty?

Please check all that apply.

- Scientific capacity
- Lack of scientific information
- Legal challenges
- Technical challenges
- Financial challenges
- Trade Challenges
- Other?

For those checked boxes, please briefly indicate what were the implications of these barriers and how have they been addressed or if not yet addressed, how could they be addressed?

Our perception is that all challenges checked above have not been solved due to a lack of objective public policies that incentive the capacity-building and the participation of the civil groups interested in the matter. The political programs, or the lack of them, give preference to economic results in detriment of the necessary social and environmental equilibrium. We understand that the application mechanisms of Precautionary Principle are public tools with a broad and strategic scope, extremely important to the public health and environment protection.

The legal challenges are also significant, since the Brazilian judiciary power has insufficient tradition to deal with chemical security themes, and is still greatly influenced by the prevention culture, even that it means environmental injustice.

Other challenges are the absence of a policy that adopts new standards of consumption and promotes an urgent reassessment of the ideology of the economic development to incorporate new values, mainly in the area of environmentally acceptable and sustainable products and processes.

Are these challenges also applicable to decision-making and actions regarding established risks?

Yes No

When someone accepts the possibility of the risk, also accepts the probability of the damages, so the prevention rationality prevails.

Next steps

7. What are the most important needs of your country or organization for more effectively applying precaution (or making decisions in the face of uncertainty) and overcoming barriers in chemicals management decision-making?

Please check all that apply.

- Data on chemical toxicity/risks
- Tools for prioritization
- Tools for risk assessment
- Decision-making tools/frameworks
- Technical assistance in risk assessment processes
- Technical assistance in risk management processes
- Financial support for implementation
- International dialogue
- Information sharing to facilitate understanding of the issues
- Other

For those boxes checked, please briefly provide greater detail or links to additional information.

In relation to government, there is not a political will to integrate all levels (local, state and national) and/with all areas (health, education, culture, labor and environment), as well as to search for the improvement of government relationship with the organized civil society.

8. Briefly describe your perceptions as to some of the concerns regarding application of precaution in the context of chemicals safety?

Please briefly provide details or links to additional information.

In the view of NGOs, the implementation and applicability of the Precautionary Principle find four main barriers: 1) the problem of interpreting correctly such principle and the establishment of a common procedure for all the instances of the Judiciary Power that be reflected in orders and decrees; 2) the aversion of the economic sector to this principle. In general the principle is seen mistakenly as an obstacle to the economic development; 3) the government agents surrender easily to private sector pressure and defend the economic benefits of the enterprises without taking into account that environment and public health

questions can not be treated as a second class problem; 4) environmentalist NGOs qualified to promote the country-wide debate with the society as a whole have many difficulties to obtain funds for their activities due to a number of reasons. Such task is extremely complex and require a constant dialogue, seminars with all and every stakeholder, courses of capacity-building of community leaders aiming their insertion in these debates, relationship with local and national media, participation in existing forums and creation of new specific forums of discussion, aiming the dissemination of the correct understanding of this principle.

The NGOs still need to promote many actions to convince the private and public sectors that the precautionary rationality is more economic and profitable than the prevent one.

9. Do you have any additional information on tools and approaches for applying precaution that would be helpful to inform discussion?
Please provide any additional materials or web links.

It is necessary to attain a mutual understanding on what really is the Precautionary Principle, and when apply it. So that is also necessary to involve jurists, technicians, researchers, scientists, government officers, entrepreneurs and civil society. For us, environmentalist NGOs, it seems clear that the precaution is always in the sense of no-action, stressing the approach of the alternative and replacement. The importance of an activity can not be limited to the capacity of such activity to produce employment and profits, but it shall take into account the right of the worker to a healthy labor environment and the population right to high quality of life.

At the moment there is still much confusion about the concepts of prevention and precaution. The precaution concept does not admit that an activity be installed if it has the probability of offering risk of irretrievable damage to environment and health. However in the discussions with government technicians, prevails the idea of acceptance of risks even that they are irremediable, and that is possible to prevent them through measures of security (prevention). Under this understanding, if the risks and their probability of irretrievable damages may not be eliminated, is necessary to prevent them but permitting that the activity be installed. What must be done is to understand carefully the precautionary concept to apply it in the correct manner based on the Brazilian constitutional principles.

Please note: Unless you indicate otherwise in your response, your submission and those of others will be posted on the IFCS website.