



**INECE - UNEP INDICATORS PROJECT
PHASE 1**

COUNTRY REPORT: BRAZIL

30 APRIL 2006

1 INTRODUCTION

1.1 Objectives of the INECE-UNEP Indicators Project

The International Network for Environmental Compliance and Enforcement (INECE), in partnership with the United Nations Environment Programme (UNEP), developed pilot projects to identify opportunities to create efficiencies in the implementation of biodiversity-related multilateral environmental agreements (MEAs). Through the identification, design, and use of environmental compliance and enforcement indicators, the parties sought to recognize potential synergies among activities designed to ensure compliance with MEA obligations and to enable countries to more effectively and efficiently implement MEA requirements.

The relevant MEAs included the Ramsar Convention on Wetlands, the Convention on Biological Diversity (CBD), the Convention on the Conservation of Migratory Species (CMS), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), as well as the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (the Lusaka Agreement) when applicable. The initial pilot project countries were Brazil, Costa Rica, Kenya, and South Africa.

1.2 Focus of the Project in Brazil

In discussions with the political and technical focal points of the biodiversity-related multilateral environmental agreements in Brazil, the lack of coordination among the focal points became apparent. Because the focal points are the principal actors responsible for the MEAs in Brazil, communications and coordination among the focal points are key to identifying synergies and gaps in implementation.

Participants at the Brazil workshop requested that the project focus on developing indicators that will assist in assessing and improving the quality and frequency of communications and coordination among focal points.

A further aspect of this project includes identifying indicators to assess the existing Brazilian legislation, correlate this legislation with MEA obligations, and identify gaps in implementation. Additionally, the project will identify indicators to assess how deep into the Brazilian system the concept of MEAs is getting.

This project focus thus responds to Brazil's extensive regulatory schemes and complex administrative structure to protect its rich and internationally significant biodiversity resources. It also responds to the realities of shared responsibilities among the federal, state, and municipal governments.

This project focus is relevant to all of the biodiversity-related MEAs to which Brazil is a party.

1.3 Project Methodology in Brazil

The INECE Secretariat held initial discussions with Antonio Benjamin of Law for a Green Planet Institute in Brazil (and an INECE EPC member) to begin scoping the project and identifying key contacts in Brazil. Following these conversations, the Secretariat drafted a detailed set of questions on Brazil's legal, financial, technical, and information resources ("inputs") and coordination, communications, and implementation activities ("outputs") to guide initial in-country discussions.

The Secretariat then traveled to Brazil for a full-day "Workshop to Advance a Pilot Project on Identifying Synergies to Increase Efficiency with the Implementation of Brazil's National Biodiversity Laws", organized by INECE and Law for a Green Planet and attended by the biodiversity MEA focal points and by NGO representatives. This workshop provided an opportunity for Brazilian stakeholders to respond to the initial scoping questions, to share experiences relating to the implementation of MEAs (particularly in regards to the complexity of

Brazil's decentralized legal system and the limited staff resources to complete the MEA reporting forms), and to discuss the potential impacts of the project in Brazil.

The workshop represented a rare instance of the focal points being brought together, and so generated a discussion about information-sharing needs among the focal points. With the consent of the workshop participants, the Secretariat suggested that the project focus on developing indicators that will assist in assessing and improving the quality and frequency of communications and coordination among focal points. The focal points at the meeting were also unable to specify which Brazilian laws implemented which MEAs, and so they requested that the project also include indicators to assess how the existing Brazilian legislation implements Brazil's MEA obligations.

The Secretariat, in consultation with Antonio Benjamin and other in-country experts, then developed and refined a set of indicators. The indicators were then tested through the in-country experts, after which the final report on Phase I of the project was prepared.

1.4 In-Country Coordinator & Reviewers

The Project Coordinator in Brazil is Antonio Benjamin of Law for a Green Planet Institute.

Other experts consulted include:

- Maria Carolina Hazin, Ministry of the Environment, technical focal point for Ramsar
- Brenda Brito (IMAZON)
- Jose Luis Capella, Sociedad Dervana Derecho Ambiental
- Maria do Carmo de Lima Bezerra, Universidade de Brasília / Brazilian Association of Environment State Entities
- Isabel Belloni Schmidt, IBAMA
- Gustavo Trinadade, Ministry of the Environment
- Marina Faria Do Amaral, Ministry of the Environment
- Silvia Cappelli, Law for a Green Planet Institute

2 TREATIES, LAWS, ACTORS, & ACTIVITIES RELATED TO THE PROJECT FOCUS

2.1 Relevant Treaties

Brazil is a party to:

- Convention on Biological Diversity – signed 1992 and ratified 1994.
- Convention on International Trade of Endangered Species of Wild Fauna and Flora – ratified 1975 (domestic promulgation by Decree No.7623, 17 Nov. 1975).
- Ramsar Convention on Wetlands – ratified 1993.

Brazil is a non-party to CMS (though it is participating in the Agreement on the Conservation of Albatrosses and Petrels).

2.2 Relevant Laws & Regulations

The Federal Constitution of 1988 (Constituição Federal de 1988) contains several provisions relating to sustainable development and biodiversity conservation, including Article 225, §1, VII – “to protect the fauna and flora: practices that put at risk their ecological function and that result in the extinction of the species...are prohibited by law.”

The National Environment Policy (Política Nacional de Meio Ambiente) promotes the training and capacity building component for institutional strengthening in methodologies, techniques, and procedures for environmental impact evaluation. Even though it was enacted before the Brazilian Constitution, it established the current National Environmental Policy and also selected CONAMA (the Conselho Nacional de Meio Ambiente (National Council of Environment)) as the Council responsible for passing rules and defining standards in terms of environmental quality control.

Brazil has a National Biodiversity Policy (*Política Nacional da Biodiversidade*) as of August 2002, to be implemented by the Ministry of the Environment (*Ministério do Meio Ambiente – MMA*).

A presidential decree (No. 5092/2004) defines the rules for the identification of protected areas. There is a Forest Code (Law No.4771, 15 Sept. 1965, Código Florestal); a Fauna Protection Code (Law No.5197, 3 Jan. 1967 – Código de Proteção da Fauna); a Fishing Code (Decree No.221, 28 Feb. 1967 – Código de Pesca); an Environmental Crimes Law (Law No.9605, 12 February 1998); and several others.

Brazil also has numerous other laws relevant to biodiversity protection – so many, in fact, that the MEA focal points were unable to identify which laws implemented which MEAs.

2.3 Relevant Actors / Agencies

The two key ministries for this project are the Ministry of the Environment and the Ministry of Science and Technology.

The Ministry of the Environment coordinates the National Commission for Biodiversity (*Comissão Nacional de Biodiversidade – CONABIO*), which is responsible for the coordination of implementation of CBD commitments in Brazil, the coordination of implementation of the National Biodiversity Policy, and the coordination of the National Biodiversity Program (*Programa Nacional da Diversidade Biológica – PRONABIO*).

The Brazilian Institute for the Environment and Renewable Natural Resources (*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis – IBAMA*) is a federal administrative agency and operates under the Ministry of the Environment. This body is responsible for policing and enforcement of all federal environmental law, overseeing the use of renewable resources, and granting permits. It is IBAMA's responsibility to execute national environmental policies related to the preservation, conservation, surveillance, and control of the sustainable use of environmental resources. IBAMA is divided into numerous Secretariats, including ones on Biodiversity and Forests, the Amazon, Environmental Quality, and Sustainable Development.

CONAMA (mentioned above) establishes the norms and criteria for the licensing of polluting or environmentally damaging activities and determines, whenever necessary, research on alternatives and possible environmental consequences of projects.

The National Council for Scientific and Technological Development (CNPq), under the Ministry of Science and Technology, is the largest and most important science and technology organization in Brazil. General goals include promotion, support, and execution of scientific and technological research; to allow for the formation of human resources in all fields of knowledge; and to promote, implement, and maintain mechanisms of support, analysis, storage, diffusion and exchange of data and information on the development of science and technology in Brazil.

The National Information System for the Environment (*Sistema Nacional de Informação sobre o Meio Ambiente – SINIMA*) is intended to institutionalize the information needed to support decisions on environmental issues, allowing for rapid acquisition and updating, increasing the availability of vital services and information.

3 INPUT AND OUTPUT INDICATORS

In identifying and designing indicators to help assess the quality and frequency of communications among the focal points for biodiversity-related MEAs in Brazil, it was determined that the most useful form of indicators would be in the form of a qualitative yes/no survey for focal points and other relevant actors, with the addition of some quantitative indicators when appropriate.

3.1 Input Indicators

- Are there legal requirements for political focal points to communicate with each other?

- Are there legal requirements for the technical focal points to communicate with each other?
- Are there legal requirements for communications among technical and political focal points?
- Are there legal requirements for political and technical focal points, the states, and the municipalities to communicate with each other?
- Are the focal points for the biodiversity-related MEAs employed by the same division of the Ministry?
- Is there a clear mandate for the focal points?
- What is the budget for each focal point?
- Is the budget adequate to support the focal points' needed personnel?
 - How many people (or staff hours) are available to work on each MEA?
 - Do the staff work exclusively on MEA implementation (as opposed to being in charge of additional unrelated activities)?
- Are there central databases in which information can be shared and exchanged?
 - Is this information available for public access?
- Do problems arise due to focal points having different professional backgrounds?
- Is there an inventory of existing biodiversity-related legislation that correlates the laws with Brazil's MEA obligations?
- How many Brazilian federal laws implement the CBD? State laws? Municipal laws?
- How many different agencies or departments have responsibility for implementing the CBD?
- How many Brazilian federal laws implement CITES? State laws? Municipal laws?
- How many different agencies or departments have responsibility for implementing CITES?
- How many Brazilian federal laws implement Ramsar? State laws? Municipal laws?
- How many different agencies or departments have responsibility for implementing Ramsar?
- Does MMA offer any training courses for prosecutors on MEA requirements and implementation? For judges? For IBAMA agents? For state and municipal agencies?
 - If so, how long have such courses been offered?
 - How many prosecutors have been trained in the MEAs to which Brazil is a party?
 - How many judges have been trained in the MEAs to which Brazil is a party?
- Is there any information about MEA implementation available via the Internet or any other public means of communication?

3.2 Output Indicators

- How many times in the past year have the focal points met or communicated as a group to exchange information?
 - Is this frequently enough?
- How many times in the past year have the focal points met or communicated one-on-one to exchange information?
 - Is this frequently enough?
- Are the quality and substance of the communications among focal points adequate?
- Do the results of focal point communications get shared with the implementing bodies at the state and municipal level?

- Is there adequate communication from the compliance and enforcement officials on the ground to the Ministry and the focal points about MEA implementation?
- Do the focal points receive feedback from the MEA Secretariats?
 - If so, is that feedback disseminated and acted upon?
- Are there existing efforts to identify gaps in MEA implementation?
- How often are MEAs cited by prosecutors in litigation?
- How often are MEAs cited by judges in judicial decisions?
- Would training/capacity building from the MEA secretariats or other organizations on leveraging synergies between thematically-clustered MEAs be useful?

4 RECOMMENDATIONS AND NEXT STEPS

For Phase II of this project in Brazil, the indicators developed in Phase I should be tested in greater detail to determine their analytical value. Once their value is determined, INECE and UNEP should explore whether the lessons learned from the Brazil project can serve as a model for baseline assessments of other countries' institutional capacity to implement biodiversity-related MEAs in an efficient and effective manner. It is envisioned that these baseline assessments could take the form of a peer review process involving both experts in the issues and regional academics.

The indicators developed in Phase I should help assess the need for creating a national biodiversity-related MEA coordinating organization. Such an umbrella organization could coordinate information collection, storage, distribution, and use and could foster cooperation on MEA implementation. Additionally, the results of the full implementation of the indicators may illuminate the need for a legal requirement for communication among focal points and/or the need for hiring more personnel. The indicators may also assist Brazil in identifying the appropriate level of resources needed to implement each MEA and provide a comparative analysis of the level of resources available to implement each MEA.