



**INECE - UNEP INDICATORS PROJECT
PHASE 1**

COUNTRY REPORT: COSTA RICA

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 Costa Rica

Although a small country, Costa Rica is recognized as a leader in innovative environmental policy mechanisms, particularly regarding protected areas and recognition of valuable services provided by the natural environment, such as biodiversity, carbon fixation for global climate benefit, water capture and distribution from standing forests, and others. In addition, as a country with one of the highest concentrations of biodiversity (and endemic plant and animal species), Costa Rica's legal and policy treatment of biodiversity has implications for global heritage.

Costa Rica is a signatory to nearly all major international environmental agreements. However, the country faces many challenges in ratifying and implementing MEAs to provide better protection for the country's extensive biodiversity resources.

During the scoping phase of this project, in-country stakeholders proposed that the project focus specifically on identifying **measures to improve communications and coordination activities among country stakeholders in the MEA ratification process**. Costa Rica stakeholders envisioned that the project would bring about a clearer understanding and documentation of the limitations and gaps faced by Costa Rica (and, by extension, other countries in the region) in implementing MEAs. In particular, the work could help define a clearer set of priorities and needs for the following:

- providing replicable lessons for Costa Rica as it assesses other regional and international biodiversity-related MEAs, including CMS;
- creating more fluid and effective structures for regulating and permitting of appropriate uses of biodiversity, and
- helping establish better coordination channels between negotiators, legislators, regulators and enforcement officials.

This project focus affects the implementation of obligations from all the biodiversity-related MEAs to which Costa Rica is a party.

1.3 Project Methodology in Costa Rica

The INECE Secretariat began the project in Costa Rica by holding initial scoping discussions with key in-country stakeholders, including Carolina Mauri and Jose Pablo Gonzalez. These conversations leveraged and built upon an existing INECE indicators project in Costa Rica looking at using environmental compliance and enforcement indicators to assist Costa Rica's Office of the Environmental Prosecutor in measuring the impact of the Office's activities to combat illegal logging. The illegal logging project had introduced key stakeholders in Costa Rica, including Environment Minister Carlos Manuel Rodriguez, to the benefits of using indicators to measure the impacts of specific environmental enforcement efforts, reveal temporal trends in illegal activity, and support program adjustment and evolution.

During the scoping conversation with José Pablo Gonzalez for the INECE-UNEP project, he emphasized institutional arrangements as the most important area of MEA synergy, noting specifically the lack of coordination among those involved in the ratification process.

Subsequent discussions with Carolina Mauri and other in-country stakeholders led to the confirmation of this project focus and the development of a set of draft indicators. The Secretariat then refined the draft indicators, referencing key publications on the MEA ratification process, including *Making Law Work* Chapter 3 and UNEP's draft *Manual on Compliance with and Enforcement of MEAs*. 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 Costa Rica is Carolina Mauri, an environmental lawyer. Other experts consulted included:

- José Pablo Gonzalez, Environmental Prosecutor;
- Jorge Cabrera (negotiator to CDB and CITES); and
- Patricia Madrigal (Environmental Lawyer).

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

2.1 Relevant International and Regional Treaties

Costa Rica has ratified or acceded to the following biodiversity-related conventions:

- The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), ratified June 1995;
- The Convention on Biological Diversity (CBD), ratified August 1994; and
- The Convention on Wetlands (Ramsar, Iran, 1971), ratified April 1992.

Costa Rica is also a party to the Central American Convention on Biodiversity and Priority Wild Areas, but is not a party to the Convention on the Conservation of Migratory Species (CMS).

2.2 Relevant Laws

Costa Rica's Constitution guarantees to every inhabitant of Costa Rica the right to a healthy environment that is in ecological balance.¹ Furthermore, Article 7 of the Constitution² asserts that ratified international treaties immediately become part of Costa Rica's domestic legal framework, regardless of the presence of implementing legislation.

Costa Rica's current legal system for protecting and conserving its natural resources is based on the Wildlife Conservation Act (*Law # 7317*, 1992) and the Biodiversity Act (*Law # 7788*, 1998), along with the Wildlife Conservation Act Regulations (*Decree No. 26435*, 1997) and other natural resource protection requirements (e.g., The Forestry Act (*Law #7575*, 1996)).

The Wildlife Conservation Law and its regulations establish provisions for research, use, conservation and protection of wild flora and fauna, but do not include provisions on use of genetic resources. The Law establishes measures to control the extraction and trade of wild species or samples for cultural and scientific purposes. All research requiring management of wildlife has to be registered in the wildlife registry of the National System of Protected Areas (SINAC) in the Ministry of the Environment (MINAE).

The Biodiversity Law, which was written to implement the Convention on Biological Diversity, establishes a legal framework for access and sustainable use of biodiversity, including a detailed permit system to manage all proposed biodiversity uses. The law provides "some norms on biosafety, conservation, and sustainable use of ecosystems and species. It also contains norms on IPR, *sui generis* community rights, education and public awareness, research, technology transfer, incentives, environmental impact assessments, and procedures and sanctions."³ The Biodiversity Act assigned new responsibilities for biodiversity research to SINAC and established the National Commission for Biodiversity Management (CONAGEBIO). CONAGEBIO is responsible for the implementation of a permitting system that governs access to Costa Rica's genetic and biochemical resources.

Costa Rica is a party to Ramsar, has declared by Presidential Decrees 12 wetlands as Ramsar sites, and has developed management plans for at least eight of these sites. Costa Rica also was the first Central American country to develop a National Wetland Policy,⁴ which encompasses many of the main concepts of the Ramsar Declaration. However, there is no specific legislation to implement Ramsar or to provide a more general protection to the country's wetlands. Wetlands are currently protected by various provisions in several laws, such as the Biodiversity Law and the Forestry Law. There is draft legislation under discussion by the Legislative Assembly, but it is not likely to be approved in 2006.

¹ Constitución Política, Artículo 50. El Estado procurará el mayor bienestar a todos los habitantes del país, organizando y estimulando la producción y el más adecuado reparto de la riqueza. Toda persona tiene derecho a un ambiente sano y ecológicamente equilibrado. Por ello, está legitimada para denunciar los actos que infrinjan ese derecho y para reclamar la reparación del daño causado.

² Constitución Política, Artículo 7. Los tratados públicos, los convenios internacionales y los concordatos, debidamente aprobados por la Asamblea Legislativa, tendrán desde su promulgación o desde el día que ellos designen, autoridad superior a las leyes.

³ Eds. Susan P. Bass and Manuel Ruiz Muller. Protecting Biodiversity: National Laws Regulating Access to Genetic Resources in the Americas. IDRC, 1999.

⁴ *Política de Humedales de Costa Rica*. http://www.ramsar.org/wurc/wurc_policy_costarica.htm

2.3 Relevant Actors

As described above, Costa Rica's Ministry of Environment and Energy (MINAE) is responsible for:

*issuing national environmental policies, regulations, and administrative procedures for all aspects related to the following areas: ... forests, protected areas, wildlife and biodiversity, biological corridors, marine resources management and conservation within protected areas, ...watersheds, wetlands...*⁵

Within MINAE, the National Commission for the Management of Biodiversity (CONAGEBIO) is responsible for "formulat[ing] national policies relating to the conservation, sustainable ecological use and restoration of biodiversity, in accordance with conventions concerning biological diversity and other internationally corresponding agreements and treaties, as well as relating to national interests."⁶ A National Commission on Biodiversity, including representatives from the government, academia, and non-governmental organizations, advises MINAE in the decision making process. A separate division of MINAE, the National Conservation Areas System (SINAC), is responsible for the implementation of all four international biodiversity instruments.

SINAC faces limitations due to lack of financial resources and technical expertise. In addition, domestic implementing regulations are not clear, or are nonexistent. There is little or nothing specific on the rules or procedures, making the permit process very bureaucratic and difficult. This creates gaps in the protection of biodiversity, wildlife, and wetlands and in the implementation of international agreements. It also discourages serious researchers from engaging in work in the country and encourages less scrupulous actors to simply ignore or circumvent the rules for extraction and trade of wild species.

3 EXISTING MEA RATIFICATION PROCESS

As described in the introduction, this pilot project assessed communications and coordination activities that occur as Costa Rica moves from entering into international discussions on a general issue of concern (e.g., illegal trade in endangered wildlife) to drafting national legislation to implement ratified agreements. The discussion below summarizes the existing processes involved.

The MEA ratification process usually begins with general discussions of the issue at the international level. The international conversations become driving forces of more specific discussions about the issue of focus at the national level. Following informal national-level discussions, the government of Costa Rica and MINAE decide whether to support the proposed MEA process. If so, delegates are sent to the international negotiations to represent the country's interests and objectives during the drafting of the agreement.

During the negotiation process, Costa Rica will likely align with other countries as part of a negotiation bloc, to give more weight to arguments supporting the country's position. For

⁵ *General Regulation of the Ministry of the Environment and Energy (Executive Decree 30077-MINAE, December 2, 2001).*

⁶ *Biodiversity Law of Costa Rica (Law 7788, April 23, 1998).* Unofficial English translation available online at http://www.grain.org/brl_files/costarica-biodiversitylaw-1998-en.pdf.

example, during the CBD negotiations, Costa Rica and sixteen other countries formed the *Group of Like-Minded Megadiverse Countries*, which presented arguments in favor of increased funding for technology transfer, a stronger international regime on access to genetic resources and benefit sharing, and other topics. Following the negotiation process, MINAE and other government agencies review and authorize signature of the agreement.

However, the Ministry of Foreign Affairs does not have subject matter experts to participate in international negotiations of MEAs. MINAE is usually asked to appoint some close collaborators to undertake such tasks. In the case of CBD and CITES, there is one negotiator who is an independent consultant and has extensive knowledge of these issues. The negotiator of Ramsar issues is a SINAC official expert on wetlands issues. Additionally, negotiators receive little or no guidance from MINAE or the Ministry of Foreign Affairs and represent the “Country’s Position” based generally on their personal knowledge and opinions.

After signing the agreement, the agreement is presented to Costa Rica’s Legislative Assembly (*Asamblea Legislativa de la República de Costa Rica*) for ratification. Generally, the agreement is made publicly available, and a national debate may be held on whether to ratify the treaty. The Legislative Assembly made hold hearings or consultations during the decision making process.

Following ratification, and once the agreement enters into force at the international level, the agreement automatically becomes law in Costa Rica. New legislation or amendments to existing legislation may then be drafted to ensure effective implementation of the agreement. During this process, the draft legislation is presented for comment, the legislation is revised, and then voted on and accepted or rejected.

However, there is little or no formal communication or coordination between negotiators and members of the Legislative Assembly. The Legislative Assembly rarely asks for information in the ratification process and, to the best of local experts’ knowledge, has never held a hearing on a ratification process. There are no formal communication mechanisms. The long delays in ratifying MEAs are attributable, at least in part, to the lack of information made available to legislators.

4 INDICATORS FOR COSTA RICA

Given the nature of this project’s focus, the indicators are mainly qualitative output indicators across three levels of activity in the MEA ratification process: during negotiations (prior to signature), prior to ratification, and when drafting legislation to implement the MEA. Examples include communications between the negotiation team and other stakeholders, whether the country has the laws and resources in place to implement the MEA, and whether there are formal legislative hearings on the ratification process.

Some inputs into the negotiation process, including the scope and composition of the negotiation team and the existence of legislation to support a public review of MEAs prior to ratification, are also included.

During MEA Negotiations / Prior to Signing an MEA	Prior to Ratifying an MEA	When Drafting Implementing Legislation
<ul style="list-style-type: none"> • How many members are there on a negotiation team? • How many agencies and/or organizations are represented on a negotiation team? • Are there formal communications between the MEA negotiation team and the Legislative Assembly? • Is there a legal gap analysis conducted before signing a new MEA that identifies existing relevant legislation and potential necessary changes? • Is there an analysis of the costs and benefits associated with implementation conducted prior to signing an MEA? • Is there any type of communication or coordination with national (within Costa Rica) focal points of existing MEAs? • Does a national agency (e.g., MINAE's Directorate of International Affairs) review the draft agreement, ensure that it is in accordance with Costa Rica's interests, identify potential legal conflicts, and/or identify potential economic issues? • Is an assessment conducted of Costa Rica's capacity to implement the MEA's provisions? • Is the draft agreement translated into Spanish for review by government and other stakeholders? 	<ul style="list-style-type: none"> • Are there formal Legislative Assembly hearings on the ratification process? • Are there formal communications to those responsible for drafting implementing legislation? • Is there any other formal mechanism for integrating MEA requirements into existing environmental management structures? • Is there any type of communication or coordination between focal points in neighboring countries (to leverage experience / share information)? 	<ul style="list-style-type: none"> • Is there a public comment period on the draft legislation? • Are there formal communications with field-level enforcement agents (regarding their capacity/needs) at the time that the implementing legislation is drafted? • Are efforts made to ensure collaboration with indigenous peoples? • Is an assessment of the legislation's economic impact conducted? • Is an assessment of the legislation's environmental impact conducted?

5 RECOMMENDATIONS AND NEXT STEPS

In-country stakeholders confirmed that the implementation of Phase II of the INECE-UNEP indicators project will provide important input to improve the country's evolving policies on MEA ratification and implementation. It was agreed that, politically, the INECE-UNEP indicators project could not be more timely and relevant to Costa Rica, due to the fact that the newly confirmed President, Mr. Óscar Arias, is very focused on environmental issues, and international cooperation specifically. It was agreed that the Costa Rica project can be used by the new administration as a basis for improving environmental diplomacy in Costa Rica and expanding the capacities of the negotiators within the Ministry of the Environment as well as the environmental capacity of the Ministry of Foreign Affairs.

In-country stakeholders recommended that Phase II include a comparison of the INECE indicators to any indicator programs used to assess reporting to CBD and other MEAs. Additionally, country stakeholders emphasized the need for long-term follow-up, requesting that the indicators be analyzed over time to evaluate progress towards improving the MEA negotiation process.

Furthermore, Phase II of the project in Costa Rica may provide an opportunity to use the findings from Phase I 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 or regional workshop, involving experts in the issues and regional academics.