

Fifth Montevideo Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme V)

**Seventh Meeting of the Steering Committee for Implementation
15:00-18:00 East Africa Time (UTC + 3), 26 and 27 February 2024
United Nations Office in Nairobi – UNEP Law Division Meeting Room (Hybrid)**

Agenda item 5(b) Options paper on legal responses to biodiversity

Options for Clearly Defined Priority Areas to Tackle the Biodiversity Crisis

Introduction

1. At the virtual segment of the first global meeting (6 – 9 June 2021), national focal points to the Fifth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme V), identified three priority areas for implementation of the Programme¹ that is legal responses to address (a) the pollution crisis, (b) the climate crisis and (c) the biodiversity crisis, which are aligned with UNEP’s medium-term strategy for 2022-2024. The three thematic areas are supplemented by cross-cutting activities, and for each thematic area, national focal points identified priority areas.

2. Under thematic areas (b) and (c) above, national focal points requested the secretariat to prepare reports for clearly defined priority areas to address the climate and biodiversity crises respectively. On thematic area (c), the national focal points identified ‘Legal responses to enhance compliance with, and enforcement of biodiversity related laws, including criminal laws.’

3. The present option paper is developed in response to the above mandate provided to the Montevideo Programme V’s secretariat. It outlines the consultations process that sought proposals on the options papers and a synthesized summary of the core proposed options. The preliminary list of options will be considered at the seventh meeting of the steering committee for implementation to be held on 26 and 27 February 2024 and subsequently by the national focal points at the second global meeting of national focal points to be held in Nairobi, from 3 to 5 June 2024.

Methodology

4. In 2023, the Montevideo Programme V secretariat held regional consultations for: the Asia-Pacific, West Asia and Central Asia regions, with possibility for remote participation from the Balkans, Eastern Europe and South Caucasus regions, during the 3rd ASEAN Environmental Law Conference (Bangkok, 15 – 18 August 2023); the Africa region during the Fifth Association of Environmental Law Lecturers in African Universities Scientific Conference (Nairobi, 21 – 23 August 2023, focusing on climate change) and the Workshop on the Implementation of Biodiversity, Chemicals and Waste Multilateral Environmental Agreements (Bugesera, Rwanda, 29 – 31 August 2023, focusing on biodiversity); and for the Latin America and the Caribbean region (Panama City, 25 – 26 September 2023).

5. The convening of the consultations in parallel with regional conferences on environmental law and meetings of national focal points served a dual purpose of minimising costs and capitalizing on the availability of a diverse group of relevant stakeholders, including from governments, academia, legal education institutions, youth, and civil society.

6. The consultations followed a similar format, where participants were divided into groups, each group focusing on a pre-determined area of intervention that aligns to the objectives of the Programme. These areas were: legal frameworks, enforcement and criminal law, capacity-building and research and knowledge development. The present paper categorises the proposed options under these broad areas. To broaden participation, the secretariat also developed and disseminated online questionnaires to gather information.

Outcomes of regional consultations

I. Common Issues in the Regions

8. Biodiversity is among the three global planetary crises facing the world, others which are also related to biodiversity, being climate change and pollution. To address the main drivers of biodiversity loss there are various biodiversity related multilateral environmental agreement (MEAs). Also important is the Kunming-Montreal Global Biodiversity Framework (GBF) which was adopted in December 2022, with its goals and targets to be achieved by 2030. The following were common priority options identified in all regions related to tackling biodiversity loss:

- Strengthening legal frameworks with emerging areas of regulation including for implementation of MEAs and the GBF so that biodiversity related laws can be effective to address biodiversity loss.
- Strengthening enforcement and criminal law, including enhancing regional and transboundary cooperation.
- Strengthening institutions by building capacity of various stakeholders to develop and implement biodiversity laws.
- Expanding the knowledge base on biodiversity law.

II. Issues per region

9. This part presents the various outcomes of the Regional Stakeholders Consultations held in three regions Africa, Asia and Latin America and the Caribbean. The outcome has been categorized in four areas focusing on strengthening legal and institutional frameworks; enforcement and criminal law in biodiversity; capacity building; and research areas.

Africa Region, Bugesera, Rwanda, Participants only there was no online input	
Category	Highlights on Priority Areas for Tackling the Biodiversity Crisis
1. Strengthen legal and institutional frameworks relating to biodiversity at all levels	<ul style="list-style-type: none"> • Strengthen biodiversity legal frameworks at the national, subnational and the regional level to implement MEAs and to include emerging areas of regulation such as for implementation of the GBF. • Strengthen environment-related institutions and empower them to fulfill their mandate.

	<ul style="list-style-type: none"> • Enhance coordination between Ministries government agencies with related mandates, biodiversity-conventions focal points.
2. Enforcement and Criminal Law in Biodiversity	<ul style="list-style-type: none"> • Address enforcement challenges of biodiversity related laws, including on detecting, investigating, prosecuting and preventing crimes relating to biodiversity. • Harmonize the laws addressing criminal offences in biodiversity issues to ensure coherence and ease of retrieval. • Develop sentencing guidelines and develop guidelines to calculate environmental damages for the judiciary. • Reinforce bilateral and regional cooperation agreements to address illegal activities and crimes that significantly affect biodiversity of a transboundary nature.
3. Capacity building	<ul style="list-style-type: none"> • Build capacity of judges, prosecutors, lawyers, other relevant stakeholders and the public on biodiversity and natural resources law. • Develop curricula, information products and tools on biodiversity law for national and international environmental law education for higher learning institutions and judiciary training institutes. • Translate UNEP guidance documents into all UN official languages. • Strengthen environmental institutions with financial and human resources to develop, monitor, and report on environmental legislation.
4. Research Areas	<ul style="list-style-type: none"> • Access to and benefit sharing (ABS) mechanisms for biodiversity, • Digital sequencing information on biodiversity, • Undertake a study on rights, and obligations relating to biodiversity as well as the rights of nature, • Undertake a study on legal aspects of biosafety and GMOs.

Latin America and Caribbean, Participants and online input.	
Category	Highlights on Priority Areas for Tackling the Biodiversity Crisis
1. Strengthen legal frameworks relating to biodiversity	<ul style="list-style-type: none"> • Revise regressive non-environmental regulations relating to mining, transport, and energy sectors to align to biodiversity legal frameworks contextually and coherently. • Revise biodiversity-related legislation to include emerging areas of regulation and to align regulatory frameworks with international biodiversity targets to meet global conservation goals.

	<ul style="list-style-type: none"> • Develop a comprehensive biodiversity framework law as a model for assessing national biodiversity legislation. • Apply stringent regulations to address the proliferation of invasive species that are posing a significant threat to biodiversity in Latin America; • Harmonize legislation at the sub regional level to address gaps in the protection of biodiversity. • Strengthen litigation to promote environmental accountability and sustainability and to reinforce biodiversity related legal frameworks. • Mainstream biodiversity as a cross cutting issue into all public policies legal and regulatory provisions. • Enhance synergies among MEAs at the national level. • Apply the integrated approach to biodiversity conservation which goes beyond MEAs to include all natural resources, investment, mining, and free trade agreements. • Engage legal drafters in the Caribbean to draft new generation laws on biodiversity related legislation to replace old legal frameworks. • Implement biodiversity MEAs at the national level by domesticating them.
<p>2. Enforcement and Criminal Law in Biodiversity</p>	<ul style="list-style-type: none"> • Identify and review the main threats to biodiversity to strengthen enforcement mechanisms. • Enhance international cooperation to tackle transboundary trafficking and serious illegal activities that affect biodiversity incurring criminal as opposed to or in addition to civil and/or administrative liability. • Integrate into legal frameworks the concept of ecocide, focusing on the destruction of ecosystems, and the recognition of ecosystem services. • Enhance implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Convention on Biological Diversity (CBD) linking enforcement strategies with the scientific community and authorities, including customs officials. • Promote legal frameworks that involve local communities in conservation efforts as a solution to crime. • Enforcement frameworks for demarcation of boundaries and monitoring environmentally sensitive species and areas and ensure active patrolling and prosecution when violations occur, particularly in cases with transnational dimension.

<p>3. Capacity building</p>	<ul style="list-style-type: none"> • Undertake capacity building programs for various stakeholders to assure effective implementation of environmental laws. • Train judges, prosecutors, lawyers, other relevant stakeholders and the public on biodiversity and natural resources law. • Need to link science to policies and laws in biodiversity training programs. • Collaborate with sub regional institutions to leverage funding from existing projects to build capacity of biodiversity related stakeholders. • Undertake comparative studies between countries' laws to facilitate mutual learning and improved legislation.
<p>4. Research Areas</p>	<ul style="list-style-type: none"> • Develop comprehensive legal guidance materials that focus on biodiversity of the region such as forest biodiversity, species diversity, endangered species, and invasive species. • Study and incorporate concepts of ecocide, ecosystem and cross-cutting issues relating to biodiversity to incorporate them in legal frameworks. • Study the impact of invasive alien species such as Sargassum and prohibit its transfer to other areas in biodiversity related legal frameworks. • Promote legal tools and incentives for companies to raise awareness on biodiversity issues encouraging corporate participation in conservation efforts. • Promote knowledge among judges, ensuring they have access to comprehensive information, including damage assessments and scientific evidence. • Map regulatory and jurisprudence at the regional level to expand the knowledge base and identify gaps. • Embrace new technologies such as ecological floors for sustainable development and enhancing threat detection mechanisms are vital for addressing the evolving challenges in biodiversity conservation across Latin America and the Caribbean.

<p>Asia, Participants and online input.</p>	
<p>Category</p>	<p>Highlights on Priority Areas for Tackling the Biodiversity Crisis</p>
<p>1. Strengthen legal frameworks relating to biodiversity</p>	<ul style="list-style-type: none"> • Revise legal frameworks to incorporate emerging issues and align to GBF targets. • Support countries in implementing MEAs

	<ul style="list-style-type: none"> • Enhance consultations with meaningful participation of stakeholders when developing and implementing biodiversity related legislation; • Strengthen penalties for violations. • Prepare a regional legal framework on invasive alien species; • Enhance regional cooperation for the transboundary movement of wildlife. • Strengthen regional protected areas systems for common conservation areas.
2. Enforcement and Criminal Law in Biodiversity	<ul style="list-style-type: none"> • Strengthen enforcement of environmental laws including through international cooperation. • Incentivize law enforcement. • Strengthen regional co-operation to tackle transboundary crime.
3. Capacity building	<ul style="list-style-type: none"> • Undertake capacity building initiatives for various stakeholders • Stronger Public Awareness of importance of biodiversity (value for economic services); • Support legal clinics and their networks;
4. Research Areas	<ul style="list-style-type: none"> • Research on the weakness of legal instruments to address transboundary harms. • Explore links between climate change and biodiversity • Examine the role of knowledge of Indigenous peoples in biodiversity protection

III: Options for priority areas to tackle the biodiversity crisis

10 The secretariat received relevant input on legal responses for tackling the biodiversity crisis as priority areas for Montevideo Programme V from the three regional stakeholders' consultations, though not all the outputs were relevant for the work under the Programme. The following is a summary of the general options.

Option1 - Support developing countries to strengthen national, sub national and regional biodiversity related laws to address current biodiversity issues and new global perspectives.

- Support countries to develop, strengthen and implement adequate legal and institutional frameworks to address the biodiversity crisis at the national and sub-national level to enable countries to implement MEAs and the GBF.
- Strengthen transboundary instruments and regional and sub-regional legal Instruments relating to nature and natural resources, regional seas as well as transboundary agreements on shared natural resources;
- Harmonize national legislation based on international and regional agreements.

Option 2: Build capacity of various stakeholders to develop and implement biodiversity related laws and to strengthen institutions.

- In collaboration with partners, build capacity of all stakeholders at the national and regional level to develop and implement biodiversity related MEAs.
- Strengthen capacity of legal drafters and relevant government officials to facilitate revising national biodiversity-related legislation.
- Engage partner national training institutions to develop curricula and embed or integrate curricula in training institutions to strengthen environmental law education and ensure sustainability.
- Raise awareness, specifically by developing information products and legal guidance materials that are targeting various stakeholders.

Option 3: Strengthen weak areas of Enforcement and Criminal Law in Biodiversity Law;'

- Strengthen regional law enforcement capability by providing opportunities for peer networking and knowledge sharing of law enforcement officials, to share experience on enforcement actions and case studies across countries.
- Harmonize national laws relating to criminal offences addressing biodiversity issues, to ensure coherence.
- Develop legal guidance materials and tools to assist countries in strengthening weak areas of enforcement such as sentencing guidelines and guidelines to calculate environmental damage, and penalties.
- Address transboundary trafficking and illegal activities that significantly affect the environment by strengthening international co-operation focusing on the main threats and cross cutting areas.
- Strengthen partnerships with key partners whose mandate relates to illegal activities that seriously affect the environment and may qualify as crimes.
- Strengthen legal clinics to support legal aid schemes that enhance access to justice in environmental matters such as supporting public interest litigation.
- Engage local communities living adjacent to protected areas by enhancing participatory approaches to biodiversity conservation so that they can participate in the protection of biodiversity.
- Enhance collaboration between the scientific community and authorities, including customs officials, for the effective implementation of international agreements like the CITES.
- Consider cross cutting issues in enforcement such as on watershed exploration, and addressing transboundary trafficking and illegal activities that affect the environment and may qualify as crimes in certain jurisdictions as well as ecocide and ecosystem services.

Option 4: Addressing Knowledge Gaps Research, Studies and Tools to Provide Guidance to Stakeholders on Biodiversity Law

- Research and undertake studies, prepare publications and promote tools on biodiversity law to increase understanding of issues. These includes regional analysis of biodiversity laws, including criminal offences and penalties and research on best practices
- Prepare comprehensive legal guidance materials focusing on each region's unique biodiversity.

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