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Fifth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme V): delivering for people and the planet
Second global meeting of national focal points
Nairobi, 3–5 June 2024
Item 4 (b) of the provisional agenda*

Implementation of the Fifth Programme for the Development and Periodic Review of Environmental Law: priority areas for implementation

Options for clearly defined priority areas to combat the biodiversity crisis

Note by the secretariat

I. Introduction

1. During the online segment of the first global meeting of national focal points for the Fifth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme V) (2–4 June 2021), the national focal points identified three thematic areas for implementation of the Programme, specifically, legal responses to address: (a) the pollution crisis; (b) the climate crisis; and (c) the biodiversity crisis. Aligned with the medium-term strategy of the United Nations Environment Programme (UNEP) for 2022–2025, 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), national focal points requested the secretariat to prepare reports for clearly defined priority areas to address the climate and biodiversity crises, respectively. For thematic area (c), the national focal points requested that a report be prepared on options for clearly defined priority areas to strengthen, develop or implement appropriate legal and institutional frameworks at the national or subnational level to implement biodiversity-related goals and commitments.

3. The present options paper was prepared in response to the above mandate provided to the Montevideo Programme V secretariat. It outlines the consultation process that sought proposals on the options paper and summarizes the core options proposed. The preliminary list of options was considered at the seventh meeting of the steering committee for implementation, held on 26 and 27 February 2024, and will be discussed by the national focal points at their second global meeting, to be held in Nairobi from 3 to 5 June 2024.

* UNEP/Env.Law/MTV5/GNFP.2/1.

II. Methodology

4. In 2023, the Montevideo Programme V secretariat held regional consultations for the Asia-Pacific, West Asia and Central Asia States, with the possibility of remote participation from Balkan, Eastern European and South Caucasus States, during the Montevideo Programme V regional meeting and third Environmental Law Conference of the Association of Southeast Asian Nations (ASEAN) (Bangkok, 15–18 August 2023); for African States during the fifth scientific conference and general assembly of the Association of Environmental Law Lecturers in African Universities (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 Latin American and Caribbean States at the Montevideo Programme V regional conference on legal responses to combat the triple planetary crisis in Latin America and the Caribbean (Panama City, 25 and 26 September 2023).

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

6. The consultations followed a similar format, with participants divided into groups and each group focusing on a predetermined area of intervention that aligned with the Montevideo Programme V objectives:

(a) *Strengthen legal and institutional frameworks at all levels to address biodiversity loss, including in enforcement and criminal law:* activities that provide practical guidance and technical assistance to develop and implement biodiversity-related laws at the national, subnational, subregional and regional levels to address biodiversity loss;

(b) *Enhance capacity-building and awareness to increase the effectiveness of biodiversity law:* activities that target various stakeholders to enhance their capacity to develop and implement biodiversity-related laws. The activities may include peer learning, training, education and awareness-raising in relation to environmental law to enable countries to engage more stakeholders and to strengthen their capacity to address environmental issues;

(c) *Research and knowledge development:* activities that encourage research, including studies and reports on emerging environmental issues and the relationship between environmental law and other, related legal fields to expand the knowledge base and assure wider appreciation of current issues related to biodiversity.

7. The present paper categorizes the proposed options in these three areas. To broaden participation, the secretariat also developed and disseminated online questionnaires to gather additional information.

III. Outcomes of the regional consultations

8. This part sets out the outcomes of the regional consultations on key priority areas falling within the mandate of Montevideo Programme V that were identified during the in-person consultations and in online questionnaires. The presentation highlights priority areas common to all regions, as well as priority areas only flagged during specific regional consultations. The priority areas have been categorized according to the three predetermined areas of intervention listed in paragraph 6 above, specifically: (a) strengthening of legal and institutional frameworks at all levels to address biodiversity loss, including in enforcement and criminal law; (b) enhancement of capacity-building and awareness to increase the effectiveness of biodiversity law; and (c) research and knowledge development.

A. Common priority areas

9. Priority areas identified by participants in two or more regions are listed in table 1.

Table 1
Key priority areas identified in two or more regions

Category	*Key priority areas*
1. Strengthen legal and institutional frameworks at all levels to address biodiversity loss, including in enforcement and criminal law	• Strengthen biodiversity legislation at the national and subnational levels by enhancing implementation of biodiversity-related multilateral environmental agreements and updating laws in relation to emerging issues, including the Kunming-Montreal Global Biodiversity Framework. • Develop a model comprehensive biodiversity law to guide countries in strengthening their legislation. • Address weak areas of enforcement to ensure that laws effectively address drivers of biodiversity loss. • Strengthen international cooperation, including bilateral and regional cooperation, to make enforcement effective and to tackle illegal trafficking at the transboundary level. • Harmonize national legislation at the regional level to improve its effectiveness at tackling biodiversity loss. • Strengthen biodiversity litigation.
2. Enhance capacity-building and awareness to increase the effectiveness of biodiversity law	• Build the capacity of various stakeholders, including legal drafters, parliamentarians, government officials, the judiciary, prosecutors, law enforcement officials and customs officials to protect biodiversity. • Engage training institutions of various stakeholders to ensure the sustainability of capacity-building programmes. • Include other non-state actors, such as communities living around conservation areas, in capacity-building programmes.
3. Research and knowledge development	• Conduct research and studies on various aspects of biodiversity to expand the knowledge base and to prepare tools for capacity-building.

B. Issues by region

10. This section sets out the various outcomes of the regional stakeholders' consultations held for African States, Asia-Pacific States, and Latin American and Caribbean States.

1. African States

11. The regional consultations for African States were held at the capacity-building workshop for national focal points of the multilateral environmental agreements and Montevideo Programme V to facilitate the implementation of multilateral environmental agreements on biodiversity and chemicals and waste that was held in Bugesera, Rwanda, from 29 to 31 August 2023. Most of the participants were government officials, including multilateral environmental agreement focal points and Montevideo Programme V national focal points, with staff from the secretariats of multilateral environmental agreements on biodiversity and chemicals also attending. There was no online participation. The key areas identified by the region as priorities for Montevideo Programme V are set out in table 2.

Table 2
Key priority areas identified during regional consultations for African States

Category	*Key priority areas*
1. Strengthen legal and institutional frameworks at all levels to address biodiversity loss, including in enforcement and criminal law	• Strengthen legal frameworks on biodiversity at the national, subnational and regional levels to implement multilateral environmental agreements and to include emerging areas of regulation such as implementation of the Kunming-Montreal Global Biodiversity Framework. • Strengthen environment-related institutions and empower them to fulfil their mandates. • Enhance coordination between ministries, government agencies with related mandates and biodiversity convention focal points. • Address enforcement challenges of biodiversity-related laws, including detection, investigation, prosecution and prevention of crimes related to biodiversity.

Category	*Key priority areas*
	• Harmonize the laws on biodiversity-related criminal offences to ensure coherence at the regional level and ease of retrieval. • Develop judicial guidelines on sentencing and calculating environmental damages. • Reinforce bilateral and regional cooperation agreements to address illegal activities and crimes of a transboundary nature that significantly affect biodiversity.
2. Enhance capacity-building and awareness to increase the effectiveness of biodiversity law	• Build the 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 education and judicial training institutions. • Translate UNEP guidance documents into all official languages of the United Nations. • Strengthen environmental institutions with financial and human resources to develop, monitor and report on environmental legislation.
3. Research and knowledge development	• Access and benefit-sharing mechanisms for biodiversity. • Digital sequencing information on biodiversity. • Conduct a study on rights and obligations related to biodiversity, as well as on the rights of nature. • Conduct a study on legal aspects of biosafety and genetically modified organisms.

2. Latin American and Caribbean States

12. In collaboration with the regional subprogramme coordinator for environmental governance based at the UNEP Regional Office for Latin America and the Caribbean, the secretariat organized the Montevideo Programme V regional conference on legal responses to combat the triple planetary crisis in Latin America and the Caribbean in Panama City on 25 and 26 September 2023. National focal points from the region, along with some legal experts from universities in the region, participated in person, and 450 other participants, including experts and other stakeholders, participated online. The key areas identified by the region as priorities for Montevideo Programme V are set out in table 3.

Table 3
Key priority areas identified during regional consultations for Latin American and Caribbean States

Category	*Key priority areas*
1. Strengthen legal and institutional frameworks at all levels to address biodiversity loss, including in enforcement and criminal law	• Revise regressive non-environmental regulations related to the mining, transport and energy sectors to align, contextually and coherently, with legal frameworks on biodiversity. • Revise biodiversity-related legislation to include emerging areas of regulation and to align regulatory frameworks with international biodiversity targets to meet global conservation goals. • Develop a comprehensive framework law on biodiversity 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 subregional level to address gaps in biodiversity protection. • Strengthen litigation to promote environmental accountability and sustainability and to reinforce biodiversity-related legal frameworks. • Mainstream biodiversity as a cross-cutting issue in all public policies and legal and regulatory provisions. • Enhance synergies between multilateral environmental agreements at the national level.

Category	*Key priority areas*
	• Apply the integrated approach to biodiversity conservation, which goes beyond multilateral environmental agreements to include all natural resources, investment, mining and free trade agreements. • Engage legal drafters in the Caribbean to draft new-generation biodiversity-related legislation to replace old legal frameworks. • Implement multilateral environmental agreements on biodiversity at national level by incorporating them into domestic law. • Identify and review the main threats to biodiversity in order to strengthen enforcement mechanisms. • Enhance international cooperation to tackle transboundary trafficking and serious illegal activities that affect biodiversity, including criminal liability, 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 and the Convention on Biological Diversity, 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. • Establish enforcement frameworks for the demarcation of boundaries and monitoring of environmentally sensitive species and areas, and ensure active patrolling and prosecution when violations occur, particularly in cases with a transnational dimension.
2. Enhance capacity-building and awareness to increase the effectiveness of biodiversity law	• Conduct capacity-building programmes for various stakeholders to ensure effective implementation of environmental laws. • Train judges, prosecutors, lawyers, other relevant stakeholders and the public on biodiversity and natural resources law. • Link science to policies and laws in biodiversity training programmes. • Collaborate with subregional institutions to leverage funding from existing projects to build the capacity of biodiversity-related stakeholders. • Conduct comparative studies between countries' laws to facilitate mutual learning and improved legislation.
3. Research and knowledge development	• Develop comprehensive legal guidance materials that focus on biodiversity in the region, such as forest biodiversity, species diversity, endangered species, and invasive species. • Study the concepts of ecocide, ecosystem degradation and cross-cutting biodiversity-related issues in order to incorporate them in legal frameworks. • Study the impact of invasive alien species such as *Sargassum* and prohibit their transfer to other areas using biodiversity-related legal frameworks. • Promote legal tools and incentives for companies to raise awareness of 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 measures and jurisprudence at the regional level to expand the knowledge base and identify gaps. • Embrace new technologies for sustainable development and enhance threat detection mechanisms, both of which are vital to addressing the evolving challenges in biodiversity conservation across Latin America and the Caribbean.

3. Asia-Pacific States

13. The regional stakeholders' consultation for Asia-Pacific States was organized in a hybrid format in collaboration with the UNEP Regional Office for Asia and the Pacific, with contributions from the regional offices for West Asia and Europe. The consultations included Montevideo Programme V national focal points from the region and legal experts from research institutions, non-governmental organizations and academia. The Montevideo Programme V regional meeting was organized back to back with the third ASEAN Environmental Law Conference, held in Bangkok from 15 to 18 August 2023. The key areas identified by the region as priorities for Montevideo Programme V are set out in table 4.

Table 4
Key priority areas identified during regional consultations for Asia-Pacific States

Category	*Key priority areas*
1. Strengthen legal and institutional frameworks at all levels to address biodiversity loss, including in enforcement and criminal law	• Revise legal frameworks to incorporate emerging issues and align with the targets of the Kunming-Montreal Global Biodiversity Framework. • Support countries in implementing multilateral environmental agreements. • 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. • Strengthen enforcement of environmental laws including through international cooperation. • Incentivize law enforcement. • Strengthen regional cooperation to tackle transboundary crime.
2. Enhance capacity-building and awareness to increase the effectiveness of biodiversity law	• Undertake capacity-building initiatives for various stakeholders. • Stronger public awareness of the importance of biodiversity (economic contribution of ecosystem services). • Support legal clinics and their networks.
3. Research and knowledge development	• Research the weakness of legal instruments to address transboundary harms. • Explore links between climate change and biodiversity. • Examine the role of the knowledge of Indigenous Peoples in biodiversity protection.

IV. Options for priority areas to tackle the biodiversity crisis

14. 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 to the work under the Programme. The following is a summary of the general options.

A. Support developing countries' efforts to strengthen national, subnational and regional biodiversity-related laws to address current biodiversity issues and new global perspectives

(a) Support countries to develop, strengthen and implement adequate legal and institutional frameworks to address the biodiversity crisis at the national and subnational levels to enable countries to implement multilateral environmental agreements and the Kunming-Montreal Global Biodiversity Framework.

(b) Strengthen transboundary instruments and regional and subregional legal instruments related to nature, natural resources and regional seas, as well as transboundary agreements on shared natural resources. Harmonize national legislation and criminal offences within regions to address gaps in legislation and to effectively address biodiversity loss.

(c) Strengthen regional law enforcement capability by providing opportunities for peer networking and knowledge-sharing among law enforcement officials in order to share experience on enforcement actions and case studies across countries.

(d) Develop legal guidance materials and tools to assist countries in strengthening weak areas of enforcement, such as guidelines on sentencing and on calculating environmental damage and penalties.

(e) Address transboundary trafficking and illegal activities that significantly affect the environment by strengthening international cooperation, focusing on the main threats and cross-cutting areas.

(f) Strengthen partnerships with key partners whose mandate relates to illegal activities that seriously affect the environment and may qualify as crimes.

(g) Strengthen legal clinics to support legal aid schemes that enhance access to justice in environmental matters such as supporting public interest litigation.

(h) 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.

(i) Enhance collaboration between the scientific community and authorities, including customs officials, for the effective implementation of international agreements like the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

(j) Consider cross-cutting issues in enforcement such as watershed exploration, transboundary trafficking and illegal activities that affect the environment and may qualify as crimes in certain jurisdictions, as well as ecocide and destruction of ecosystems and related services.

B. Build the capacity of various stakeholders to develop and implement biodiversity-related laws and strengthen institutions

(a) In collaboration with partners, build the capacity of all stakeholders at the national and regional levels to develop and implement biodiversity-related multilateral environmental agreements.

(b) Strengthen the capacity of legal drafters and relevant government officials to facilitate the revision of national biodiversity-related legislation.

(c) Engage partner national training institutions to develop curricula and embed or integrate curricula in training institutions to strengthen environmental law education and ensure sustainability.

(d) Raise awareness, specifically by developing information products and legal guidance materials that target various stakeholders.

C. Address knowledge gaps, conduct research, and promote tools to provide guidance to stakeholders on biodiversity law

(a) Conduct research, prepare publications and promote tools on biodiversity law to increase understanding of issues. These activities include regional analysis of biodiversity laws, including criminal offences and penalties and research on best practices.

(b) Prepare comprehensive legal guidance materials focusing on each region's unique biodiversity.