

Law and National Biodiversity Strategies and Action Plans



Publication: Law and National Biodiversity Strategies and Action Plans

Produced by the Law Division for the United Nations Environment Programme

Director of Publication: Elizabeth Maruma Mrema

Authors: Balakrishna Pisupati (Forum for Law, Environment, Development and Governance (FLEDGE)),
Andreas Obrecht (United Nations Environment Programme), Tomkeen Mobegi (United Nations Environment Programme)

Acknowledgment

Thanks are due to Yolanda Saito (International Development Law Organization), Jiri Hlavacek (United Nations Environment Programme), Maria Socorro Manguiat (United Nations Environment Programme), Sylvia Bankobeza (United Nations Environment Programme) Susan Wekesa (United Nations Environment Programme), Katharina Rogalla von Bieberstein (World Conservation Monitoring Centre), John Tayleur (World Conservation Monitoring Centre) for their inputs and contributions. Particular thanks go to Eunice Jerono Odhiambo (United Nations Environment Programme) and Paula Wambui Waibochi (United Nations Environment Programme) for their significant work on analysing the National Biodiversity Strategies and Action Plans. Comments received from other experts, colleagues and partners are also gratefully acknowledged.

Disclaimer

The contents of this publication do not necessarily reflect the views or policies of the United Nations Environment Programme or contributing organizations or individuals.

The designations employed and the presentation of material in this publication do not imply the expression of any opinion whatsoever on the part of the United Nations Environment Programme concerning the legal status of any country, territory or city or its authorities, or concerning the delimitation of its frontiers and boundaries.

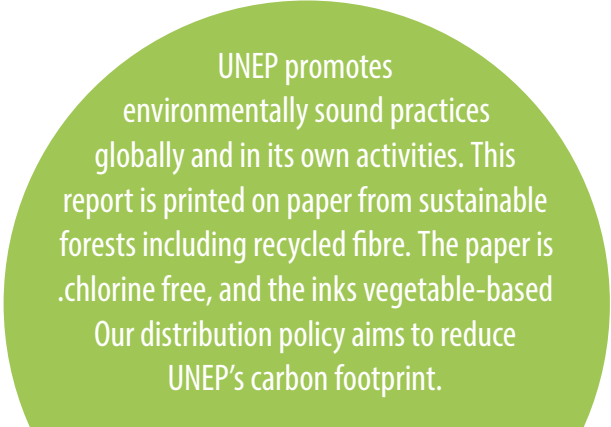
Reproduction

This publication may be reproduced in whole or in part and in any form of educational or non-proper services without special permission from the copyright holder, provided acknowledgment of the source is made. The United Nations Environment Programme would appreciate receiving a copy of any publication that uses this publication as a source.

No use of this publication may be made for resale or any other commercial purpose whatsoever without prior permission in writing from the United Nations Environment Programme. Applications for such permission, with a statement of the purpose and extent of the reproduction, should be addressed to the Communications Division, United Nations Environment Programme, P.O Box 30552, Nairobi 00100, Kenya.

The use of information from this document for publicity or advertising is not permitted.

Citation: United Nations Environment Programme (2018). *Law and National Biodiversity Strategies and Action Plans*, Nairobi, Kenya.



UNEP promotes
environmentally sound practices
globally and in its own activities. This
report is printed on paper from sustainable
forests including recycled fibre. The paper is
chlorine free, and the inks vegetable-based
Our distribution policy aims to reduce
UNEP's carbon footprint.

Table of contents

I.	Introduction.....	1
	Definitions.....	4
II.	National biodiversity strategy and action plans (NBSAPs).....	7
A.	What is an NBSAP?.....	8
B.	Developing NBSAPs.....	8
C.	Revision of NBSAPs.....	11
D.	Granting NBSAPs legal backing within the Convention on Biological Diversity.....	11
III.	Legal preparedness: biodiversity law.....	15
A.	Introduction.....	16
B.	Defining biodiversity law.....	17
C.	Nexus between biodiversity law and NBSAPs.....	18
D.	Development of biodiversity law.....	20
E.	International biodiversity law.....	23
	(a) Sources of international biodiversity law.....	23
	(b) Multilateral environmental agreements.....	23
	(c) Customary law.....	24
	(d) General principles of law.....	25
F.	Relationship between international and national biodiversity law.....	25
G.	National biodiversity law.....	28
	(a) The national legal status of biodiversity.....	28
	(b) Scope of the national biodiversity legal framework.....	29
IV.	Legal preparedness.....	31
A.	What exactly is meant by the term "legal preparedness"?.....	32
B.	Why is legal preparedness for NBSAPs important for biodiversity conservation?.....	32
C.	Design and applicability.....	33
V.	Strengthening and sustaining legal preparedness in NBSAPs.....	35
A.	Expanding biodiversity conservation through legal preparedness.....	36
B.	Basic elements for strengthening and sustaining legal preparedness in the NBSAPs process.....	37
	Institutional structures and professional competencies.....	37
C.	Access to information and data on the NBSAPs process, related legislation, best practice and policies.....	39
D.	Coordination mechanisms across jurisdictions and sectors.....	40
E.	Ministerial and departmental levels.....	40
	(a) Local and municipal levels.....	41
	(b) Advisory bodies.....	41
	(c) Courts and tribunals.....	42
	(d) Indigenous and local communities.....	34

F. Accountability framework.....44

VI. NBSAPs and the Aichi Biodiversity Targets45

Legal preparedness for the Aichi Biodiversity Targets46

Conclusions56

VII. Review of legal considerations within NBSAPs57

Methodology58

Research limitations.....59

Data review and findings59

Extent to which parties have developed NBSAPs59

Parties with a post-2010/up-to-date NBSAPs.....62

Parties that have reviewed their laws related to biodiversity68

Legal measures in NBSAP68

Compilation of findings.....69

Compilation of post-2010 findings.....70

VIII. Sources73

Conventions and protocols74

Resolutions and decisions74

Publications and reports62

Training modules77

Website links.....81

Case law83

Other sources84



Introduction

I. Introduction

The contributions of biodiversity and ecosystems to human development and well-being have long been recognized.^{1,2} However, the world continues to lose its biodiversity as a result of both direct and indirect pressures, including habitat destruction, overexploitation, the spreading of invasive alien species, climate change and population pressure. National, bilateral and multilateral efforts to halt and reverse the loss have given rise to a number of legal, regulatory and policy regimes that are currently under implementation.³

While the policy and regulatory regimes are intended to provide an overarching framework for action on the ground, legal regimes and instruments provide the interpretation and protection services necessary for ensuring that policy and regulatory regimes are effectively implemented. The implementation referred to in the present paper usually takes place at the national level.

The Convention on Biological Diversity (“the Convention”)⁴ was adopted in 1992 at the United Nations Conference on Environment and Development, also known as “the Rio Earth Summit”, held in Rio de Janeiro, Brazil, from 3 to 14 June 1992, with the objectives of ensuring the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising

out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.⁵ The Convention entered into force on 29 December 1993.

By its article 6 (a), the Convention requires parties to develop national strategies, plans or programmes for the implementation of the Convention at the national level. In doing so, each party shall “integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies”,⁶ as well as the “consideration of the conservation and sustainable use of biological resources into national decision-making”.⁷ Articles 6 and 10 (a) of the Convention exhibit strong linkages between the development of national biodiversity strategies, plans or programmes and the achievement of article 10 on the sustainable use of components of biological diversity. In that regard, it has been suggested that the implementation of the Convention could be achieved through the means of national biodiversity strategies and action plans (NBSAPs).⁸ NBSAPs thus constitute the key policy-cum-strategy document for the realization of the objectives of the Convention by many of the Convention’s parties. While as at March 2018, out of the 196 parties to the Convention, 190 had submitted their

1 “Updated analysis of information in the fourth national reports”, available at <https://www.cbd.int/doc/meetings/cop/cop-10/information/cop-10-inf-02-en.pdf>.

2 Millennium Ecosystem Assessment (2005).

3 Snape, William J. (1996).

4 Convention on Biological Diversity, preamble. Available at <https://www.cbd.int/doc/legal/cbd-en.pdf>.

5 Convention on Biological Diversity, article 1.

6 Convention on Biological Diversity, article 6 (b).

7 Convention on Biological Diversity, article 10 (a).

8 Convention on Biological Diversity, article 6.

NBSAPs⁹ to the Convention secretariat and 191 had provided their fifth national reports,¹⁰ outlining the ways in which the strategies had been implemented, nearly all countries have reported a continued decline in biodiversity.¹¹ The third edition of *Global Biodiversity Outlook*, published in 2010 taking into account the fourth national reports submitted by 178 parties, indicated that in many countries progress towards achieving the objectives of the Convention had been limited and has had little observable impact on the status and trends of biodiversity.¹² That lack of progress and impact led to the development of the Strategic Plan for Biodiversity 2011–2020, which was adopted as decision X/2 by the Conference of the Parties at its tenth meeting, held in Nagoya, Japan, from 18 to 29 October 2010¹³ and was supported by a set of twenty global biodiversity targets (“the Aichi Biodiversity Targets”)¹⁴ to reinvigorate national, regional and global action.¹⁵ By its decision XI/2, the Conferences of the Parties urged parties and other Governments to review and, as appropriate, update and revise their NBSAPs in line with the Strategic Plan for Biodiversity 2011–2020. Aichi Biodiversity Target 17 specifically addresses NBSAPs: “By 2015 each party has developed, adopted as a policy in-

strument, and has commenced implementing an effective, participatory and updated national biodiversity strategy and action plan”. A clarification on law and the Aichi Biodiversity Targets is provided in section VI below.

The Strategic Plan for Biodiversity 2011–2020 subsequently received broad support from other biodiversity-related conventions and the United Nations General Assembly, therefore positioning NBSAPs as an important instrument for a potential synergistic implementation of the biodiversity-related Conventions.

Following the adoption of decision X/2, countries began to review, revise and update their NBSAPs, both in the light of their implementation experience and of more recent developments, such as the focus on links with sustainable development. In addition, in paragraph 17 of decision XIII/1, the Conference of the Parties encouraged parties to ensure that their NBSAPs were adopted as policy instruments to enable the mainstreaming of biodiversity at all relevant levels across political, economic and social sectors. Almost all parties (97 per cent) have developed at least one NBSAP since they became a party, and this has formed the nucleus of their national action on the implementation of the Convention and the Strategic Plan for Biodiversity 2011–2020.¹⁶

One key element that has attracted the attention of those assessing the robustness and implementation effectiveness of NBSAPs has been the legal aspects of the NBSAPs and the nature of legal preparedness at the national level to

9 Convention on Biological Diversity, National Biodiversity Strategies and Action Plans (NBSAPs). Available at <https://www.cbd.int/nbsap/>.

10 In its decision XIII/27 on national reporting, the Conference of the Parties to the Convention on Biological Diversity at its thirteenth meeting, held in Cancun, Mexico, from 4 to 17 December 2016, provided guidelines, including reporting templates, for the sixth national reports due by 31 December 2018.

11 Note by the Executive Secretary of the Convention on Biological Diversity entitled “Update on progress in revising/updating and implementing national biodiversity strategies and action plans, including national targets” (UNEP/CBD/COP/13/8/Add.1), presented to the Conference of the Parties to the Convention at its thirteenth meeting on 17 December 2016. See also the note by the Executive Secretary of the Convention on Biological Diversity entitled “Update on progress in revising/updating and implementing national biodiversity strategies and action plans, including national targets” (CBD/SBI/2/2/Add.1), to be presented to the Subsidiary Body on Implementation at its second meeting, to be held in Montreal, Canada, from 9 to 13 July 2018.

12 Secretariat of the Convention on Biological Diversity (2010).

13 Decision X/2, on the Strategic Plan for Biodiversity 2011–2020 and the Aichi Biodiversity Targets, adopted by the Conference of the Parties to the Convention at its tenth meeting.

14 Ibid.

15 Decision X/8, on the United Nations Decade on Biodiversity 2011–2020, adopted by the Conference of the Parties to the Convention at its tenth meeting.

16 Update on progress in revising/updating and implementing national biodiversity strategies and action plans, including national targets (CBD/SBI/2/2/Add.1). Note to be presented by the Executive Secretary of the Convention on Biological Diversity to the Subsidiary Body on Implementation at its second meeting, to be held in Montreal, Canada, from 9 to 13 July 2018.

implement them.^{17,18} While countries continue to establish legislation and legal frameworks to implement NBSAPs and address biodiversity problems, much of the experience is based on the use of national sectoral policies and legislation related to biodiversity, and there is thus a clear need to further analyse the legal components of the present NBSAPs, the role of legal preparedness in the implementation of NBSAPs focusing on biodiversity, and ecosystems as an overarching theme, rather than as a sectoral issue. The aim of such an analysis is not simply to replace the narrow sectoral perspective with a broader cross-sectoral focus on biodiversity and ecosystems, but to widen the scope on the NBSAPs even further to include the concept of sustainable development.

The present paper therefore attempts to provide an overview of current thinking and the experience of countries in using legal frameworks to implement the Convention at the national level through NBSAPs and provides options for enhancing legal preparedness in revising and implementing the NBSAPs and the Strategic Plan for Biodiversity 2011–2020 and achieving the Aichi Biodiversity Targets.

Definitions

The following definitions have been used in the present paper, drawn largely from the Convention on Biological Diversity.

Biodiversity means biological diversity.

Biological diversity means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.²⁰

Biodiversity law means legal instruments and mechanisms regulating certain behaviour, providing incentives to achieve certain biodiversity conservation objectives and setting appropriate institutions to respond to the biodiversity needs and demands of society.²¹ For the purpose of the present publication, biodiversity law shall include legislation/acts of parliament, decree law, and local bylaws.

Biological resources include genetic resources, organisms or parts thereof, populations or any other biotic component of ecosystems with actual or potential use or value for humanity.

Biotechnology means any technological application that uses biological systems, living organisms or derivatives thereof to make or modify products or processes for specific use.²²

Decision means a formal expression of the will of the governing body of an international organization or international agreement. Decisions are generally binding but may occa-

预览已结束，完整报告链接和二维码如下：

https://www.yunbaogao.cn/report/index/report?reportId=5_14448

