

English Summary of the Report

"Transito de Comercio Ilegal de Animais Silvestres No Brasil"
(The Traffic of Illegal Trade of Wild Animals in Brazil)

by

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INTRODUCTION

Brazil has many social and political problems which have, in the past, and continue to influence how natural resources are treated. The illegal trade of species is a thermometer for society, because it involves all levels of the society, and shows the chaotic state of the country in terms of management of its natural resources. This report has the intention to discuss some of the principal environmental problems in Brazil, such as illegal wildlife trade, though a diagnostic of the Brazilian political scene, economy, and society.

The Regions of Brazil

The author describes Brazil -- its geographical regions and ecosystems. There are five regions, each with its corresponding typical ecosystem: North - Amazon Ecosystem; Northeast - Caatinga Ecosystem; South and Southeast - Atlantic Ecosystem; Center-West - Cerrado Ecosystem.

ASPECTS OF LEGISLATION

I - The legislation regarding this theme is insufficient, technically deficient, very complex and/or contradictory (Valdely Cardoso Brito and Antonio Teleginski)

a) How many and what are the norms (law, decrees, resolutions) of major importance for this study?

- Federal constitution of 1988;
- State Constitutions which have been restructured after the federal constitution of 1988;
- Forest Code, Law 4.771 (15 Sept 65) which was changed on 15 June 78 by the Law 6.535. New edition Law 7.803 (15 Sept 89);
- Fauna Protection Law 5.197 (3 Jan 67) which was changed by Law 7.653 (12 Feb 88) which was revoked by the paragraph 4 of article 27 which was revoked by the Law 7.679 (23 Nov 88) which gives authority over the marine mammals (annex 2);

- Regulations for the contravention of Law 1.508 (19 Dec 51) Code of penal process.

- National Policy of Environment, Law 6.938 (31 Aug 81) with a new edition by the Law 7.804 (18 July 89).

b) What is the hierarchy structure of these norms?

1. Federal constitution
2. State constitution
3. Federal law
4. State law
5. Municipal law
6. Federal and State resolutions
7. Federal and State decree

c) How are these laws applied - in theory and in practice - and what are the organs (agencies) responsible?

IBAMA, Federal police and Federal justice are responsible for applying the legislation at a Federal level. They work together with the Secretary of Environment of each state, and with the coordinators of the Department of Natural Resource Protection, who work with forest police. All those institution assess fines for violations.

d) Does have internal contradictions in each law?

Yes, there can be conflicts in the application of laws because of overlapping competence of federal, state and municipal authorities.

e) What is the juridical (justice) base of legislation at the state level? How is this juridical base expressed in the laws?

The juridical base of the state corresponds to its competence to pass supplemental legislation regarding materials that are not covered by federal legislation. If there is an absence of a federal law, the state can pass and apply a law. An example is given that the federal law for the protection of fauna does not contain any provision for rehabilitation centers for confiscated or rescued animals. So some states have in their state constitutions a provision which allows for the construction of those rehabilitation centers.

f) What system of dominion exists regarding natural resources (res nulles, res comunis, dominal, others)?

g) Is there any technical-scientific base to the laws?

No, there is not a scientific base but a constitutional definition.

h) What is the criterion of legislation? Preventive or curative?

The criterion is preventive. However, the laws establish sanctions which are repressive, very punitive, or insignificant, making unclear the correct form of application. Also, the sanctions being levied do not take into consideration the social and cultural contrasts of the country. For example, wildlife traffickers often encourage rural community members to capture wild animals so they can be commercialized. As has been discussed, the social and cultural conditions of the traffickers and the hunter are very different. Usually the punishments to the hunters are more severe than to the traffickers. This demonstrates that legislation does not follow the dynamics of society.

i) Are technical deficiencies detectable in the form of the norms (laws, decrees, resolutions, etc.)?

Yes, they exist, principally in the commercialization of wild animals. The responsible institution - IBAMA - authorizes scientific and commercial captive breeding facilities. But the same institution creates so many bureaucratic problems to legalize those facilities that, as a result, the facilities start without IBAMA's permit, thus commercializing their product illegally. IBAMA does not monitor the function of official breeding facilities, for lack of staff and infrastructure. As a result, captive breeding facilities many times become illegal traffickers with a governmental permit!

j) How many laws exist for the same theme and species? Are they complementary or contradictory?

The laws are generic, not specifying the themes or species they treat, permitting various interpretations. This aspect causes great difficulties in the application of the laws, allowing, in most cases, the offender to go free without punishment. For example, all hunting in Brazil is prohibited, with penalties up to 1 to 3 years in detention. Subsistence hunting, a cultural aspect inherent in traditional communities isolated geographically, is interpreted with the same vigor as amateur or professional hunting.

k) Are there any international agreements about the natural resources?

The author cited 7 different agreements:

- Convention for the Protection of Fauna and Flora and the Beautiful Scenery of America, signed in Washington 12 Oct 40. Ratified on 13 Feb 48 and promulgated by Decree 58.054 of 23 March 66.

- International Convention to Regulate Whale Fishing, signed in Washington on 2 Dec 46 and promulgated by Decree 28.524 of 18 Aug 50.

- Convention for the Conservation of Antarctic Seals, concluded in London 1 jun 72 and promulgated by Decree 66 on 18 Mar 91.

- Convention on International Trade of Endangered Species of Wild Fauna and Flora, signed in Washington on 3 march 73 and promulgated by Decree 76.623 of 17 Nov 75.

- Agreement for Conservation of the Fauna and the Flora of the Amazonian Territories of Brazil and Colombia, signed in Bogota on 20 June 73 and promulgated by Decree 78.017 on 12 July 76.

- Agreement for Conservation of the Fauna and the Flora of the Amazonian Territories of Brazil and Peru, promulgated by Decree 78.802 on 23 Nov 76.

l) Has any legislation come from the signing of these accords?

Yes, it exists. Article 19 of the Law of External Wildlife Trade, conforming with the edition of Law 7.653 of 12 Feb 88, is derived from CITES.

m) Is there any legislation that indirectly regulates the resources in question? Taxes, customs, etc.?

No, because the laws are of a preventive character, and control is exercised by IBAMA (Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renovaveis).

n) What kind of sanctions and punishments does the legislation authorize if the laws are broken?

A person can go to jail for 2 to 5 years if they violate articles 2, 3, 17 and 18 of the Law of Faunal Protection, conforming with the edition of Law 7.653 of 1988.

[Report has no question o)]

p) Are these sanctions or penalties evidence that the laws are not being complied with?

The penalties established for violation of the laws, whether repressive or insignificant, do not allow for modifications that account for the day-to-day social situation of the country. Those sanctions do not educate people about the environmental problems. People that do the control and monitoring have some other problems to apply the law because if they do not do the control this means a third income for them.

STRUCTURAL ASPECTS OF THE ADMINISTRATION

II - The institutions responsible for applying the law are insufficient.

a) How many institutions are responsible for applying the law, and what is their hierarchy of their administration?

Brazil's form of government is a presidentialism. The President of the Republic is the highest point of the hierarchy, directing projects, decree and resolutions to the Senate, which can approve or reject them. If approved, the project is directed to the Congress of Federal Deputies for study and approval. The President also has the function of signing international accords for the protection of natural resources and to solicit financial resources for the same. The federal Secretary of Environment is principally responsible for (normatizar -- establishing standards??) for the National Policy for the Environment, delegating to IBAMA the responsibility for the technical executive, legislative, and normative about the environment problems (environmental pollution, hunting, fishing, captive breeding facilities, commerce of fauna and flora, and research, etc).

IBAMA works together with state Secretaries of the Environment (although not all states have a secretary of environment). The secretaries are responsible for applying the environmental legislation, through the departments of protection of natural resources and the Forest Police, in environment planning, use and occupation of the soil, and of the management and administration of state conservation units.

Municipal Secretaries of the Environment have the function to administer the parks, green areas, and springs of the municipality. The Forest Police of the state is a division of the Military Police, which is responsible to the state Secretary of Public Safety. The Forest Police is responsible for the protection of the natural resources and to apply the pertinent legislation. The

state Ministry of the Public represents the highest justice authority in the state. They judge infractions related to the environment (appendix 3, 4 and 5).

b) How should the legislation be working and how is it working in reality?

The legislation should be functioning in accord with the federal constitution and National Policy for the Environment, already established, which changes according with the social changes. However, the responsible federal institutions are in a very difficult time, lacking capable technicians and financial resources. Today, these institutions are neglecting environmental questions, and, many times, they support the interests of commercial business and political groups, just contributing when the federal government needs to request resources from other countries.

c) How do the institutions responsible for the protection of natural resources work?

These institutions do not have any connection at the administrative level, especially in the exchange of information. There is overlap of activities between federal and state institutions. There is a lack of systematic data to establish priorities and more precise directions to pursue. This gives problem for the creation of specific legislation for the administration and management of natural resources. Because of the lack of technical data there is a lack of effective control of the national patrimony.

There is no interrelation between the institutions that work directly or indirectly with the environment because of the problems mentioned above. And also because some of the institutions that work indirectly do not know aspects of the current laws and regulations. The consequence for this lack of relationship is the loss of natural patrimony and also the loss of economic divisions.

d) Which institutions work indirectly with the protection of natural resources?

According with Law 5.197, article 25:

"The government will monitor through the executive organ of the Secretary of Environment, or through agreement with others states or municipalities, to apply the rule of the law, which can create indispensable services.

Unique paragraph - The monitoring of hunting by the specialist organ does not exclude the action of police or the armed forces, by themselves."

So, beside the institutions responsible for the administration and protection of natural resources - at the federal, state, and municipal level - other institutions such as federal, state, municipal police, military forces, custom police, public health can act in a preventive manner, at the moment, but afterward they need to send the cases to the competent institution.

e) What is the relationship between all those institutions with international institutions that work with protection of natural resources?

The only international institution which has been approved by the Brazilian government is CITES. There are no other institutions, just reports from researchers and observers which interfere to only a minor degree with the administration of natural resources.

f) What is the interest, commitment and motivation of the people that administer and work in those institutions?

There are many cases that when a new director takes over an institution, their work is based more on the politics of the political party in power at the moment than on the law. There are many departments that have a large number of employees who did not get their job based on their technical ability but based on political and personal favoritism. As a result, there is a lot of work for those people with technical skills, who have to work for very low salaries and are vulnerable to the current political environment. As a consequence workers have very low interest, commitment, motivation.

ECONOMIC ASPECTS OF ADMINISTRATION

III - The resources available to administer the natural resources are sufficient (Luis Son).

a) What is the estimate of the optimum amount of funds necessary to develop the offices responsible for administering the natural resources?

Approximately US\$150,000.00 per year. When a new office is opened, 13.5% of this value goes to buy permanent equipment (vehicles, furniture, equipments, etc). This amount, in subsequent years, will be distributed among the various budget categories as follows. 50% is used for staff salaries for a team with: 3 professionals with university training, 3 assistants, and 1 general

helper. 20% is used in operational expenses (travel, fuel, etc). 13% is used in administrative expenses (xerox, books, mail, etc). 3.0% is used for amortization payments. 0.5% for general expenses.

b) What is the amount that offices receive? What are the political-financial reasons they receive funds? What happens to with the administration of natural resources before financial resources are available?

No criteria exist for the division of financial resources among the various departments. The strategy or plans of these institutions are not well defined and in many cases are obscure. There are no priorities for emergencies.

The result is a disjointed administration of the natural resources (just 5% of 800 conservation units of the country has adequate conditions) and lack of control of the illegal trade of wildlife at national borders and airports. Also, there is a lack of support for new research and environmental education programs, which are essential to the management of the natural resources.

c) How does the amount of funding available affect the people that work in those offices? Do any cases of corruption exist?

The budgetary allowances available for personnel salaries are not well calculated and are usually underestimated. In general, all the factors such as problems in the administration, lack of motivation, low salaries results in corruption at all levels of the institutions that work with natural resources.

THE POLITICS OF ENVIRONMENTAL QUESTIONS

IV - Political interest does not exist (Maria Cecília Wey Britto).

a) Of what importance are the platforms and political discourses about the environment problems and the administration of natural resources?

The platforms and political discourses are increasingly emphasizing the importance of environment problems. Much of the discussion centers around problems of industrialization and the development of cities, for example, air and water pollution.

International positions have influenced Brazilian politicians to defend the conservation of biodiversity, with the protection of tropical forests as the principal discourse. Others global environmental problems have also influence political discourse, such as destruction of the ozone layer and fires in the Amazon basin.

The UN meeting in Rio (Earth Summit) brought a different discourse about the issue of sustainable development.

Although there is a lot of discourse, there is a big difference between discourse and action. Usually the only action comes from concerned individuals.

b) What is the influence of politics on environmental problems and the administration of wildlife resources?

Because the people of Brazil do not practice good citizenship and there is a lack of connection between good citizenship and environmental quality, it is difficult for environmental problems to receive coordinated treatment on the part of everyone.

But it is important to emphasize that environmental problems have been incorporated into the political agenda and administration, and that this has incited the private sector to begin modifying their agenda.

The Eco-92 meeting in Brazil contributed to the development of several projects in the months prior to the meeting. But after the meeting the attention of the media decreased and the interest in environmental problems decreased, too.

Observations: There are some political decisions which negatively and positively influence the administration of natural resources. The positive point is the chapter on the environment in the federal constitution of 1988. Also the environmental legislation developed in all the states gives the opportunity for considerable action in preventing and curating environmental problems. The development of the SISNAMA (National Environment System) at the federal level, the creation and action of CONSEMAS (State Environmental Councils) at the state level which permits environmental questions to be discussed.

The negative points were the fiscal incentives given to businesses which would be installed in the north of Brazil - in the Amazon forest - and the implementation of agrarian reform, which caused the destruction of local wild resources and as a consequence contributed to the development of several ecological/economic and social problems (indians, miners, posseiro, famers, etc.)

SOCIETY AND ENVIRONMENTAL QUESTIONS

V - There is no public interest (João P. Capobianco and Hélio de Alcantara Pinto)

a) How many NGOs are recognized? What kind of economic resources do they have?

In Brazil, the first NGOs were created in the 50s. And the number increased greatly during the 1980s. The author describes how the NGOs act and their principal problems. The NGOs get their financial resources through membership, distribution of materials and promotion of materials, donations, projects through private initiative, etc.

The biggest work the NGOs do in Brazil is to mobilize and inform the public about environmental problems.

d) How is the participation of media on the environmental problems?

Their participation of the media in environmental issues has increased year by year.

COMMERCE OF WILD ANIMALS

VI - There is a lack of technical information and criteria for decision-making.

a) What percentage of species used commercially are well-understood from the perspective of their ecology? What is the environmental impact of illegal and legal trade?

The two species of animals most commercialized from captive breeding operations are the caiman and Callithrix. But since the responsible institution does not supervise, it is not possible to tell if the wildlife came from the wild or from captive. In the case of ornamental plants, 40,000 orchids and a million cactus are legally commercialized. Because there are just few species that have been commercialized legally, it is supposed that there is information and control by the authority about the ecology of them. So, the biggest amount of trade is illegal, and the immediate impact is on endangered species which are more vulnerable.

b) Do they use that information to develop better legislation and for making better decisions for management and administration? Is experience one of the criteria for the decision making process?

The legislation and management plans are made without the input of scientists or the public. But the author thinks this will change in the 90's.

c) What are the technical-scientific and political criteria that have been used to define the volume of wildlife that can be commercialized? What is the opinion of the scientific community on legal and illegal trade?

The criteria adopted for legally commercializing wild species are based on a scientifically-based management plan based on IBAMA regulations and registration as a commercial captive breeding center.

The scientific community knows about the illegal commerce but has little power to change or give opinion about the situation or on the decision-making about the management of species.

FAUNA LEGISLATION

VII - The legislation is violated.

a) What is the level which the legislation is enforce? In which it is not?

The difference between the number of infractions and the number of people enforce the law shows the quantity of species that are illegally commercialized although there are no definite statistics. Laws aren broken all the time but there is no significant data to prove it.

b) Who is benefitted by the illegal trade?

The person who sells the animals and the intermediaries.

c) Which kind of legislation is most often broken?

All laws are broken.

d) How does justice work with the legislation that has been broken?

First they give a fine. In accordance with the gravity of the crime, there is an inquiry and later the case is presented in court for final judgement.

ILLEGAL TRAFFIC OF SPECIES

VIII - The resources have been illegally utilized and commercialized.

a) What is the estimated volume of natural resources that have been illegally commercialized? What is the destination of the species?

It is difficult to estimate the quantity of skins, birds, and primates that are illegally commercialized each year. Institutions have no internal data on the quantities leaving the country illegally. However, to get an idea of the amounts, here are some examples from author's trip during of the period of 91 through 92:

- In the city of Foz do Iguaçu (state of Paraná), 5 *Leontopithecus chrysomelas* (golden-headed lion tamarins) were apprehended. Their destination was Cidade del este (Paraguay).

- At the São José dos Pinhais airport (state of Paraná), a pair of *Anodorhynchus hyacinthinus* (hyacinth macaws) had a CITES permission (false). Their destination was Holland.

- at Santos port (state of São Paulo) was apprehended 3 tons of caiman skins which destination was Trinidad.

- at Duque de Caxias fair (state of Rio de Janeiro) there are commercialized hundreds and hundreds of illegal examples, with the connivance with the authorities. It is the biggest place where illegal trade people meet in Brasil.

- at National Park of Serra do Cipó (state of Minas Gerais) hundreds of ornamental plant are still taken from the park with the destination to Germany.

- port of Tubarão (state of Espírito Santo) hundreds of ornamental plants go out from the port with the destination to Japan and Germany.

- At Linhares (state of Espírito Santo) was apprehended a truck with 1,500 birds of different species and hundred of primates with destination to Duque de Caxias fair at state of Rio de Janeiro.

- port of Salvador (state of Bahia) was apprehended by IBAMA dozens of *Callithrix jacchus aurita* with destination to Japan;

- on the border between Brasil and Bolivia (1986), 311,868 caiman sp skins, 46,814 skins of *Felis* sp and 73,230 skins of sucuri snake left the country.

- It was apprehended in New Jersey 50,000 birds of 75 species, from Brasil with connection with Argentina;

- The biggest volumes which leave the country are: one million of caimam sp, two millions of birds from different species, 60.000 (felinos) cats skins and 20.000 of snakes skins. See the appendixes 7,8,9,10 for the list of species that have been commercialized and the principal routes.

b) What is destination of those species (industry, confection, collectors, etc)?

Those species are going to collectors (which have interest in exchanging species, e.g., the case of *Amazona brasiliensis* exchanged for *cracatoa of turfo preto* from Malaysia), zoo, circus, merchant, and people. The commerce of furs has been industrialized by clothing stores. The illegal commerce involves all social levels, for strictly economic reasons. A traffickers can gain 2,000% of the value of the initial buying.

c) What are the political-economic causes of particular interest which generate the illegal trade?

- Frequent changes in administration, of directors, and, as a consequence, of directions.

- Lack of government interest in dealing with political-social problems of the country.

- Inefficiency and incompetence of the responsible institutions to resolve environmental problems in the country.

d) What is the opinion of the government and the public about the illegal trade?

The government is not happy with illegal trade. But as was said before, the illegal commerce is done with connivance of the authority, and sometimes with the participation of them. The opinion of government by the society is not very considered. The public in general does not know about the illegal trade.

e) In which parts are international agreement affected by the illegal trade?

The only international agreement is CITES, but the majority of competent authorities do not know about it.

f) Is there any advantage to have the legal trade which gives benefit to the society?

No, because usually the trade just gives benefit to the people that sell the natural resources or to private interests.

ECONOMIC VALUE OF NATURAL RESOURCES

XIX - Importance and economic value of the natural resources.

a) What percentage of the exports of the country are represented by exports of natural resources? What is the economic importance of the natural resources?

The legal exportation of natural resources (ornamental plants, wild animals) represents less than 0.1% of the GNP.

The legal trade does not represent a big percent of the GNP. However, the illegal trade produce millions of dollars.

b) Which species make up the greatest percentage of the exports of natural resources?

There is not significant data. Of the ornamental plants, cactus are the most representative (one million are sold annually). In the case of fauna, it is caiman skins.

RECOMMENDATIONS

On the basis of the information and opinions collected during this work, the following recommendations are made with intention to reinforce the control of the traffic of the natural resources:

- divulge in the mass communication media, the studies of fauna and flora which qualify their importance within the dynamic of the ecosystems, where man is one of integrated element;
- divulge in the mass communication media, campaigns about the illegal trade of species, and the consequences of the illegal trade biologically and socially;
- preparation of up-to-date guides about endangered species;
- promote training courses for employees that conduct the control and monitoring (inspection) for the various responsible institutions (IBAMA, forest police, federal police, custom police, treasury police, highway patrol, and state secretary);
- implement and improve the posts for control and monitoring (inspection) on the state and federal highways;
- increase the human resources in the control and monitoring (inspection) and administration sectors, also the technician and specialists sector, principally for them to develop activities in the area of natural resources management;

- monitoring of the governmental institutions and NGOs that are working with administration of the natural resources;
- monitoring the commercial and scientific captive breeding operations, and the zoos;
- to develop a large number of studies about the management of natural resources in Conservation Units (parks, reserves, experimental stations, etc.) as a way to conserve the endangered species, and about the sustainable management practiced by traditional populations.