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Editorial

The current issue of elni Review (2/2011) covers a variety of topics on international environmental law, including standardisation of environmental NGOs, conservation law and two country specific contributions from Brazil regarding access to environmental information and biotechnological inventions.

Special focus in this issue is placed on two different topics: Firstly on intellectual property rights on genetic resources. The second subject is devoted to access to environmental information and access to justice within the framework of the Aarhus Convention.

First of all, *Christoph Then and Ruth Tippe* examine the impact of biopatents on animal and plant breeding in their article "Patents on melon, broccoli and ham?". After shedding light on current German and European patent legislation they discuss the consequences of patents on conventional breeding regarding genetic resources and food production.

The second article "Biopatents in Brazil" by *Edson Paula de Souza* provides insights into current legislation on biotechnological inventions in Brazil. He explores the impact of limitation on patent protection for R&D.

Susette Biber-Klemm and *Michelangelo Temmerman* then provide us with an overview of Rights to Animal Genetic Resources by comparing the different legal frameworks for plant and animal breeding/genetic resources on national and international levels.

The two subsequent articles address different aspects of the Aarhus Convention:

Sandra Aline Nascimento da Nóbrega gives an overview of access to environmental information in Brazil (access to environmental information is one of the three pillars of the Aarhus Convention). She compares the Aarhus Convention with Brazilian legislation and discusses which regulations have been implemented in Brazilian law.

In her contribution *Eva Julia Lohse* asks whether there is unrestricted access to justice for environmental NGOs. She examines the judgement of the European Court of Justice (Case C-115/09) on the non-conformity of the German Environment Appeals Act with Directive 2003/35 and the Aarhus Convention.

Ralf Lottes's article analyses what civic society can expect from the Commission's proposal for a legislative review of the European standardisation policy. He concentrates on the standardisation of NGOs through the review of the EU framework for standardisation regarding environmental NGO participation on a national level.

Hendrik Schoukens' contribution on temporary na-ture and conservation law examines the adaptability of European nature conservation law for temporary nature, focusing on the situation in Belgium.

Finally, we cover recent developments in environmental law with three different contributions concentrating on intellectual property rights in terms of genetic resources.

The article by *Lisa Minkmar* provides insights from a biopatent case: the "Teff-Patent" (EP 1646287).

Subsequently; *Claudia Fricke* reviews the current debate on the revision of Directive 98/44/EC on the legal protection of biotechnological inventions.

Lastly, *Graham Dutfield* comments on the United Nations Special Rapporteur on the Right to Food and the interplay between traditional knowledge, intellectual property rights and the right to food.

Contributions for the next issue of the elni Review are very welcome. Please send contributions to the editors by mid-February 2012.

Claudia Fricke/Martin Führ
November 2011

Rule of Law for Nature

9-11th May 2012
in Oslo, Norway

The year 2012 marks a number of watershed points in international environmental affairs: The 40th anniversary of the adoption of the Stockholm Declaration, the 30th anniversary of the UN World Charter for Nature and the UN Convention on the Law of the Sea, the 25th anniversary of the Brundtland Report, and the 20th anniversary of both the Rio Declaration, Agenda 21, and the UNCED Conventions: the Framework Convention on Climate Change and the Convention on Biological Diversity.

This is an appropriate point in time for reflection on the legal status of nature, how environmental goods and services are valued and taken into account in decision-making, and the implications of the rule of law in this respect.

While the rule of law generally is used with regard to citizens' rights, this conference aims to explore the application of the rule of law to environmental protection, and its implications. How can the legal protection of the natural environment be strengthened? This also opens for reflections on the temporal and geographical extension of the rule of law.

The conference aims at analysing these basic issues of international and national environmental law and looking at new trends in this area of law.

For more information about participation, including registration forms, please visit:

http://www.jus.uio.no/forskning/omrader/naturressurs/arrangementer/2012/05-09-rule-of-law

Access to environmental information: A comparative analysis of the Aarhus Convention with Brazilian Legislation

Sandra Aline Nascimento da Nóbrega

1 Introduction

"To live effectively is to live with adequate information."
Norbert Wiener[1]

Brazil is blessed with an immense wealth of natural resources. Most of its territory is covered by native for-ests[2], which are considered high biodiversity spots and it is located on 13.8 per cent of the surface freshwater in the world.[3] Preserving these environmental riches while maintaining a high pace of economic growth is a challenge that can, some argue, be best faced with informed public participation.

In order to get the general public more involved in decisions regarding sustainable economic development, the Brazilian Congress approved a law specifically targeting availability and access to environmental information in 2003. This law was clearly inspired[4] by the principles of 1998 Aarhus Convention which established the procedural rights to access to environmental information, public participation and access to court in environmental matters among European countries.

This paper aims to compare the Aarhus Convention – with its innovative nature and open administrative and democratic practices – with applications on access to environmental information in Brazil. First a brief explanation of the Aarhus Convention will be given (section 2), followed by an overview of access to environmental information in Brazilian legislation and its recent evolution (section 3). Then the paper will compare Brazilian legislation and the Aarhus Convention and will identify which criteria of the Aarhus Convention regarding access to environmental information have already been introduced in Brazilian legislation (section 4). In addition, the paper will discuss the actual effectiveness of Brazilian Law 10.650/03 through an empirical exercise seeking to estimate how often it has been used to access environmental information.

2 Brief description of the Aarhus Convention

The first discussion about the concept of access to environmental information was transposed in Principle 10 of the UN Rio Declaration[5] and Art. 6 of the UN Framework Convention on Climate Change (UNFCCC)[6]. However, these approaches were rather broad and did not include any rights that could be enforced by procedural mechanisms. To remedy this situation, the UN Economic Commission for Europe (UNECE) Convention on 'access to information, public participation in decision-making and access to justice in environmental matters' was signed at the 4th "Environment for Europe" Conference, which took place in Aarhus, Denmark, in June 1998 (hereinafter Aarhus Convention). Even though The Aarhus Convention has a regional scope and therefore it has only been ratified by Pan-European Countries[7], the entry into force of the Aarhus Convention end of 2001 was an important stepping stone for International Environmental Law.

The Aarhus Convention can be seen as the first international agreement that provided clear rules to guarantee environmental democracy. The Aarhus Convention rests on three pillars: access to environmental information (Art. 4 and 5); public participation (Arts. 6 - 8); and access to justice (Art. 9). The access to environmental information, which is the focus of this paper, has a passive and an active dimension. The passive dimension deals with the duty of public bodies to provide information upon public requests (Art. 4(1)) that can only be rejected based on a restricted number of reasons listed in

1 Wiener, Norbert. "Cybernetics or the Control and Communication in the Animal and the Machine". Massachusetts: First MIT Press Paperback, 1965.

2 PNUD – Brazil." Área coberta por florestas é reduzida no Brasil, aponta estudo de Centro da ONU" [The territory covered by forests is reduced in Brazil, says UN study center]. Available at: <http://pressroom.ipc-undp.org/2011/reducao-na-area-coberta-por-florestas-no-brasil-aponta-estudo-de-centro-da-onu/?lang=pt-br>. (accessed August 5, 2011). For more details see: http://www.ipc-undp.org/pub/IPCWorkingPaper78.pdf.

3 Freitas, Marcos de at all. "Gestão de recursos hídricos no Brasil: a experiência da Agência Nacional de Águas". Available at: http://www.bvsde.paho.org/bvsacd/encuen/freitas.pdf> (accessed August 5, 2011).

4 That the Brazilian legislation was inspired by the Aarhus Convention was confirmed in email communication from 03 of August of 2010 with Fabio Feldmann who is the author of the Brazilian Law 10.650/03.

5 Art. 10 of the Rio Declaration, adopted at the United Nations Conference on Environment and Development (UNCED) (known as the "Earth Summit") which took place at Rio de Janeiro from 3 to 14 June 1992 states that , "each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities".

6 The United Nations Framework Convention on Climate Change (UNFCCC), is an international environmental treaty produced at the same UNCED Conference of the Rio Declaration. Its Art. 6 states that provides in Art. 6 that *"the parties shall promote and facilitate at the national and, as appropriate, sub-regional and regional levels, and in accordance with national laws and regulations, and within their respective capacities, public access to information…":*

7 As of October 2011, there were 45 Pan-European States including all the 27 members of the European Union plus the European Union as legal entity of its 27 members.

Art. 4(4). The active dimension consists on the obligation of public authorities to produce and disseminate environmental information.

3 The right of access to environmental information in Brazil

Brazil is a multi-party federal republic with the typical Montesquieu tripartite division of powers into the legislative, the executive and the judiciary. It has three spheres of government: the Union, the States and the Federal District, and the municipalities. Each of these spheres is independent and has their own executive and legislation whereas the judiciary only exists in the union and states.

Each sphere of government has competences to legislate as laid down in the Federal Constitution. In terms of environmental law, all three spheres can legislate if there is no pre-existing federal law. In the case of a conflict between state or municipal law and federal law, the latter overrides both of the former. Despite the constitutional right to legislate, in practice most of the environmental laws are promulgated by the Union.

Since the early 1980s the Brazilian government has ensured certain rights of access to environmental information in a number of fragmented laws[8], i.e. each individual area was covered by sparse legislation. For instance the law regulating the management of water resources had a small provision regarding access to environmental information attached to it[9]. A major change came about when these rights were consolidated within one single law voted on by the two legislating chambers in 2003. Federal Law no 10650/03 was also meant to reinforce the tools to defend Art. 225 of the Brazilian Constitution, which ensures the right to an ecologically balanced environment.

Brazilian legislation on access to environmental information followed relatively the same road map as the Aarhus Convention. Brazilian Federal Law no 10.650/03, enacted in 2003, includes the obligation for the government to provide information to the public (active right) and the right of the citizens to require information from the government (passive right). In order to answer the request of information, the public authority can even ask for information from private parties.

Under this law, all organs and entities of the government which have competencies in the environmental field are obliged to grant the public access to environmental information. Public institutions must offer this information in all formats available (i.e. written, visual, audio, or electronic) (Art. 2).

Brazilian Federal Law No 10.650/03 establishes that any person can require information from public authorities without giving reasons for the request. To do so, an individual needs to make a written demand in which the applicant states that s/he will not use the received information for commercial purposes, under penalty of law (Art. 2, 1o). As discussed below, the obligation of a written request and the statement of non-disclosure of the information are not in line with Art 4(1)(a) of the Aarhus Convention, The environmental institution is required to give an answer within thirty days (Art. 2, § 5o). Moreover, in the case of a negative response to a request, the institution must expose the reason why the information was denied and the interested party can appeal within fifteen days (Art. 5). Regarding the right to appeal, the Brazilian legal system offers two possibilities. In the administrative sphere, the interested party can ask for a review of the decision from the top public authority responsible for providing environmental information. If the request is still denied, the interested parties can go before the Court and claim their rights to access environmental information through injunction relief.

However, the right to environmental information is not absolute. As in the Aarhus Convention, the Brazilian Federal Law respects the protection of commercial, industrial, and financial confidentiality (Art. 2, § 2o). Secrecy concerning internal communication of public authorities and other information which is confidential under the rules of law is also protected by law (Art. 2, § 2o). However, the burden is on the private party to tell the public administration that the information is confidential (Art. 2, § 3o) while in the Aarhus Convention (Art. 4, par. 4, (d) it is the public authority who decides whether or not the information is confidential. Another important difference is that there is no special status of information on emissions in the Brazilian case.

In order to ensure the dissemination of environmental information, the Brazilian government is obliged to make the most important environmental information available to the public by publishing[10] it in both the official governmental journal and at government ministries and offices (Art. 4). Regarding the cost to provide the requested information, Art. 9 stipulates that "*the information in this Law shall be provided by paying an amount corresponding to the reimbursement of funds spent for supplying it, observing the rules and specific tables, set by the competent body at the federal, state or municipal*

8 National Policy of Environment (1981); the Law of Public Action (1985), Policy Act National Coastal Management (1988), Pesticide Law (1989), National Environment Fund (1989), Law 8.079 of 1990 (Code of Consumer Protection), Law of Environmental Education (1999), Law of National Water Agency (2000), Statute of the City (2001).

9 Art. 26, III of Brazilian Federal Law 9.433/97.

10 Art. 4 of the Federal Law 10.650/03 expressly states which information has to be published.

level". The Brazilian Constitution already ensures the right that all the requested information brought before governmental institutions must be given free of charge. However, the provision seems to be necessary considering the structural problems found in Brazilian public bodies[11]. In the case of abuse of this provision, the interested parties can go before the Court to ensure their rights.

As explained above, there is no doubt that Federal Law no 10.650/03 is an important instrument to implement the right to access to environmental information in Brazil. However, it is not clear to what extent this law has improved *in practice* the access to environmental information rights. This is what will be discussed in the next section.

4 A comparative analysis of Brazilian Legislation with the Aarhus Convention

4.1 Does Brazil comply with Aarhus Convention criteria?

In order to identify whether Brazil complies or not with the Aarhus Convention criteria regarding environmental information, two tables are presented below which cover the main articles of the Aarhus Convention regarding access to environmental information. Table 1 focuses on passive rights and Table 2 on active rights. In both of the tables, the first three columns describe the exact provision, the resulting obligations, and the implementation elements of the Aarhus Convention, respectively

[11] These structural problems include the lack of equipments such as computers, copy machines, also the irregular or inexistent access to internet and the qualification of the civil servants to deal with new technologies. More on this can be found in Loures, Flavia Tavares Rocha. "A Implementação do Direito à Informação Ambiental." Milaré Advogados Consultoria em Meio Ambiente. 2008. http://www.milare.adv.br/artigos/idia.htm#_ftnref1 (accessed July 06, 2010).

Table 1: Comparison of Brazilian Legislation and Aarhus - Passive Rights

Provision	Obligation[12]	Implementation elements[13]	Corresponding Article in Brazilian Law
Art. 4(1)	Requires public authorities to make information available upon request	• No interest stated • Inform requested (with exceptions)	Federal Law 10.650/03 – Art. 1(1)
Art. 4(2)	Sets time limits for public authorities to respond and supply information	• As soon as possible • At the latest: one month • Possible extension with justification to two months	Federal Law 10.650/03 – Art. 2(5)
Art. 4(3)	Optional exceptions	• Not held • "*Manifestly unreasonable*" or "*too general*" • Material in the course of completion or internal communications	Federal Law 10.650/03 – Art. 2(2) regarding internal communications
Art. 4(4)	Optional exceptions and if they adversely affect certain interests	• Proceedings of public authorities • International relations, national defence or public security • Course of justice • Commercial and industrial confidentiality • Intellectual property rights • Personal data • Voluntary information • Protecting the environment	Federal Law 10.650/03 – Art. 2(2)
Art. 4(5)	Ensures that the information request will reach the appropriate public authority	• Inform applicant • Transfer information request	Art. 9º, VII e IX, da Lei 6.938/81
Art. 4(6)	Ensures that even if some of the information requested falls under the exceptions, the remaining information will be made available	• Separate out information	None
Art. 4(7)	Procedures for refusals	• In writing • Stated reasons • Information on the review procedure • Time limits • Notice to applicant	Federal Law 10.650/03 – Art. 5
Art. 4(8)	Optional charges for information	• Reasonable costs • Schedule of charges	Federal Law 10.650/03 – Art. 9

[12] All the information in this column was reproduced from Stec, Stephen and Casey- Lefkowitz, Susan. The Aarhus Convention: An Implementation Guide. New York: United Nations, 2000. pp. 53-54; pp. 66-67 and p. 125.

[13] See Stec, S. and Casey-Lefkowitz, S., supra note 12.

The fourth and final column states whether there is a corresponding Article to the Aarhus requirements in the Brazilian legislation. Brazilian Federal Law 10.650/03 focuses more on passive rights, i.e. the rights of individuals to request information. On this passive aspect only Art. 4, paragraphs 3 (first part) and 6 of the Aarhus Convention were not covered by equivalent Brazilian legislation. However, the requirements stated in paragraph 3 that information is *"manifestly unreasonable"* or *"too general"* may not be accepted might be covered by provisions of other Brazilian laws[14]. Brazilian law also does not go into more detail and does not specify that information which is not available or lacks completeness should not be delivered.

This seems like quite a reasonable requirement since a public authority cannot provide information which it does not have, or only partially has, (but it is obliged to refer the applicant to the public authority which might have the information requested: Art. 4(5) of the Aarhus Convention). Paragraph 6 is also not covered by Brazilian legislation since there is no specification in case a piece of information is not considered secret but is part of a confidential document. In this case the Convention states that the part of the information which is not confidential must be available. Finally, it is important to note that Brazilian Law also stipulates that individuals do not need to give reasons to request access to environmental information. However, in contrast to the Aarhus Convention, it states that such requests must be made exclusively in written format to be validated.

[14] For instance, Art. 17, VII of the Brazilian Civil Procedure Code states that all "manifestly unreasonable" requests are considered bad-faith litigation and must be punished with a fine of up 1% of the costs of the process.

Table 2: Comparison of Brazilian Legislation and Aarhus – Active Rights

Provision	Obligation[12]	Implementation elements[13]	Corresponding Article in Brazilian Law
Art. 5(1)	General obligations for parties to ensure that public authorities collect, possess and disseminate environmental information	• Relevant to their functions • Adequate flow to public authorities • Immediate dissemination if imminent threat to human health or environment	Federal Law 10.650/03 – Art. 4
Art. 5(2)	Practical arrangements for making information accessible	• Publicly accessible lists, registers or files at no charge • Support to public in seeking information • Points of contact	None
Art. 5(3)	Aims to ensure that information will eventually become available electronically	• Accessible through public telecommunications networks	SISNAMA – Federal Law 6.938/81
Art. 5(4)	Requires national state-of-the-environment reports	• Regular intervals, not exceeding three or four years	Federal Law 10.650/03 – Art. 8
Art. 5(5)	Requires the government to disseminate legislation and policy documents		Federal Constitution, Art. 5
Art. 5(6)	Applies to the public dissemination of privately held information	• Framework of voluntary eco-labelling or eco-auditing schemes	Federal Law 10.650/03 – Art. 3
Art. 5(7)	Requires the government to publish information concerning environmental decision-making and policy-making		Indirectly trough Art. 37 of the Federal Constitution
Art. 5(8)	Requires mechanisms for disseminating environment-related product information to consumers	• Enable consumers to make informed choices	The Brazilian "Qualidade Ambiental" eco-label[14]
Art. 5(9)	Concerns the development of national systems for maintaining information on pollution releases and transfers	• Coherent, nationwide system • Structured, computerised, publicly accessible database • Compiled through standardised reporting	Federal Technical Registry of Potentially Polluting Activities or Use of Environmental Resources Federal Law nº 6938 Art. 17 incisos I e II
Art. 5(10)	Incorporates the optional exceptions from disclosure listed in Art. 4		Federal Law 10.650/03 – Art. 2(2)

12 See Stec, S. and Casey-Lefkowitz, S., supra note 1.

13 See Stec, S. and Casey-Lefkowitz, S., supra note 1.

14 For further information please see http://www.abntonline.com.br/rotulo/en/Abnt.aspx.

Table 2, regarding active rights (i.e. the duties of the government to produce and disseminate information), shows that there are some important aspects of the Aarhus Convention requirements which are not covered by Brazilian legislation.

First, there are no provisions concerned with practical measures to make information accessible as contained in Art. 5(2) of the Aarhus Convention. This is important since this provision states that the information must be effectively accessible. It is not enough to guarantee the right to access information without also establishing in which way this information will be disseminated and how the government will ensure that the public has support to reach this information. It is also important to highlight that, if it aims at establishing a similar provision, Brazil must take into account its economic and social reality. In a country where only 2/5 of the population has access to the internet[18] it is realistic to argue that only online publication cannot be considered as an effective means of making it accessible. Other support for dissemination must be used to reach a majority of people (e.g. print, radio, television).

Second, there is no specific provision in Brazilian legislation equivalent to Art. 5(7) of the Aarhus Convention regarding governmental obligation to publish environmental decision/policy-making information. However, there is a provision in the Federal Constitution which states the obligation of the government to become public on all its actions[19]. Thus, it can also be applied to environmental field and one could consider that Brazil fulfils this condition in an indirect way.

Even in certain cases where Brazil appears to comply with the Aarhus criteria caution may be advised. Reports on environmental quality are essential to guaranteeing the right to a healthy environment as they represent vital instruments for planning and organizing societal activities. Brazilian Federal Law 10.650/03 states that national environmental authorities must elaborate and disseminate annual reports about the quality of the environment. In practice, the Brazilian Environmental Agency (IBAMA) gives the impression that it is complying with this provision links to annual reports on environmental quality available on its website. However, when the internet user attempts to access those reports he/she is directed to an empty webpage.[20] As this could only be due to a technical problem, the author wrote to the IBAMA to enquire about how the reports could be accessed. Although the Brazilian government has been obligated to publish annual reports since 1981, the technical coordinator of the environmental quality reports informed me that, due to administrative and political problems, until now only one report was published (in 1984) and the next one is expected to be prepared only next year for Rio +20.[21]

4.2 Can Brazil become part of the Aarhus Convention? And in ratifying this convention, what could Brazil gain?

The Aarhus Convention was designed from a regional perspective and has so far been ratified only by Pan-European Countries. However, according to Art. 19(3) of the Convention, non-European Countries may accede to the convention upon approval by the Meeting of the Parties.

Recently, the Parties considered the possibility of responding to the request for approval of new parties, as required by Art. 19(3)[22]. After contact with the Legal Affairs Officer to the Aarhus Convention Secretariat, I was informed that *"the expression of interest from Cameroun is the only official expression of interest the secretariat has received so far"*[23]. So this shows that in theory Brazil could also start a procedure to become part of the Convention if it would desire to do so.

Regarding the possible implications of this accession, Brazil would have to comply with all the criteria[24] of the convention and would be subject to the scrutiny of the Compliance Committee. However, it would be another international commitment which comes with the associated pressure, which the Brazilian government may not be ready to prioritise over more pressing economic development issues.

5 The Brazilian Federal Law on Access to Environmental Information: Is it effective?[25]

We have seen that Brazil has a strong set of legal instruments to guarantee access to environmental information since the enactment of Federal Law

18 Jordão, Priscila. "61% dos brasileiros não têm acesso à web." Portal Exame. 06 April 2010. Available at: http://portalexame.abril.com.br/tecnologia/noticias/61-brasileiros-nao-tem-acesso-web-546758.html?page=1> (accessed September 15, 2010).

19 Art. 37, caput of the Brazilian Federal Constitution.

20 Ambiente, Ministério do Meio. Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis. http://www.ibama.gov.br/qualidade-ambiental/?page_id=76 (accessed July 10, 2011).

21 Email correspondence with João B. D. Câmara from 12th of August 2011.

22 United Nations Economic Commission for Europe "Extraordinary session of the Meeting of the Parties 2010." Available at: http://www.unece.org/env/pp/emop2010.htm. (accessed September 13, 2010). More recently, the question was discussed at length at The fourth session of the Meeting of the Parties. For further information see the report of the meeting at: <http://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/Post_Session/ece.mp.pp.2011.2_as_submitted_adv.pdf>.

23 Email correspondence with Aphrodite Smagadi from 13th of September 2010.

24 In this case, Brazil would have to comply with all criteria of the other two pillars of the Aarhus Convention, i.e. public participation and access to justice.

25 Since the topic is rapidly evolving, I would like to point out that this research was carried out in October 2010.

10.650/03. In theory it could play an important role in improving public debate and democratic participation in environmental decision-making. However, a law to have practical effects needs to leave the paper and become a reality.

Under the auspice of Brazilian Federal Law 10.650/03 individuals can request information from public authorities without any reason and free of charge. This must be a simple procedure via the administrative bodies. Should the information be denied, the interested party can appeal to superior administrative bodies and if the party is still not satisfied s/he can go before court claiming the breach of federal law. Considering the two routes, administrative and judicial, citizens have to assert their rights to access to environmental information, two lines of enquiry were followed in order to detect if the law had been effective. Firstly, a search for the number of environmental information requested based on this law was carried out. Secondly, a case review was made as to the impact of this law in the number of litigation before tribunals.

5.1 Administrative sphere

The first empirical experiment consisted of attempting to obtain data on the number of administrative requests for environmental information addressed to the Brazilian Environmental Agency (IBAMA). This governmental organ is responsible at federal level for the actions of national environmental policies, control of environment quality, the authorization of use of natural resources, and environmental monitoring and control. Considering these ecological protection duties of IBAMA it was naturally chosen as the best place to collect data on environmental information requests across Brazilian states.

An initial attempt to obtain this data by intensive online search did not yield any significant results. This was really surprising since one of IBAMA's main tasks is to produce and disseminate environmental information; it even offers a direct online service where citizens can request information and report environmental crimes *("linha verde"* or green line). After unsuccessful online search, direct contact was made through e-mail and also via the 'green line' in order to obtain the number of requests for environmental information received by IBAMA.

The only responses received after these direct contact attempts was that citizens should contact the civil servant in charge of such matters in their own state of residence. Again, a quite shocking finding, since Brazil has 26 states it would be extremely time consuming for anyone to obtain a global environmental picture and it also assumes that ecological impact stops on a state's border.

Thus, it was impossible to know how many administrative proceedings were initiated and who initiated these requests: NGOs, private parties, or citizens. I was also not able to identify the type of information which was supplied or denied, nor could I establish whether the Federal Law 10.650/03 has been used to request this information. In sum, it was not possible to find in the administrative sphere any relevant data on almost all aspects of access to environmental information. The only thing we can therefore conclude from this exercise is that there is a serious lack of information regarding the right to access to environmental information, which makes it impossible to assess the impact of Brazilian legislation in practice.

5.2 Judicial sphere

The second part of the empirical exercise consists in a direct search on online database for cases based on Brazilian Federal Law 10.650/03 in order to evaluate the impact of this law in the number of cases brought before tribunals. The search was carried out on the twenty six websites of the Federal courts of each Brazilian State plus the one of the Federal District and also made in websites of the five Federal Regional Courts (Tribunais Regionais Federais – TRFs) which are the courts to which appeal cases are sent to after a decision in first instance at federal level.

All these websites contain detailed records on every judicial decision taken by the courts since the early 1990s. As the law studied is from 2003, all decisions which are related to this law should be included in these databases. The search can be made both by using certain key words and directly by the number of the law.

However, not a single register regarding Federal Law 10.650/03 was found in the online databases of all 37 tribunals which should in practice contain records of almost all cases the tribunals have dealt with in recent years. To make sure this was not a problem due to the search procedure a placebo experiment was carried out by looking for references to Federal Law 1.060/50 which regulates the waiving of legal fees. In this case hundreds of decisions were found after a simple search suggesting that the methodology is not flawed and that there were indeed no cases since 2003 which made use of the law regulating rights to access to environmental information.

5.3 Implication of the "no-findings"

This finding in itself raises a number of important questions: Does this mean that all requests for information were complied without the need for any legal action (which would point to a very strong deterrent effect of the law)? Or is it the result of a lack of knowledge by the public of its rights regarding access to environmental information which therefore does not use the law?

We can assume from the relatively poor success from the two modest empirical research strategies adopted that there is very little scope for the analyses of the impact of environmental information legislation in Brazil. This raises the question of the design of new legislation in a fast changing society faced with new problems without any analyses of the effectiveness of these laws. Brazil has repeatedly failed to make laws that work.[26] It would therefore be a great improvement if Brazil implemented some form of evidence-based legislation.[27]

6 Conclusions

Even though Brazil is not part of the Aarhus Convention, it has legislation on access to environmental information which was inspired by Principle 10 of the UN Rio Declaration and the Aarhus Convention. Brazilian law is very advanced in the environmental field and covers almost all of the Aarhus Convention criteria regarding access to environmental information. However, the existence of legislation by itself does not mean that it is effective in practice.

Brazil has nowadays over 150 thousand federal rules.[28] This suggests that it is not a problem to produce a law. *"The biggest obstacle to environmental protection in Brazil has been lax enforcement rather than lack of legislation"*[29]. The present research on the frequency of use of Brazilian legislation on access to environmental information yielded poor results as it was impossible to find any evidence of its use from administrative or judicial sources. The fact that the law is published in the Official Journal is not enough to ensure that the public actually has the access to the information right it guarantees. Moreover, it is crucial that the information must be disseminated in a transparent and accessible way in order to reach the majority of the population.

Brazil has significant legal instruments to enforce the right to environmental information. However, civil society has to be well organized and make use of these instruments in order to construct a balanced environment and insure economic sustainable development. This highlights the important role of environmental non-governmental organizations, which can make a big difference in instructing the public about its rights and pressure the governmental bodies to follow the Rule of Law.

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26 A recent article from the BBC highlighted how Brazil has advanced laws but not practices to enforce these laws (http://www.bbc.co.uk/portuguese/noticias/2010/07/100709_violencia_mulher_rc.shtml). A more in depth analysis about the failure of law in Brazil and in Latin America in general is documented in Esquirol, Jorge L. "The Failed Law of Latin America." American Journal of Comparative Law, 2008:75-124.

27 The idea of Evidence-based legislation (EBL) comes from the definition of "evidence-based medicine". The latter is defined as "the conscientious, explicit, and judicious use of current best evidence in making decisions about the care of individual patients" (BMJ.com Sackett, DL, et al. 'Evidence based medicine: what it is and what it isn't: It's about integrating individual clinical expertise and the best external evidence', (editorial) British Medical Journal, vol. 312, pp. 71-72 (January 13, 1996)). Using this concept in drafting legislations means that the legislators must base their decisions in the best available scientific and systematically gathered evidence.

28 Amaral, Gilberto Luiz do Amaral. "Quantidade de normas editadas no brasil: 20 anos da constituição federal de 1988". Available at: http://www.ibpt.com.br/img/_publicacao/13081/162.pdf>. (Accessed October 20, 2011).

29 Lemos, Maria Carmen M. "Popular Participation and Pollution Control in Brazil." In Participation and the quality of environmental decision making, door Frans H. J. M. Coenen, Dave Huitema en Laurence J. O'Toole, 337. Dordrecht: Kluwer Academic Publihers, 1998. p. 268.

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Institut für angewandte Ökologie
Institute for Applied Ecology

The Öko-Institut (Institut für angewandte Ökologie - Institute for Applied Ecology, a registered non-profit-association) was founded in 1977. Its founding was closely connected to the conflict over the building of the nuclear power plant in Wyhl (on the Rhine near the city of Freiburg, the seat of the Institute). The objective of the Institute was and is environmental research independent of government and industry, for the benefit of society. The results of our research are made available of the public.
The institute's mission is to analyse and evaluate current and future environmental problems, to point out risks, and to develop and implement problem-solving strategies and measures. In doing so, the Öko-Institut follows the guiding principle of sustainable development.
The institute's activities are organized in Divisions - Chemistry, Energy & Climate Protection, Genetic Engineering, Sustainable Products & Material Flows, Nuclear Engineering & Plant Safety, and Environmental Law.

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sofia

The Society for Institutional Analysis was established in 1998. It is located at the University of Applied Sciences in Darmstadt and the University of Göttingen, both Germany.
The sofia research group aims to support regulatory choice at every level of public legislative bodies (EC, national or regional). It also analyses and improves the strategy of public and private organizations.
The sofia team is multidisciplinary: Lawyers and economists are collaborating with engineers as well as social and natural scientists. The theoretical basis is the interdisciplinary behaviour model of homo oeconomicus institutionalis, considering the formal (e.g. laws and contracts) and informal (e.g. rules of fairness) institutional context of individual behaviour.

The areas of research cover
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elni

In many countries lawyers are working on aspects of environmental law, often as part of environmental initiatives and organisations or as legislators. However, they generally have limited contact with other lawyers abroad, in spite of the fact that such contact and communication is vital for the successful and effective implementation of environmental law.

Therefore, a group of lawyers from various countries decided to initiate the Environmental Law Network International (elni) in 1990 to promote international communication and cooperation worldwide. elni is a registered non-profit association under German Law.

elni coordinates a number of different activities in order to facilitate the communication and connections of those interested in environmental law around the world.

Coordinating Bureau

Three organisations currently share the organisational work of the network: Öko-Institut, IESAR at the University of Applied Sciences in Bingen and sofia, the Society for Institutional Analysis, located at the University of Darmstadt. The person of contact is Prof. Dr. Roller at IESAR, Bingen.

elni Review

The elni Review is a bi-annual, English language law review. It publishes articles on environmental law, focussing on European and international environmental law as well as recent developments in the EU Member States. elni encourages its members to submit articles to the elni Review in order to support and further the exchange and sharing of experiences with other members.

The first issue of the elni Review was published in 2001. It replaced the elni Newsletter, which was released in 1995 for the first time.

The elni Review is published by Öko-Institut (the Institute for Applied Ecology), IESAR (the Institute for Environmental Studies and Applied Research, hosted by the University of Applied Sciences in Bingen) and sofia (the Society for Institutional Analysis, located at the University of Darmstadt).

elni Conferences and Fora

elni conferences and fora are a core element of the network. They provide scientific input and the possibility for discussion on a relevant subject of environmental law and policy for international experts. The aim is to gather together scientists, policy makers and young researches, providing them with the opportunity to exchange views and information as well as to develop new perspectives.

The aim of the elni fora initiative is to bring together, on a convivial basis and in a seminar-sized group, environmental lawyers living or working in the Brussels area, who are interested in sharing and discussing views on specific topics related to environmental law and policies.

Publications series

elni publishes a series of books entitled "Publications of the Environmental Law Network International". Each volume contains papers by various authors on a particular theme in environmental law and in some cases is based on the proceedings of the annual conference.

elni Website: elni.org

The elni website www.elni.org contains news about the network. The members have the opportunity to submit information on interesting events and recent studies on environmental law issues. An index of articles provides an overview of the elni Review publications. Past issues are downloadable online free of charge.

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