

FAO Office of Evaluation

Evaluation of FAO's cooperation with Brazil 2002-2010

Annex 9 Analysis of National Execution in FAO-Brazil cooperation

1 Introduction

1. The Terms of Reference of the Evaluation called for the comparison of the National Execution modality, as implemented in Brazil in the context of both GCPs and UTFs, to assess any possible difference or similarity.
2. The Evaluation analysed UTF/BRA/066/BRA, run by MMA for the implementation of GESTAR. A field visit was paid to one of the recipients of one LoA issued within the project, the Centro de Agricultura Alternativa do Norte de Minas (CAA), during which an in-depth assessment was made of the implementation details of the LoA, including decision making, approval and mode of execution.
3. The selected GCP project was GCP/BRA/070/EC with title "Management of Forests, Support to Sustainable Production and Strengthening of Civil Society in the Brazilian Amazon" is a standard GCP Project, with a tripartite structure headed by a Steering Committee, wherein ABC/MRE was the chair, and the Project Director. The national agency was the Ministry of Environment (Ministério do Meio Ambiente, MMA).
4. Projects, in most cases, are not 'juridical entities', thus projects must use FAO's contractual instruments, which are Letters of Agreement in most cases. Within the project, the Steering Committee is the institution where the three parties meet at the highest possible level, thus it is the highest decision-making body about all project's aspects and events.
5. The Project Director of the GCP was a Government staff, whereas the Project Coordinator was recruited by FAO. Other project staff, both technical and administrative includes National Project Officers (NPOs) recruited through FAO contract. Only one NPO was outposted at the FAO Representation acting as Project Liaison Officer and providing technical support to other FAO activities whenever feasible, while the project team sits in MMA. The Government contributed to the project with additional staff from SFB, ICMBio and MMA.
6. The GCP Project Document stated that one of the three project components should be implemented by a Brazilian NGO, called Grupo de Trabalho Amazônico (GTA), which was accordingly contracted by means of a FAO Letter of Agreement signed by the FAO Regional Representative for Latin America and the Caribbean and the President of GTA, on 21 September and 1 October 2009 respectively.

2 Findings

7. In the case of the UTF, the assessment of the LoA with CAA showed good level of compliance with the practical implementation measures adopted by MMA. However, such measures contradicted the financial provisions for fund disbursement foreseen by the LoA. In practice, such discrepancy did not affect correctness of execution, which was overall sound and transparent. At the same time, FAO clearly had no role whatsoever in any strategic or operational aspects of the project and the Organization acted only as a payment agent.
8. In the case of the GCP, the assessment identified three areas of concern, illustrated here below.

2.1 Risk of Financial Loss

9. Chapter 5, para V. sub-para d) i-vi; a) b) c) of the LoA stipulates that the total amount of financial contribution by the project to the NGO 'will not exceed' Brazilian Reais R\$ 2,163,750 payable in six instalments; the first instalment would be paid upon signature of the LoA and the remaining five upon presentation of approved products according to a list and plan of activities agreed prior to the signature of the agreement. The first contractual payment was executed accordingly and the amount of R\$ 649,125 transferred to the GTA Bank account.
10. The LoA stipulated that payments were to be made in local currency (Brazilian Reais R\$). FAO financial recording of the LoA was done in USD equivalent¹ calculated against the exchange rate at the time of payment. Shortly afterward, the USD lost value against the R\$, which led to a strong increase of the residual amount to be paid in USD, according to the LoA. This means that future instalments in R\$ will require higher disbursements in USD than initially foreseen.
11. A rough estimate based on current exchange rates indicates that this situation will cause a deficit of approximately € 124,000 in the FAO accounts to meet the commitment of the LoA. This will affect negatively the overall project budget or will oblige to submit a request to the donor for additional funds. There is no formal commitment by the EC to compensate for the additional cost of the project.

2.2 Legal Case

12. Approximately 4 months after FAO transferred the first LoA instalment to GTA, a 'fixed amount' was frozen in the bank account of the ONG on the grounds of an impending judicial attachment by a creditor of GTA.
13. The issue was immediately reported to all the project partners, including FAO HQ and has produced different interpretations on appropriateness of judicial action and related responsibilities. The situation was at a standstill at the time of the Evaluation mission, October 2010.
14. There are divergent interpretations on the lines of responsibility among stakeholders. The Evaluation's view is that the actions performed within the LoA are 'simple' acts of management that do not relate to the legal sphere: the issue at stake is a first contractual payment based upon the LoA signature generating a 'transfer of property' of the prescribed amount to the entitled beneficiary. Subsequent events are a set of circumstances, unforeseeable and unrelated to the LoA that blocked the NGO's access to its bank account. This event falls fully and exclusively within the responsibility of the NGO itself.
15. Should the legal case result in a financial loss, there is no certainty that the EC will recognise this as a budget charge and will reimburse FAO. Any decision on the matter will have to be taken by the project formal stakeholders, namely the project Steering Committee.

2.3 Availability of funds and use of Delegation of Authority

16. By means of a memorandum dated 21 April 2009, the then FAO Representative issued a formal Delegation of Authority to the Project Coordinator, recruited by FAO, and to the NPO Officer posted in the FAO Representation.
17. Funds provided by the EC, as Contracting Authority, are based on a 'Pre-financing'² pattern and disbursed upon receipt of progress reports prepared by the Project. The EC finalizes payment of instalments within 45 days from approval of the progress report.
18. The report was apparently delayed. When informal communication was circulated about the imminent approval of the progress report by the EC, the Project Coordinator decided to launch an urgent purchase of cars and issued a purchase order to a commercial company. Funds

1 FAO Accounts are maintained in USD. Financial relationships between EC and FAO is based on Euro. Final account reporting FAO-EC is in € currency.

2 EC definitions

required for this payment had not been released yet by the EC, as the progress report had not been approved by that time.

19. This action was not communicated to the FAO Representation until the moment the cars, ready for delivery, were going to be taken back to the company's stock within days due to the non-payment of the related invoice. The Project and FAO had to inform the EC office about the state of affairs and sollicite an urgent release of a pre-financing payment. The EC Delegation's commendable understanding and action in a very short time-span solved the impasse.
20. The problem originated from the lack of control of the FAOR-Brazil on the procurement order, due to the ample delegation of authority previously given to the Project Coordinator, who had made a management decision without seeking FAO approval.

3 Conclusions

21. The analysis above shows that in both cases, the role of FAO was limited to be a payment agent for both UTF and GCP. The type of problems incurred into during the GCP implementation could have emerged also in a UTF, since they stemmed from the very low level of FAO's involvement in the project implementation. The national execution modality in the country does not change from UTF to GCP and does not comply in any case with the UN definition of National Execution.
22. The Evaluation discussed these issues at length with the FAO Representative in Brazil, including the urgent need to withdraw as soon as possible the delegation of authority in the GCP and re-assume it in his capacity as FAO Budget Holder who holds the full financial responsibility of the use of funds.
23. The three GCP problems seem to stem from:
 - a. Risk of financial loss: the lack of definition of a policy on currency of financial obligations, particularly in the case of LoAs comprising long time periods. Such policy would protect both the Organization and its partners, as well as provide a clear pattern of true funds availability during project execution;
 - b. Legal Case: The problem stems from the use of an LoA issued by FAO, which results as the sole organization responsible for its management, rather than by the Project Steering Committee wherein responsibility would be shared among the parties;
 - c. Availability of funds and use of Delegation of Authority: in this case, the same procedures followed in Brazil for the management of the UTF, which devolve a major authority to the Project Coordination, were extended to a GCP where FAO as Budget Holder cannot relinquish any of its prerogatives in favor of the Government component. The absence of appropriate tools for National Execution modality was the root cause of this problem.
24. The evaluation report contains two recommendations addressing the root-causes of these problems.