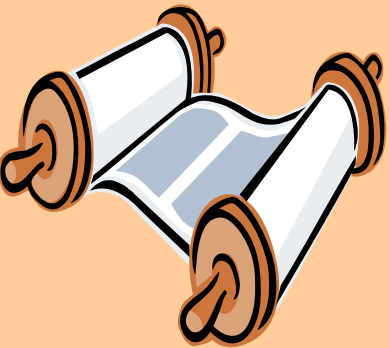




**Commonwealth Seminar for the
African Region on the
Implementation of International
Environment Instruments and
Policy Development
31 October – 6 November
Mauritius**

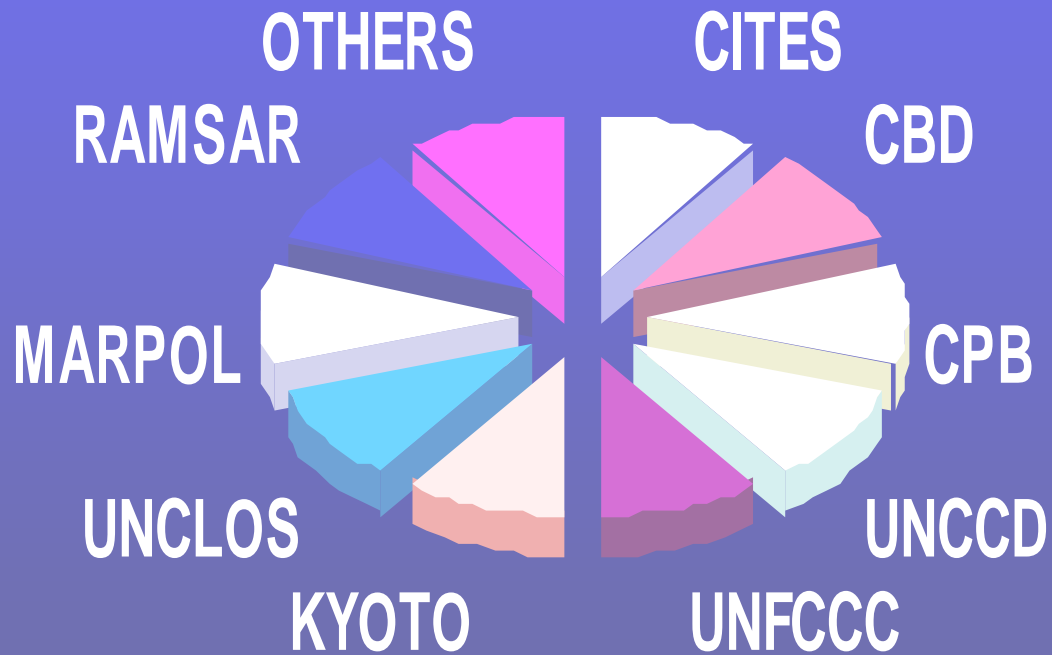
**Sardia Cenac ©
Researcher, Law Development Section
Legal and Constitutional Affairs Division
The Commonwealth Secretariat**

**Towards Comprehensive
Environmental Law -
Identifying the Gaps in the
existing legislative
framework of African
Small States of the
Commonwealth**

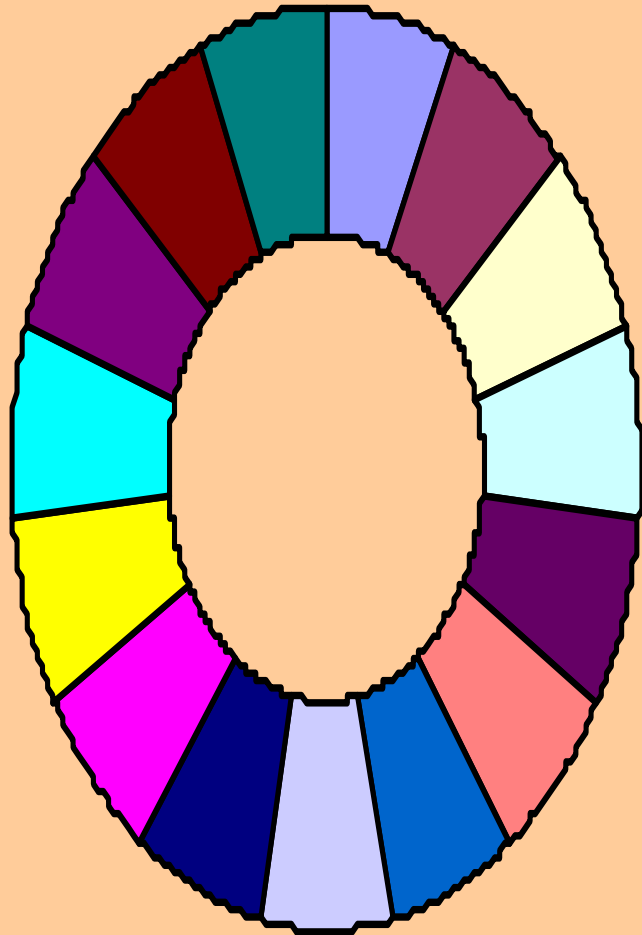


Thursday, 3rd November, 2005

INTERNATIONAL COVERAGE

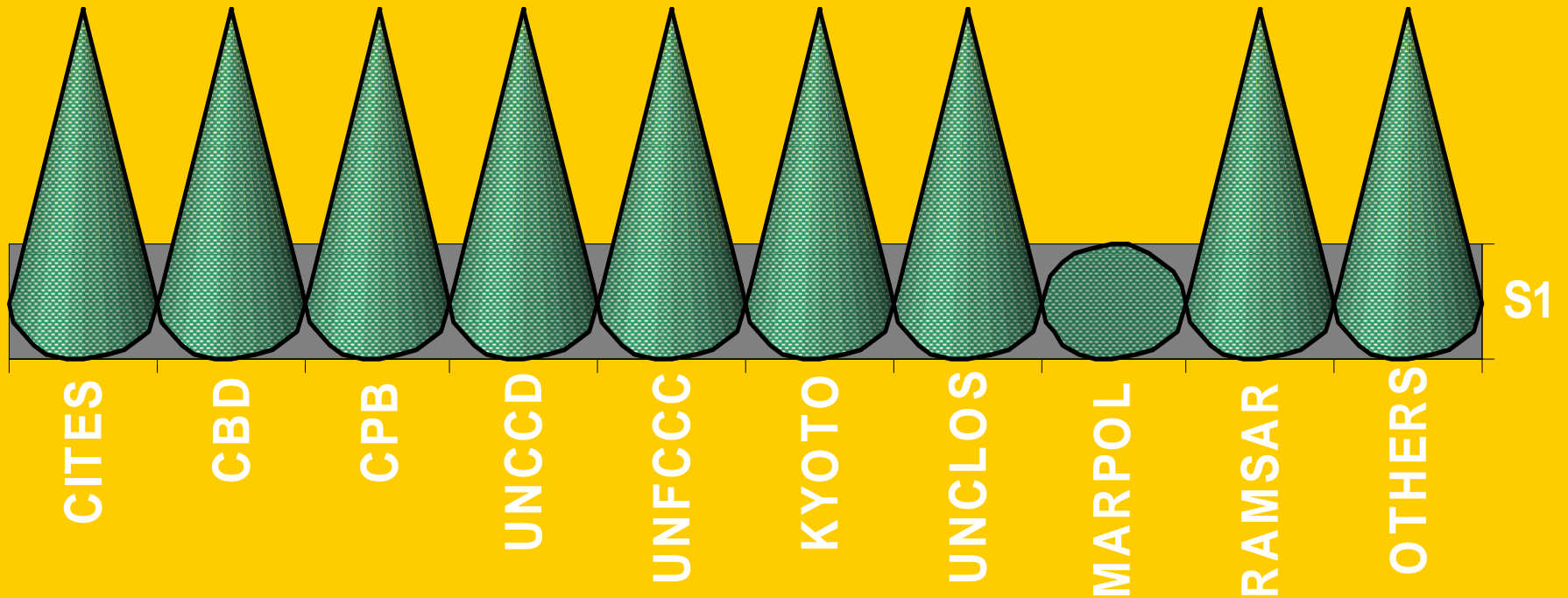


THEMATIC LEGISLATIVE COVERAGE



- PA/MPA
- CBD
- CZM
- CCM
- DM
- EA
- TT
- TK
- SD
- INT OB
- R/INT OB
- ETF
- P/WM
- S/WM

BOTSWANA'S INTERNATIONAL OBLIGATIONS



Laws of Botswana

- Agricultural Resources (Conservation) Act 1973
- Atmospheric Pollution (Prevention) Act 1971
- Fish Protection Act 1975
- Forest Act 1976
- National Monuments and Relics Act
- Town and Country Planning Act 1980
- Tourism Act 1992
- Waste Management Act 1999
- Water Act 1968
- Wildlife Conservation and National Parks Act 1992

Laws of Botswana

Designation of an Environment Authority

- ❖ Officers, boards, departments have responsibility for various matters under the different pieces of legislation
NO legislative body which is also a co-ordinating body.

Protected Areas/Management of Protected Areas

- ❖ Wildlife Conservation and National Parks Act 1992
- ❖ Forest Act 1976

Provision for Management Plans? Buffer zones?

Laws of Botswana

Conservation of Biological Diversity

- ❖ Agricultural Resources (Conservation) Act 1973
- ❖ Fish Protection Act 1975
- ❖ Forest Act 1976
- ❖ Wildlife Conservation and National Parks Act 1992

No provision which speaks explicitly to the need to conserve biodiversity. Legislation does not provide for NAPs

Coastal Zone Management

- Not applicable

Laws of Botswana

Climate Change Management

- ❑ Inadequate coverage (Agricultural Resources Act 1973, below)

Desertification Management

- ❖ Agricultural Resources (Conservation) Act 1973 – provides for the conservation of water, soil, vegetation etc. through the use of *Conservation Orders* (order to conserve agri resources) and *Conservation Regulations* (to regulate agricultural land-use practices) under s. 16 and *Stock Control Orders* (prescribing max number of stock which may be kept or pastured) under s. 19

No provision for Early Warning Systems for Drought, Research and development and financial resources for the implementation of NAPs (which include desertification management)

Laws of Botswana

Soil/Water Management

- ❖ Agricultural Resources (Conservation) Act 1973
- ❖ Water Act 1968 – defines ownership, rights and use of public water. Prohibits the pollution, fouling etc of public water
- ❖ Agrochemicals Act 1999

Pollution/Waste Control

- ❖ Waste Management Act 1999 provides for Waste Management, Recycling and Litter Plans ss9 – 11 and gives effect to the Basel Convention
- ❖ Water Act 1968
- ❖ Atmospheric Pollution Prevention Act 1971

Standard setting?

Laws of Botswana

Sharing/Technology Transfer

- No coverage

Traditional Knowledge

- No coverage

Establishment of an Environment Trust Fund

- No coverage

Recognition of International Obligations & Regional, International Co-operation

- ❖ WCNPA 1992, s. 88 and 92(e)

Laws of Botswana

Trade in Endangered Species

- ❖ WCNPA 1992 fully implements CITES which is understood to include the Appendices and Resolutions of the COP

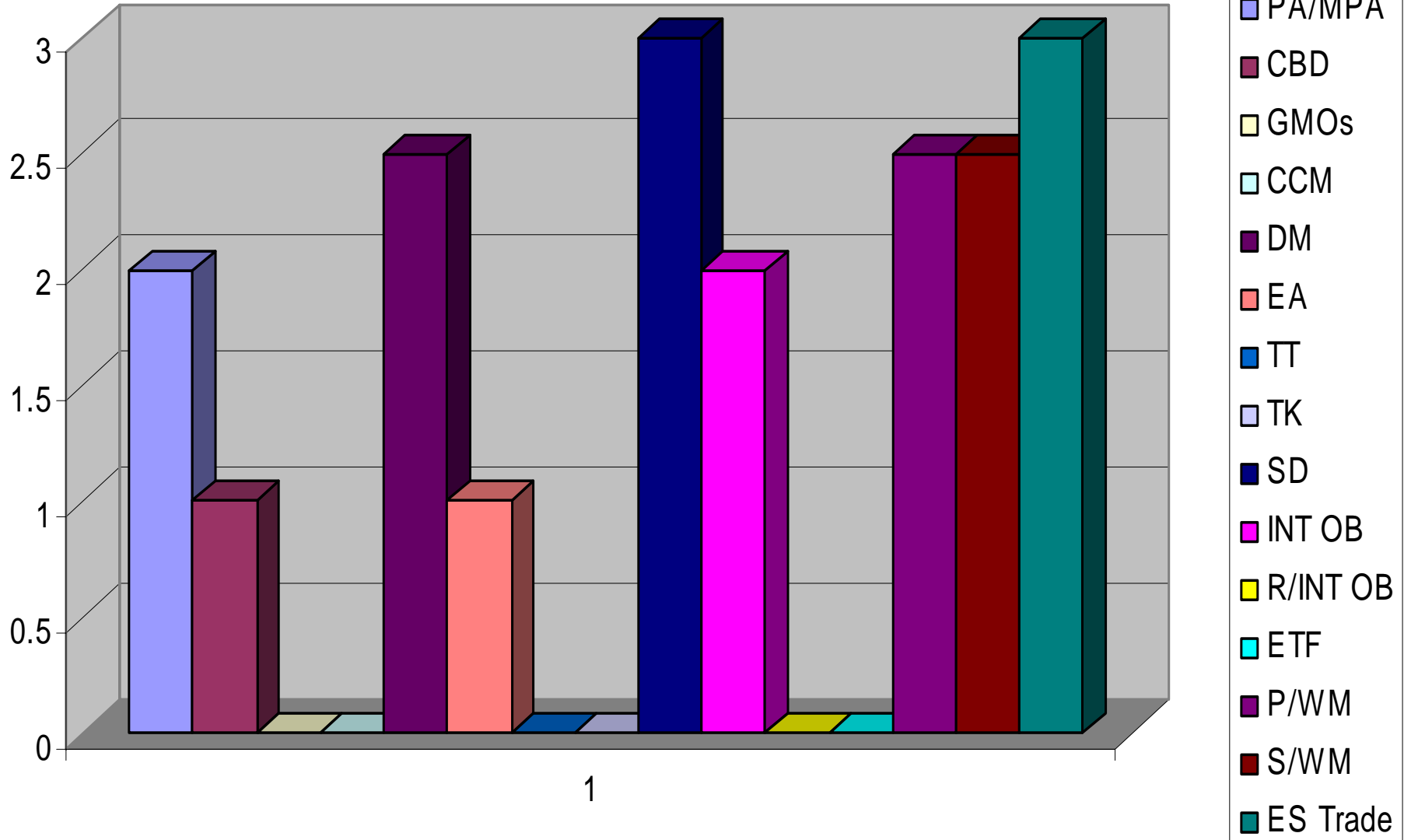
Sustainable Development (planning and EIA)

- ❖ Town and Country Planning Act 1980 – requires development plans for all areas declared to be planning areas.
- ❖ EIA Act 2005 provides for environment impact assessment, strategic environment assessment and notification of another country in the event of significant, adverse transboundary environment impact (s28)

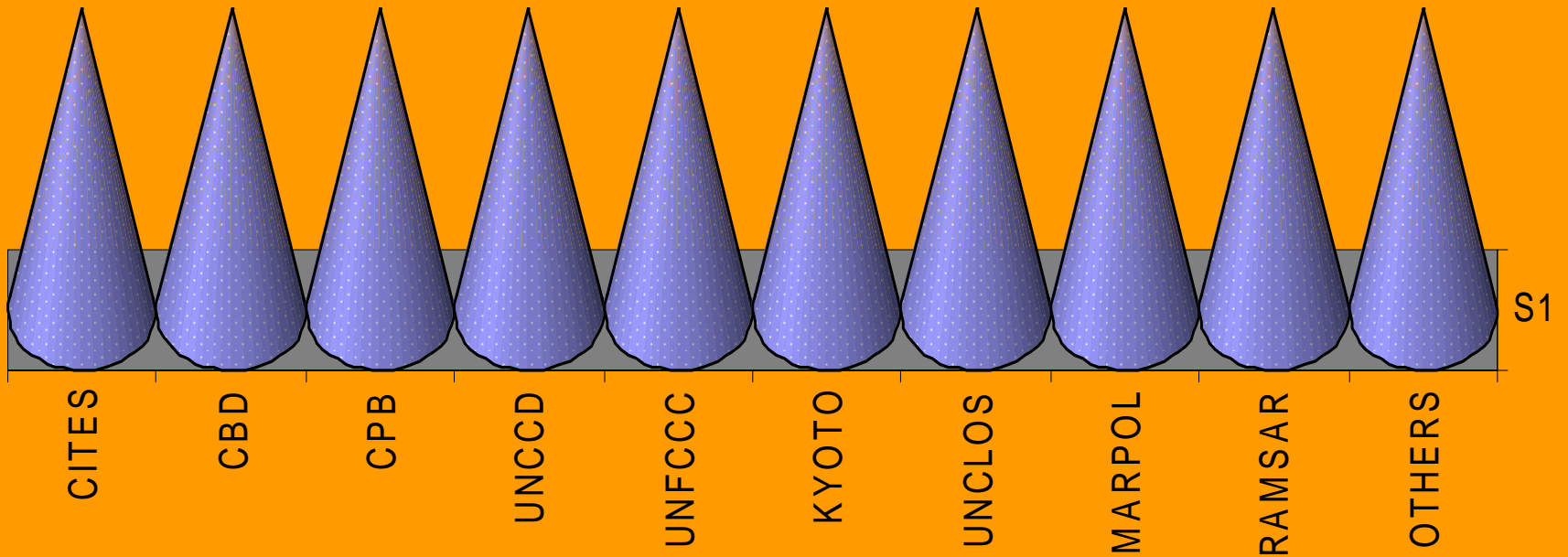
Biosafety

- No coverage

Botswana's Environmental law Coverage



THE GAMBIA'S INTERNATIONAL OBLIGATIONS



Laws of The Gambia

- **National Environmental Management Act**
- **Wildlife Conservation Act**
- **Forest Act & Regulations**
- **Fisheries Act & Regulations**
- **Prevention of Damage By Pest Act**
- **Hazardous Chemicals & Pesticides Control & Management Act**
- **Plant Importation Regulation Act**
- **Environmental Protection (Prevention of Dumping) Act**
- **Territorial Sea & Contiguous Zone Act**
- **Continental Shelf Act**
- **National Water Resources Council Act**

Laws of The Gambia

Designation of an Environment Authority

- ❖ National Environment Management Act 1994 (NEMA)

Protected Areas/Management of Protected Areas

- ❖ NEMA 1994, s.30(3) provides for PA in the CZ, river or wetland; s.33(1)(c) – selection & management of buffer zones; MPs for CZ required under s.30(2); provides for Management of the CZ and inland zone by regs. and guidelines
- ❖ Wildlife Conservation Act 1977
- ❖ Forest Act 1977

Laws of The Gambia

Conservation of Biological Diversity

- ❖ NEMA 1994 provides for in situ, ex situ conservation (ss 33-34), sustainable use through management activities (ss. 30 – 34) Access to genetic resources – s.34
- ❖ Forest Act 1977
- ❖ Fisheries Act 1991
- ❖ Wildlife Conservation Act 1977

Coastal Zone Management

- ❖ NEMA Act 1994 – s.30. Section 31 provides for the development of a Management Plan

Laws of The Gambia

Climate Change Management

- ❖ NEMA 1994, s. ICZM (as above)
- ❖ NEMA 1994, s. 40 - Guidelines are to be prepared for the management of disasters, including drought.

No provision for communication of information related to implementation (national inventories)

Desertification Management

- ❖ NEMA 1994 provides for environmentally sound management procedures for soil resources (s. 31(1)(b)) and for control of coastal erosion: s. 30(2)(b).

No provision for Early Warning Systems, decentralisation,

Laws of The Gambia

Soil/Water Management

- ❖ NEMA provides for the conservation of soil and vegetation, the establishment of standards for soil and water quality (s.28)
- ❖ Water Resources Council Act 1979 provides for plans for rational use of water

Pollution/Waste Control

- ❖ NEMA 1994 prohibits pollution in excess of these standards for air, water, solid waste, effluent. S.38 prohibits dangerous discharges into water (creates offences, remediation required); Provision also made for ozone layer protection – s. 35
- ❖ Environmental Protection (Prevention of Dumping) Act 1988

Laws of The Gambia

Trade in Endangered Species

- ❑ Inadequate coverage – NEMA, s. 32(g) prohibits/restricts trade in any component of biodiversity

Sustainable Development (planning and EIA)

- ❖ NEMA 1994 provides for preparation of NAP, requires EIA

No provision for Strategic Environment Assessment and notification in the event of transboundary adverse effects. Decentralisation?

Biosafety

- ❑ No coverage

Laws of The Gambia

Sharing/Technology Transfer

- Inadequate coverage - Access to genetic resources – s.34

Traditional Knowledge

- No coverage

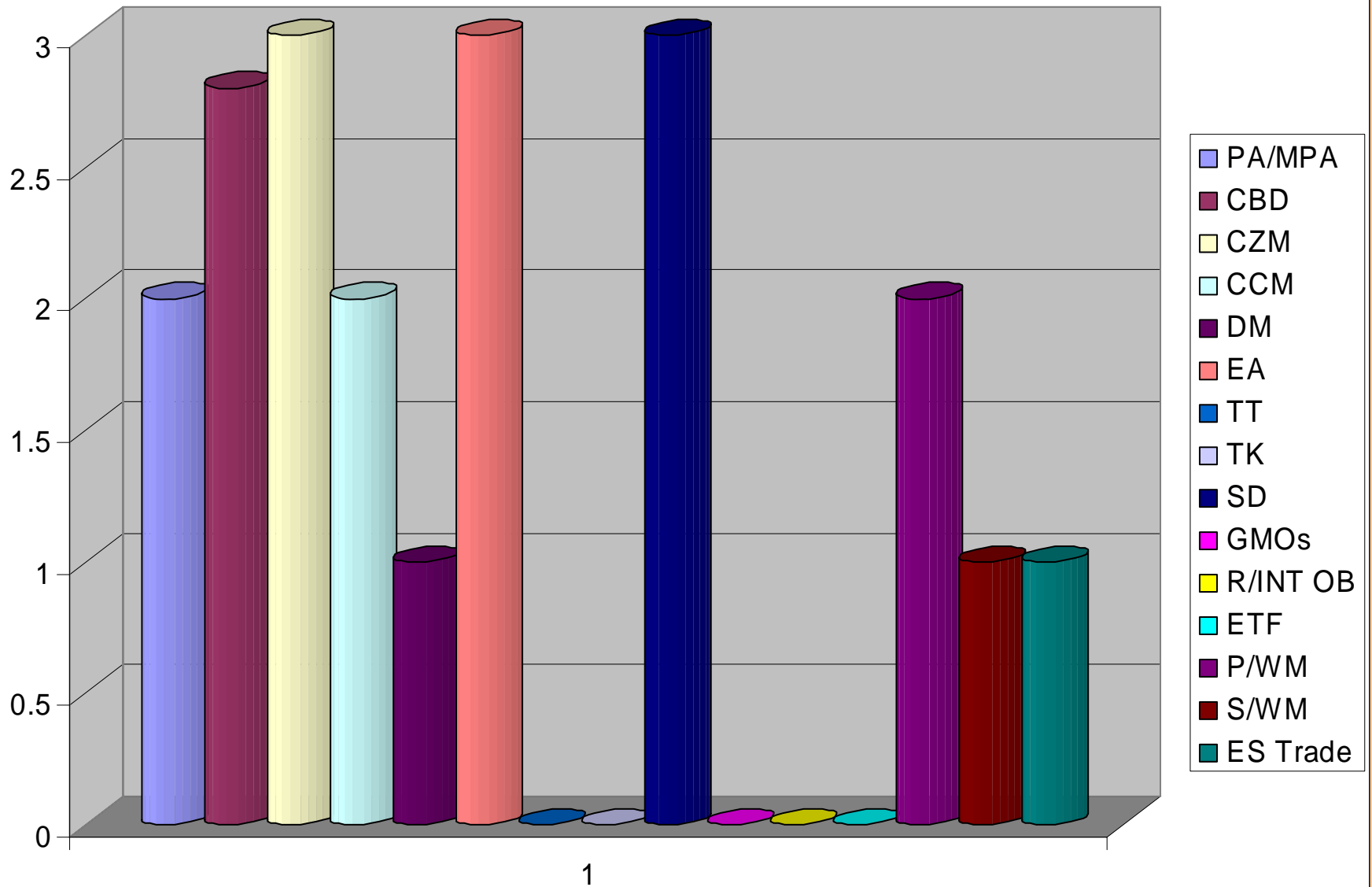
Establishment of an Environment Trust Fund

- No coverage

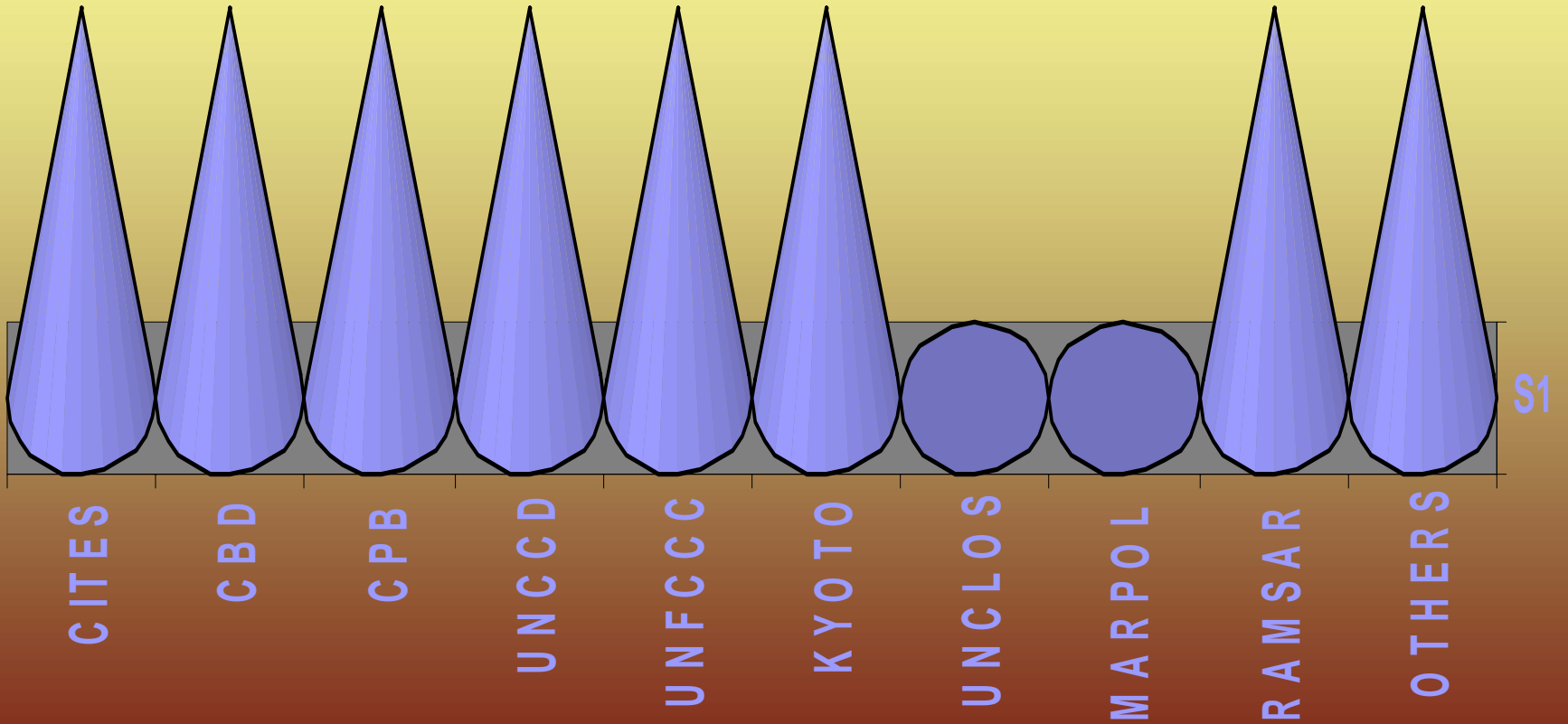
Recognition of International Obligations & Regional, International Co-operation

- No coverage

The Gambia's Environmental Law Coverage



LESOTHO'S INTERNATIONAL OBLIGATIONS



Laws of Lesotho

- Environment Act 2001
- Forestry Act 1998
- Disaster Management Act 1997
- Wild Birds Proclamation 1914
- Sale of Game Proclamation 1939
- Game Preservation Proclamation 1951
- National Parks Act 1975
- Protection of Fresh Water Fish Proclamation 1951
- Historical Monuments, Relics, Fauna and Flora Act 1967
- Land Act 1979
- Land Husbandory Act 1969
- Management Resources Areas Order 1993
- Water Resources Act 1978

Laws of Lesotho

Designation of an Environment Authority

- ❖ Environment Act 2001 (as amended) – Department of Env is vested with authority
- ❖ Forestry Act 1998 – Chief Forestry and other officers manage forestry resources

Designation/Management of Protected Areas

- ❖ Forestry Act 1998 provides for establishment of Forest Reserves in Part V, requires Forest Management Plans for each area. Prohibits acts in the reserve without an appropriate licence.
- ❖ EA 2001 - declaration of PA in rivers, banks, lakes, wetlands (s.62(3)) and land etc (s73)

Management Plans under the EA?

Laws of Lesotho

Conservation of Biological Diversity

- ❖ EA 2001, ss. 66-68

Coastal Zone Management

- Not applicable

Climate Change Management

- ❖ Disaster Management Act 1997 provides for planning which seeks to develop/improve measures relating to prevention and mitigation. Disaster Management Plans are required (s.5)
- ❖ EA 2001 – Guidelines are required for the management of environmental disasters, incl flood, drought, intrusion of invasives (s.43)

Laws of Lesotho

Desertification Management

- ❖ EA 2001 provides for standards for soil, water quality, requires S.U of hilly & mountainous areas(60(5)), management of rangelands (s.70), requires Guidelines for the management of nat. disasters, incl drought. (s43)
- ❖ Land Husbandry Act 1969 applies to agri land. Seeks to improve use of land, soil conservation, water resources etc.

No provision for Early Warning Systems for Drought, Research and development and financial resources for the implementation of NAPs (which include desertification management)

Laws of Lesotho

Soil/Water Management

- ❖ EA 2001 provides for quality standards for water and soil
- ❖ Water Act 1978

Pollution/Waste Control

- ❖ EA 2001 prohibits water pollution and pollution in excess of stds. and provides for spillers' liability (s. 45 – 47). Effluent discharge and pollution licences required. (s. 48 – 52); prohibits import/export of hazardous waste

Trade in Endangered Species

- ❑ Inadequate coverage (Wild Birds Proclamation 1914 prohibits sale or export of plumage or skins of birds)
CITES listed species not provided for, permitting system, reporting etc

Laws of Lesotho

Sustainable Development (planning/EIA)

- ❖ Environment Act 2001 provides for planning at district and national levels, EIA and Monitoring, Use of economic instruments (s. 108)

**No provision for SEA and notification in the event of adverse transboundary effects. Participatory rights?*

Biosafety

- No coverage (legislation proposed)

Sharing/Technology Transfer

- Inadequate coverage – s.69, EA 2001

Laws of Lesotho

Traditional Knowledge

- ❑ No coverage

Establishment of an Environment Trust Fund

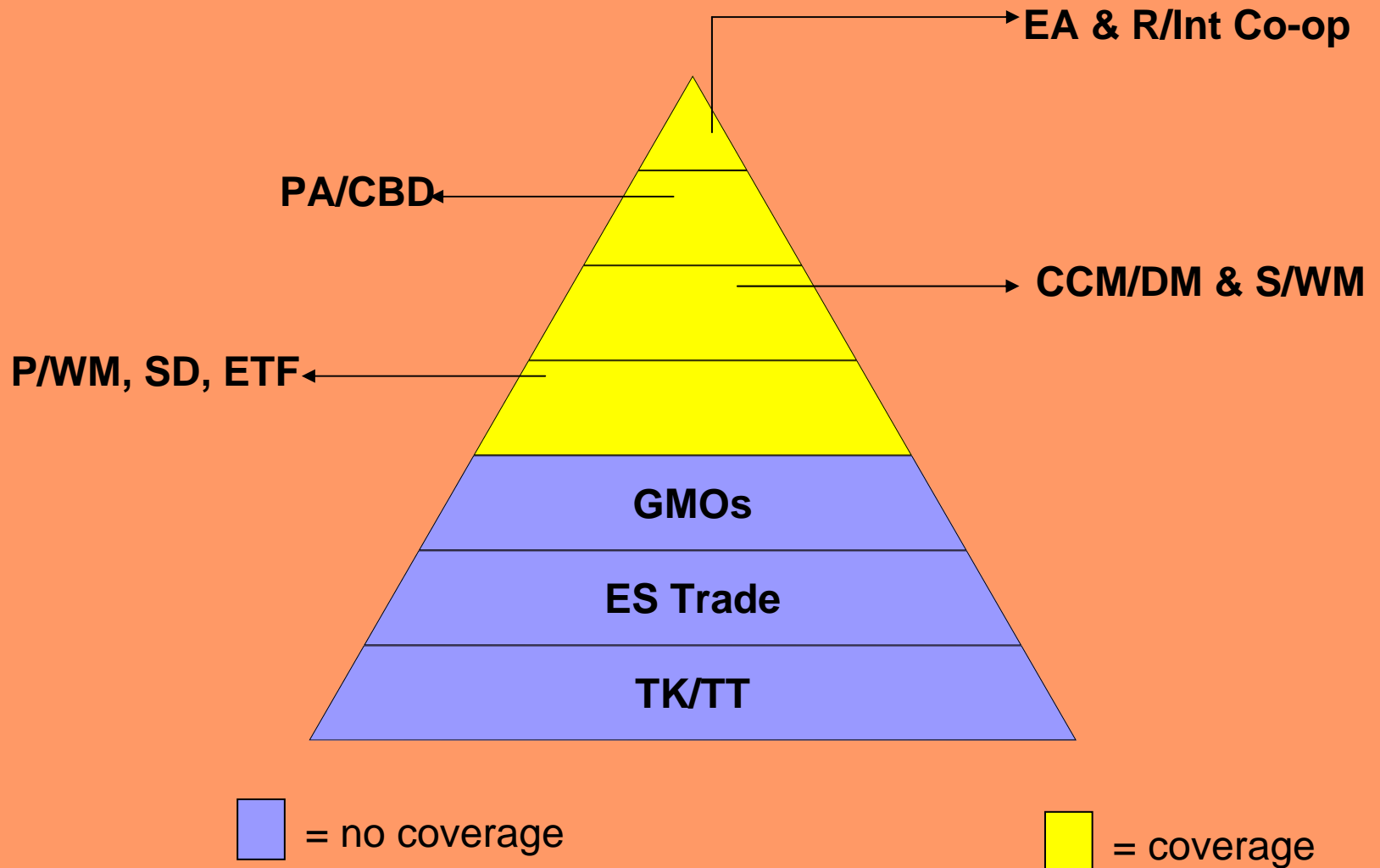
- ❖ Forestry Act 1998 provides for a Forestry Fund, the proceeds of which are to be used for the establishment and sustained management of forests and forests research (s.7)

No general fund

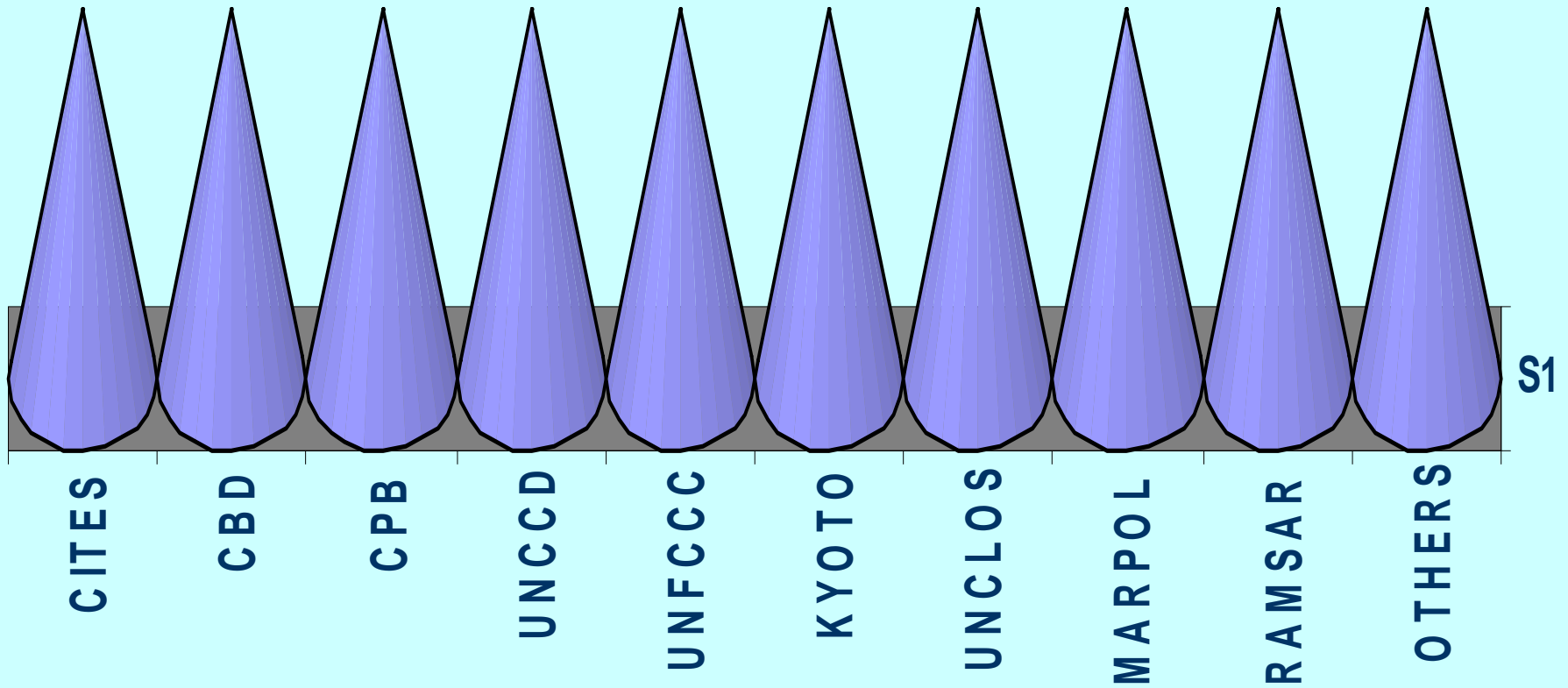
Recognition of International Obligations & Regional, International Co-operation

- ❖ EA 2001

LESOTHO'S COVERAGE



MAURITIUS' INTERNATIONAL OBLIGATIONS



Laws of Mauritius

- Environment Protection Act 2002
- Wildlife and National Parks Act 1994
- Plants Act 1982
- Forests and Reserves Act
- Planning and Development Act 2004
- Rivers and Canals Act 1981
- Ground Water Act
- Fisheries and Marine Resources Act 1998
- Genetically Modified Organisms Act 2004

Laws of Mauritius

Designation of an Environment Authority

- ❖ Environment Protection Act (EPA) 2002 establishes the National Environment Commission and the Department of the Environment, Police de l'Environnement
- ❖ Wildlife and National Parks Act (WNPA) 1994 established the National Parks Conservation Service

Designation/Management of Protected Areas/Conservation of Biodiversity

- ❖ WNPA 1994 provides for designation of parks and reserves and requires Management Plans for each such reserve (including the Buffer Zone).
- ❖ Fisheries and Marine Resources Act 1998 provides for MPA and management/conservation measures (ss.6 – 10)

Laws of Mauritius

Coastal Zone Management

- ❖ EPA 2002 provides for ICZM (Part VII), requires Plans to be developed (s.50)

Climate Change Management

- No coverage

Desertification Management

- No coverage

Laws of Mauritius

Soil/Water Management

- ❑ Inadequate coverage

Pollution/Waste Control

- ❖ EPA 2002 provides for liability etc in case of spills (ss. 29 – 36), requires standards/guidelines for water, air, waste etc. (s.37)

Trade in Endangered Species

- ❖ WNPA 1994 prohibits trade in prescribed wildlife (s17)
- ❖ Fisheries Act 1998 prohibits trade in fish and fish products, mammals and turtles (ss25-27)

CITES incorporated through regulations under WNPA

Laws of Mauritius

Sustainable Development (planning/EIA)

- ❖ EPA 2002 requires EIA (includes SIA)
 - ❖ Planning and Development Act 2004 provides for adoption of Development Plans
- Provision of economic incentives? Decentralisation?*

Biosafety

- ❖ Genetically Modified Organisms Act 2004

Sharing/Technology Transfer

- No coverage

Laws of Mauritius

Traditional Knowledge

- ❑ No coverage

Establishment of an Environment Trust Fund

- ❖ EPA 2002 establishes the National Environment Fund
- ❖ Fisheries Act 1998 provides for the Marine Protected Areas Fund

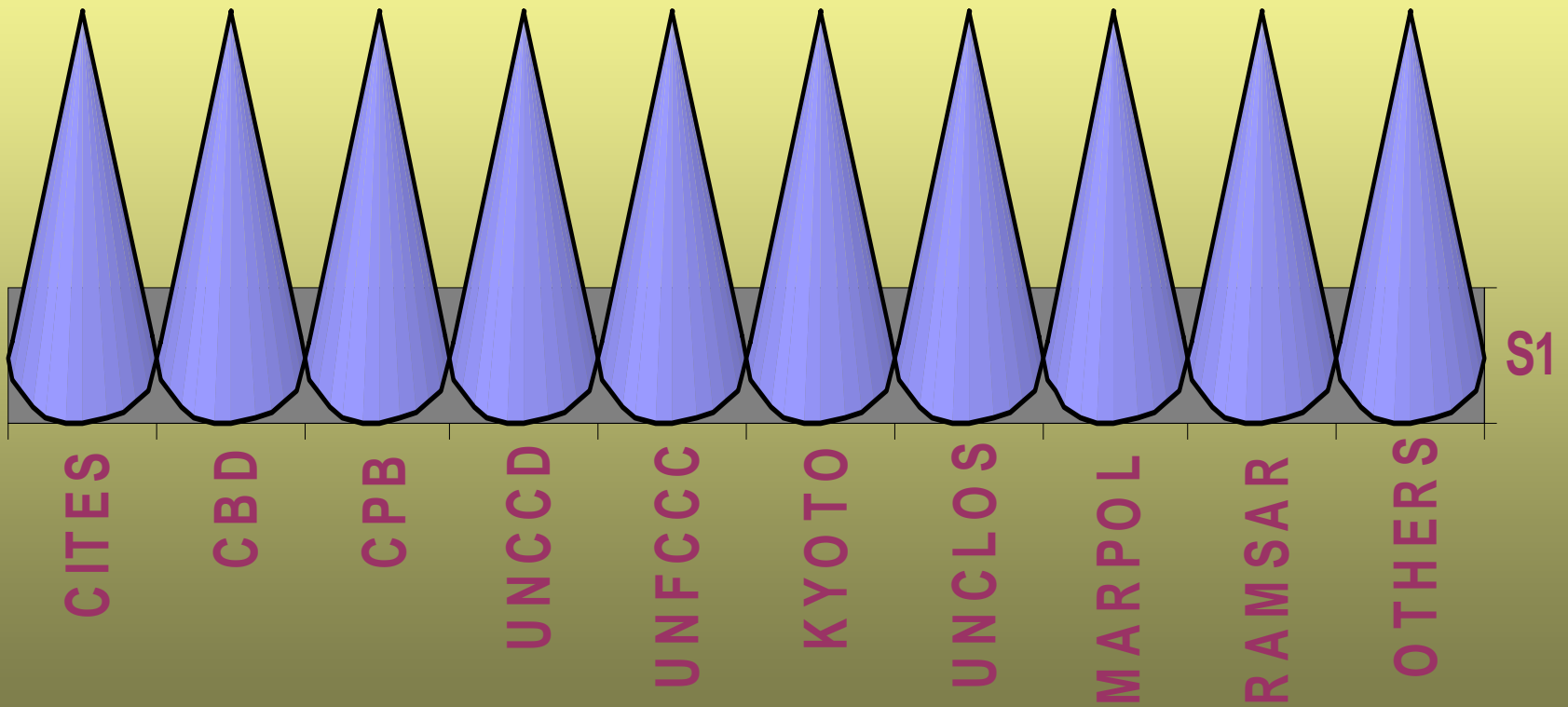
Recognition of International Obligations & Regional, International Co-operation

- ❖ Provision made in several instruments

Mauritius' Environmental Law Coverage



NAMIBIA'S INTERNATIONAL OBLIGATIONS



Laws of Namibia

- Agricultural Pests Act
- Animal Protection Act
- Fertilizers etc. Act
- National Monuments Act
- Mountain Catchment Areas Act
- Soil Conservation Act
- Water Act
- Aquaculture Act
- Game Products Trust Fund Act
- Decentralisation Act
- Forest Act
- Environment Investment Fund Act
- Inland Fisheries Resources Act
- Fisheries Act

Laws of Namibia¹

Designation of an Environment Authority

- ❖ Provision is made for the establishment of Councils, Boards and Advisory Committees under various Acts, including the Forestry Act 2001, Nature Conservation Ordinance 1975 etc

No body with a coordinating role (contemplated in drafting EMA)

¹Constitution provides that International conventions become part of Namibian law upon ratification

Laws of Namibia

Protected Areas/Management of Protected Areas

- ❖ Forestry Act 2001 – provision for FMP
- ❖ Fisheries Act 1992, s. 29 & Inland Fisheries Act 2003, s22
- ❖ Mountain Catchment Areas Act 1970
- ❖ Nature Conservation Ordinance 1975

Conservation of Biodiversity

- ❖ (as above)

No legislation which specifically addresses conservation of biodiversity eg. ex situ conservation measures

Laws of Namibia

Coastal Zone Management

- ❑ Inadequate coverage

Climate Change Management

- ❑ Inadequate coverage

Desertification Management

- ❖ Soil Conservation Act 1969
- ❖ Forestry Act 2001

No provision for disaster management planning, early warning systems etc. No provision for Water and Agricultural Resources Plan

Laws of Namibia

Soil/Water Management

- ❖ Water Act 1956
- ❖ Soil Conservation Act 1969
- ❖ Mountain Catchment Areas Act

Provision for standards for water/soil resources?

Pollution/Waste Control

- ❖ Water Act 1956
- ❖ Fisheries Act 1992, s.32(1)(ag)
- ❖ Atmospheric Pollution Prevention Ordinance 1976
- ❖ Prevention and combating of Pollution of the Sea by Oil 1981
- ❖ Hazardous Substances Ordinance 1974

Provision for air quality standards etc? Restoration?

Laws of Namibia

Trade in Endangered Species

- ❖ Inland Fisheries Act 2003, s.19(c)
- ❖ Nature Conservation Ordinance 1975, s49(1) prohibits the import and export of game and wild animals and their skins except under permit.

Administrative arrangements as required under CITES?

Sustainable Development

- ❖ Decentralisation Enabling Act 2000 – Decentralisation Implementation Plan

No provision for EIA (which may cover SEA and notification of transboundary effects) – Legislation proposed

Laws of Namibia

Biosafety

- No coverage

Sharing/Technology Transfer

- No coverage

Traditional Knowledge

- No coverage

Laws of Namibia

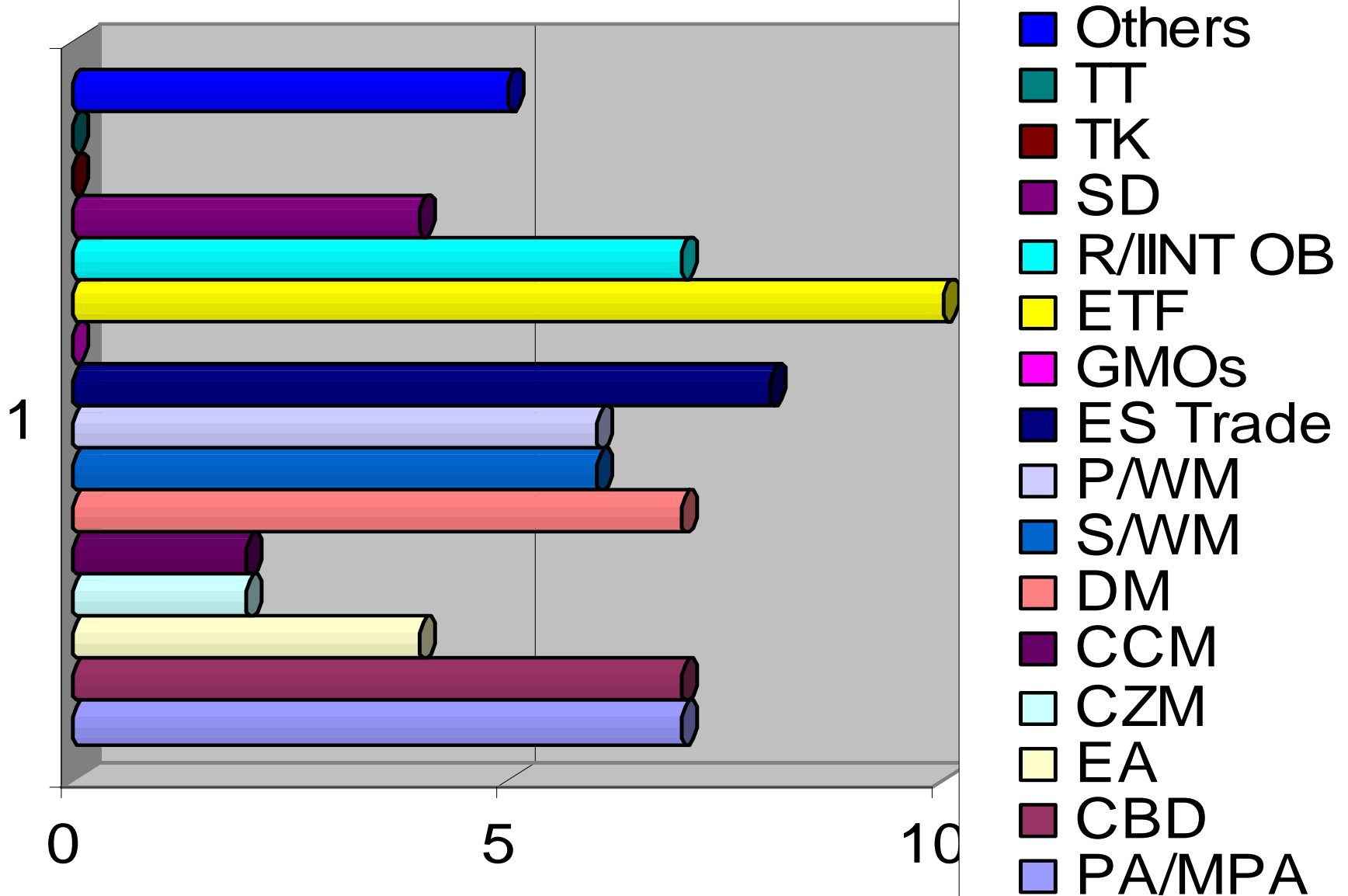
Establishment of an Environment Trust Fund

- ❖ Environment Investment Fund Act 2001 establishes the Environmental Investment Fund
- ❖ Fisheries Act 1992 – Sea Fisheries Fund
- ❖ Game Products Trust Fund Act 1997

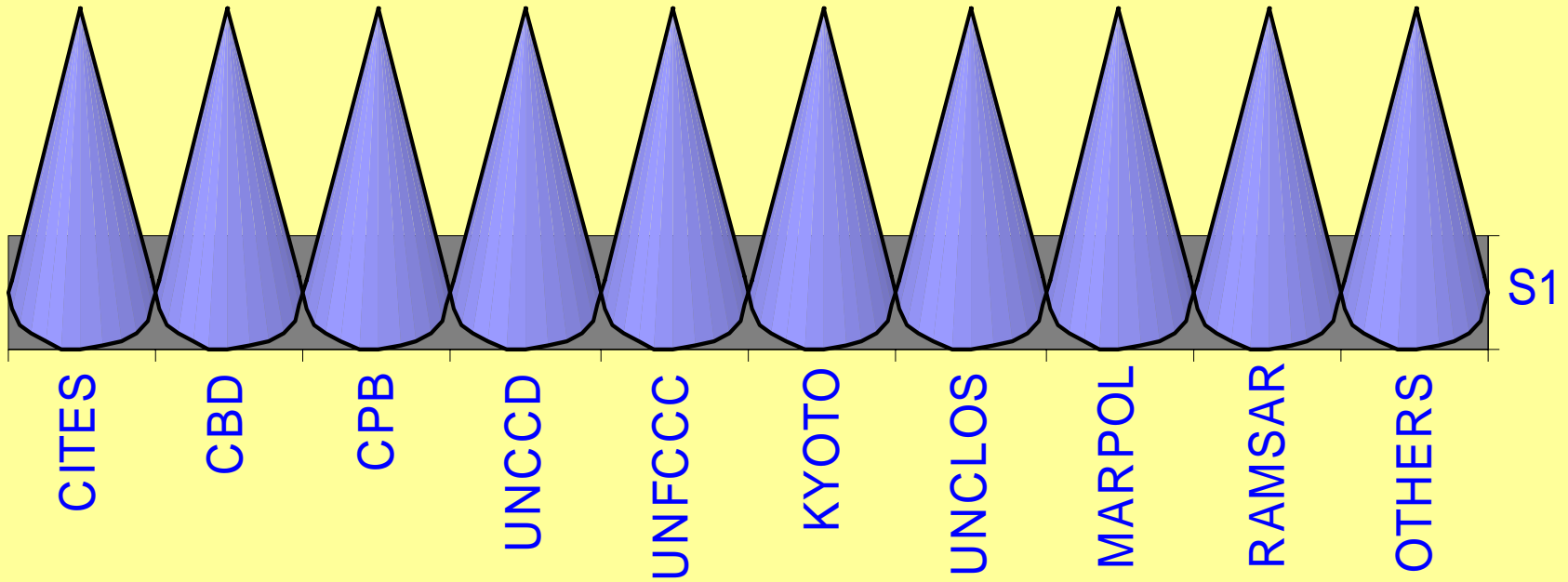
Recognition of International Obligations & Regional, International Co-operation

- ❖ Constitution of Namibia
- ❖ Fisheries Act 1992, s.32(1)(ah)

Namibia's Environmental Law Coverage



SEYCHELLES'S INTERNATIONAL OBLIGATIONS



Laws of The Seychelles

- Environment Protection Act 1994
- National Parks and Nature Conservancy Act 1969
- Forest Reserves Act 1955
- Beach Control Act 1971
- Birds' Eggs Act 1933
- Plant Protection Act 1996
- Fisheries Act

Laws of The Seychelles

Designation of an Environment Authority

- ❖ Environment Protection Act (EPA) 1994 establishes the Environment Authority
- ❖ National Parks and Nature Conservancy Act (NPNC) 1994 establishes the National Environment Commission

Designation/Management of Protected Areas

- ❖ National Parks and Nature Conservancy Act 1969
- ❖ Forest Reserves Act 1955
- ❖ Fisheries Act

No provision for Management Plans

Laws of The Seychelles

Conservation of Biological Diversity

- As above, no specific legislation for protecting/conserving biodiversity

Coastal Zone Management

- ❖ EPA 1994 provides for ICZM Plans, declaration of Coastal zones and for the control of activities (particularly, pollution), s. 11

Climate Change Management

- No coverage

Desertification Management

- No coverage

Laws of The Seychelles

Soil/Water Management

- ❖ EPA 1994 requires standards for water and soil (s6), Preservation of Areas where water may need special protection, including catchment areas, and for pollution control (s.7)

Soil management?

Pollution/Waste Control

- ❖ EPA 1994 requires standards for air, water, effluent limitations etc (s6), management and minimisation of waste (ss12 &13), handling of hazardous substances

Revision of provision on protection of the ozone layer

Laws of The Seychelles

Trade in Endangered Species

- ❑ Inadequate coverage (Birds' Eggs Act 1933 provides for export/import of birds' eggs and their products to be regulated)

Sustainable Development (planning/EIA)

- ❖ EPA 1994 requires EIA (amend s11 NPNC Act 1969)
- ❖ TCPA

No provision for SEA

Biosafety

- ❑ No coverage (legislation proposed)

Laws of The Seychelles

Sharing/Technology Transfer

- No coverage

Traditional Knowledge

- No coverage

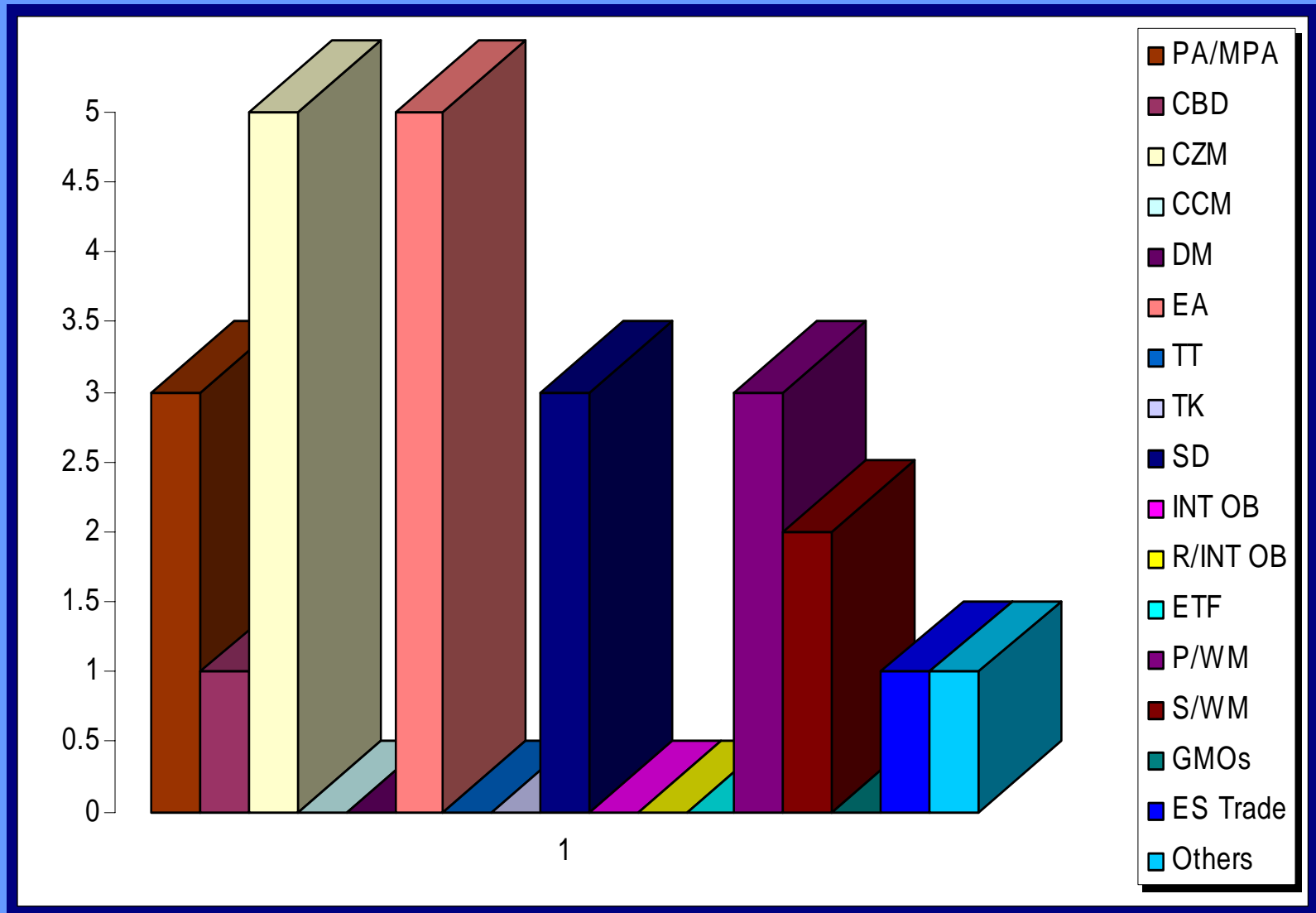
Establishment of an Environment Trust Fund

- No coverage

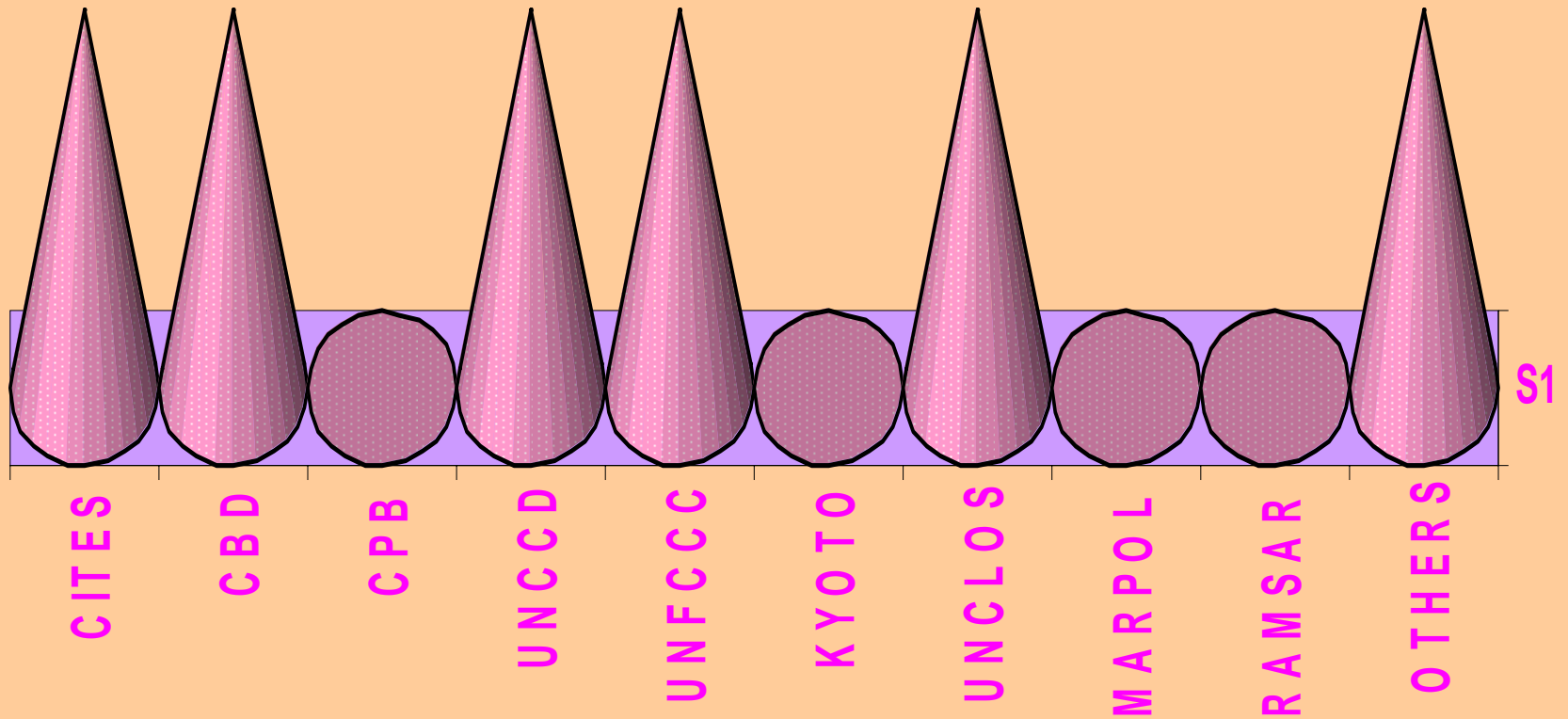
Recognition of International Obligations & Regional, International Co-operation

- No coverage

The Seychelles' Environmental Law Coverage



SWAZILAND'S INTERNATIONAL OBLIGATIONS



Laws of Swaziland

- Environmental Management Act 2002
- Environmental Audit, Assessment & Review Regulations
- Waste Regulations 2000
- Ozone Depletion Substances Regulations
- Flora Protection Act 2000
- The Game Act 1953 (as amended)
- Wild Birds Protection Act 1914
- Protection of Fresh Water Fish Act 1938
- Forest Preservation Act 1910
- Natural Reserves Act 1951

Laws of Swaziland

Designation of an Environment Authority

- ❖ Environment Management Act (EMA) 2002 establishes the Environment Authority which has extensive powers – including enforcement powers

Protected Areas/Management of Protected Areas

- ❖ Natural Resources Act 1951
- ❖ Forests Preservation Act 1910
- ❖ Flora Protection Act 2000 provides for the establishment of flora reserves, botanic gardens and protection of special habitats

No provision for Management Plans

Laws of Swaziland

Conservation of Biological Diversity

- Not specifically addressed in legislation

Coastal Zone Management

- Not applicable

Climate Change Management

- No coverage

Desertification Management

- Inadequate coverage

Laws of Swaziland

Soil/Water Management

- ❖ EA 2001
- ❖ Water Act 2003 provides for Water Resources Master Plan, assessment of effects of dev. Proposals for water resources w/impact on use of water resources

Pollution/Waste Control

- ❖ EMA 2002, Part V prohibits discharges into the environment and requires regulations creating a system for IPPC and a licensing system to control discharges. Part VI requires waste management – preparation of a waste management strategy, waste licences, prohibits trade in waste without written permission and a prohibition on import of hazardous waste.

Laws of Swaziland

Trade in Endangered Species

- ❖ Flora Protection Act 2000 protects indigenous flora and prohibits exports of protected flora (s7). There is a further prohibition on cross-border trade of plants listed in Red Data List of South African Plants and IUCN listed plants.
- ❖ Game Act 1953 (as amended, 1991) prohibits the import and export of any trophy or raw product of specially protected game (s19)
- ❖ Wild Birds Protection Act 1914 prohibits export of the plumage of wild birds (s.3)
CITES listed species not provided for, as too, notification, recording information and reporting

Laws of Swaziland

Sustainable Development (planning/EIA)

- ❖ EMA 2002 requires EIA/SEA and notification of transboundary effects, s.32(9)

Biosafety

- Not party to CPB

Sharing/Technology Transfer

- No coverage

Traditional Knowledge

- No coverage

Laws of Swaziland

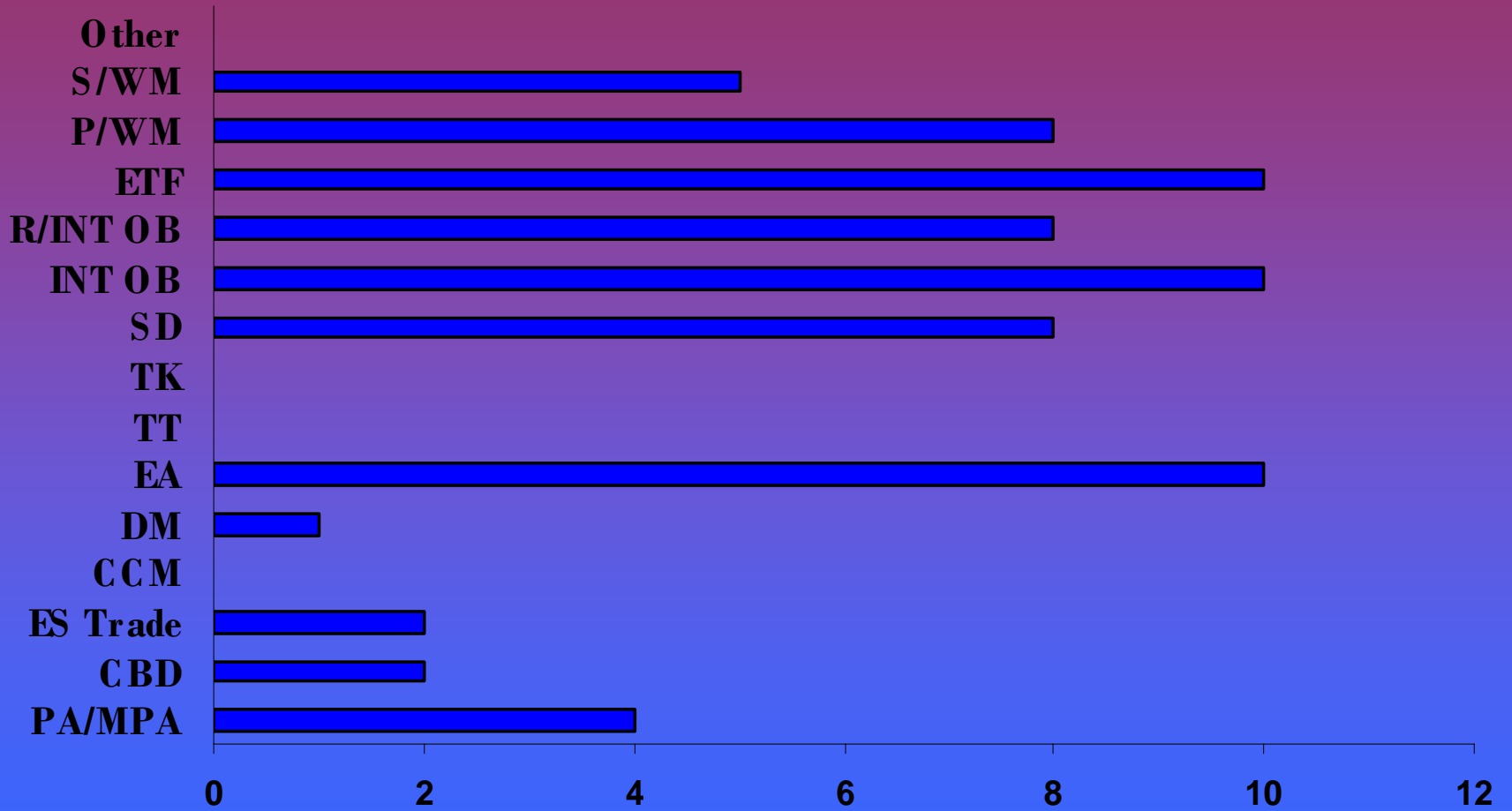
Establishment of an Environment Trust Fund

- ❖ EMA 2002 provides for the establishment of a fund (s20)

Recognition of International Obligations & Regional, International Co-operation

- ❖ EMA 2002, s. 49 provides that international agreements are to be given effect
- ❖ Water Act 2003 – Joint International Water Bodies

Swaziland's Environmental Law Coverage



■ Series1

Conclusion

- 100% of states must legislate for TT and TK
- 42% must legislate for CBD
- 28% must legislate for EA or Department etc with a co-ordinating role
- 14% must legislate for CZM
- 28% must legislate for ETF
- 57% must legislate for ES Trade under CITES
- 57% must legislate for Biosafety, CCM and DM

Conclusion

- Single Comprehensive Act – The Gambia, Lesotho, Seychelles, Swaziland
- Comprehensive sectoral Laws – Botswana, Mauritius, Namibia

Thank You