



# **Legal Preparedness for Achieving the Aichi Biodiversity Targets:**

## **The role of law for biodiversity incentives and financing**

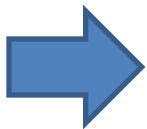
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# ‘Legal Preparedness for Achieving the Aichi Targets’ Initiative: quick overview

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- IDLO: rule of law and a culture of justice for sustainable development.
- Legal preparedness: assessment of legal frameworks; development of action plans; building capacity of governments and empowering people
- Rio+20 called for “networking and experience-sharing to help countries to learn from one another in identifying appropriate sustainable development policies.”
- Countries need tailored legal solutions to biodiversity issues, and in-country legal expertise is key: need to expand traditional understanding of “biodiversity laws”.

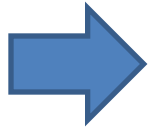


This Program provides a framework to **simultaneously build up knowledge and capacity globally** on law and biodiversity .



# IDLO's work on Target 3: building and sharing knowledge

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Program launched in May 2013

- Creating a global network of experts on biodiversity law and related issues;
- Gathering knowledge through a scoping study on legal aspects of Target 3;
- **Developing a toolkit based in documented country experiences with implementation of incentives;**
- Promoting active consultations, debate and knowledge exchange;
- **Future steps:** develop tailored capacity building and legal support programs for countries to undertake legal preparedness to achieve their own biodiversity targets within the Aichi framework.

# The role of law for Target 3

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- Environmental ‘command-and-control’ (CAC) regulation: traditional instrument to promote environmental goals, often fail to reflect the value of nature and promote incentive dynamics addressing direct and indirect causes of biodiversity loss.
- Other types of instruments such as economic incentives are increasingly used and encouraged: additional financial resources and involvement of public and private sectors.
- Legal, regulatory and institutional implications and need of legal basis to establish any kind of incentives at the national level – PES schemes, offsets, green markets and green fiscal instruments.

# The role of law for Target 3

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- **Key legal issues related to Target 3:**
- Need to identify perverse incentives and evaluate adequate responses and positive incentives: role of impact assessment, access to information and public participation.
- Political will at all levels and awareness: key for pushing reform of legal instruments with negative incentives and establishment of positive ones.
- Responsive institutions: key for implementation and access to justice.
- Common legal issues for incentives: contract law; property law; tax law, administrative law – an enabling legal framework.
- Legal frameworks are also fundamental to ensure equitable distribution of duties and benefits, enforcement, access to justice and responsive institutions.

# Chile: mandatory impact assessment and offsetting

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- **What motivated this Law?** Political leadership: catalyst for change, Law on the Environment, 1993.
- **What did law do?** Legal approach creates mandatory impact assessment (IA) and its own system of mitigation measures.
- **Why is this innovative?** Dual role – the Law provided legal certainty:
  1. Disincentives for harmful effects, which must be assessed and economically compensated;
  2. Compensation mechanism provides additional financing to conservation.
- **What are remaining challenges?** A concept of biodiversity has been included in the law, but there remains an adequate economic valuation of biodiversity is still missing. Highlights the need for both economic and legal tools working together.

# Brazil: tax mechanism creating a PES scheme at State level:

## ICMS Ecologico

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- **What motivated this Law?** Political leadership and subsidiarity: Municipalities as catalysts for change in the State of Paraná.
- **What did law do?** Not a green tax: PES scheme based on distribution of (VAT) tax revenue.
- **Why is this innovative?**
  - Financial support for conservation without additional tax burden.
  - Increase in conservation areas and tax revenue received by Municipalities.
- **What are remaining challenges?** Adequate quantitative and qualitative criteria in the law are key; political will to create the legal framework at State level; implementation and capacity building; lack of awareness prevents wider utilization.

# Ecotourism in Indonesia's side of Borneo

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- **What motivated this Law?** Tourism is a key economic activity. Ecotourism is one of the responses to prevent negative impacts and incentivize sustainable behavior for business, but an enabling legal framework is important.
- **What did law do?** Specific legislation on legal delimitation of conservation areas that can be used for commercial activities.
- **Why is this innovative? :**
  - Licensing for the private sector, specifying what types of activities might be undertaken in conservation areas (services and businesses).
  - Protection of property rights and entitlement to local communities living in conservation areas to receive benefits.
- **What are remaining challenges?** Compliance and barriers for implementation.



# USA: creating a market for biodiversity offset businesses: wetland banking

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- **What motivated this Law?** Voluntary offset mechanisms often fail in practice.
- **What did law do?** Legal obligation for developers to compensate damage to biodiversity in wetlands. Role of law for wetland banking system: Property rights: conservation easement agreements; Contract law and enforcement: establishment of the bank and purchase of offset credits; Commercial/financial law: bonds and letters of credit.
- **Why is this innovative?**
  - Can be an improvement over traditional “permittee-responsible” mitigation.
  - Has led to a new market for biodiversity conservation businesses.
- **What are remaining challenges?** offsets should be a last resort; since most mitigation banks are for-profit, bankers may be motivated to find properties that will maximize profits rather than conservation.

## Some ideas for discussion

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- In your experience is legal support important for biodiversity incentives? Why – for equity, legal certainty, other issues?
- In your country, are there legal barriers to the creation of biodiversity incentives? What types of incentives are being used/discussed?
- In your country, are there legal mechanisms that are creating opportunities / that need to be in place for the implementation of biodiversity incentives? What types of incentives?

THANK YOU FOR YOUR ATTENTION!



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