

WORKING PAPER

LEGAL ASPECTS OF THE AICHI BIODIVERSITY TARGET 11: A SCOPING STUDY



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LIST OF ABBREVIATIONS

ABS	Access and Benefit Sharing
ADSDPP	Ancestral Domain Sustainable Development and Protection Plans
ASEAN	Association of Southeast Asian Nations
CMS	Convention on Migratory Species
COP	Conference of the Parties
EHS	Ecologische Hoofdstructuur
EPBC	Environment Protection and Biodiversity Conservation
ESA	Environmentally Sensitive Areas
EU	European Union
GOBI	Global Ocean Biodiversity Initiative
ICCAs	Indigenous peoples and community conserved territories and areas
ILO	International Labour Organization
IPAs	Indigenous Protected Areas
LMMAs	Locally-managed marine areas
MPA	Marine Protected Area
MPAs	Marine protected areas
NPA	Natural Protected Areas
NRS	National Reserve System
PAs	Protected Areas
PES	Payments for Ecosystem Services
PoWPA	Programme of Work on Protected Areas
REDD	Reducing Emissions from Deforestation and Forest Degradation
SNSs	Sacred Natural Sites
TCOs	Lands of Original Communities
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environmental Programme
WDPA	World Database on Protected Areas
WHC	World Cultural and Natural Heritage

OVERVIEW OF SCOPING PAPER

PURPOSE

The primary purpose of this scoping paper is to set out the state-of-the-art of legal knowledge on Aichi Biodiversity Target 11 and identify priority areas for future legal research to fill key knowledge gaps. This survey of legal knowledge is intended to provide a foundation for future research efforts that will examine the effectiveness of specific national/subnational legal approaches and develop practical legal guidance that can assist policy-makers and other stakeholders to take concrete action to utilize legal approaches to achieve Target 11.

SCOPE

This scoping paper provides a detailed explanation of every element of Target 11, which includes: increase of terrestrial and marine protected areas (PAs) coverage globally; ecological representativeness of PA networks; establishment of areas of particular importance for biodiversity and ecosystem services; connectivity conservation; effectiveness and equity in management; and other effective area-based conservation measures. It provides an historical overview of the PA policy

framework at the international and regional levels, and provides seventeen examples of innovative legal approaches to implementing Target 11. It does so by highlighting the legal foundations of the Target in international law as well as select domestic regimes.

APPROACH AND ORGANIZATION

The scoping paper's authors have engaged recognized legal experts and, together with legal researchers, have undertaken research and analysis of leading legal publications, programs and instruments to survey and assess legal tools and approaches relevant to the achievement of Target 11. Part I provides a brief overview of the aspects of Target 11 for which law may be relevant. Part II describes international and regional legal instruments relevant to Target 11, and includes synergies with other Targets. Part III addresses the implications for national implementation and presents a list of innovative legal approaches. Part IV provides a select bibliography of key relevant readings.

PART I: CONTEXT AND BACKGROUND

Target 11: By 2020, at least 17 per cent of terrestrial and inland water areas and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscape and seascape.

EXPLANATION OF THE TARGET

The 10th Conference of the Parties (COP 10) to the Convention on Biological Diversity (CBD) agreed in October 2010 in Nagoya, Japan, on the new Strategic Plan for Biodiversity 2011-2020. This new plan outlines 20 Aichi Targets, which are organized under five strategic goals to achieve biodiversity conservation. Aichi Target 11, which belongs to Strategic Goal C, “To improve the status of biodiversity by safeguarding ecosystems, species and genetic diversity”, addresses issues related to the conservation of terrestrial, inland water, and coastal and marine areas through systems of PAs and other area-based conservation measures. Although the text of the target is short, it addresses multiple facets of PAs, including increased coverage, connectivity, management, governance and equity, and applies to both terrestrial and marine PAs. The diagram below illustrates how it is composed of two quantitative targets, establishes two overarching means of achieving the targets, and provides a number of qualitative elements that should be fulfilled. The next sub-section addresses each element of Target 11 in sequence.

Quantitative Targets by 2020	<ul style="list-style-type: none">> 17% terrestrial> 10% coastal and marine
Means of Conservation	<ul style="list-style-type: none">> Protected areas> Other effective area-based conservation measures
Qualitative Elements	<ul style="list-style-type: none">> Ecological representativeness> Particular importance for biodiversity and ecosystem services> Management equity and effectiveness> Connectivity conservation> Integration into wider landscapes and seascapes



Quantitative Targets by 2020

The combined total of PAs and other effective area-based conservation measures should reach at least 17% of terrestrial and inland water areas, and 10% of coastal and marine areas by 2020.

Means of Conservation

Protected areas: From 1990 to 2012, there has been a constant growth in protected territory and, at present, there are 205,945 nationally-designated PAs around the world.¹ Despite this progress, current figures show global PA coverage is far below the quantitative element of Target 11. In particular, protected terrestrial areas have grown from 8.9 per cent to only 14.6 per cent of the world’s land surface, while protected marine areas have grown from 4.6 per cent to 9.7 per cent in coastal waters up to 12 nautical miles, and from 1.2 per cent to only 5.3 per cent in waters of national jurisdiction up to 200 nautical miles from the coastline.²

Other effective area-based conservation measures: There is an ever-increasing acknowledgement that territories and areas governed and managed by indigenous peoples and local communities can lead to the conservation and sustainable use of biodiversity, with studies showing that these areas can outperform state protected areas under certain conditions.³ They also have the potential to generate a range of co-benefits aside from biodiversity conservation, including livelihood security, cultural identity, social and spiritual wellbeing, and climate change adaptation, among others.⁴ In certain international fora (further discussed in Part II), territories or areas governed by Indigenous peoples or local communities that also contribute to conservation are sometimes referred to as

¹IUCN/UNEP-WCMC, The World Database on Protected Areas (WDPA) <<http://www.protectedplanet.net>>.

² United Nations, ‘The Millennium Development Goals Report’ (UN 2013) 45.

³ Porter-Bolland, L., E. Ellis, M. Guariguata, I. Ruiz-Mallen, S. Negrete-Yanklevich, and V. Reyes-Garcia. 2012. “Community managed forests and forest

protected areas: An assessment of their conservation effectiveness across the tropics”. *Forest Ecology and Management*, 268: 6-17.

⁴ Janishevski L. and S. Babu, 2011. ‘Protected Areas and Climate Change,’ *Biodiversity and Climate Change Issue Paper 6*. UNEP.

indigenous peoples and community conserved territories and areas (ICCAs), locally-managed marine areas (LMMAs), and/or sacred natural sites (SNSs).⁵ Voluntarily conserved by indigenous peoples or local communities through customary laws or other effective means, they comprise natural and/or modified ecosystems and embody significant cultural, spiritual, biological, and ecological values and functions. However, the evaluation of conservation effectiveness of areas outside of state PAs has not been as systematic as that within protected areas, and social assessment of all types of PAs and other effective area-based conservation measures is lacking; more work is required in this respect.⁶

» DESPITE THE INCREASE IN THE TOTAL COVERAGE OF PROTECTED AREAS, MANY ECOREGIONS (PARTICULARLY MARINE ONES) REMAIN UNDER- REPRESENTED OR UNPROTECTED ◀

Qualitative Elements

Ecological representativeness: PAs and other effective area-based conservation measures should contain adequate

samples of the full range of existing ecosystems and ecological processes, including at least 10% of each ecological region within each country.⁷ Ecological regions (or ecoregions) are “areas with relative homogeneity in ecosystems” reflecting “the distributions of fauna and flora across the entire planet”.⁸ They are intended to provide “a spatial framework for ecosystem assessment, research, inventory, monitoring, and management”.⁹ Despite the increase in the total coverage of protected areas, many ecoregions (particularly marine ones) remain under-represented or unprotected, with gaps between PAs.¹⁰ In order to assess the ecological representativeness of PAs and other effective area-based conservation measures and measure the combined coverage of biodiversity, the percentages of both terrestrial and marine ecoregions protected must be taken into account.¹¹

Establishment of areas of particular importance for biodiversity and ecosystem services: PAs and other effective area-based conservation measures should include: areas high in species richness or threatened species, threatened biomes and habitats, areas with particularly important habitats (key biodiversity areas, high conservation value areas, important plant areas, sensitive marine areas, etc.); and areas important for ecosystem services, including provisioning services such as food, water, timber, and fiber, regulating services, which affect climate, floods, disease, wastes, and water quality, cultural services that provide recreational, aesthetic, and spiritual benefits, and supporting services such as soil formation, photosynthesis, and nutrient cycling.¹² With relation to key biodiversity areas, global datasets have only been developed for the Alliance for Zero Extinction sites (AZEs) and the Important Bird Areas (IBAs).¹³ Regarding ecosystem services, “there is no agreed methodology” for identifying areas of particular importance for the continuous provision of ecosystem services, “because ecosystem services are user-defined and site-specific”.¹⁴ Thus, an increase in coverage, whether by official PAs or other effective area-based conservation measures, should be guided by long-term biodiversity conservation objectives, as well as the preservation of associated ecosystem services and cultural values. It is

⁵ Notably, the diverse and complex systems envisaged by the terms ICCAs, LMMAs, and SNSs could become understood and appreciated only in terms of their conservation values or outcomes. In this sense, more fundamental human rights considerations may be overlooked or even undermined, depending on how they are recognised, supported, and promoted. In addition, once a new term is enshrined in international law and policy (as ‘ICCA’ is under the CBD and by the International Union for Conservation of Nature – IUCN), there is potential for it to be altered or misused (intentionally or otherwise) in the process of national enactment and interpretation. See, for example: Ibarra, J. T., A. Barreau, C. del Campo, C. I. Camacho, G. J. Martin, and S. R. McCandless, 2011. “When formal and market-based conservation mechanisms disrupt food sovereignty: impacts of community conservation and payments for environmental services on an indigenous community of Oaxaca, Mexico”. *International Forestry Review*, 13(3): 318–337.

⁶ Schreckenberg, K., Camargo, I., Withnall, K., Corrigan, C., Franks, P., Roe, D., Scherl, L. M. and Richardson, V. (2010) *Social Assessment of Conservation Initiatives: A review of rapid methodologies*, Natural Resource Issues No. 22. IIED, London.

⁷ Decision VII/30, ‘Strategic Plan: future evaluation of progress’ in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Seventh Meeting, UNEP/CBD/COP/DEC/VII/30 (13 April 2004), Provisional framework for goals and targets, Goal 1, Target 1.1.

⁸ Stephen Woodley et al, ‘Meeting Aichi Target 11: What does Success look like for Protected Area Systems?’ [2012] 18(1) PARKS 5, 25. Ecoregions are “nested within more coarse classifications of biogeographic realms and biomes”. For background, see Miklos D.F. Udvardy, ‘A classification of the biogeographical provinces of the world’ (1975) IUCN Occasional Paper no. 18 <<http://cmsdata.iucn.org/downloads/udvardy.pdf>> accessed 10 September 2013. Notably, the CBD has not yet endorsed or added to this definition.

⁹ James M. Omernik and Robert G. Bailey, ‘Distinguishing between Watersheds and Ecoregions’ [1997] 33 *Journal of the American Water Resources Association* 935, 937.

¹⁰ Bastian Bertzky et al, ‘Protected Planet Report 2012: Tracking progress towards global targets for protected areas’ (IUCN 2012).

¹¹ Secretariat of the Convention on Biological Diversity, ‘Biodiversity Indicators and the 2010 Biodiversity Target: Outputs, Experiences and Lessons Learnt from the 2010 Biodiversity Indicators Partnership’ (2010) CBD Technical Series No. 53. See also David M. Olson et al., ‘Terrestrial ecoregions of the world: A new map of life on Earth’ [2001] 51 *BioScience* 933.

¹² Millennium Ecosystem Assessment, *Ecosystems and Human Well-being: Synthesis* (Island Press 2005).

¹³ Taylor H. Ricketts et al, ‘Pinpointing and preventing imminent extinctions’ [2005] 102 (51) *Proceedings of the National Academy of Sciences* 18497; BirdLife International (2004), *Important Bird Areas in Asia: Key Sites for Conservation* (BirdLife International 2004). For background, see G Eken et al. (2004) ‘Key biodiversity areas as site conservation targets’ [2004] 54 *BioScience* 1110. Penny F. Langhammer et al., ‘Identification and Gap Analysis of Key Biodiversity Areas: Targets for Comprehensive Protected Area Systems’ (IUCN 2007).

¹⁴ Woodley et al. (n 3) 27. However, *ibid*: “it is possible to identify areas that are likely to be important for ecosystem services including wetlands, montane grasslands, and cloud forest ecosystems as provisioners of clean water; coastal mangroves as nursery grounds for valuable sea life and diminishing the impact of storms; areas of natural vegetation that are providing soil stabilisation in erosion-prone areas and some forests, peat lands and grasslands as significant carbon stores and sinks”.

important to recognize that for certain types of PAs and other effective area-based conservation measures, cultural and social values and objectives may take primacy over biodiversity conservation objectives as such, while still contributing significantly to conservation outcomes.

Management equity and effectiveness: PAs and other effective area-based conservation measures should have in place planning measures to ensure ecological integrity and the protection of species, habitats and ecosystem processes,¹⁵ as well as the full and effective participation of indigenous peoples and local communities, such that costs and benefits of the areas are fairly and equitably shared.¹⁶ The effective management of PAs and other effective area-based conservation measures is reflected on the accurate functionality of the area and based on its projected conservation targets.¹⁷ Apart from creating a general obligation to develop management plans, PA legislation can also play an important role in relation to effectiveness and equity in PA management by establishing related best practice principles and standards. Identification and definition of key components of management plans, processes of plan preparation, its legal status, as well as implementation considerations do not only provide means to ensure harmonization of management plans, but also to introduce international guidelines regarding equity and effectiveness at the national to local levels.¹⁸

While the concept of management typically focuses on the processes internal to the protected area (the 'what'), the issue of governance (the 'who' and 'how') refers to the involvement of a wide range of stakeholders, including government agencies, non-government organizations, private entities, indigenous

peoples and local communities.¹⁹ In other words, it provides "the platform for different interested parties to come together to find a shared vision, work with the costs and benefits issues, and locate the protected area within the greater socio-cultural and economic context".²⁰

Connectivity conservation: Scientists have stressed that PAs by themselves are becoming isolated ecological islands and "[h]abitat fragmentation has been recognized as a major threat to ecosystems".²¹ In order to preserve species and maintain ecological processes and ecosystem services for the well-being of indigenous peoples and local communities and humanity as a whole, it is necessary to establish connectivity conservation measures between different PAs and with other effective area-based conservation measures,²² the latter of which confer many co-benefits such as livelihood generation and support for cultural and linguistic diversity.²³ Approaches include the establishment of "ecological networks, ecological corridors and/or buffer zones" to allow connectivity,²⁴ integration of climate change adaptation concerns and activities,²⁵ and the application of the ecosystem approach.²⁶ The CBD has provided expert guidance and disseminated scientific data and accurate information (including case studies) with respect to various aspects related to connectivity through various publications under the CBD Technical Series.²⁷ Providing for connectivity among PAs would also help with the achievement of Aichi Target 5, which recommends a significant reduction of "degradation and fragmentation" of natural habitats by 2020.

Integration into wider landscapes and seascapes: Moving beyond the concept of connecting different PAs and other

¹⁵ Decision VII/28, 'Protected areas (Articles 8 (a) to (e))' in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Seventh Meeting, UNEP/CBD/COP/DEC/VII/28 (13 April 2004), Programme of Work on Protected Areas. Under Goal 1.4 a list of suggested activities is provided to substantially improve site-based protected area planning and management.

¹⁶ *ibid.* Under Goals 2.1 and 2.2 activities are suggested to promote equitable sharing of both costs and benefits arising from the establishment and management of protected areas, as well as to enhance and secure involvement of Indigenous and local communities and relevant stakeholders.

¹⁷ M Hockings et al., 'Evaluating Effectiveness: A Framework for Assessing Management Effectiveness of Protected Areas' (IUCN 2006).

¹⁸ See also Lausche, Barbara. Guidelines for Protected Areas Legislation. IUCN. Gland, Switzerland. 2011, pp. 30-32.

¹⁹ Borri-Feyerabend, G., N. Dudley, T. Jaeger, B. Lassen, N. Pathak Broome, A. Phillips and T. Sandwith (2013). Governance of Protected Areas: From Understanding to Action. Best Practice Protected Area Guidelines Series No. 20, Gland, Switzerland: IUCN. xvi + 124pp.

²⁰ Woodley et al. (n 3) 29-30.

²¹ Tenth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA 10), 'Indicators for assessing progress towards the 2010 target: Connectivity/Fragmentation of ecosystems' UNEP/CBD/SBSTTA/10/INF/20 (17 December 2004)

<<http://www.cbd.int/doc/meetings/sbstta/sbstta-10/information/sbstta-10-inf-20-en.pdf>> para 9. See also *ibid* para 19: "To avoid unnecessary fragmentation of ecosystems and habitats is a key aspect of national and regional land use plans and other relevant instruments such as environmental impact assessment at the project and the strategic levels and cumulative impact assessment".

²² For a recent legal assessment, see Barbara Lausche et al., 'The Legal Aspects of Connectivity Conservation. A Concept Paper' (IUCN 2013). For a scientific treatment, see Lutz Tischendorf & Lenore Fahrig, 'How should we measure landscape connectivity?' [2000] 15 Landscape Ecology 633.

²³ Porter-Bolland et al., 'Community managed forests and forest protected areas: An assessment of their conservation effectiveness across the tropics' [2012] 268 Forest Ecology and Management 6.

²⁴ Decision VII/28, 'Protected areas (Articles 8 (a) to (e))' in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Seventh Meeting, UNEP/CBD/COP/DEC/VII/28 (13 April 2004), Programme

of Work on Protected Areas, Goal 1.1, para 1.2.3: "Integrate regional, national and sub-national systems of protected areas into broader land- and seascape, *inter alia* by establishing and managing ecological networks, ecological corridors and/or buffer zones, where appropriate, to maintain ecological processes and also taking into account the needs of migratory species"; para 1.2.4: "Develop tools of ecological connectivity, such as ecological corridors, linking together protected areas where necessary or beneficial as determined by national priorities for the conservation of biodiversity"; para 1.2.5: "Rehabilitate and restore habitats and degraded ecosystems, as appropriate, as a contribution to building ecological networks, ecological corridors and/or buffer zones".

²⁵ *ibid* Programme of Work on Protected Areas, Goal 1.4, para 1.4.5: "Integrate climate change adaptation measures in protected area planning, management strategies, and in the design of protected area systems". See further Decision X/31, 'Protected areas' in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Tenth Meeting, UNEP/CBD/COP/10/27 (29 October 2010) para 14(a): "integrate protected areas into wider landscapes and seascapes and sectors, including through the use of connectivity measures such as the development of ecological networks and ecological corridors, and the restoration of degraded habitats and landscapes in order to address climate change impacts and increase resilience to climate change".

²⁶ Description, principles, and operational guidance for its application are provided in Decision V/6, 'Ecosystem approach' in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Fifth Meeting, UNEP/CBD/COP/5/23 (26 May 2000). See also Decision VI/12, 'Ecosystem approach' in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Sixth Meeting, UNEP/CBD/COP/6/20 (19 April 2002); Decision VII/11, 'Ecosystem approach' in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Seventh Meeting, UNEP/CBD/COP/7/21 (20 February 2004); Decision IX/7, 'Ecosystem approach' in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Ninth Meeting, UNEP/CBD/COP/9/29 (30 May 2008).

²⁷ See in particular Graham Bennett and Kalemaji Jo Mulongoy, 'Review of Experience with Ecological Networks, Corridors and Buffer Zones' CBD Technical Series No. 23 (2006) <<https://www.cbd.int/doc/publications/cbd-ts-23.pdf>> accessed 30 September 2013. A full list of publications is available at <<http://www.cbd.int/ts/>>.

effective area-based conservation measures, Target 11 calls for their integration into their broader environment and to be connected to the wider landscape and/or seascape. This requires not only the application of an ecosystem-based approach,²⁸ but also general mainstreaming of PAs and other effective area-based conservation measures into non-biodiversity-related policy fields and overall spatial planning activities (including land use planning as well as zoning). A key step in this direction is improved inter-agency and inter-sectoral coordination. A concrete example for such integration into wider land- and seascapes would be “using protected areas as natural solutions in ecosystem-based approaches to climate change adaptation and mitigation, and for filling policy gaps in this area”.²⁹ The Man and Biosphere Programme is a practical example of an attempt to better integrate protected areas into wider social, economic and ecological systems.³⁰

BRIEF OVERVIEW OF RELEVANT REGIONS REQUIRING TARGET 11 IMPLEMENTATION

Based on the World Database on Protected Areas (WDPA),³¹ the note prepared by the CBD Secretariat on National Biodiversity Targets for 2010 and beyond 2010,³² and the Programme of Work on Protected Areas (PoWPA),³³ the regions described below have the greatest need to better address Target 11.

Asia has 5.5% coverage of PAs (marine and terrestrial), according to the 2011 WDPA. The work on implementing strategies and action plans has been weak, considering only twelve of twenty-nine countries in Asia have submitted PoWPA action plans. This shows low level of focus on the improvement of site-based PA planning and management, as well as on other

effective area-based conservation measures. There is equally low expansion of PA coverage and ecological representativeness.

Oceania has a low percentage of PA coverage at only 3.2% for both marine and terrestrial. Notwithstanding good examples such as the Federated States of Micronesia’s strategy to protect at least 20% of coral reefs as “no take” reserves by 2020, besides Australia, there is weak focus on the protection of biodiversity through the expansion of PA coverage. In regards to PoWPA, it has been pointed out that there is a low level of establishing and strengthening PA networks, including little work on PA connectivity and other effective area-based conservation measures.

Northern Africa only has 4% of PA coverage. The Northern African countries have done little on the protection of biodiversity through PAs and on developing national strategies in this regard. While some Northern African countries have sent their National Biodiversity Strategy and Action Plan (NBSAP) to the CBD Secretariat, none of these has any content on PA coverage. The Moroccan NBSAP has not been fully implemented yet, while Libya has still not submitted its NBSAP.

The Caribbean has a very low percentage of PA (marine and terrestrial) coverage of only 4.6% overall; the maritime coverage is only 2.2%, while the terrestrial is 11.2%. This may be due to the weak progress on the development of the Caribbean countries’ PoWPA Action Plans. Caribbean countries show few improvements in recognizing other effective area-based conservation measures, as well as ensuring PA connectivity and integration. Only four countries have implemented national strategies (Antigua and Barbuda, Cuba, Dominican Republic, and Grenada). However, Cuba and Dominican Republic have worked hard on integrating Target 11 into their national strategies.³⁴

²⁸ Decision X/31, ‘Protected areas’ in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Tenth Meeting, UNEP/CBD/COP/DEC/X/31 (29 October 2010) para 1(d).

²⁹ Decision XI/24, ‘Protected areas’ in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Eleventh Meeting, UNEP/CBD/COP/DEC/XI/24 (5 December 2012) para 1(d).

³⁰ <http://www.unesco.org/new/en/natural-sciences/environment/ecological-sciences/man-and-biosphere-programme/>

³¹ The World Database on Protected Areas (a joint project of the United Nations Environment Programme and IUCN) is the most comprehensive global spatial dataset on marine and terrestrial protected areas available.

³² Secretariat of the Convention on Biological Diversity, ‘National Biodiversity Targets for 2010 and beyond 2010 – Note by the Executive Secretary’, UNEP/CBD/SP/PRP/3 (11 January 2010).

³³ Decision VII/28, ‘Protected areas (Articles 8 (a) to (e))’ in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Seventh Meeting, UNEP/CBD/COP/DEC/VII/28 (13 April 2004), Programme of Work on Protected Areas.

³⁴ The Dominican Republic, for example, has included this target in its NBSAP and its national targets.

PART II: INTERNATIONAL LAW REGIME

GLOBAL INSTRUMENTS

The Convention on Biological Diversity

The international legal regime for the conservation of biodiversity revolves around the CBD which requests each contracting party, “as far as possible and as appropriate”, to “establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity”; to “develop, where necessary, guidelines for the selection, establishment and management of protected areas”; and to “promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas”.³⁵ Geographically defined areas designated or regulated and managed to achieve specific conservation objectives are central to the implementation of various CBD thematic programmes,³⁶ in particular to the conservation and sustainable use of marine and coastal biodiversity.³⁷ In addition, the preservation of inland waters ecosystems,³⁸ dry and sub-humid lands,³⁹ forests⁴⁰ and mountains⁴¹ rely heavily on the establishment and strengthening of PAs.

Building on a number of resolutions and recommendations of the Fifth World Parks Congress in 2003, the Parties to the CBD adopted PoWPA as Decision VII/28 in 2004.⁴² PoWPA includes four Programme Elements, sixteen goals, and a number of suggested activities of the Parties and suggested supporting activities of the Executive Secretary.

Under PoWPA, an Ad Hoc Open-ended Working Group was created with the objective, *inter alia*, of “explor[ing] options for cooperation towards the establishment of marine protected areas in marine areas beyond the limits of national jurisdiction, consistent with international law, including the United Nations Convention on the Law of the Sea, and based on scientific

information”.⁴³ Accordingly, in 2008, the COP adopted scientific criteria and guidance for the development of a global inventory of Ecologically or Biologically Significant Areas (EBSAs) within and beyond national jurisdictions,⁴⁴ and sponsored a Global Ocean Biodiversity Initiative (GOBI) to facilitate the process of acquisition of the best scientific data for the identification of specific areas in the “deep seas and open oceans”.⁴⁵



Furthermore, the PoWPA underlines the importance of “assessing the economic and socio-cultural costs, benefits and impacts arising from the establishment and maintenance of protected areas, particularly for indigenous and local communities, and adjust[ing] policies to avoid and mitigate negative impacts, and where appropriate compensate costs and equitably share benefits in accordance with the national legislation”.⁴⁶ Each COP since the adoption of the PoWPA has adopted an additional decision on protected areas, inviting Parties to “seek contributions from indigenous and local communities on progress made towards the targets, challenges/obstacles and capacity-building needs”;⁴⁷ to

³⁵ Convention on Biological Diversity 31 ILM (1992) 818. In force 29 December 1993. Article 8(a); 8(b); 8(e). In situ Conservation (emphasis added).

³⁶ CBD (n 1) Article 2. Use of Terms.

³⁷ Decision VII/5, ‘Marine and coastal biological diversity’ in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Seventh Meeting, UNEP/CBD/COP/DEC/VII/28 (13 April 2004).

³⁸ Decision VII/4, ‘Biological diversity of inland water ecosystems’ in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Seventh Meeting, UNEP/CBD/COP/DEC/VII/28 (13 April 2004).

³⁹ Decision V/23, ‘Consideration of options for conservation and sustainable use of biological diversity in dryland, Mediterranean, arid, semi-arid, grassland and savannah ecosystems’ in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Fifth Meeting, UNEP/CBD/COP/5/23 (26 May 2000). In particular Annex 1, Part B, Activity 7(a).

⁴⁰ Decision VI/22, ‘Forest biological diversity’ in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Sixth Meeting, UNEP/CBD/COP/6/20 (19 April 2002).

⁴¹ Decision VII/27, ‘Mountain biological diversity’ in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Seventh Meeting, UNEP/CBD/COP/DEC/VII/28 (13 April 2004).

⁴² Decision VII/28, ‘Protected areas (Articles 8 (a) to (e))’ in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Seventh Meeting, UNEP/CBD/COP/DEC/VII/28 (13 April 2004).

⁴³ *ibid* para 18; para 25; para 29(a) (emphasis added).

⁴⁴ Decision IX/20, ‘Marine and coastal biodiversity’ in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Ninth Meeting, UNEP/CBD/COP/DEC/IX/20 (9 October 2008) para 14 and para 18. See Annex I and Annex II.

⁴⁵ The reference is to the Area (seabed) and the High Seas (water column), as defined by UNCLOS, Articles 1(1)(1) and 86 (see below). EBSAs are instruments for the promotion of scientific collaboration and not equivalent to MPAs, whose management rests in the hands of the relevant authorities. See IUCN, “Global Ocean Biodiversity Initiative (GOBI)” <http://www.iucn.org/about/work/programmes/marine/marine_resources/projects/?5008/Global-Ocean-Biodiversity-Initiative>.

⁴⁶ Decision VII/28, ‘Protected areas (Articles 8 (a) to (e))’ in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Seventh Meeting, UNEP/CBD/COP/DEC/VII/28 (13 April 2004) Programme Element 2. Goal 2.1. Para. 2.1.1.

⁴⁷ Decision VIII/24, ‘Protected areas’ in Decisions adopted by the Conference of the Parties to the Convention on Biological Diversity at its Eighth Meeting, UNEP/CBD/COP/DEC/VIII/24 (15 June 2006) para 16.

“ensure that conservation and development activities in the context of protected areas contribute to the eradication of poverty and sustainable development and ensure that benefits arising from the establishment and management of protected areas are fairly and equitably shared in accordance with national legislations and circumstances, and do so with the full and effective participation of indigenous and local communities and where applicable taking into account indigenous and local communities’ own management systems and customary use”;⁴⁸ to “include indigenous and local communities in multi-stakeholder advisory committees, in consultations for national reporting on the programme of work on protected areas, and in national reviews of the effectiveness of protected area system”;⁴⁹ to “coordinate their activities and to foster regional cooperation partnerships and implementation strategies, so as to support the implementation of national action plans for the programme of work by working with national focal points for the programme of work and the regional technical support networks, developing professional capacity, making available tools and best practices, providing advice, and promoting the development of better enabling environments”;⁵⁰

World Heritage Convention

The Convention Concerning the Protection of the World Cultural and Natural Heritage (WHC) applies to the natural areas that have been entered into a World Heritage List under the Convention due to their outstanding universal value.⁵¹ While the CBD uses the concept of PA as an approach to conservation and merely encourages its parties “to share and update relevant information on their protected areas system with the World Database on Protected Areas”,⁵² the WHC is one of the first modern international law instruments where the listing of PAs is a primary means for State Parties to meet their legal obligations under the Convention.⁵³ A strong emphasis is placed on international cooperation but specific obligations are established for states in Articles 4 and 5 as regards “the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage (...) situated on its territory” and measures to achieve this objective.⁵⁴

Operational Guidelines have been adopted to facilitate the implementation of the WHC and to mobilize international assistance for developing countries under the World Heritage Fund.⁵⁵ Accordingly, State Parties should ensure “the full and effective implementation” of “legislative and regulatory measures at national and local levels” with a view to “assure the survival of the property and its protection against development and change that might negatively impact the Outstanding Universal Value, or the integrity and/or authenticity of the property”.⁵⁶ Interestingly from the point of view of connectivity, this document also considers the necessity of providing “an adequate buffer zone”, namely “an area surrounding the nominated property which has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property”.⁵⁷

Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention)

The Convention on Migratory Species (CMS) provides a framework for bringing together “Range States” in relation to a particular migratory species, meaning the states with jurisdiction “over any part of the range of that migratory species”.⁵⁸ The CMS lays the legal foundations for conservation measures according to “the areas of land or water that a migratory species inhabits, stays in temporarily, crosses or overflies at any time on its normal migration route”.⁵⁹ As far as Target 11 is concerned, the CMS is an interesting instrument as it aims for a “favourable conservation status” for migratory species, which includes *inter alia* efforts to ensure that “there is [...] sufficient habitat to maintain the population of the migratory species on a long-term basis”.⁶⁰ To achieve this objective, the CMS encourages cooperation among its parties for the conclusion of formal conservation agreements, providing for the “conservation and [...] restoration of the habitats of importance in maintaining a favourable conservation status, and protection of such habitats from disturbances”.⁶¹ The CMS COP has acknowledged on several occasions that the objectives of the CMS cannot be achieved without ensuring adequate connectivity conservation. Resolution 10.3, adopted at COP 11 and devoted to critical sites and ecological networks, is clear in this regard.⁶² Furthermore, a related resolution on flyway conservation requests Parties to

48 Decision IX/18, ‘Protected areas’ in Decisions adopted by the Conference of the Parties to the Convention on Biological Diversity at its Ninth Meeting, UNEP/CBD/COP/DEC/IX/18 (9 October 2008) para 19.

49 Decision X/31, ‘Protected areas’ in Decisions adopted by the Conference of the Parties to the Convention on Biological Diversity at its Tenth Meeting, UNEP/CBD/COP/DEC/X/30 (29 October 2010) para 32(e).

50 Decision XI/24, ‘Protected areas’ in Decisions adopted by the Conference of the Parties to the Convention on Biological Diversity at its Eleventh Meeting, UNEP/CBD/COP/DEC/XI/24 (5 December 2012) para 7.

51 For background and discussion on the introduction of the concept of “natural heritage” in international law, see Francesco Francioni (ed), *The 1972 World Heritage Convention: A Commentary* (Oxford University Press 2008).

52 Decision IX/31, ‘Protected areas’ in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Tenth Meeting, UNEP/CBD/COP/10/27 (29 October 2010) para 35.

53 For an assessment of the WHO in comparison with other biodiversity-related treaties, see Catherine Redgwell, ‘The World Heritage Convention and Other Conventions Relating to the Protection of the Natural Heritage’ in Francioni (n 12).

54 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage 11 ILM (1972) 1358, Articles 4-5 (emphasis added).

55 Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage, ‘Operational Guidelines for the Implementation of the World Heritage Convention’ WHC. 12/01 (July 2012) <<http://whc.unesco.org/archive/opguide12-en.pdf>>.

56 *ibid* para 96. Criteria for considering a property as possessing Outstanding Universal Value are listed in para 77.

57 *ibid* para 103-104.

58 Convention on the Conservation of Migratory Species of Wild Animals (Bonn) 19 ILM (1980) 15. In force 1 November 1983. See Article I.1(h): “or a State, flag vessels of which are engaged outside national jurisdictional limits in taking that migratory species”. A list of range states is included in the CMS appendices: <http://www.cms.int/pdf/en/CMS_Range_States_by_Species.pdf>.

59 *ibid* Article I(1)(f).

60 *ibid* Article I(1)(c)(3).

61 *ibid* Article V(5)(c). See also Article II.1: “taking individually or in co-operation appropriate and necessary steps to conserve such species and their habitat”; Article III.4(a): “(Parties that are Range States of a migratory species listed in Appendix I shall endeavour) to conserve and, where feasible and appropriate, restore those habitats of the species which are of importance in removing the species from danger of extinction”.

62 Resolution 10.3, ‘The role of ecological networks in the conservation of migratory species’ Adopted by the Conference of the Parties at its Tenth Meeting, UNEP/CMS/Resolution 10.3 (25 November 2011) preamble: “Recognizing that habitat destruction and fragmentation are among the primary threats to migratory species, and that the identification and conservation of habitats of appropriate quality, extent, distribution and connectivity are thus of paramount importance for the conservation of these species in both the terrestrial and marine environments”.

ensure that “migratory birds’ habitat requirements are integrated into land-use policies including PAs but also especially outside PAs”.⁶³ This is particularly relevant in view of the need to integrate PAs into broader landscapes and seascapes.

➤ HABITAT DESTRUCTION AND FRAGMENTATION ARE AMONG THE PRIMARY THREATS TO MIGRATORY SPECIES ◀

Convention on Wetlands (Ramsar Convention)

The Ramsar Convention promotes the “conservation and wise use of all wetlands through local, regional, and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world”.⁶⁴ Over the years, the Ramsar Convention has broadened its scope to cover all aspects of wetlands conservation and wise use, including creating wetland reserves and in recent years, recording the PA category of a Ramsar site where the site is a designated PA. Parties to the Ramsar Convention have an obligation to designate “suitable wetlands within its territory for inclusion in a List of Wetlands of International Importance” and at least one PA should be included when signing or ratifying the Convention.⁶⁵ Wetlands such as rivers necessarily provide for connectivity and, therefore, the obligations under the Convention could contribute to connectivity conservation. It is also important to note that the Third Strategic Plan 2009-2015

urges Parties under Strategy 1.3 (Policy, Legislation and Institutions) to “develop and implement policies, legislation, and practices, including growth and development of appropriate institutions, in all Contracting Parties to ensure that the wise use provisions of the Convention are being effectively applied”.⁶⁶

United Nations Convention on the Law of the Sea

The international instrument setting out “the legal framework within which all activities in the oceans and seas must be carried out”⁶⁷ is the United Nations Convention on the Law of the Sea (UNCLOS).⁶⁸ In particular, Article 192 codifies the customary obligation “to protect and preserve the marine environment”, and Article 197 sets forth the duty to cooperate in the achievement of this objective.⁶⁹ However, there is no specific provision on marine protected areas (MPAs), only a reference in Article 194(5) to the need to “protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life”. Nonetheless, other marine legal instruments with either global or regional application have encouraged the development and use of area-based management tools, including MPAs, for the protection and preservation of the marine environment.⁷⁰

International Human Rights Law

In addition to the body of international law dedicated to the protection of the environment and the regulation of marine activities, it is important that states respect the full gamut of international law that provides rights to Indigenous peoples and local communities to ensure that PAs are equitably governed and managed.⁷¹ As shown above, the concept of PAs has evolved to embrace a more complex notion of ICCAs, acknowledging both the necessity and many benefits of appropriately recognizing and supporting the role of Indigenous peoples and local communities in the governance and management of natural resources and in development

⁶³ Resolution 10.10, ‘Guidance on global flyway conservation and options for policy arrangements’ Adopted by the Conference of the Parties at its Tenth Meeting, UNEP/CMS/Resolution 10.10 (25 November 2011) para 2. See also para 3: ‘to carry out work to determine how best to manage landscapes, including the designation of protected trans-boundary habitat corridors and ecological networks with suitable and sufficient habitat in which to breed, forage and rest’.

⁶⁴ Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar) 996 UNTS (1971) 245. In force 21 December 1975.

⁶⁵ *ibid*, Article 2(1) (emphasis added); Article 2(4).

⁶⁶ The Ramsar Strategic Plan 2009-2015 as adopted by Resolution X.1 (2008) and adjusted for the 2013-2015 triennium by Resolution XI.3 (2012) <<http://www.ramsar.org/pdf/strat-plan-2009-e-adj.pdf>>. The latest version of all the most important guidance documents can be found in Ramsar Convention Secretariat, ‘Ramsar Handbooks for the Wise Use of Wetlands’ (Ramsar 2010) <http://www.ramsar.org/cda/en/ramsar-documents-guidelines/main/ramsar/1-31-105_4000_0_>. See in particular, ‘Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands’ <<http://www.ramsar.org/pdf/lib/hbk4-03.pdf>> (adopted at the 7th Meeting of the Conference of the Contracting Parties as the Annex to Resolution VII.7).

⁶⁷ Decision VIII/24, ‘Protected areas’ in Decisions Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Eighth Meeting, UNEP/CBD/COP/VIII/24 (31 March 2006) para 42, preamble to Options for cooperation for the establishment of marine protected areas in marine areas beyond the limits of national jurisdiction.

⁶⁸ UN Convention on the Law of the Sea (Montego Bay) 21 ILM (1982) 1261. In force 16 November 1994.

⁶⁹ Tullio Scovazzi, ‘Marine Protected Areas on the High Seas: Some Legal and Policy Considerations’ paper presented at the World Park Congress, Governance Session “Protecting Marine Biodiversity beyond National Jurisdiction” (Durban,

South Africa, 11 September 2003) <<http://www.cbd.int/doc/articles/2004/A-00150.pdf>>.

⁷⁰ For example, the 1946 International Convention for the Regulation of Whaling (Washington), providing for “the designation of sanctuary areas” (Article V.1); the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL) (London), as modified by its 1978 Protocol, establishing special areas where particularly strict standards are applied to discharges from ships (Annexes I, II, V); the Guidelines for the Identification of Particularly Sensitive Sea Areas (PSSAs) adopted on 6 November 1991 by the Assembly of the International Maritime Organization (IMO) under Resolution A.720 (17); the 1991 Protocol on Environmental Protection to the Antarctic Treaty which establishes Antarctic Specially Protected Areas or Antarctic Specially Managed Areas (Annex V). As a reference, see ‘The International Legal Regime of the High Seas and the Seabed beyond the Limits of National Jurisdiction and Options for Cooperation for the Establishment of Marine Protected Areas in Marine Areas beyond the Limits of National Jurisdiction’ in Report of the First Meeting of the Ad Hoc Open Ended Working Group on Protected Areas, UNEP/CBD/WG-PA/1/INF/2 (28 April 2005) <<http://www.cbd.int/doc/meetings/pa/pawg-01/information/pawg-01-inf-02-en.pdf>>; Case-studies on the establishment of marine protected areas beyond national jurisdiction in Report of the First Meeting of the Ad Hoc Open Ended Working Group on Protected Areas, UNEP/CBD/WG-PA/1/INF/3 (17 May 2005) <<http://www.cbd.int/doc/meetings/pa/pawg-01/information/pawg-01-inf-03-en.pdf>>.

⁷¹ Harry Jonas, J. Eli Makagon, Stephanie Booker and Holly Shrumm, An Analysis of International Law, National Legislation, Judgements, and Institutions as they Interrelate with Territories and Areas Conserved by Indigenous Peoples and Local Communities: Report No. 1: International Law and Jurisprudence (Natural Justice 2012) accessed 4 March 2013 <<http://naturaljustice.org/wp-content/uploads/pdf/ICCALegalReviewINTERNATIONALLAWANDJURISPRUDENCE.pdf>>.

decisions with national or regional impact.⁷² Central to this is the appreciation of the multiple roles and benefits of ICCAs, LMMAs and SNSs, including realizing human rights, conserving and sustainably using biodiversity, eradicating poverty, securing livelihoods, food and water sovereignty, and mitigating and adapting to climate change.⁷³ The International Labour Organization Convention No. 169 Concerning Indigenous and Tribal Peoples (ILO Convention 169) includes provisions aimed at ensuring their participation and consultation in specific development projects and as a more general and continuous involvement in public decisions.⁷⁴ Beyond ILO Convention 169,⁷⁵ the rights of Indigenous peoples are now codified in the UN Declaration on the Rights of Indigenous Peoples, which is recognized as reflecting customary international law.⁷⁶ Indigenous peoples' and local communities' rights vis-à-vis protected areas are also included in a wide range of CBD decisions and IUCN resolutions.⁷⁷

REGIONAL INSTRUMENTS

African Convention on the Conservation of Nature and Natural Resources (African Convention)

The African Convention was adopted *inter alia* to “foster the conservation and sustainable use of natural resources” and requires its parties to “establish, maintain and extend, as appropriate, conservation areas”.⁷⁸ The African Convention incorporates several international principles of PA conservation as well as importantly recognized good governance principles. First, the African Convention incorporates provisions of the CBD related to *in-situ* conservation and the establishment of PAs and links this obligation to the IUCN PA management categories.⁷⁹ Specifically, Article XII states that Parties “shall

establish, maintain and extend, as appropriate, conservation areas”. The African Convention also gives the explicit attention to the important role of local communities in PA development and management. Finally, it also focuses on the need for compatible land uses outside of established conservation areas and for strategies to sustain broader ecological processes.⁸⁰

ASEAN Declaration on Heritage Parks and Reserves

Eleven PAs were designated under the 1984 ASEAN Declaration on Heritage Parks and Reserves, which was revitalized in 2003 so as to include a total of twenty-six PAs.⁸¹ The establishment of National Parks and Reserves as PAs is also a fundamental part of the later ASEAN Agreement on the Conservation of Nature and Natural Resources, which stemmed from the Declaration but is not yet in force.⁸²

The European Framework

In the European framework, the 1979 Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) promotes the conservation of habitats of the wild flora and fauna species, endangered natural habitats, and areas of importance for migratory species.⁸³ This instrument is significant in two ways *vis-à-vis* Target 11; first, the Bern Convention is open to non-member states of the Council of Europe and, to date, it has been ratified by four African countries;⁸⁴ and second, it lead to the creation of the so-called Emerald Network of Areas of Special Conservation Interest.⁸⁵

In order to comply with its obligation under the Convention,⁸⁶ the European Union (EU) adopted the “Habitats Directive”, which mandates that “[a] coherent European ecological network of special areas of conservation shall be set up under

⁷² Harry Jonas, Ashish Kothari and Holly Shrumm, Legal and Institutional Aspects of Recognizing and Supporting Conservation by Indigenous Peoples and Local Communities: An Analysis of International Law, National Legislation, Judgements and Institutions as they Interrelate with Territories and Areas Conserved by Indigenous Peoples and Local Communities (Natural Justice 2012) accessed 4 March 2013 <<http://naturaljustice.org/library/our-publications/legal-research-resources/icca-legal-reviews>>.

⁷³ Regional human rights regimes could also open interesting perspectives: e.g. African Charter on Human and Peoples' Rights (Banjul) 21 ILM (1982) 52, in particular Article 24. For background, Alan Boyle, ‘Human Rights or Environmental Rights? A Reassessment’ [2007] 18 Fordham Env LR 471.

⁷⁴ ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries 28 ILM (1989) 1382. In force 5 September 1991. In particular, Article 6-7; Section II. Land: Articles 13-19.

⁷⁵ ILO 169 has limited membership, thus the tendency of Indigenous groups to reference UNDRIP. While UNDRIP is officially a non-binding instrument, it has universal endorsement.

⁷⁶ International Law Association, 2010. The Hague Conference on the Rights of Indigenous Peoples: Interim Report. Available at: <http://www.ila-hq.org/download.cfm/docid/9E2AEDE9-BB41-42BA-9999F0359E79F62D>. Notwithstanding this view, parties such as Canada have opposed references to UNDRIP in CBD COP decisions and in the Nagoya Protocol, for example.

⁷⁷ Harry Jonas, J. Eli Makagon and Holly Shrumm, The Living Convention: A Compendium of Internationally Recognized Rights that Support the Integrity and Resilience of Indigenous Peoples' and Local Communities' Territories and other Social-ecological Systems (Natural Justice 2013) accessed 23 May 2013 <<http://naturaljustice.org/library/our-publications/legal-research-resources/the-living-convention>>.

⁷⁸ Revised African Convention on the Conservation of Nature and Natural Resources, adopted on 11 July 2003 in Maputo (but not in force), amending the 1968 African Convention on the Conservation of Nature and Natural Resources (Algiers) 1001 UNTS 4 (in force 16 June 1969). See Article II(2). Objectives; Article XII. Conservation Areas (emphasis added). See also Annex II: Strict Natural Reserves, Wilderness Areas, National Parks, National Monuments, Habitat/Species Management Areas, Protected Landscape/Seascape, or

Managed Resource Protected Areas. For background, IUCN, An Introduction to the African Convention on the Conservation of Nature and Natural Resources (IUCN 2004); Michael Bowman, Peter Davies, Catherine Redgwell (eds), Lyster's International Wildlife Law (Cambridge University Press 2011) ch 9.

⁷⁹ See Dudley, N. (Editor) (2008). *Guidelines for Applying Protected Area Management Categories*. Gland, Switzerland: IUCN.

⁸⁰ Lausche, Barbara. Guidelines for Protected Areas Legislation. IUCN. Gland, Switzerland. 2011

⁸¹ 1984 ASEAN Declaration on Heritage Parks and Reserves adopted on 29 November 1984 in Bangkok, at the 2nd ASEAN Ministerial Meeting on the Environment; revitalized in 2003 as ASEAN Declaration on Heritage Parks <<http://www.asean.org/news/item/asean-declaration-on-heritage-parks>>.

⁸² ASEAN Agreement on the Conservation of Nature and Natural Resources (Kuala Lumpur) 15 EPL (1985) 64. Not in force (ratified only by Indonesia, Thailand and the Philippines). In particular, Article 13. Protected Areas.

⁸³ 1979 Convention on the Conservation of European Wildlife and Natural Habitats (Berne) UKTS (1982) 56. In force 1 June 1982. See Articles 1-4, 6.b, 9.

⁸⁴ Burkina Faso (1990), Morocco (2001), Senegal (1987), Tunisia (1996).

⁸⁵ Resolution No. 1 (1989) of the Standing Committee on the provisions relating to the conservation of habitats; Recommendation No. 14 (1989) of the Standing Committee on species habitat conservation and on the conservation of endangered natural habitats; Recommendation No. 15 (1989) of the Standing Committee on the conservation of endangered natural habitat types; Recommendation No. 16 (1989) of the Standing Committee on areas of special conservation interest; Recommendation No. 25 (1991) of the Standing Committee on the conservation of natural areas outside protected areas proper; Resolution No. 3 (1996) of the Standing Committee concerning the setting up of a Pan-European Ecological Network. For useful background, see Convention on the conservation of European wildlife and natural habitats - 4th meeting of the Group of Experts on Protected Areas and Ecological Networks (Strasbourg, 18-19 September 2012) - The Emerald Network: a Network of Areas of Special Conservation Interest - Explanatory document and compilation of relevant texts T-PVS/PA (2012) 2.

⁸⁶ Bern Convention (n 29) Article 4(1).

the title Natura 2000”.⁸⁷ Together with the “Birds Directive”,⁸⁸ this key legal instrument is the centrepiece of EU biodiversity and nature conservation law.

Moreover, the preservation and protection of the Alpine region is covered by the 1991 Alpine Convention, the Protocol of which on the Conservation of Nature and the Countryside establishes the obligation “to preserve, manage and, where necessary, to extend the existing protected areas, in keeping with their protective function, and also to define, where possible, new protected areas”.⁸⁹ Since Target 11 ends with the recommendation of “integrat[ing]” PAs “into the wider landscape and seascape”, it is important to also take into full consideration the ambitious European Landscape Convention, which “applies to all parts of Europe, including natural, rural, urban and peri-urban areas. It is not confined to either the cultural, man-made or natural components of landscape: it is concerned with all of these and how they interconnect”.⁹⁰

UNEP Regional Seas Agreements

Numerous instruments for the protection of the marine environment at a regional level are relevant to the achievement of Target 11. The 1974 UNEP Regional Seas Programme covers eighteen regions of the world and revolves around the national adoption of strategic action plans for the protection of coastal and marine environment, as well as the promotion of sustainable development.⁹¹ UNEP is directly responsible for six of the programmes, while five of them have not been initiated under its auspices, but are linked by the pursuit of common objectives.

Among the UNEP-administered programmes, the Mediterranean region adopted an action plan (MAP) in 1975 and codified its commitments into the legally binding Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean Sea (Barcelona Convention), followed by six related protocols.⁹² Particularly relevant to Target 11 is the Protocol on Specially Protected Areas and Biological Diversity in the Mediterranean, which aims at coordinating measures to facilitate the establishment of Specially Protected Areas “in the marine and coastal zones” subject to the sovereignty and jurisdiction of its contracting parties; to this end, it created a List of Specially Protected Areas of Mediterranean Importance (the SPAMI List).⁹³

The North-East Atlantic Region has an independent programme, the key legal instrument of which is the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention), which requires its parties to “take all possible steps to prevent and eliminate pollution and ... take the necessary measures to protect the maritime area against the adverse effects of human activities”.⁹⁴ Annex V of the OSPAR Convention is dedicated to the protection and conservation of the ecosystems and biological diversity of the maritime area, and requires contracting parties “to develop means, consistent with international law, for instituting protective, conservation, restorative or precautionary measures related to specific areas or sites or related to particular species or habitats”.⁹⁵ In this framework, an OSPAR Network of MPAs has been established and work is currently being undertaken to ensure that it is “ecologically coherent” (i.e. “consistent with the CBD target for effectively conserved marine and coastal ecological regions”) and “well-managed”.⁹⁶

⁸⁷ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] *OJ L 206*. Article 3(1) (emphasis added). See Resolution No. 5 (1998) of the Standing Committee concerning the rules for the Network of areas of special conservation interest (Emerald Network), preamble: for EU state members which are parties to the Berne Convention, the Emerald Network sites “are those of the Natura 2000”. For background, *Nicolas De Sadeleer, ‘Habitat Conservation in EC Law: From Nature Sanctuaries to Ecological Networks’* [2005] 5 *Yearbook of European Environmental Law* 215.

⁸⁸ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds [2009] *OJ L 20*.

⁸⁹ 1991 Convention on the Protection of the Alps 25 *EPL* (1995) 105. In force 6 March 1995. The contracting parties are Germany, France, Italy, Slovenia, Liechtenstein, Austria, Switzerland, the European Economic Community, and the Principality of Monaco. See also Protocol on the Implementation of the Alpine Convention of 1991 Relating to the Conservation of Nature and the Countryside, Article 11(1).

⁹⁰ 2000 European Landscape Convention (Florence) 176 *CETS*. In force 1 March 2004. See Article 2: “this Convention (...) includes land, inland water and marine areas. It concerns landscapes that might be considered outstanding as well as every day or degraded landscapes”. See European Landscape Convention, ‘Explanatory Report’ para 26. See also Recommendation CM/Rec (2008) 3 of the Committee of Ministers to member states on the guidelines for the

implementation of the European Landscape Convention, adopted by the Committee of Ministers on 6 February 2008.

⁹¹ UNEP, ‘Regional Seas Programme’ <<http://www.unep.org/regionalseas/about/default.asp>>.

⁹² 1976 Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona) 15 *ILM* (1976) 290. In force 12 February 1978 (amended in 1995, in force in 2004). For background, see Tullio Scovazzi, *Marine Specially Protected Areas: The General Aspects and the Mediterranean Regional System* (Kluwer 1999); and Tullio Scovazzi, ‘New International Instruments for Marine Protected Areas in the Mediterranean Sea’ in Maria Gavouneli, Nikolaos Skourtos and Anastasia Strati (eds), *Unresolved Issues and New Challenges to the Law of the Sea: Time before and Time after* (Martinus Nijhoff 2006) ch 5.

⁹³ Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean [1999] *OJ L322*, Article 5(1) and Article 8. The Protocol was first adopted in 1982; then amended in 1995, and in force in 1999.

⁹⁴ 1992 Convention on the Protection of the Marine Environment of the North East Atlantic (OSPAR Convention) 32 *ILM* (1993) 1072. In force 25 March 1998. Article 1(a).

⁹⁵ *ibid.* Annex V, Article 3(1)(b)(iii).

⁹⁶ OSPAR Recommendation 2003/3 adopted by OSPAR 2003 (OSPAR 03/17/1, Annex 9), amended by OSPAR Recommendation 2010/2 (OSPAR 10/23/1, Annex 7) Article 2.1(a) and 2.1(b).

PART III: NATIONAL AND SUBNATIONAL IMPLEMENTATION

IMPLICATIONS FOR DOMESTIC IMPLEMENTATION

The majority of the world's governments already have an array of legal instruments to increase and improve their PA systems and other effective area-based conservation measures, including for connectivity conservation.⁹⁷ Yet most legal frameworks for PAs and biodiversity conservation still present many weaknesses. These include, for example, weak legal and institutional frameworks and information to achieve coherent land use planning, equitable and effective governance and management, and relevant conservation measures, including in transboundary contexts. These factors are often compounded by, on the one hand, pressures of encroachment or degazettement of PAs for economic and industrial activities and, on the other, governments' perceived economic costs of increasing PA coverage, lands and resources of which could otherwise be used for other economic activities. Top-down, strictly protected areas are often viewed by indigenous peoples and local communities with suspicion as another means of dispossessing them of their territories and areas. On top of this, development and global change factors, including climate change, are adding new complexities to existing social and ecological systems. These weaknesses, gaps and new challenges require serious and sustained attention, including by increasing the capacity of people involved in the governance and management of PAs.⁹⁸

Notwithstanding the above pressures, this is an era of opportunity for the achievement of Target 11. First, with the advances in theoretical and practical approaches to landscape, seascape and transboundary conservation, there is greater opportunity to integrate PAs into larger land and resource use plans, including the activities of sectors such as agriculture, forestry and mining. Second, there are opportunities in the area of national and regional land use regulations that can contribute to ecological representativeness, connectivity conservation and the establishment of areas of importance for biodiversity. These objectives can be achieved through a range of different legal and quasi-legal instruments and approaches, including national conservation and sustainable use legislation, land use planning legislation, voluntary conservation agreements, and community-based conservation. Third, the IUCN PA governance types and management categories provide governments with a range of options to achieve the overall terrestrial and marine PA targets. In this regard, new and innovative approaches such as payments for ecosystem services (PES), access and benefit sharing (ABS), reducing

emissions from deforestation and forest degradation (REDD) with REDD+ including the role of conservation, sustainable management of forests as well as enhancement of forest carbon stocks, and voluntary conservation agreements are potentially useful. Fourth, there are renewed efforts to identify marine areas of ecological or biological significance (EBSAs) beyond national jurisdiction.



In this context, policymakers should understand 'innovation' as a three-tiered approach. First, better use of existing instruments should be focused upon. This can be achieved through ensuring the participation of all concerned groups, incorporating the latest scientific information (including based on traditional knowledge systems), strengthening management, monitoring, and enforcement capacity, modernizing financial accounting, and insisting on broader conservation planning as part of sustainable development. Those are core elements that are already present in some form in most protected areas-related laws. Second, new innovative approaches can be developed or adopted from other national contexts. The following section provides a range of such examples. Third, in order to achieve Target 11's goal of integrating PAs and other effective area-based conservation measures into broader landscapes and seascapes and increasing ecological connectivity, greater consideration should be given to non-conservation legal tools that need to integrate biodiversity conservation and connectivity objectives into their frameworks. Such instruments include land use planning and development control laws, including coastal development and zoning; sustainable use laws in agriculture, fisheries, forestry, and water management, as well as laws on public finance, economic incentives and disincentives; and, where applicable, use of innovative market mechanisms such as payments for

⁹⁷ Ideas for this section provided by Barbara Lausche, personal communication. September 2013.

⁹⁸ For more information on the implementation of the CBD Programme of Work on Protected Areas, as well as main impediments for effective

establishment and management of protected areas, see for example Secretariat of the Convention on Biological Diversity, 'In-Depth Review of the Implementation of the Programme of Work on Protected Areas – Note by the Executive Secretary', UNEP/CBD/SBSTTA/14/5 (14 January 2010).

ecosystem services, conservation banking, biodiversity offsets, and tradable development rights.

A SURVEY OF LEGAL APPROACHES

This section provides a range of innovative legal approaches that countries are currently using to achieve Target 11.

Canada, Ocean Act, 2004

Creates a nuanced three-zone system of protection of marine areas that balances social and economic interests with environmental values. Also addresses marine connectivity by prohibiting activities outside of the PA boundary and off limit to Canadian maritime zone jurisdiction.

The Marine Protected Area (MPA) of the Gully of Nova Scotia was officially established in 2004 by Canada's Ocean Act. This MPA covers the largest submarine canyon in eastern North America, located south-east of Nova Scotia, Canada. It is outstanding how the Ocean Act addresses the protection of the Gully, by establishing three zones of protection. Zone 1 is very strict, preventing any kind of disturbance, damage or destruction of the Gully, while Zone 2 allows a limited fishery. Zone 3 is designated as a potential multi-use area without any activity or plan approval. The usefulness of this multi-purpose zoning is how it accommodates social and economic interests with environmental values. Another interesting aspect is established in the vicinity clause of the Gully Regulations, in which it is prohibited depositing, discharging or dumping outside the MPA boundary, which is off limit of the Canadian maritime zone jurisdiction. As a result, hydrocarbon exploration and exploitation has been prevented in the Gully while fisheries, marine scientific research and shipping have been substantially reduced.⁹⁹

France, National Legal Framework for Protected Areas

Illustrates a legal system for protected areas which relies mostly on land use planning to achieve conservation objectives and with a centralized system implemented at local level.

In France, two major trends emerge with respect to the protection of natural areas: an increasing involvement local government and local communities, going so far as to decentralize protection in some cases; and greater emphasis on the sustainable development of natural areas in addition to their protection. The legal framework for PAs is not based on a specific law but on various legislative and regulatory instruments which were consolidated as part of the 2000 Environmental Code. At the same time, some types of PAs may be established on the basis of sectoral legislation such as the Land Planning Code and the Forestry Code. Also the diversity of PAs categories with respect to the initiating institutions as well as the management and protection modalities is another important asset of the French PAs system. This diversity allows appropriate solutions to be found for PAs management and

protection pursuant to specific objectives defined by the public authorities.¹⁰⁰

Peru, National Protected Areas Act (Law 26834), 1997

Illustrates a model law in a developing country for both terrestrial and marine PAs.

Peru's system of protected areas has been developed recently so it is still in process of consolidation. The country's legal framework for PAs is comprehensive. The framework consists of the Natural Protected Areas (NPA) Act (1997) and its Regulations (2001) plus several legal regulatory instruments adopted since; always based on participatory processes. While this development is commendable, the implementation and enforcement are not effective enough and therefore sustainable and efficient management is still far from being achieved.

Despite the fact that further measures are required for the implementation of the legal framework on the subject, the NPA Act is a comprehensive modern law for both land and marine protected areas, it recognizes the existence of a sub-system of marine and coastal areas, which has yet to be implemented. It incorporates the IUCN Protected Areas Categories and another important element is the inclusion of private conservation areas.

In order to include areas of particular importance for biodiversity and ecosystem services, such as areas with particularly important habitats which is the case of sensitive marine areas, the NPA System has included the possibility of PAs extending over marine ecosystems. As above, the creation of a sub-system of marine and PAs has since led to frequent discussion. The legal frameworks for the establishment of PAs is available but actual definition and implementation remain a challenge. In this sense, the first and only Peruvian PA extending over marine ecosystems is the Paracas National Reserve, which was established in 1975. There are two other national protected areas that cover coastal ecosystems: the Lagunas de Mejia (1984) and Manglares de Tumbes (1988) national sanctuaries.

The NPA System includes public, private and community-based protected areas. These two last ones can be formally recognized by the government on a voluntary basis, upon the owners' application. For these cases the central government concludes agreements with landowners in order to support productive management of their property in a manner that is compatible with the goals of the protected area. To ensure an effective and equitable management of these areas with the participation of Indigenous and local communities, Peru has also developed what is called delegated management or co-management of PAs at two levels: with non-profit organizations and with Indigenous peoples in community reserves under special rules. For both cases, the legal tool that has been implemented is a management contract that may

⁹⁹ Government of Canada. Justice Laws Website. Ocean Act S.C. 1996. Assented to 1996-12-18. Available at: <http://laws-lois.justice.gc.ca/eng/acts/O-2.4/page-1.html>. Lausche, Barbara. Guidelines for Protected Areas Legislation. IUCN. Gland, Switzerland. 2011, available at: <http://data.iucn.org/dbtw-wpd/edocs/EPLP-081.pdf>

¹⁰⁰ Lausche, Barbara. Guidelines for Protected Areas Legislation. IUCN. Gland, Switzerland. 2011, available at: <http://data.iucn.org/dbtw-wpd/edocs/EPLP-081.pdf>

involve management of the entire area, part of the area or its operations.

Australia, Indigenous Protected Areas System, 1992

PAs managed by Indigenous peoples through a combination of legal means and other effective means, with a government initiative to support and formally recognize areas as part of national system.

Indigenous Protected Areas (IPAs) emerged from the Australian Government's 1992 commitment to establish a system of PAs that is comprehensive, adequate and representative of all the terrestrial bioregions of Australia – the National Reserve System (NRS). IPAs are planned, voluntarily declared (or dedicated) as PAs and managed by Indigenous peoples themselves. While IPAs are not government PAs, the IPA Program is an Australian Government initiative to support these activities and to formally recognize IPAs as part of the NRS. In recognition that many government PAs had already been established on traditional estates without Indigenous peoples' consent, the IPA program also includes funding to enable Indigenous peoples to negotiate enhanced engagement in the management of existing government-declared national parks and other protected areas. Australia's terrestrial PA estate (the National Reserve System) totals about 106 million hectares (about 14% of the nation's total land area), of which about 26.5 million hectares are contributed by IPAs.

IPAs are established by Indigenous people independently of legislation, in accordance with the IUCN Protected Areas Guidelines which state that PAs can be managed by "legal and other effective means". In practice, IPAs are typically managed by a combination of legal means (land ownership title, community by-laws, legislated rights to use natural resources, etc.) and other effective means (customary laws, ranger patrols, liaison, education, signage, partnerships with conservation agencies, research, etc.) The IPAs support Indigenous landowners to develop and implement plans of management for conservation of their lands as parts of Australia's NRS. This large and growing PAs network represents both a challenge and an opportunity for Indigenous peoples' livelihoods and connections to Country. PAs as a focus for reconciliation rather than dispossession is a relatively recent phenomenon and an ongoing journey.¹⁰¹

Australia, Corridors and Lease Agreements (1978-1996)

Beyond legal frameworks, Australia has two interesting programmes to support PAs, namely on: corridors and ecological frameworks, and joint-governance and -management of PAs.

Australia has a comprehensive and globally recognized legislative and policy regime for terrestrial and marine PAs. Consistently with this scheme, Australia has developed interesting programs for the establishment of conservation

corridors and for celebrating conservation agreements with Indigenous peoples to tackle its biodiversity loss. Neither example below are part of a legal regime, but function in the context of an overall federal framework for environmental protection and biodiversity conservation and also with protected areas legal frameworks at the state and territorial level.

Keeping PAs interconnected using corridors and ecological networks to allow connectivity, has become an important conservation response. Even though there are no direct references to connectivity corridors in the Environment Protection and Biodiversity Conservation (EPBC) Act, a great deal of work has been done on connectivity corridors in Australia. A clear example of wider landscapes initiatives is the Great Eastern Ranges Initiative. The aim of this globally and internationally recognised program is conserving and managing a continental lifeline of habitats, landscapes and people by improving and reconnecting 'islands' of natural vegetation along the Great Eastern Ranges. It also represents an adaptive response to climate caused biome shifts, helps to provide essential ecological services including potable water and it is important for Indigenous peoples and also for non-Indigenous Australians. This Initiative illustrates the fact there where there is political will and institutional capacity, the law is not always necessary to ensure connectivity.

In order for PAs to be effectively and equitably managed and ensure ecological integrity and protection of species, habitats and ecosystems processes, with the full participation of indigenous communities, Australia has dealt with the challenge of looking for culturally appropriate ways for Indigenous peoples to participate in the preparation of management plans for PAs and the day-to-day management of the reserves. In this context, the Commonwealth has reached some agreements to manage several PAs jointly with traditional owners. The first area managed under such an agreement was the Kakadu National Park.¹⁰² Through formal lease agreements traditional owners and other Aboriginal peoples have been granted rights such as being able to continue with hunting and food gathering (other than for purposes of sale), the right to continue the traditional use of any area of the park for ceremonial and religious purposes and under certain conditions the right to reside within the park.¹⁰³

South Africa, Protected Areas Act, 2003

Provides cooperative governance with regard to declaration and management, entrenches a national system of PAs as part of a broader strategy to manage and conserve biodiversity as well as a representative network of PAs on state, private and communal land, promotes the sustainable use of PAs for the benefit of all as well as the participation of local communities. Also when interpreted and applied in conjunction with other legal instruments, it offers an array of planning tools for implementing connectivity.

The Protected Areas Act prescribes a national framework for the declaration and management of PAs which applies to terrestrial

¹⁰¹ Australian Government. Department of Sustainability, Environment, Water, Population and Communities. National Reserve System, available at: <http://www.environment.gov.au/parks/nrs/index.html>

¹⁰² Available at <http://www.environment.gov.au/parks/kakadu/management/lease.html>
¹⁰³ Lausche, Barbara. Guidelines for Protected Areas Legislation. IUCN. Gland, Switzerland. 2011, available at: <http://data.iucn.org/dbtw-wpd/edocs/EPLP-081.pdf>

and marine environment. The ambit of the Act is broad regarding the forms of land which can be incorporated within PAs. It specifically recognizes that its objects can only be achieved if it is achieved in partnership with people, an essential element in the South African context where 83 per cent of land is privately owned. In an effort to ensure the practical realization of this partnership, the Protected Areas Act specifically provides for the incorporation of private, communal and state-owned land within all forms of PAs prescribed under the Act. It provides for a broad array of governance options including state-owned PAs, privately-owned PAs and community-owned PAs. The governance options are further diversified as the Act provides for a range of management categories and management options for PAs. Also the national and provincial conservation authorities have implemented various stewardship programmes to demystify these options and facilitate their practical uptake by private and communal landowners.

Another interesting aspect of the Act is that, although it does not expressly provide for connectivity conservation, there are various statutory tools contained within the Act itself and in other laws (such as the Biodiversity Act, 2004) that can be used to implement connectivity conservation.

Denmark, Nature Protection Act, 1992

Allows designation of individual PAs throughout Denmark with clauses that ensure the protection of certain habitat types and zones, whether it is on private owned-land or not.

Denmark has some of the most advanced legislation in the world for protecting special habitat types including all types of wetlands. The Nature Protection Act (1992) may be used to establish individual PAs. However the Act has a valuable role that goes much beyond this function. It includes clauses to ensure the general protection of certain habitat types and zones throughout the country, considering how little natural land is left. These habitat types and zones are protected by the State, prohibiting any activity that may alter their natural state, therefore limiting the options of the use of the land of the private property. The Act does not dispose of any compensation if the areas are privately owned. The exception is with a permit which may only be granted in special circumstances. Protected habitat types include watercourses of a certain size, natural lakes of more than 100 square meters, and other environmental sensitive areas including heaths, bogs, humid permanent grasslands and uncultivated dry meadows. Protected habitat types cover approximately 9.4 per cent of the land surface, and are registered and shown on official government maps. Protected zones include beaches and zones around lakes and watercourses of a certain size or width. There are also building control zones within 300 meters of forests; these are called protected forest buffers.¹⁰⁴

South Korea, Act on the Protection of the Baekdu Daegan Mountain System, 2003

Creates a biodiversity corridor along the South Korean part of the Baekdu Daegan Mountain System. This Act is supported by

a variety of distinct laws, destined to create newly PAs, as well as to connect them with previous designated ones.

An innovative and successful example of a large-scale connectivity conservation initiative where a distinct law exists can be found in South Korea and its Act on the Protection of the Baekdu Daegan Mountain System (BDMS) 2003 (Act No. 7038), last amended in 2009 (Act. no. 9479). This Act designates an area of 263,427 hectares, of which 86 per cent is made up of 183 PAs existing at the time the Act entered into force, and 14 per cent consists of new buffer and core areas created to complete the corridor. The Act came into effect in 2005, creating a biodiversity corridor along the South Korea part of the Baekdu Daegan Mountain System, the main mountain range of the Korean peninsula. The South Korea BDMS Act provides an integration of all PAs within the system, whether previously existing or new, and declared under a variety of different laws, responding to the shared authority of two main ministries; the Ministry of Environment (MoE) (responsible for 18 PAs) and Korea Forest Service (KFS) (responsible for 144 different types of PAs from protected forest to land-use change restricted areas) share the responsibility of implementation of the System on the covered PAs of the Biological Corridor. In addition, the Ministry of Tourism, Culture and Sport, through the Cultural Heritage Administration is responsible for administering the law that applies to the 21 cultural heritage protection properties in the BDMS. The Ministry for Food, Agriculture, Forestry and Fisheries, through the KFS, has overall responsibility for the BDMS. This Act prevails any other existing one, including land planning law.



The BDMS Corridor is an innovative large-scale connectivity conservation measure. The BDMS Act establishes shared responsibility amongst the different ministries relating to the corridor based on their competences over the territories covered. This Act provides the conservation of cultural heritage property, as part of the BDMS, within the framework of the connectivity offered by a biological corridor, proving once again its innovative features. The Act on the Protection of BDMS is the main example of a legal measure to promote connectivity within the Asian continent.¹⁰⁵

¹⁰⁴ Consolidated Act No. 749 of 21 June 2007, as last amended by Act No. 514 of 12 June 2009. Lausche, Barbara. Guidelines for Protected Areas Legislation. IUCN. Gland, Switzerland. 2011, available at: <http://data.iucn.org/dbtw-wpd/edocs/EPLP-081.pdf>

¹⁰⁵ Lausche, Barbara. The Legal Aspects of Connectivity Conservation. IUCN. Gland, Switzerland, 2012. Act on Protection of Baekdu Daegan Mountains System, No. 7038 of date December 31st, 2003, last amended in 2009 by Act No. 7284.

England, Agriculture Act, 1986

Provides the Environmentally Sensitive Areas (ESA) scheme, offering incentives to farmers to adopt agricultural practices which safeguard and enhance environmentally valuable areas of the landscape. This scheme formed part of the connection between agriculture and the countryside with a sustainable development that the Act pursued.

The Agriculture Act provides further provision in relation to agriculture and the countryside, with an approach to sustainable development. This Act, establishes the Environmentally Sensitive Areas (ESA) scheme, which was introduced in 1987 to offer incentives to encourage farmers to adopt agricultural practices which would safeguard and enhance parts of the country of particularly high landscape, wildlife or historic value. The ESA scheme was voluntary. Farmers with eligible land in ESAs were offered a ten-year agreement that provided an annual payment in return for following a certain prescribed set of farming practices designed to conserve and enhance the landscape, historic and wildlife value of the land under agreement. Among the resulting environmental benefits are: improved numbers of wading birds in lowland wet grassland, protection and improvement of species-rich grassland on the chalk downs and in hay meadows, landscape improvements from better management of features such as hedges and dry stone walls and from conversion of arable to grassland, and protection of historic features, such as ancient field systems. However, the ESA scheme has been closed to new applicants and suppressed by the Environmental Stewardship scheme since 2005, as a result of England's rural development obligations within the European Union.

This innovative initiative within the Agriculture Act of 1986 was an economic incentive mechanism to protect the environment. The Act provides the possibility for farmers to enhance and protect their working land by submitting it to the ESA scheme. In return these farmers would be paid as an incentive for the protection of these lands, to which they would be instructed on how to do so. This is a good example of a win-win situation, in which the interested farmer would economically benefit from the safeguard of its own working field, as part of the broader landscape.¹⁰⁶

The Netherlands, Nature Policy Plan (Natuurbeleidsplan) of 1990

Illustrates the creation and conservation of a coherent and connected national network of natural areas and the development of conservation tools to involve the local communities and owners.

The Ecologische Hoofdstructuur (EHS), the Netherlands Ecological Network, was introduced by the Nature Policy Plan of 1990. It has a central role in connectivity conservation in the Netherlands. It is considered the backbone of nature in the state and consists of, and connects, large and small existing natural areas, (agri)cultural landscapes with notable ecological values,

and areas still to be converted into nature, the ones that are called "nature development areas". The Network's main objective is to contribute to the conservation and restoration of nature and biological diversity in the Netherlands. It specifically comprises core areas, nature development areas and connectivity zones. In addition, the EHS aims to connect Dutch areas with natural areas across the border in neighbouring states.

Over the years the EHS has been shaped and protected through a mix of instruments, including land purchase, spatial planning, and nature conservation legislation. Voluntary and incentive-based mechanisms are an innovative tool from the EHS. Private nature conservation measures are stimulated in various ways. One longstanding instrument is the Estates Act *Natuurschoonwet* 1928. This Act aims at the conservation of estates, particularly their natural values, by providing the owners, usufructuaries and leaseholders with tax benefits if they meet certain conservation conditions in these areas. To be eligible for these tax benefits an estate must measure at least five hectares and at least 30% of its area must consist of woods or other natural landscapes. Tax benefits might include exemptions from Real Estate Tax and Income Tax.

Nature conservation measures on private lands are also promoted by the 2011 subsidy program *Subsidie Natuur- en Landschapsbeheer* (SNL). The SNL's scheme allows farmers and other private landowners to apply for subsidies to finance projects within the EHS over a six-year period. These projects focus on farmland and natural habitats. Farmland projects may include measures aimed at protecting nests or creating foraging areas, some of them are especially relevant because they include connectivity measures to protect botanical meadows and meadows with flora of high ecological value. Natural habitats projects are aimed at preserving a specific habitat type or cultural landscape. There are also specific subsidiary programs for the conversion of land into nature.¹⁰⁷

Chile, General Law of Fisheries and Aquaculture, 1989

Illustrates the use of other types of effective area-based conservation measures and promotes an innovative method for safeguarding both habitats and populations of species, ensuring ecological integrity with the added value of the participation of the local communities, guaranteeing therefore the effective and equitable management of these areas.

In Chile, according to Law No. 18.892/108, a marine area of five nautical miles has been exclusively reserved for artisanal fishing extractive activities. Artisanal fishing organizations have the exclusive right for fishing activities in ocean beaches and inland waters. They have also been granted the exclusive management for sustainable use of the hydro-biologic resources in those areas. In order to access these benefits they must register themselves in the Artisanal Fishing Registry established by Law No. 20431/109, 2010 under Decree 430 (General Law of Fisheries and Agriculture). This Law also

¹⁰⁶ Legislation of the United Kingdom. Agricultural Act, 1986, available at: <http://www.legislation.gov.uk/ukpga/1986/49/contents>. Lausche, Barbara. The Legal Aspects of Connectivity Conservation. Volume 1 – A Concept Paper. IUCN. Gland, Switzerland. 2013

¹⁰⁷ Source: Trouwborst, Arie. The Legal Aspects of Connectivity Conservation. Volume 2- Case Studies. IUCN. Gland, Switzerland. 2013.

¹⁰⁸ Ley No. 18.892 de 1989 y sus modificaciones, Ley General de Pesca y Acuicultura.

¹⁰⁹ Ley No. 20437 Modifica la Ley General de Pesca y Acuicultura en Materia de áreas de Manejo y Registro Pesquero Artesanal. Available at <http://www.leychile.cl/Navegar?idNorma=1012765&buscar=Registro+Pesquero+Artesanal>

establishes certain management areas for the development of these activities. For an appropriate control of this kind of fishing the government of Chile counts on the National Service of Fishing and Aquaculture which is part of the Ministry of Economy, Promotion and Tourism and is in charge of the Artisanal Fishing Registry and together with the Sub-secretary of Fishing and Aquaculture is in charge of everything related to Artisanal Fishing in the country.¹¹⁰ The Sub-secretary has also established the Artisanal Fishing Monitoring Program. The main objective of this program is to obtain real data and be able to regulate the exercise of artisanal fishing. In addition, specific regulations on artisanal fishing have been published. These regulations establish certain conditions for ships, rules for extraction and registration among others. Another tool that has been developed is a Management Areas Plan, which allows a better control by dividing the fishing areas into easily identifiable regions.

Bolivia, Constitution of the Republic of Bolivia, 2009, and Related Laws

The recognition of lands of original communities addresses the original rights to indigenous peasant territories, allowing them to collectively possess titles over lands and territories. The Indigenous peoples' management of their territory will lead to a significant degree to ecosystem integrity, without necessarily being a Protected Area.

Bolivia has recognized Lands of Original Communities (TCOs, in Spanish) since 1994. In the new constitution of 2009, this concept has been replaced by the broader concept "Original Indigenous Peasant Territories" (TIOCs, in Spanish). Article 2 of the new Constitution states: "Considering the pre-colonial existence of nations and original Indigenous peasant peoples and their ancestral dominance over their territories, the free determination within the framework of the unity of the State is guaranteed, which consists of their right to autonomy, self-government, their culture, the recognition of their institutions and the consolidation of their territorial entities, in accordance with this Constitution and the Law". Article 30, the right to collective title over lands and territories of Indigenous peoples is recognized, which is further elaborated in Article 403. Indigenous peoples exercise a right to property and exclusive access, use and exploitation rights over renewable natural resources on their territories. Regarding non-renewable resources and sub-soil resources like fossil fuels, only a right to prior and informed consultation and a share of the benefits of the exploitation is granted.

TCOs and TIOCs represent a formal recognition by the State of the autonomy of the relevant Indigenous peoples, and allow them to manage their territories through their own governance structures. The frameworks respect Indigenous perspectives on the concept of 'territory', which unites the aspect of political control, power and administration with the exercise of property rights over the land and the natural resources that can be found on the land. Notably, TCOs and TIOCs are not conservation areas in the strict sense. However, most TCOs include high biodiversity and are ecologically stable and a significant degree

of the ecosystem integrity is due to the traditional interaction between Indigenous peoples and their territories. For that reason, fourteen areas have the double status of TCO and protected area.¹¹¹

An example of this approach is provided by Kaa-Iya del Gran Chaco National Park and Integrated Management Area (KINP). In 1995, the Izoceno-Guarani people, numbering approximately 10000 inhabitants in 23 communities along the banks of Parapeti river in the Gran Chaco, Santa Cruz, Bolivia, were under considerable pressure from expanding agriculture and industries. With the help of the Wildlife Conservation Society (WCS) the community proposed to the government the creation Kaa-Iya del Gran Chaco National Park and Integrated Management Area (KINP) and subsequently assumed the responsibility to co-manage the park creation. In 1997, the community presented a territorial demand for a TCO of 1.9 million hectares adjacent to KINP. The community then established the Ivi Iyambae Foundation and started the Kaa-Iya project in conjunction with WCS and USAID Bolivia to promote institutional strengthening and the long term sustainable management of the KINP and TCO.

Fiji i Taukei Lands Act and Fiji i Taukei Lands Trust Act, 2011

With the provision of native lands to be held by native Fijians, the Act established the possibility of the involvement of communities in the governance of coastal zones, having resulted in over 149 locally managed marine areas, managed by 400 communities all over Fiji.

Fiji's customary land tenure system is well established in two pieces of legislation; namely, the i Taukei Lands Act [Cap 133] (TLA) and the i Taukei Lands Trust Act [Cap 134] (TLTA). Formerly the Native Lands Act, and the Native Lands Trust Act, both pieces of legislation were amended by the Native Lands (Amendment) Decree and Native Lands Trust (Amendment) Decree in 2011 replacing the word "Native" or "Indigenous Fijian" wherever it appeared in the principal Act with the word "i Taukei".

The TLA plays a crucial role in preserving and maintaining customary communal ownership of native lands by the i Taukei. Section 3 of the TLA establishes that all i Taukei lands are to be held by the Indigenous people according to native custom and tradition. Section 4 of the same Act establishes the i Taukei Land Commission (TLC) which was formed in 1880 primarily to: register i Taukei lands; identify ownership of such lands; and classify customary roles and migration records of communal units. The TLC can determine disputes relating to customary headships or titles and land disputes which can be appealed to the Appeals Tribunal. They can also demarcate and set aside sites as village reserves.¹¹²

The TLTA establishes the i Taukei Land Trust Board (TLTB). The TLTB was formed in 1940 to secure, protect and manage land ownership rights assigned to i Taukei landowners and to

110 http://www.sernapesca.cl/index.php?option=com_content&view=article&id=83&Itemid=221

111 Gaceta Oficial de Bolivia. Constitución Política del Estado. February 2009. Available at:

http://suprema.poderjudicial.gob.bo/Leyes%20y%20Reglamentos/Nueva_CP_E.pdf

112 Native reserves, according to the provisions of the TLTA are native lands that will not be subjected to a lease.

facilitate the commercial transactions that revolve around its use.

i Taukei lands are further classified into i Taukei land leases and i Taukei reserves. i Taukei reserves comprise 38% of all i Taukei Lands. In section 5 of the TLTA, no i Taukei lands can be sold except to the State and any dealings with the land require the approval of the majority of the members of the mataqali over the age of 21. Under this system, land and communal owners are registered with no individual titles issued. Ownership is vested in the mataqali and individual membership of the mataqali is recorded in the Vola-ni-Kawa Bula (VKB). Legally, the final decision on land lease approvals rests with the TLTB, which controls and administers all native lands. If leased, i Taukeiland falls under the 'western' system of land tenure (Ministry of Lands 1992). Notably, under this system, by 2011 there were over 149 Locally Managed Marine Areas (LMMAs) managed by 400 communities, covering half the area of Fiji's traditional fishing grounds (qoliqoli).¹¹³

Namibia, Nature Conservation Amendment Act, 1996

Provides rights over wildlife for rural communities who are able to receive user rights for commercial and subsistence uses. This right is given through a structure of conservancies, which should be formed by these communities in order to gain their management on wildlife back.

Namibia provides Africa's leading example of a formalized, government-crafted process of devolving clearly delineated rights over wildlife to rural communities. Namibia's Communal Conservancies are based on the Policy on Wildlife Management, Utilisation and Tourism in Communal Areas (1995) and the subsequently enacted Nature Conservation Amendment Act (1996). The Act provides for rural communities to form conservancies and gain use rights over wildlife and tourism within the conservancies. Through Communal Conservancies, adopted in policy reforms shortly after Namibia became independent from South Africa in 1990, local communities can apply for and receive broad user rights over wildlife and both commercial and subsistence uses. Since the first of these conservancies were created in 1998, over 70 Communal Conservancies now cover nearly 15 million hectares, which is more than 16% of the country's total area and roughly the same amount of land contained in Namibia's formal protected area system.¹¹⁴

Italy, Ampezzo Valley Rules, 1971

Recognizes the management of the forests and the pastures of the Ampezzo Valley by a well-defined community as a private legal entity. The Valley is recognized as a common property to the community of mountain families that live within this area.

This is a site specific legal innovation. The community of the Ampezzo Valley (Italy) received national recognition as a private legal entity whose mission and activities encompass general benefits and concerns. The legal entity is called the

"Regole of the Ampezzo Valley" (Regole d'Ampezzo)– a federation of eleven small villages that, for about a thousand years, held and shared under unbroken communal property a land rich in forests and pastures. The Regole (whose name means "rules") are both a specific way of governing the territory and a form of rural civilization that survived modernity and persist today side-by-side millionaires' villas and elite tourism.

Today, the territory of the Regole – including the Regional Natural Park – is a "common property" owned and managed by a well-defined community through ancient customary rules recognized by the contemporary legal system. Specifically, in 1971, the Italian State recognized the Regole have a legal status as a "community of mountain families" with legal personality under private law. At the same time it recognized that the Regole had some statutory autonomy, i.e., its members are free to determine their own uses of the resources without particular obligations imposed by the law. In 1971, the Regole of the Ampezzo valley also incorporated themselves to all effects as a "company" for the management of the forests and the pastures, with the writing of a new *Laudo* (charter) adapted to the new times, which essentially maintained intact all the ancient concepts and uses. Both the local *Laudo* and the national law that recognized the institution of the Regole firmly assert two concepts: the indivisibility of the territory and the exercise of the rights over that territory by the descendants of the ancient families of the original *Regolieri*.¹¹⁵

The Philippines, Indigenous Peoples' Rights Act, 1997

Provides for the development of Ancestral Domain Sustainable Development and Protection Plans (ADSDPP), which supports the Indigenous people to delineate their ancestral domains, as well as to manage their own ICCAs. It also established the basis for a project focusing on the expansion and strengthening of the terrestrial PA system, linking it to local communities and Indigenous lands in the surrounding landscapes.

In the Philippines, financial support from the Global Environment Facility to the government has enabled the provision of technical assistance to indigenous peoples in the formulation of their Ancestral Domain Sustainable Development and Protection Plans (ADSDPP). The support that Indigenous peoples receive in the delineation of their ancestral domains and the formulation of their ADSDPPs based on their traditions and culture effectively supports their initiatives for ICCA governance and management. The Philippine government also launched the New Conservation Areas in the Philippines Project (NewCAPP) "to expand and strengthen the terrestrial protected area system in the Philippines by developing new protected areas models [...] and expand the [...] system with the integration of new conservation areas to include sites with a comprehensive ecological coverage and strong links to local communities and indigenous lands in the surrounding landscape."¹¹⁶ NewCAPP is not directly related

¹¹³ Fiji Legislation. Native Lands. Available at:

http://www.paclii.org/fj/legis/consol_act_OK/nlta206/

¹¹⁴ Government Gazette of the Republic of Namibia. Nature Conservation Amendment Act, 1996. Available online at:

http://www.nacso.org.na/dwnlds/Nature_Consevation_Amendment_Act.pdf

¹¹⁵ Lausche, Barbara. Guidelines for Protected Areas Legislation. IUCN. Gland, Switzerland. 2011, available at: <http://data.iucn.org/dbtw-wpd/edocs/EPLP-081.pdf>. Regole d' Ampezzo. Available online at:

<http://www.regole.it/Ing/Regole/normativa.php>

¹¹⁶ <http://www.newcapp.org/>

to the Indigenous Peoples Rights' Act (1997),¹¹⁷ but it is seen by indigenous peoples as an opportunity to push ancestral domains for greater government recognition and support. This is expected to bolster the claims of Indigenous peoples over their ancestral domains and provide additional layer of security and protection. Many indigenous communities look at the Indigenous Peoples' Rights Act as a positive affirmation of their historical role in conservation. In this context, ancestral domains are currently better appreciated than the PAs system which is seen as an imposition from the State designed to take them out from their traditional territories.¹¹⁸

Panama, Political Constitution of the Republic of Panama, Comarcas

Constitutional recognition of Indigenous peoples' "Comarcas" within which they have created their own laws providing procedures to designate certain areas as conservation areas. Some of these Comarcas grant the authority to administer these conserved areas by its own traditional authorities.

The Constitution of Panama recognizes and respects the ethnic identity of national Indigenous peoples, and includes provisions that promote programs and institutions to develop the material, social and spiritual values of their cultures, including their languages. The Indigenous peoples of Panama include the Ngabe, the Guna, the Embera, the Wounaan, the Bugle, the Naso and the Bri-Bri, who represent approximately 285,231 persons, a little less than 10% of the Panamanian population. A little over half of the Indigenous people live in Indigenous territories called "Comarcas", which cover 20% of the territory of Panama, some 15,103 km².

The innovative element of this set up, is that the state has granted authority to Indigenous peoples to govern and manage their lands. Several of the laws of the Panamanian Comarcas (for example, the Law of the Comarca Embera-Wounaan, the Law of the Comarca Ngobe-Bugle and the Law of the Comarca Kuna de Wargandi) include procedures to designate certain areas as conservation areas. Moreover, the Embera-Wounaan Comarca Law grants the authority to administer the part of the Darien National Park located on its territory to its own traditional authorities, in conjunction with the National Environmental Authority. While the laws of the Panamanian State do not refer to 'ICCAs', the laws of the Indigenous Comarcas do mention the traditional management practices in Indigenous peoples' territories.¹¹⁹

This approach is bolstered by other national laws. For example, the Environmental Planning Law of the National Territory in Panama emphasizes that social, cultural and ecological aspects should be taken into account in environmental planning, which implies that traditional practices of sustainable use and conservation, which are closely related to cultural and social aspects, are implicitly recognized. The law also states that

Indigenous Comarca's have the duty to contribute to the protection and conservation of the natural resources within their territories, in accordance with the parameters established by the national Environmental Authority together with the Indigenous authorities of the Comarca's, in accordance with existing laws.¹²⁰

CONCLUSIONS

This scoping paper has provided an overview of the core elements of Target 11 which include:

- > Quantitative targets for terrestrial and marine areas by 2020;
- > Means of conservation, including: PAs and other effective area-based conservation measures; and
- > Qualitative elements, including: ecological representativeness, establishment of areas of particular importance for biodiversity and ecosystem services, management equity and effectiveness, connectivity conservation, integration into wider landscapes and seascapes.

It also details the evolution of a range of international and legal instruments relevant to Target 11, illustrating considerable advances across these legal frameworks. In this context, it argues that while many countries have PA frameworks, they remain weak for a variety of reasons¹²¹ and are compounded by factors such as encroachment or degazettement. Notwithstanding these challenges, the paper suggests "this is an era of opportunity for the achievement of Target 11" and encourages national governments to understand 'innovation' as a three-tiered approach, namely:

- > Focus on better use of existing instruments, including a range of approaches such as conducting conservation planning as part of sustainable development;
- > Develop new approaches or draw upon approaches from other national contexts, such as the seventeen examples set out above.
- > Give greater consideration to non-conservation legal tools, such as: land use planning and development control laws; sustainable use laws in agriculture, fisheries, forestry, and water management, as well as laws on public finance, economic incentives and disincentives; and, where applicable, use of innovative market mechanisms.

The next tranche of work on Target 11 consists of developing more in depth papers on each innovative legal approach which will, among other things, shed light on the range of legal means countries are using – and could use – to achieve each distinct element of Target 11.

¹¹⁷ Office of the President of the Philippines. The Indigenous Peoples' Rights Act of 1997. Available online at: <http://opapp.gov.ph/resources/indigenous-peoples%E2%80%99-rights-act-1997>. Review: <http://naturaljustice.org/library/our-publications/legal-research-resources/icca-legal-reviews>

¹¹⁸ Pedragosa, S., 2012. 'Philippines Report,' in Jonas H. A. Kothari and S. Shrumm.

¹¹⁹ República de Panamá. Constitución Política de la República de Panamá. Available at

<http://www.asamblea.gob.pa/main/LinkClick.aspx?fileticket=fDgmRvYW8cY%3D&tabid=123>

¹²⁰ Masardule, O., ICCA Review: Panama. <http://naturaljustice.org/library/our-publications/legal-research-resources/icca-legal-reviews>.

¹²¹ Weaknesses include legal and institutional frameworks and information to achieve coherent land use planning, equitable and effective governance and management, and relevant conservation measures, including in transboundary contexts.

PART IV: LEADING LEGAL PUBLICATIONS FOR FURTHER READING

Protected Areas

Lausche, B., 2011. *Guidelines for Protected Areas Legislation*. IUCN: Gland, Switzerland.

Borrini-Feyerabend, G., N. Dudley, T. Jaeger, B. Lassen, N. Pathak Broome, A. Phillips and T. Sandwith (2013). *Governance of Protected Areas: From understanding to action*. Best Practice Protected Area Guidelines Series No. 20. IUCN: Gland, Switzerland.

Connectivity

Crooks, K., and M. Sanjayan (eds.), 2006. *Connectivity Conservation*. Cambridge University Press: United Kingdom.

Brown, J., N. Mitchell, and M. Beresford (eds.), 2005. *The Protected Landscape Approach. Linking Nature, Culture and Community*. IUCN: Gland, Switzerland, and Cambridge.

Amend, T., J. Brown, A. Kothari, A. Phillips, and S. Stolton (eds.), 2008. *Protected Landscapes and Agrobiodiversity Values. Volume 1 in the Values of Protected Landscapes and Seascapes Series*. IUCN and GTZ: Gland, Switzerland; Mallarach, J. M. (ed.), 2008.

Protected Landscapes and Cultural and Spiritual Values. Volume 2 in the Values of Protected Landscapes and Seascapes Series. IUCN: Gland, Switzerland.

Dudley, N., and S. Stolton (eds.), 2012. Protected Landscapes and Wild Biodiversity. Volume 3 in the Values of Protected Landscapes and Seascapes Series. IUCN: Gland, Switzerland.

Lausche, B., 2012. The Legal Aspects of Connectivity Conservation: A Concept Paper (Draft 8 August, 2012). IUCN: Gland, Switzerland.

ICCAs

Kothari, A., with C. Corrigan, H. Jonas, A. Neumann and H. Shrumm (eds), 2012. Recognising and Supporting Territories and Areas Conserved By Indigenous Peoples And Local Communities: Global Overview and National Case Studies. Technical Series no. 64. Secretariat of the Convention on

Biological Diversity, ICCA Consortium, Kalpavriksh, and Natural Justice: Montreal, Canada.

Borrini-Feyerabend, G., 2010. Strengthening What Works: Recognizing and supporting the conservation achievements of Indigenous peoples and local communities. IUCN CEESP Briefing Note 10. CENESTA: Tehran. http://www.iucn.org/about/union/commissions/ceesp/ceesp_publications/?5323/Strengthening-what-works

LMMAs

Govan H., W. Aalbersberg, A. Tawake and J. Parks, 2008. *Locally-managed Marine Areas: A Guide to Supporting Community based Adaptive Management*. LMMMA Network, Fiji.

Law, Institutions and Community Conservation

Jonas H., A. Kothari and H. Shrumm, 2012. Legal and Institutional Aspects of Recognizing and Supporting Conservation by Indigenous Peoples and Local Communities: An Analysis of International Law, National Legislation, Judgements and Institutions as they Interrelate with Territories and Areas Conserved by Indigenous Peoples and Local Communities. Natural Justice and Kalpavriksh: Bangalore and Pune. <http://naturaljustice.org/library/our-publications/legal-research-resources/icca-legal-reviews>

Jonas H., J. E. Makagon, S. Booker, and H. Shrumm, 2012. An Analysis of International Law, National Legislation, Judgements, and Institutions as they Interrelate with Territories and Areas Conserved by Indigenous Peoples and Local Communities: Report No. 1: International Law and Jurisprudence. Natural Justice and Kalpavriksh: Bangalore and Pune. <http://naturaljustice.org/wp-content/uploads/pdf/ICCALegalReviewINTERNATIONALLAWANDJURISPRUDENCE.pdf>

Jonas H., E. J. Makagon, and H. Shrumm, 2013. The Living Convention: A Compendium of Internationally Recognized Rights that Support the Integrity and Resilience of Indigenous Peoples' and Local Communities' Territories and other Socio-ecological Systems. Natural Justice: South Africa and Malaysia. <http://naturaljustice.org/library/our-publications/legal-research-resources/the-living-convention>

Legal Preparedness for Achieving the Aichi Biodiversity Targets

The global initiative on Legal Preparedness for Achieving the Aichi Biodiversity Targets is connecting people globally to collaborate on empowering laws for biodiversity. The Initiative focuses on sharing evidence, experiences and good practices on biodiversity-minded legal approaches being implemented in countries around the world. Through this knowledge exchange, it aims to rapidly foster new thinking, build new capacity, and provide practical guidance to engage governments, citizens and the private sector to develop new legal approaches, tailored to country and local contexts, to achieve the Aichi Biodiversity Targets.

Author:

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About the Scoping Study

This scoping study is a “living document” aimed at setting out the existing state of legal knowledge intended to provide a foundation for discussion and research, to be updated as new knowledge is gathered through consultations and further study. We appreciate your comments to add to and improve this study, please send to AichiLaw@idlo.int.

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