

## MOVING TOWARDS GREENER INFRASTRUCTURE: INNOVATIVE LEGAL SOLUTIONS TO COMMON CHALLENGES

For most countries, developing transport and power-generation infrastructure is vital to progress. However, when infrastructure decisions fail to account for biodiversity and differentiated gender impacts, negative effects can be large – sometimes outweighing benefits. Legal frameworks play a central role in determining outcomes. This brief presents key findings from a review of innovative policies that seek to address some of the most common challenges to reconciling infrastructure, conservation, and gender concerns.

The review first considered the legal frameworks governing infrastructure development in four countries: Brazil, Peru, the Democratic Republic of Congo, and Uganda. It focused in particular on hydroelectric and road projects. Although each country has unique laws and structures regulating integration of biodiversity and gender

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issues into infrastructure decisions, the most critical challenges facing the regulatory processes are similar. They include:

- Inadequate funding, staff, equipment, and expertise within agencies responsible for environmental review and licensing;
- Challenges to unbiased decision-making due to conflicts of interest and pressure to move forward with large infrastructure projects independent of negative impacts;
- Unclear jurisdictional lines between agencies; and
- Inadequate implementation and enforcement of existing laws.

Building on this understanding of common challenges, we then surveyed a broader set of countries – more than 20 in all – to identify legal options for addressing weaknesses or opportunities as they relate to biodiversity and gender. Following are examples of some of the most noteworthy measures:

- 1) Ensuring that agencies responsible for environmental review and licensing have sufficient resources to carry out their functions. Fiji's regulations allow the government to require project proponents to reimburse reasonable agency expenses, including related to reviewing proposals and Environmental Impact Assessment (EIA) reports, field visits, and inspections. These provisions reduce scope for project approvals due simply to insufficient funding to conduct rigorous reviews.
- 2) Guaranteeing that EIAs occur early in the decision-making process. In the USA, regulations stipulate that until the relevant agency issues an EIA decision, project



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proponents are prohibited from actions that have adverse environmental impacts. Further, neither proponents nor government may take actions that would limit or prejudice the choice of alternatives.

3) Improving the quality of EIAs by making consultants accountable. In Uganda, regulations provide for criminal penalties to be imposed on EIA consultants who provide false or misleading information, including up to 18 months in prison.

4) Defining key issues to be considered in EIAs. Under Kenyan law, EIAs must consider potential impact on a wide range of biodiversity issues, including: wild animals, vegetation, soil fertility, breeding populations of fish or game, wetlands, ecosystem maintenance, food chains, aquifer recharge, fragile ecosystems, water sources, and landscapes.

5) Providing binding guidelines on compensation. In Colombia, “The Manual to Determine Compensation for Biodiversity Loss” describes both which impacts require compensation, and at what scale. It also requires that compensatory measures be carried-out in equivalent ecosystems to those affected by the specific project, and lists acceptable conservation measures, including support for new protected areas, creation of private conservation areas, restoration, and reforestation.

6) Requiring EIAs to evaluate differentiated impacts on men and women. Negative impacts on women in particular are often obscured where not considered explicitly. Regulations in the Philippines require projects that will have a significant impact on women to include in the EIA a specific chapter considering gender issues.

7) Making it compulsory for developers to clearly disclose information on potential local impacts and take into account feedback from affected communities. Peru’s regulations require that relevant information be broadcast in local languages. South Africa’s regulations



require EIA consultants to review and consolidate local comments into a written scoping report.

8) Providing legal options that create financial incentives and disincentives to improve compliance with mitigation and compensations plans. Regulations in the USA require performance bonds and insurance in a variety of cases including related to transportation infrastructure. Such up-front financial commitments help ensure that companies will comply with their environmental obligations, and reduce government liability.

9) Empowering agencies to respond effectively where projects violate the terms of their approval. South Africa’s regulations allow for immediate suspension of a project if there is non-compliance with an environmental authorization, or if the authorization was obtained with fraudulent information. In Uganda, the government may direct project proponents to undertake specific mitigation measures to ensure compliance with predictions made in their EIAs.

10) Creating and implementing whistleblower protection laws to increase reporting when legal requirements are violated. Nepal’s regulations place an affirmative responsibility on public employees to report corruption. They also provide protection for whistleblowers’ identities and employment, and allow whistleblowers to receive compensation for undue harm.

The full report details these and numerous other laws. It concludes that, if done carefully, adapting existing legal options to new contexts offers significant potential to improve infrastructure development as it relates to both biodiversity conservation and gender-differentiated impacts.

*For the full report, please visit:*

<http://www.conservation-strategy.org/en/publication/legal-solutions-for-greener-infrastructure>

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