

-MODULE 4-

GENERIC ELEMENTS FOR PA LEGISLATION

-PLANNING, TYPES, ESTABLISHMENT, DISESTABLISHMENT & ALTERATION-

CONTEXT OF MODULE WITHIN BROADER COURSE

- This is the fourth Module in the Course.
- Planning is an essential component of any PAs legal framework as it aids in ensuring that:
 - Prior to establishment
 - All relevant factors/plans (physical, spatial, legal, institutional, environmental, social and economic) have been identified and taken into account in determining whether or not to establish the PA, where its boundaries should lie, what form it should take, who should manage it etc.
 - All land tenure arrangements have been considered in respect of land to be included in the PA.
 - All relevant stakeholders have been identified and have been given an opportunity to participate in and inform the process.
 - The baseline information necessary for developing a coherent and equitable PAs system plan and individual PA management plans is clear.
 - Post establishment
 - The procedure for developing and the authority/responsibility for implementing the PAs system plan and individual PA management plans are certain.
 - Necessary baseline information is available against which to assess the functioning of the system plan and each PA.
- PA laws prescribe the broad array of issues which must be considered in the process leading to the establishment of a PA which include:
 - Land tenure arrangements
 - Relevant plans
 - Stakeholders and stakeholder interest.
- Several different forms of plans/planning are of relevance to PAs and these include:
 - Systems Planning
 - Management Planning
- The form and purpose of the above plans/planning differ but they often intersect with one another both in respect of their formulation and implementation.
- PA laws provide for the development and implementation of many of these plans, and legal mechanisms to promote alignment between them.

- Given that the nature, form and function of PAs vary widely, many PA laws seek to categorise different types of PAs.
- In an effort to provide some guidance and standardisation, the IUCN has developed a series of Management Categories and Governance Types for PAs, which are increasingly reflected in domestic PA laws.
- The legal provisions governing planning and categorisation naturally need to be accompanied by those providing for the formal declaration, disestablishment or alteration of the borders of PAs.
- The process to establish a PA is often particularly complex with the PA law providing for:
 - Initiation/nomination procedures
 - Public participation procedures
 - Intergovernmental consultation procedures
 - Interim protection measures
 - Land acquisition measures
 - Demarcation of boundaries
 - Formal declaration procedures
 - Registration procedures
- With the growing need to incorporate private/communal land (i.e. non-state owned land) in PA systems, the following legal mechanisms are increasingly included in PA legislation:
 - Conservation agreements
 - Easements
 - Covenants
 - Servitudes
 - Leases
- A thorough knowledge of all the above components is essential to anyone tasked with understanding, implementing, reviewing or drafting a PA law.
- This Module therefore seeks to introduce the Learners to five key components embedded in PA laws, namely:
 - Planning
 - Types/categories of PAs
 - Procedures for establishing a PA
 - Procedures for disestablishing a PA
 - Procedures for altering the borders of PAs.

OVERVIEW OF KEY CONTENT

In this Module the Educator will introduce the Learner to:

- **Protected Areas Planning**
 - Different Planning Dimensions
 - Legal issues informing the establishment in of a PA
 - Tenure/rights issues
 - General plans
 - Stakeholders
 - Types of PA plans
 - System plans
 - Management plans

- **Protected Area Categories/Types**
 - IUCN Management Categories
 - IUCN Governance Types
 - Reflecting/enabling the categories/types in/through the law

- **Establishing/Declaring a Protected Area**
 - Initiation/nomination procedures
 - Public participation procedures
 - Intergovernmental consultation procedures
 - Interim protection measures
 - Land acquisition measures
 - Demarcation of boundaries
 - Formal declaration procedures
 - Registration procedures

- **Disestablishing a Protected Area**
 - Grounds
 - Processes
 - Authority

- **Altering the Borders of a Protected Area**
 - Grounds
 - Processes
 - Authority

MODULE OBJECTIVES & OUTCOMES

- **Objectives**
 - Introduce the Learners to the different ways in which planning provisions (in both the pre-establishment and post-establishment period) are prescribed in PA laws.
 - Distil the different types of plans/planning of relevance to PAs and how these are provided for in PA laws.
 - Identify the key legal issues that should be taken into account in planning for PAs.
 - Highlight how PA laws can provide for the alignment of these different types of plans/planning and key legal issues impacting on planning for a PA.
 - Clarify the different IUCN Management Categories and Governance Types and how these are given effect to in PA laws.
 - Examine the legal mechanisms of relevance to establishing, disestablishing and altering the boundaries of PAs; and specifically the procedures, prerequisites, authorities and provisions for public participation embedded in PA laws.

- **Desired Outcomes**
 - Understanding of the different ways in which planning provisions (in both the pre-establishment and post-establishment period) are prescribed in PA laws.

- Knowledge of the different types of plans/planning issues of relevance to PAs, how these are provided for in PA laws and legal mechanisms for promoting alignment between them.
- Clarity on the different IUCN Management Categories and Governance Types and how these are given effect to in PA laws.
- Awareness of the legal mechanisms for establishing, disestablishing and altering the boundaries of PAs; and specifically the procedures, prerequisites, authorities and provisions for public participation embedded in PA laws.
- An ability to formulate and critically review the following types of provisions in PA laws:
 - Planning
 - Management Categories and Government Types
 - Establishment Procedures
 - Disestablishment Procedures
 - Boundary Alteration Procedures.

READINGS & RESOURCES

- *PA Law Guidelines* (Pgs 138-162, 172-174)
- *PA Management Guidelines* (Pgs 1-24, 33-50)

STRUCTURE & DURATION OF MODULE

- This Module is structured into **two main components**:
 - **Seminar Presentation**
 - **Exercise**
- The approximate **duration** of the Module is 4 hours comprising of:
 - Seminar Presentation (2 hours)
 - Exercise (2 hours)

REFLECTIVE EXERCISES

In this Module the Educator has the choice of **two exercises**:

- **Exercise 1** - *Matching De Facto Realities to Legal Incorporation Tools*
 - **Nature of the Exercise**
 - Large Group Exercise.
 - Practical Legal Scenario.
 - Legal Problem Solving.
 - Group Presentations.
 - **Purpose of the Exercise**
 - Provide Learners with an opportunity to reflect on their knowledge of the law in a practical context.
 - Increase Learners' ability to identify:
 - Relevant stakeholders in the context of establishing a PA.
 - Different ownership and land-use realities impacting on the establishment of a PA.
 - Core issues that should be scoped in the process leading to the establishment of a PA and the role/influence of PA law on these issues.
 - Increase knowledge of the different legal tools that could be used to incorporate different parcels of land within PAs.
 - **Methodology/Procedure**
 - Divided Learners into four groups.
 - The Educator will present a fictional case study to all Learners (10 minutes).
 - The case study relates to the anticipated formation of a mega reserve and the potential incorporation of different parcels of land:
 - Owned by many different entities (state, private citizens, communities, NGOs and companies).
 - Subject to varying land uses (conservation, mining, development, agriculture).
 - With differing conservation value (some of high conservation value and others of low conservation value).
 - The Groups will then be tasked with identifying (50 minutes):
 - What core domestic issues should be scoped in the pre-establishment planning and negotiation process that could influence the form, nature and process leading to the establishment of the PA? What is the impact/role of PA law on these issues?
 - What different parcels of land are to be included in the PA and what are the distinct ownership/land use arrangements characterising each?
 - Who are relevant stakeholders that should be consulted over the establishment of the PA and why?
 - What legal tools could be used to incorporate the different parcels of land into the PA detailing:

- Which would be most useful/relevant to which parcel of land?
 - Why would it be most useful/relevant?
 - The Learners will then come back together as a group and each Group will be asked to present the outcomes of their discussions on one of the above four issues (4 x 15 minutes = 60 minutes).
 - The Educator will facilitate this process and encourage feedback and additions from other groups.

- **Exercise 2** - *Exploring Protected Areas Planning, Categories/Types, Establishment, Disestablishment and Alteration through the Protected Areas Law Matrix*
 - **Nature of the Exercise**
 - Individual Exercise.
 - Legal Analysis.
 - Completion of PA Law Matrix (Planning, PAs Categories/Types, Declaration, Disestablishment and Alteration).
 - Discussion Forum.

 - **Purpose of the Exercise**
 - Provide Learners with an opportunity to practically use their knowledge.
 - Get Learners reading and analysing PA laws.
 - Increase familiarity with the PA Law Matrix.
 - Possibly build up a repository of PA Law Matrix for more jurisdictions.

 - **Methodology/Procedure**
 - The Educator will provide each Learner with:
 - A blank matrix.
 - A PA law from a particular country (a generic example is provided but Educators are encouraged to select a PA law relevant to their context or that of their audience).
 - Each Learner will be required to critically review the relevant law and complete the relevant components of the PA Law Matrix – ie those relating to planning, PAs categories/types, declaration, disestablishment and alteration (1 hour).
 - All Learners will then come back together as a group and the Educator will, drawing from the Learners' contributions, present a complete PA Law Matrix (which is provided to the Educator or will have been developed by him/her in advance) (1 hour).

NOTES FOR THE EDUCATOR

• **General Preparations for the Module**

- Read the main texts and the additional readings and resources.
- Work through the relevant Seminar Presentation and supporting Notes for the Educator.
- Tailor the Presentation to suit your purpose and audience.
- Read through the relevant Exercises.
- Tailor the Exercises to suit your purpose and audience.

• **Facilitation of the Module**

- The Educator may wish to consider the following factors in tailoring the Seminar Presentation to their specific context and audience:
 - Where this Module is presented as a stand-alone Module - the Educator may wish to insert a slide containing a photograph of him/herself and his/her contact details (after slide 1) and spend some time allowing each of the Learners to introduce him/herself.
 - In the context of the section dealing with Planning for PAs the Educator may wish to integrate a specific example of a PA from their jurisdiction or that of the Learners into the Seminar Presentation (slide 8) and use it as the basis through which to reflect on the key legal issues addressed on slides 9-14.
 - Examples drawn from different jurisdictions are included in the following sections of the Seminar Presentation for illustrative purposes:
 - System Planning (slides 17-19)
 - Management Planning (slides 20-21)

The Educator is encouraged to replace these with examples from their jurisdiction or that of the Learners. Alternatively where the legal framework is not well developed, the Educator can supplement these examples with those from their jurisdiction or that of the Learners with a view to comparing and contrasting the different legal approaches.

- Where the Learners have previously taken Module 1 (Introduction to the Course and Basic PA Concepts) and Module 2 (Governance Principles and Approaches) the Educator may elect to abridge the content on slides 23-34 dealing with the IUCN Management Categories and Governance Types. Alternatively, the Educator can retain this content and present it speedily in the interest of reemphasising these important elements.
- Generic elements typically found in PA laws form the basis of the content included in the following sections of the Seminar Presentation:
 - Establishing PAs (slides 36-46)
 - Disestablishing & Amending the Boundaries of PAs (slides 48-49).

The Educator is encouraged to adapt these slides to reflect the elements contained in the PA law applicable in their jurisdiction or that of the Learners. Alternatively, where this legal framework is not well developed, the Educator can supplement these generic elements with actual legislative examples drawn from their jurisdiction or that of the

Learners with a view to comparing and contrasting the different legal approaches.

- The Educator should be aware that the content dealt with in Module 5 links with that contained in:
 - **Module 2** (Governance Principles & Approaches) - which introduces the notion of “governance” and “PA governance”); and which unpacks the role of law in influencing/informing the governance arrangements at play in a PA.
 - **Module 3** (Definitions, Scope, Principles, Objectives & Institutions) - which covers the legal mechanisms for entrenching/operationalising key management principles and objectives in a PA law.
 - **Module 5** (Management) - which covers the legal mechanisms for implementing management planning in a PA.

ASSESSMENT EXERCISES

• Nature and Guidance on Use of Exercises

- The Educator is provided with a series of essay-style assessment questions that are designed so as to broadly cover the content the Module.
- The questions may be utilised for assessment purposes or as an opportunity for Learners to consolidate their knowledge.
- The questions cover both theoretical and practical issues.
- No mark allocation for the questions has been provided.
- All of the questions are of equal weighting.
- It is recommended that in an exam-type setting, Learners should have 1 hour to answer each question.
- The answers for the questions can be drawn directly from the Seminar Presentation and the accompanying Seminar Notes.

• Assessment Questions

- *Question 1*

Write an essay in which you critically explore what you understand by the notion of “planning” in the context of PAs. Having done so either:

- Canvass the different types of plans of relevance to PAs and the nature, purpose, key legal issues associated with each and the relationship between these plans. OR
- Canvas the legal issues that should inform the decision to establish a PA.

- *Question 2*

During the past decade, the IUCN has developed a series of PA categories/types with a view to facilitating planning of PAs and PA systems; improving information management about PAs; and helping to regulate activities in PAs. Briefly describe the nature and difference between these categories and typologies and the vital role of PA law in promoting them.

- *Question 3*

You are tasked by the Minister to prepare a Memorandum in which you detail the generic legal provisions you should find in a PA law providing for the establishment of a PA. Prepare this memorandum for the Minister.

- *Question 4*

In many jurisdictions, PA laws provide for the inclusion of non-state land within PAs. Write an essay in which you reflect on the possible legal tools for enabling the inclusion of such land within PAs. Be sure to canvas in your essay the nature of and difference between these legal tools, and the key legal elements that need to be included in a PA law to enable each.

- *Question 5*

In an ideal world, PAs should be perpetual in nature. However, environmental, social and economic circumstances do change and most PA laws make provision for amending the boundaries of PAs and/or providing for their disestablishment. Write an essay in which you detail the procedures and safeguards that should be contained in a PA law in order to ensure that these provisions are not subject to abuse.