

## **-MODULE 5-**

### **GENERIC ELEMENTS FOR PA LEGISLATION**

#### **-MANAGEMENT-**

#### **CONTEXT OF MODULE WITHIN BROADER COURSE**

- This is the fifth Module in the Course.
- Management is an essential component of any PA law.
- The relevant management regime should govern the following types of issues:
  - Designation of a management authority for the PA.
  - Co-Management options and arrangements.
  - Preparation, content and approval processes for management plans.
  - Monitoring and reporting requirements.
  - Zoning and buffers.
- Thorough knowledge of all the above components is essential to anyone tasked with understanding, implementing, reviewing or drafting PA law.
- This Module therefore seeks to introduce the Learners to the manner in which PA laws regulate the above management components.

#### **OVERVIEW OF KEY CONTENT**

In this Module the Educator will introduce the Learners to:

- **Management Authorities**
  - Qualification
  - Designation
  - Functions, powers and duties
  - Reporting and accountability
  - Mandate termination
- **Co-Management**
  - Form and nature
  - General legal considerations
    - Definition
    - Authority
    - Written agreements
    - Consistency
    - PA status
  - Special legal considerations relating to voluntary conserved areas
    - Capacity-building and support
    - Flexibility
    - Clarity

- Free prior informed consent
- Customary and traditional rights
- **Management Planning**
  - Form/nature
  - Content
  - Approval process
  - Monitoring and reporting on implementation
- **Zoning**
  - Form and Nature
  - Power to designate
  - Legal consequences of designation
- **Buffers & Connectivity Conservation**
  - Nature and role of buffers.
  - Nature and role of connectivity conservation
  - Special legal considerations relating to buffers and connectivity conservation

## **MODULE OBJECTIVES & OUTCOMES**

- **Objectives**
  - Introduce the Learners to the different components of a management regime contained in PA laws.
  - Clarify who can be appointed as management authorities, the different selection criteria, the process for appointing them and the functions, powers and duties accorded to them.
  - Distil the different management options ranging from single management to co-management.
  - Explain the form, nature and approval process for developing management plans for PAs and the legal mechanisms providing for their implementation.
  - Describe the different legal mechanisms aimed at promoting management monitoring and reporting within a PA.
  - Examine the legal mechanisms governing zoning, buffers and connectivity within and adjacent to PAs.
- **Desired Outcomes**
  - Understanding of the different components of a management regime contained in PA laws.
  - Clarity on the legal process for selecting, appointing and prescribing the functions, powers and duties of management authorities.
  - Knowledge of the different management options ranging from single management to co-management.
  - Understanding of the form, nature and approval process for developing management plans for PAs and the legal mechanisms providing for their implementation.
  - Awareness of different legal mechanisms aimed at promoting management monitoring and reporting within a PA.

- Knowledge of legal mechanisms governing zoning, buffers and connectivity within and adjacent to PAs.
- An ability to formulate and critically review the following types of provisions in PA laws:
  - Management authorities.
  - Co-management.
  - Management planning.
  - Monitoring and reporting.
  - Zoning, buffers and connectivity.

## **READINGS & RESOURCES**

- *PA Law Guidelines* (Pgs 29-33, 129-134, 162-174)

## **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** - *The Challenge in Creating an Effective and Equitable Co-Management Regime*
  - **Nature of the Exercise**
    - Large Group Exercise.
    - Legal Role Play.
    - Mock Negotiation.
  - **Purpose of the Exercise**
    - Provide Learners with an opportunity to practically use their knowledge in a role-play situation.
    - Create an understanding of the legal requirements and issues relating to co-management regimes.
    - Build an appreciation of the many different factors which impact on the conclusion of effective and equitable co-management regimes.
    - Highlight the often-sharp distinction between de jure co-management and de-facto co-management.
    - Increase familiarity with the IUCN Management Categories and Governance Types.
  - **Methodology/Procedure**
    - Divide Learners into the following two groups:
      - The Protected Areas Authority - government conservation authority that wishes to include land in a PA, be appointed as the management authority, and subject the PA to strict regulation.
      - The Community - the less well-resourced indigenous community who owns the land to be included in the PA, wish to play a role in its management, and want to retain access, use and development rights in the PA.
    - The Educator will outline the Case Study (10 minutes)
      - The parties are in the process of negotiating the formation of a new PA.
      - The parties need to negotiate a co-management agreement in terms of the relevant law before the area can be established.
      - The law sets out mandatory content to be agreed upon and contained within the co-management agreement (a list of this content will be provided to the Learners).
    - The Educator will hand out to each group their Negotiating Mandate.
    - Each Group will be tasked with preparing for the mock first-round of negotiations (20 minutes)
      - Familiarise themselves with the Case Study and their Negotiation Mandate
      - Consider the legal requirements for concluding a co-management agreement.

- Prepare their negotiation strategy for their first engagement with the other party.
    - Appoint a lead and assistant chief negotiator to lead their delegation at the impending negotiations.
  - The Educator will then call the two groups together and run the mock first-round of negotiations (40 minutes).
    - The Educator will play the role of facilitator
    - The Educator will use the generic mandatory content to be included in a co-management agreement (set out in the scenario outline) to structure the negotiations.
  - After 40 minutes the Educator will call a break in the negotiations and hand out to each group a revised negotiation mandate reflecting certain concessions and shifts in their initial mandate.
  - Each Group will be tasked with preparing for the mock second-round of negotiations (10 minutes)
    - Consider the state of the negotiations and their revised mandate.
    - Prepare their negotiation strategy for their second engagement with the other party.
    - Appoint a different lead and assistant chief negotiator to lead their delegation at the second round of negotiations.
  - The Educator will then call the two groups together again and run the mock second-round of negotiations (30 minutes).
    - The Educator will play the role of facilitator
    - The Educator will use the generic mandatory content to be included in a co-management agreement (set out in the scenario outline) to structure the negotiations.
  - After 30 minutes the Educator will call a halt to the negotiations, bring the entire group of Learners together and ask them to reflect on (10 minutes):
    - What legal issues are central to co-management arrangements?
    - What negotiation styles they noticed being adopted by the parties to the negotiations?
    - What negotiating strategies they adopted?
    - Which of these styles and strategies worked and which did not and why?
- **Exercise 2** - *Exploring Protected Areas Management through the Protected Areas Law Matrix*
    - **Nature of the Exercise**
      - Individual Exercise.
      - Legal Analysis.
      - Completion of PA Law Matrix (Management).
      - 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 will be provided but Educators will be 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 management (1.5 hours).
  - 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 will have been provided to him/her or have been developed by him/her in advance) (0.5 hours).

## 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 Presentations 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 generic case study used to highlight the relationship between PA Management Issues & the Law (slides 6-9) - the Educator may:
    - Exclude it from the Seminar Presentation entirely if he/she is dealing with a well-capacitated audience.
    - Exclude it from the Seminar Presentation and convert it into a Reflective Exercise to be undertaken by Learners in groups/individually following the Seminar Presentation.
    - Replace the generic factual scenario with an actual case study drawn from/relevant to the Learners' context.
  - In the context of the following substantive sections of the Seminar Presentation, the Educator is encouraged to adapt the content to include legal examples drawn from their context or that of their Learners to illustrate the generic lessons/content highlighted in these slides:
    - Management Authorities (slides 11-15).
    - Co-Management (slides 17-20).
    - Management Planning (slides 22-31).
    - Zoning (slide 33).
    - Buffers & Connectivity (slides 35-38).
  - Some ideas on how to include legal examples relevant to the Learners and their context include:
    - In the context of the section on Co-Management (slides 17-20), the Educator may wish to include a specific case study of a co-management arrangement relevant to the Learners, and use it as the lens through which to critically discuss the different forms of co-management and the manner in which the relevant legal framework has provided for it.
    - In the context of the section on Management Planning (slides 22-31), the Educator may wish to use a particular PA to critically consider the relevant legal framework regulating the form/nature and content of the relevant site management plan, and the legal process governing its creation, approval, monitoring and reporting requirements.

- In the context of the section on Zoning (slide 33), the Educator may similarly wish to select a particular PA which raises zoning issues and critically consider the manner in which the relevant legal framework does/does not enable/promote zoning.
    - In the context of the section on Buffers and Connectivity (slides 35-38), the Educator may wish to source a good/bad example of interconnected/isolated PAs and utilise it as a case study through which to critically review the relevant legislation and legal tools for facilitating or promoting buffers around or connectivity between these PAs.
  - If the Educator will not be presenting Module 3 (Definitions, Scope, Principles, Objectives & Institutions) to the Learners, it may be beneficial to include the following slides from the Seminar Presentation for that Module (namely slides 37 to 53), or some abridged version of them), in the Seminar Presentation for this Module in order to set the necessary context for the discussion of management authorities. This will ensure that the learner understands the different forms of PA institutions, their different roles and the manner in which they relate to one another. These slides could be inserted before the current section on Management Authorities (slides 11-15).
  - If the Educator will also be presenting Modules 7 & 8 (Connectivity Conservation) to the Learners, the Educator may wish to deal with the content on the slides on Buffers and Connectivity (slides 35-38) briefly, or choose to exclude them, as these two issues are comprehensively dealt with in these later Modules.
- The Educator should be aware that the content dealt with in Module 5 links with that contained in:
- **Module 1** (Setting the Context) - which outlines key management principles which should be embedded within site management plans.
  - **Module 2** (Governance Principles & Approaches) - which introduces PA governance types - importantly shared governance - which relates to co-management.
  - **Module 3** (Definitions, Scope, Principles, Objectives & Institutions) - which covers key management principles and objectives which should be embedded within site management plans. It furthermore briefly introduces key PA institutions/authorities, including management authorities and co-management authorities.
  - **Module 4** (Planning, Types, Establishment, Disestablishment & Alteration) - which introduces different types of PA Plans - including site management plans.
  - **Modules 8 & 9** (Connectivity Conservation) - which deal with all issues relating to buffers, corridors and connectivity conservation in detail.



## 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*

PA laws should provide for the designation of a management authority for each PA site. The PA law should ideally regulate a number of issues relating to the designation of these management authorities. Write an essay in which you identify these issues and critically review the different manner in which PA laws can regulate them.

#### ○ *Question 2*

Co-management provisions are commonly included in PA laws where it is anticipated to provide for the sharing of functions, powers and responsibilities between one/more PA authorities. What are the forms of co-management and how do they relate to the IUCN governance types. Furthermore, what legal issues should be addressed in a PA law to provide for effective co-management?

#### ○ *Question 3*

PA laws should provide for the preparation, approval and implementation of a management plan for each individual PA. The manner in which they do so differs substantially. Prepare an essay in which you critically review the key issues which should be addressed in any PA law providing for management planning, and the different manner in which these legal provisions could be formulated.

#### ○ *Question 4*

One of the inherent weaknesses of your country's PA law is that it does not enable management authorities to adopt different management approaches and levels of regulation in respect of different regions of a single PA. Prepare a memorandum for them in which you outline the nature and potential for zoning to provide a useful legal tool to overcome this challenge and the legal issues which would need to be addressed in the PA law to enable and regulate it.

o *Question 5*

'[P]rotected areas, as part of increasingly fragmented and degraded natural ecosystems, will become isolated "ecological islands", less able to stem the accelerating loss of terrestrial and marine biodiversity and less able to maintain ecosystem functions, such as species migration and hydrological flows, that operate at the landscape/seascape level.'

(Lausche et al (2013) *The Legal Aspects of Connectivity Conservation. A Concept Paper*, IUCN, Gland, Switzerland, xi)

This is the caution sounded by scientists for the better part of three decades, which has prompted significant enquiry into how to promote improved linkages within and between PAs, with a view to promoting and/or maintaining connectivity between landscapes/seascapes, habitats, ecological processes and evolutionary processes. The scale and form of mechanisms seeking to promote such connectivity, and the terminology used by landscape ecologists to describe them, vary and include patches, matrices, corridors, linkages, buffers and mosaics. Similarly the benefits associated with improved connectivity are diverse and span biodiversity conservation, climate change adaptation and climate change mitigation. While the notion of connectivity, in an ecological sense, arose in the 1960s and has been the focus of increasing scientific attention ever since, it was not until the advent of the twenty-first century that policy makers have sought to incorporate and give recognition to it in the international, regional and domestic legal discourse.

Write an essay in which you consider the array of potential legal mechanisms for promoting connectivity within and between PAs and the types of legal issues which would need to be addressed in a PA law seeking to enable their implementation.