



STARTING THE PROCESS

II SELECTION, LEGAL FRAMEWORK, AND IDENTIFICATION OF STAKEHOLDERS IN PROTECTED AREAS

As pointed out in Chapter I, there are many definitions and classifications for PA. It would be impossible to adopt one single model, as this diversity does—indeed—reflect the complexity and multiplicity of factors and conditions involved in the definition of objectives and PA administration and management options. Thus, it should be recalled at all times, that the guidelines herein proposed should be adapted to each category, region, and culture where they will be applied.

The methodological proposal presented is based on a logical sequence where, ideally, the gender perspective should be considered throughout the entire process, from the identification and selection of a PA, to its monitoring and evaluation. However, this is not always the case; most PA have been declared and managed without any consideration to the gender equity perspective. Therefore, under certain circumstances, the specialists involved in a PA will have to decide the most adequate moment to begin the process, even if the PA is already operating.

From a gender equity perspective, it is perfectly feasible to make revisions at any moment during the development of a conservation initiative for a PA, provided it follows the concept that the actions involving conservation and sustainable use of natural resources, are part of a process that is under continuous revision and reformulation.

Nevertheless, attention is drawn to the common practice that it is possible to “add” or “glue” gender to plans already designed. It is mistakenly thought that this can be done by a gender specialist. A gender perspective is not about having an annex or paragraph disconnected from the rest of the planning and administration instruments of conservation initiatives for a PA, nor can it be alien to the people involved in the PA. “Gender annexes” usually stay inside of a desk drawer, because of the fact that no one knows what

*Gender is not
something
that can be
glue or add*

to do with them, or how to implement the recommendations proposed, nor do they obtain adequate resource allocation. Gender mainstreaming cannot be worked out by adding feminine endings to the documents, or mentioning that everything will be done based on “a gender perspective”. The same holds true regarding sustainability: a project will not be sustainable by simply saying so.

In practice, gender equity mainstreaming implies revision and redesign of all the relevant aspects of a PA, but this revision can be started at any stage and gradually make progress.

This chapter addresses the three initial stages of a conservation initiative in PA. We have included them under one single chapter because of their briefness and because many of the recommendations applicable to them are further developed in the following chapters. These are:

1. Identification and selection of a PA
2. Developing the legal framework
3. Identification of stakeholders

1 . Identification and selection of a PA

Several criteria should be taken into consideration when making the selection; namely, biogeographical, ecological, economic, social, scientific, national and international relevance, viability or potential for replication. Through an adequate combination of these criteria it will be possible to balance the purposes of conservation with the needs of the local communities and the people who might depend on the PA resources for their way of life.

Selection criteria cannot be restricted to biological or ecological aspects without considering human beings. A significant number of PA around the world are inhabited and their population depend directly on the natural resources for subsistence: in Latin America 86% of PA are inhabited by people, and in Northern and Western Europe 80% to 90% of all PA are inhabited in a seasonal manner, particularly for grazing purposes. It can be stated that there is no patch of ground in the planet that has not been affected, either directly or indirectly, by human activity.

At the time of making the selection and declaration of a PA, the local population should, ideally, be convinced that the existence of the PA will make positive contributions to their quality of life. It is essential to develop ways whereby people will be able to live in a productive and sustainable manner, while preserving biodiversity.

The concepts delimiting protection borders to keep the population away from these areas, or that force their displacement through coercive methods, have been disastrous, not only from a socio-economic point of view, but have also proven non-viable from a biodiversity protection stand point. New ways are now widely accepted to address conservation objectives, through which human activities and social relations should be duly considered at all stages of PA conservation initiatives.

A pre-appraisal is essential to attain an integral vision about the selection and establishment of a PA. This pre-appraisal should be undertaken by a multi-disciplinary team (women and men) and the participation of the potential PA stakeholders. To carry out the pre-appraisal from a gender equity perspective, the authors suggest using the guidelines and recommendations included in Chapter III of this book.

The activities involving the selection and establishment of a PA are, usually, carried out by a small team, far away from the actual site, without the participation of the communities involved, and without a gender perspective. This should not discourage the attempts made towards gender equity, since the design of the PA Management Plan or its revision may be a good time to begin the analysis and instrumentation of the gender approach. Furthermore, the appraisal or remaining steps may also contribute to correct the oversights made in the declaration statement.

The gender perspective, based on social equity, contributes to the achievement of balance between the importance of the various interests of the people, groups and local communities, and the conservation objectives of the PA. Thus, -from a particular experience-, changes can be promoted concerning PA-related local and national legal procedures, regulations and public policies, in order to make them more efficient and fair.

Decrees or declarations represent "the legal infrastructure needed to change the management relations prevailing in ecosystems and natural resources, as well as the organization of local communities and relevant interests towards sustainable development" (SEMARNAP, 1996).

2. Developing the legal framework

The legal procedures involving the creation of a PA will depend on each country's legislation. In general terms, these are enforced through decrees that transform a geographical space (land or aquatic) into a protected natural area.

In other words, the decree establishes a new legal and institutional context over clearly delimited territorial and ecological units.

**In Chapter I
the eco-
regional
approach is
describe**

The ecoregional approach, may be useful at the time of making the legal formalization, as the ecosystems and their dynamics do not fit into the political and administrative delimitations of a territory, for which reason a regulatory plan is needed to help overcome fragmentation. An integral approach to conservation will, most likely, imply an extensive revision of current legislation in many countries, as it may be insufficient, inadequate, or present inconsistencies or contradictions.

An element of strategic importance for the successful establishment and management of PA, is an appropriate legal framework and adequate social, institutional and political conditions to enable enforcement. In many countries, enforcement constitutes the "Achilles' heel" of PA-related environmental legislation. Adequate laws, regulations and policies do not suffice; a sine qua non condition to ensure compliance is the appropriation by the population and institutions of the legal and regulatory instruments.

PA are classified at a national and international level within a legal framework related not only to environmental legislation but

Because of general ignorance about environmental legislation for PA establishment and management, as well as gender equity legislation, there are many times when group or individual decisions are made, which either restrict management or the implementation of the activities undertaken, or result in violations to legal orders.

also to the set of multi-sectoral laws and regulations involving PA territory and spheres of action. Hence, it is necessary to identify all of the dispositions (laws, regulations, official rules, decrees, treaties, agreements and notices) directly related to PA management, as well as those promoting gender equity. Management of said instruments will be a useful tool to validate and support conservation and sustainability initiatives in a PA.

Experts responsible for PA management and administration, researchers, field professionals and, in general, all people and groups involved in the PA, are strongly advised to learn about the legal and regulatory instruments involved in PA establishment and management.

The application of existing regulations and dispositions constitutes one of the most difficult aspects to implement, both in developing as well as developed countries. The goal would be to have regulations generally accepted by the majority of society and which can be enforced. The opportunities for this depend on the level of knowledge of the citizens and the credibility of government programs. In any case, it is often necessary to apply the law in an objective and strong manner, when the parties clearly benefit from non-compliance (World Bank, 1996).

When carrying out the analysis, it is essential to bear in mind that legal dispositions have a different effect on the various populations, and within these, men and women are impacted differently.

It should be pointed out that management and complete understanding of all legal and regulatory instruments is practically impossible; this requires specialists on the various subjects. However, it is also true that knowledge and management of applicable legislation contributes to the empowerment process, and that adequate mechanisms should be implemented to facilitate understanding.

a. The significance of legislation

The establishment of a PA in a country, is—most of the time—accompanied by the promulgation of new laws or the modification of existing ones. PA specific legislation is the starting point for the revision of the existing legal framework. Quite commonly, the laws that regulate PA or the decrees about their creation, lack congruence with respect to other laws or may result openly contradictory. Therefore, the establishment of an adequate legal framework is a process that should also be open to continued revision and improvement.

To the extent where PA are related to biodiversity conservation and the sustainable use of natural resources, it is advisable to review other laws related to:

Other laws

- Environmental laws and laws that regulate natural resources and biodiversity: about wildlife, ecological and territorial legislation, and environmental impact surveys.
- Laws that regulate fishing activities, including regulations involving permit issuance and prohibitions (close seasons), sanctions and incentives.

The following five levels should—at least—be analyzed:

- Laws about maritime rights.
- Laws about hydrocarbons, geology and mining.
- Land legislation, particularly land ownership, land rights, and land uses.
- Forestry legislation.
- Legislation about rural development.
- Legislation on indigenous people.
- Legislation about the use of water and basins.
- Tourism-related laws.

The revision of the legal framework does not only have to verify congruity among the different laws, but also among the various laws applicable to the various levels of involvement.

- Local and community
- Municipal
- State
- National
- International

Revision of the legal framework should be focused on the compatibility of the various scopes of action, as well as on the identification of potential conflicts and legal vacuums that might be found.

Biodiversity conservation may be considered as a topic of nationwide interest and, therefore, fall under federal jurisdiction; however, it is possible that the approval for the various land uses may correspond to local or municipal authorities. To avoid potential conflicts, the zonation and establishment of restrictions or permits should be carried out in full agreement with the authorities involved and the local communities.

*Annex 2
contains a
listing of
international
agreements,
treaties,
and pacts
involving PA
and gender
equity*

b. Relevant aspects to take into account when considering the legal framework from a gender equity perspective

The PA regulating legal framework should also contribute to equity, for which reason, its revision should consider at least the following aspects:

- Legislation should include both, conservation and sustainable development objectives; i.e., quality of life of the communities and people settled within PA.
- High priority should be assigned to the revision of uses and customs and common law rights. Nevertheless caution should be taken since some common laws do not promote equity.

Indigenous populations inhabit almost 20% of the Earth, on lands that have been their home for thousands of years. They are important caretakers of the land. Quite frequently, the lands where indigenous people live are superimposed by PA areas. The culture and customs of these communities should be carefully studied and understood. Their sustainable management practices, as well as common law rights should be duly incorporated into the modifications made to legal frameworks. Equally important is to give the utmost consideration to their group land ownership rights, holy sites, and cosmo-vision with regard to the natural resources.

Consideration regarding traditional uses, customs and rights is extremely important. Yet, this should not be used as an excuse to preserve discriminatory practices towards women under the assumption that this "has been the case historically" or because of "tradition". It is necessary to start modifying beliefs and behaviors that justify women's subordination, through the implementation of a careful process of reflection and awareness, with the participation of both women and men. Changes cannot be imposed or decreed; they must obey to a persuasion and consensus-building strategy at all levels.

- Explicit promotion of equity among men and women, incorporating the national, international, and local legislation related to women's rights and gender equity.
- Consideration about the international legal framework and government-acquired commitments with respect to the conservation of biodiversity and protected areas.
- Provide the legal basis for the establishment of the institutions in charge of PA management and their interactions at the various levels. Institutionality should explicitly include community participation; i.e., it should grant legality to the agreements and pacts signed and enforced in the PA.

True ownership of the legal instruments by the communities, the stakeholders, and the institutions involved, depends on undertaking a participatory revision process. There are some countries where there are laws to regulate citizen participation within the legal framework of PA.

Of particular importance is the revision of the legal situation about ownership, possession, and use of the land, the forest, and water resources and, in general, the natural resources. Expropriation of the land or other resources, as well as forced displacement of the people and communities that have lived there and possessed the land for hundreds of years, does, usually, result in conflict and opposition that may lead to failures regarding the PA's conservation activities. When it becomes necessary to and the local communities accept expropriations and compensations, care should be exerted to ensure that the resources provide equal benefits to all group members, families and household units, particularly the women.

c. The legal framework from a gender perspective

The revision of the legal framework from a gender perspective, implies identification of all the international, national and municipal laws, regulations and rules, promoting: the equitable use, management and control of natural resources, equitable participation in decision making, equitable distribution of benefits, and policies, to put a stop to any form of discrimination or violence towards women. If the PA decree does explicitly establish gender equity promotion among its objectives, it is quite possible that it will be taken up by the people and institutions responsible for management plan drafting.

As part of the regional process promoted by IUCN throughout Mesoamerica, the Mexican Ministry of Environment and Natural Resources signed in 1999, a declaration committing itself to the promotion of gender equity in environmental policies. This document was taken up by a group of non-governmental organizations to promote similar commitments among authorities from the country's six southern states. In addition, the declaration endorsed by the wife of the Governor of the State of Tabasco, served as the setting for the Director of that State's Protected Natural Area of the Centla Swamps, to accept organizing a workshop to revise the Protected Areas Management Plan from a gender equity perspective.

Regardless of the laws or legal processes followed in each case, the most important aspect is to be aware of the fact that the simplest regulations are the best. Generally speaking, it can be said that the simplest the national regulations are, the more likely it will be for stakeholders and local communities to abide by them.

3. Identification of stakeholders

It should be recalled that there will always be people, groups, and institutions affected by or holding interests in a conservation initiative, even in uninhabited PA.

A very important criterion towards a successful PA, is to include all major stakeholders from the very beginning. The identification of stakeholders should precede PA appraisal, if it is to be a participatory appraisal.

Stakeholders in a PA may be people, groups, or institutions, holding similar or conflicting interests; they may or may not be organized in formal or informal manners; they may show attitudes of indifference towards the PA, or they may show attitudes of collaboration or rejection.

The analysis about stakeholders should be as inclusive as possible, taking into consideration the men and women of the different groups: local residents, resource users, businessmen/women, industrialists, governmental and non-governmental organizations, traditional authorities, formal and informal community groups, universities, research centers, among others.

Nonetheless, it should be pointed out that, in contexts of a generalized corruption or an incipient democracy, the presence of powerful economic stakeholders (lumber, mining, oil, etc.) may complicate the implementation of open participatory processes.

The people and stakeholders will comprise all the women and men interested in the PA from the moment of its declaration; however, consideration should also be given to all those who may be potentially involved.

Active stakeholders are those who explicitly raise their interests in the PA's management, possess specific abilities (knowledge, skills) or relative advantages (proximity, community influence), and who are willing to invest resources (time, money, political authority) in the PA conservation initiative.

Potential stakeholders are those who are not interested in the PA, or who are not organized, but who, given their characteristics, specific skills, relative advantages or interests, may play an important role in the conservation initiative or benefit from it.

*Among
the
stakeholders
are:*

- Historical occupants, i.e., the people who reside within the territory of the PA; also known as "the communities".
- The owners of PA resources (land, forests, etc.) even if they do not reside therein.
- The organizations of producers, dealers, industrialists and businessmen/women having or who may have an economic interest in the PA.

- Resource users, even if they are not residents (dealers, users of raw materials, water, labor, tourist resources, etc.).
- Government institutions involved in PA (not only those directly involved in the PA but also those involved in a broader context).
- Local authorities.
- Community associations, such as church groups, youth clubs, parents' associations, health care promoters.
- Institutions involved in research, educational and cultural activities.
- Non-governmental local, national and international organizations involved in the conservation of natural and cultural resources, community development and social equity within PA or adjacent areas.
- Political and law-making groups involved in the PA or who have shown an interest in it.
- Financial institutions or organizations that may become potential financial sources for PA management and administration.

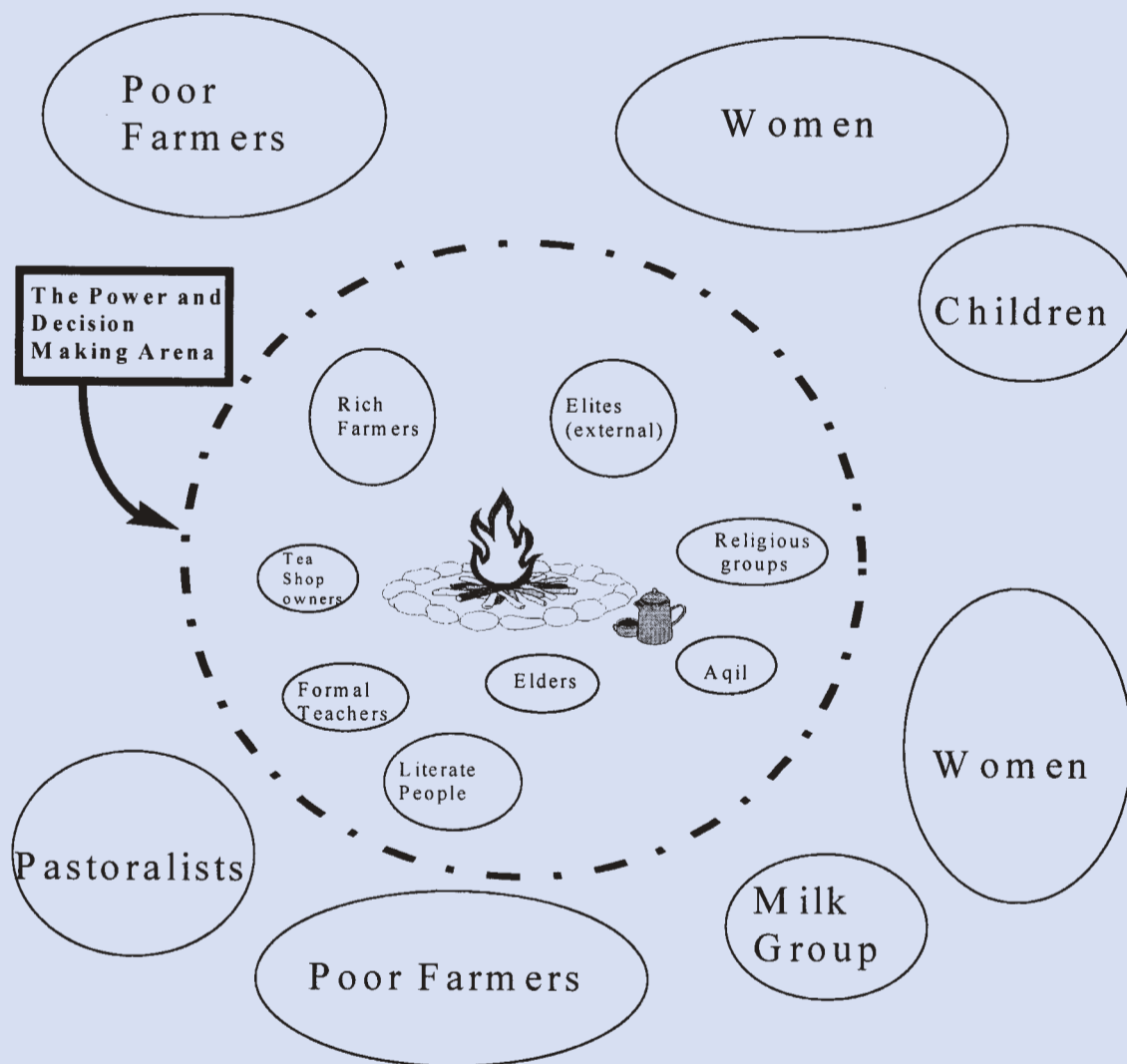
The identification of stakeholders should consider that any human group is conformed by people of different age, sex, economic, social and cultural standing. When characterizing these groups, adequate consideration should be given to all members, their interests and relations. For example, the users of natural resources should include women, boys and girls, and adults and elderly people, taking into account the resources used in productive activities, as well as those used in reproductive and community¹ activities.

When identifying stakeholders by occupation, it should be remembered to take into account activities such as the collection of medicinal herbs and firewood, fishing or hunting for household consumption. The presence of women should be considered within all groups of stakeholders, or the reasons for their absence should, otherwise, be questioned.

1 _____ Please refer to Chapter III for a definition about the productive, reproductive and community settings.

Example

The Somali Natural Resources Management Programme implemented by the Eastern Africa Regional Office of IUCN conducted a community land use and natural resources management planning in Somaliland. One of the techniques they used for identifying the stakeholders was the Campfire Diagram. This diagram was used for identifying the range of stakeholders and their stakes as well as how they make decisions. The following is the diagram for the Qalloa Village.



1. Size of the circle= relative importance of that groups stake in the natural resources.
2. Proximity to Campfire= Relative power in decision-making.
3. Those close to the fire are warm and can see, so that they have the power and control the fire and decisions, and make sure the others cannot see or stay warm. While those who are far away are cold and cannot see and so cannot make and decision.

Source: Barrow, E. and et.al. Lessons and Guidelines Developed from Practice in Somaliland. Somali Natural Resources Programme-IUCN-EARO. Kenya. 2000.

An untidy participatory process that does not take into consideration the specific weight of each stakeholder, does also constitute a factor for failure in the process involving the declaration or management of a PA.

Stakeholders should be thoroughly identified, in order to learn about their relation with the PA and extent of their participation or involvement. The better the stakeholders are known, their background, dynamics, inter-relation, and forms of organization and operation, the easier it will be to undertake the work that follows.

For this reason, rescuing and acknowledging the existence of the essential role played by stakeholders in the development of a conservation initiative, is a requirement for the process described in the following chapters.

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