

**It is important that MPA personnel understand the legislation relevant to their work, including the laws and regulations specific to the MPA, other national legislation relevant to its management, and the international law that provides the overall context. The general regulatory framework of an MPA is therefore described in this sheet.**

## INTERNATIONAL LAW

The overall framework within which MPAs are established and managed is provided by international law, in the form of multi-lateral treaties (see introductory sheet on conventions), including the:

- UN Convention on the Law of the Sea which gives coastal states jurisdiction over their inland waters, territorial seas (out to 12 nm from the coast) and Exclusive Economic Zone (EEZ) (200 nm or 370 km from the coast) provided they do not infringe the right of innocent passage by foreign ships;
- Convention on Biological Diversity, which requires that signatory states or 'Parties' establish protected areas;
- Nairobi Convention, which requires that signatory states in the WIO establish MPAs.

The treaties themselves do not enact or enforce legislation at the national level. Individual nations are responsible for this, which normally requires governments to pass enabling legislation in order to bringing the national law into line with what was agreed internationally.

## NATIONAL LEGISLATION

Although MPAs can be set up without a legal foundation, these may not be sustainable as there will be no basis for court procedures if a prohibited activity takes place. In some countries, MPAs can be established under traditional or customary legislation (see sheet B4). This is rare in the WIO, one exception being Madagascar (see case study).

National protected area legislation varies widely between countries according to the form of government, public administrative structures, extent of decentralisation, and lines of jurisdiction and decision-making. However, there are certain principles in common and most countries have a two-tier system, with primary and secondary measures.

### Primary legislation

This refers to the overall legislative framework for a sector or issue, i.e. Acts, Statutes, Ordinances or Decrees. The primary legislation for protected areas prescribes their purposes and potential geographical scope, the principal restrictions and the general approach to management (e.g. requirements for involvement of stakeholders). It should allow for additional measures to be introduced to deal with unforeseen circumstances and for the development of regulations (e.g. for offences, penalties, and user fees).

Sometimes, terrestrial and marine protected areas are established under the same primary legislation (e.g. Kenya, where both terrestrial and marine National Parks and Reserves are gazetted under the Wildlife Conservation and

Management Act). The advantage of this is that it recognises that many protected areas include both terrestrial and marine ecosystems, and that there are basic similarities between both types. However, such legislation is often oriented more towards terrestrial protected areas and does not fully address MPA needs. Elsewhere, MPAs are established under separate and more marine-oriented legislation (e.g. the Marine Parks and Reserves Act for mainland Tanzania). MPAs, particularly no-take zones, can often be declared under fisheries legislation. There may be several pieces of primary legislation allowing for MPA declaration, as in the Seychelles which has four.

Depending on the level of decentralisation in a country, legislation can often be passed at local level (e.g. District or village bye-laws), and it may be possible to establish MPAs in this way. For example, areas of reef have been closed to fishing in northern Tanzania through village bye-laws. Where local government agencies do not have jurisdiction seaward of the low water mark, locally managed MPAs will need central government support if legal backing is required.



### Secondary or enabling legislation

This refers to the 'rules', 'regulations', or 'notifications' that are developed under the primary legislation and that allow for full enforcement. Secondary legislation can be used to define the boundaries and the specific activities allowed and prohibited within the MPA in general, or within different zones. It can also be used to delegate management to a government minister, a public authority, or to communities (e.g. under co-management

arrangements), and to set licences and other fees.

Regulations should also address:

- Public rights to which people are ordinarily entitled e.g. rights of navigation, fishing and mangrove harvesting;
- Public activities that are generally tolerated but that usually have no legal basis e.g. use of the beach;
- Private rights e.g. ownership of the foreshore or private/communal fisheries.

The territorial sea-bed is usually state property, but the foreshore between high and low water marks and the adjacent coastal land can be privately owned, which can create difficulties. For example, MPAs may have no control over turtle nesting areas above high water mark. There may also be private or customary and traditional fishing rights in inshore waters. Careful consultation is thus required before regulations are introduced.

### OTHER LEGISLATION RELEVANT TO MPAs

Many other pieces of national legislation are relevant to an MPA and essential for its effective management (e.g. for fisheries, forestry and mangroves, shipping, waste disposal, mining, tourism, wildlife and E.I.A). Enforcing this can be difficult if the mandates of these government agencies take precedence over that for the MPA. Unless the primary legislation resolves this, such conflicts can undermine the effectiveness of the MPA. Harmonisation of MPA legislation with both primary and secondary fisheries legislation is particularly essential. An MPA manager must also have a good understanding of national legislation relating to employment (MPA personnel), the judiciary (powers of arrest and court procedures), and financial activities (management of the MPA's finances and fundraising).

### POLICY

It is important to understand the difference between legislation and policy. Policies are non-binding, guiding principles, usually for specific sectors (e.g. fisheries, forestry) that outline the government's intentions in relation to international obligations and national development. The legislation should then be drawn up to permit implementation of the policy. Many countries are revising their policies relating to the environment and natural resources to reflect new thinking and the obligations of international agreements. It often takes longer to revise the legislation which means that national laws may lag behind the stated policy of the government.

### Sources of further information

Gibson, J. & Warren, L. 1995. Legislative requirements. Chap 3. In: Gubbay, S. (ed.) *Marine Protected Areas. Principles and techniques for management*. Chapman and Hall, London.

Kimball, L.A. 2001. *International Ocean Governance: using International Law and Organisations to Manage Marine Resources Sustainably*. IUCN, Gland, Switzerland and Cambridge, UK. 124pp.

Salm, R.V., Clark, J.R. & Siirila, E. 2000. *Marine and Coastal Protected Areas: A Guide for Planners and Managers*. 3rd Edition. IUCN, Washington, D.C., USA.

Pomeroy, R.S., Parks, J.E. & Watson, L.M. 2004. How is your MPA doing? *A Guidebook of Natural and Social Indicators for Evaluating Marine Protected Area Management Effectiveness*. IUCN, Gland,

Switzerland and Cambridge, UK. xv + 230pp.

<http://effectiveMPA.noaa.gov>

### KEY POINTS FOR THE MPA

- MPA staff should understand all relevant legislation; copies should be readily accessible and it should be described in the management plan.
- Help stakeholders and visitors to understand both the primary legislation and the regulations; disseminate information about it (interpreted in simple language) widely (e.g. in posters or leaflets); a good understanding will help to reduce violations.
- Assess the adequacy of the legislation and identify improvements that are needed; there is sometimes a delay between enacting the primary and secondary legislation which can make enforcement difficult, so if regulations are lacking, work with the management agency to help accelerate the process.
- Ensure that key personnel learn about the most relevant international agreements, so that they understand the role of the MPA in helping the country meet these.

### CASE STUDY

#### Legislation for MPAs in Madagascar

The two formal MPAs in Madagascar were created through decrees in 1989 and 1997, and are in accordance with guidelines issued by the national protected area agency ANGAP in 1992. The new Code des Aires Protégées recognises that protected areas must address research, education and economic development as well as conservation, and use the participatory approach, in fulfilment of the obligations under the international conventions to which Madagascar is a party. Legislation to apply the Code to MPAs is being finalised, and will specify how MPAs should be established and managed, whether they be under ANGAP or other entities. The Gestion Locale Securisée (GELOSE) of 1996 allows for delegation of the management of natural resources to local communities, and is being used at MPAs where villages play an important role in management.

Madagascar also has customary law that can be used for designating local protected areas. A *dina*, or social convention, can be developed by communities according to their needs and enforced by themselves. Six villages near Toliara have set up a *dina* that is being successfully used to protect Nosy Ve Island and its surrounding reefs. Access to the MPA and its surrounding reefs, and exploitation of marine resources, are controlled through this. A *dina* must not contradict the official legislation, and once officially approved it tends to be respected.

Grandcourt, E., et al. 2000. Status and Management of the Marine Protected Areas in Madagascar. Report to Eastern African Component of ICRAN – International Coral Reef Action Network. [www.icran.org](http://www.icran.org)