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ENERO DE 2005****THE POLICY FOR THE SOCIAL PARTICIPATION IN
CONSERVATION:
CASE STUDY****EDUARDO URIBE BOTERO¹****Abstract**

Colombia is one of the world's richest countries in biological resources. To protect them, Colombian Law created the National Parks in 1959. Further regulations for their creation and administration were approved during the seventies. However, they did not include mechanisms to balance conservation interests with other economic and social development priorities. Presently, the ample majority of the National Parks overlap with the traditional territories of indigenous, black and *campesino* communities. This affects their economies and imposes restrictions on the traditional uses of natural resources. In 2002 the national government approved the Policy for the Social Participation in Conservation² which seeks to promote the implementation of conservation strategies with the participation of local stakeholders. To illustrate the effects of this Policy, and following the analytical framework of the WDR 2003³, the processes of declaration of two national parks are compared: *Corales del Rosario* National Park, and *Alto Fagua Indiwasi* National Park. Finally, the document presents a series of lessons and recommendations.

Key words: conservation, national parks, regulation, institutions, Colombia.

JEL classification: N5, O13, Q20

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² Política de Participación Social en la Conservación. 2001. Unidad de Parques Nacionales de Colombia

³ World Development Report 2003 - Sustainable Development in a Dynamic World: Transforming Institutions, Growth, and Quality of Life. 2003. The World Bank. Washington.

LA POLÍTICA DE PARTICIPACIÓN SOCIAL EN LA CONSERVACIÓN: ESTUDIO DE CASO

Resumen

Colombia es uno de los países más ricos del mundo en recursos biológicos. Para protegerlos, la legislación creó los Parques Nacionales en 1959. Otras regulaciones complementarias relativas a su creación y administración fueron aprobadas en los años setenta. Sin embargo, ellas no incluyeron mecanismos para balancear los intereses de la conservación con otras prioridades de desarrollo económico y social. Actualmente, la mayor parte de los Parques Nacionales coincide con los territorios tradicionales de comunidades indígenas negras y campesinas. Esto afecta sus economías e impone restricciones a los usos tradicionales de los recursos naturales. En el año 2002, con el objetivo de promover la implementación de estrategias de conservación con la participación de los actores sociales de los parques, el Gobierno Nacional aprobó la Política de Participación Social en la Conservación. Para ilustrar los efectos de esa política, y siguiendo el marco analítico del Informe sobre el Desarrollo Mundial del Banco Mundial⁴ del año 2003, este estudio de caso compara los procesos de declaración de dos parques nacionales: *Corales del Rosario* y *Alto Fagua Indiwasi*. Finalmente, el documento incluye una serie de lecciones y recomendaciones.

Palabras clave: conservación, parques nacionales, regulación, instituciones, Colombia.

Clasificación JEL: N5, O13, Q20

4 World Development Report 2003 - Sustainable Development in a Dynamic World: Transforming Institutions, Growth, and Quality of Life. 2003. The World Bank. Washington.

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Introduction

Colombia is one of the world's richest countries in biological resources⁵. With about 0.8 percent of the world's surface, Colombia is home to about 15 percent of all known terrestrial species. Colombia also has a wealth of ecosystem diversity. It has 65 types of ecosystems⁶ and 108 bio-geographic areas⁷. Among them are the *páramos*⁸, and cloud forests of the Andean region, and the savannas, deserts, dry forest and rain forests of the lower lands. Colombia has coasts over the Pacific and Atlantic oceans and is also rich in marine ecosystem including mangroves and coral reefs. The country has 49 National Parks with a total area of 10.320.865 hectares. Those areas include 50 of the country's 108 bio-geographic areas and 40% of the endemic centers of Latin America⁹.

Colombian Law created the National Parks in 1959. Regulations for the creation and administration of national parks were approved during the seventies. Those regulations did not provide public participation mechanisms during their process of creation and administration. In addition, these regulations did not include mechanisms to balance conservation interests with economic and development priorities. Under these circumstances, the implementation of conservation strategies with the participation of local stakeholders becomes a major challenge.

Although the National Constitution approved in 1991 recognizes the right to participate in decisions of environmental consequence, regulations written up before this date still remain in place. Forty seven National Parks were created before 2003 in areas overlapping traditional territories indigenous, black and *campesino* communities. The creation of those parks affected the economies of those communities, as they restricted the traditional uses of natural resources. There was no compensation.

In 2002, after a process of wide consultations, the national government approved the Policy for the Social Participation in Conservation¹⁰. This policy seeks to promote the design and implementation of conservation strategies in national parks with the ample participation of local stakeholders, including indigenous organizations and black and *campesino* communities. However, this policy is not a

⁵ Diversidad Biológica. 1997. Instituto de Investigaciones Alexander Von Humboldt. Bogotá. Colombia

⁶ Colombia Biodiversidad Siglo XXI. 1998. Instituto de Investigaciones Alexander Von Humboldt. Bogotá. Colombia

⁷ Diseño de Estrategias mecanismos e instrumentos requeridos par ala puesta en marcha de l Sistema Nacional de Áreas Pretejidas. 2000. Biocolombia (Informe de Consultaría)

⁸ High Andean ecosystems devoid of trees and which play an important role in local hydrologic cycles.

⁹ Diseño de Estrategias mecanismos e instrumentos requeridos par ala puesta en marcha de l Sistema Nacional de Áreas Pretejidas. 2000. Biocolombia (Informe de Consultaría)

¹⁰ Política de Participación Social en la Conservación. 2001. Unidad de Parques Nacionales de Colombia

legal instrument and therefore it is not legally binding or enforceable. The lack of coherence between those instruments is discussed in this document.

The first and second sections of this document describe the processes that lead to the creation of protected areas, as well as the mechanisms in place to balance stakeholder interests, before and after the approval of the Policy for the Social Participation in Conservation. To illustrate the effects of the Policy for the Social Participation in Conservation, the processes of declaration of two national parks are compared: the declaration of the *Corales del Rosario* National Park, and of the *Alto Fagua Indiwasi* National Park. The first case describes a park created before the Policy for the Social Participation in Conservation was approved. The second case took place after that policy was approved. The third section presents and analyzes the information discussed in the previous two sections following the framework of the 2003 World Development Report¹¹. A series of lessons and recommendations are presented in the fourth section.

1 The Situation Prior to the Policy for Social Participation

1.1 Institutional and Policy Framework

The members of the Pan-American Union¹² subscribed the Washington Convention on Nature Protection and Wild Life Preservation in 1940. This convention had the objective of promoting the development of legal frameworks for the protection of scenic values and of fauna and flora resources in the different countries. This convention defined national parks as areas for the protection and conservation of these values by the government. The convention did not make reference to the rights of the traditional local communities of those areas.

In 1959, the Colombian Congress approved Law 02. This Law had the main objective of "... promoting the forest economy and protecting the soils, waters and wild life of the Nation". In accordance with the Washington Convention, this Law created the figure of the Natural National Park¹³ for the "...conservation of fauna and flora". According to this Law, the different National Parks would be created by the Ministry of Agriculture and those decisions should be supported by a technical concept of the Colombian Academy Sciences (*Academia Colombiana de Ciencias Exactas, Físicas y Naturales*). Law 02 of 1959 did not make any reference to the rights of the traditional local communities in the areas to be declared as National Parks, or to their participation in the processes of creation and administration. Economic activities, other than tourism, were prohibited in those areas.

11 World Development Report 2003 - Sustainable Development in a Dynamic World: Transforming Institutions, Growth, and Quality of Life. 2003. The World Bank. Washington.

12 Today the Organization of American States (OAS)

13 Article 13 Law 02 of 1959

Law 02 of 1959 indicated that National Parks would be created in different climatic regions of the country, and that economic activities in those areas should be compatible with their conservation. This Law granted a high priority to the declaration of National Parks in the snow covered mountains and their surrounding mountainous ecosystems¹⁴. This could have been related to the economic importance attributed to the conservation of mountainous ecosystems for the development of economic activities, including agriculture, in the lower lands¹⁵. The first National Park¹⁶ was created in 1960¹⁷ following the procedure of the law and in its constitution there was no process of public consultation or of social compensation.

Following the enactment of Law 02 of 1959, six National Parks were created between 1960 and 1968. In accordance to Law 02 of 1959, three of those parks include high mountainous ecosystems¹⁸. The other three parks¹⁹ are notorious for their scenic value. Although all of those parks were then inhabited by indigenous black and *campesino* communities, and despite the severe restrictions imposed on the use of their natural resources, no consultations with local stakeholders were conducted. According to law 02 of 1959 they were not required.

Those six parks were administered by the Division of Natural Resources of the Ministry of Agriculture and by a Regional Corporation of the Magdalena Valley²⁰. In 1968 those two institutions were closed, and INDERENA (*Instituto Nacional de Recursos Naturales y del Medio Ambiente* - National Institute of Environmental and Natural Resources) was created²¹. INDERENA's creation had the objective of constituting a unified and specialized national institution responsible for the conservation of natural resources²². The creation of INDERENA was a part of a wider reform of the Ministry of Agriculture which included the creation of several other specialized national agencies²³. Amongst its responsibilities were the creation, management and administration of the System of National Parks.

During the sixties and seventies, INDERENA, the Geographic Institute (*Instituto Geográfico Agustín Codazzi*) and the *Instituto de Recursos Naturales* of the *Universidad Nacional* published information on the nature of Colombia's ecosystems and natural resources²⁴. Until 1993, the information gathered by those institutions provided the basis for the declaration of most of Colombia's National

¹⁴ Article 13 Law 02 of 1959

¹⁵ Interview with Mr. Julio Carrisoza. INDERENA's Director from 1973 to 1978. July 2004. Bogotá.

¹⁶ *Cueva de los Guacharos* Natural National Park.

¹⁷ Decree 2631 of 1960

¹⁸ *Farallones de Cali* National Park; *Puracé* National Park; and *Sierra Nevada of Santa Marta* National Park.

¹⁹ *Cueva de los Guácharos* National Park, *Isla de Salamanca* National Park, *Tayrona* National Park.

²⁰ This corporation administered those parks that were located in the Valle y of the Magdalena River. The Ministry of Agriculture administered the rest of the parks.

²¹ Decree 2420 Of 1968

²² Interview with Mr. Julio Carrisoza. INDERENA's Director from 1973 to 1978. July 2004. Bogotá.

²³ INCORA (National Institute for the Agrarian Reform); HIMAT (Hydrology, Meteorology and Land Reclamation Institute); IDEMA (National Institute for Agricultural Marketing) etc.

²⁴ *Revista Trianea*; *Colombia Geográfica*

Parks²⁵. Mr. Jorge Hernandez was an important scientist who worked at INDERENA and at the *Universidad Nacional* and had a large influence in the creation of most of Colombia's National Parks.

Technical employees of INDERENA and of the National Geographic Institute – IGAC (*Instituto Geográfico Agustín Codazzi*) considered that there was a need for a general norm that would set the basis for the development of future regulations for the protection of natural resources²⁶. The Minister of Agriculture of the time²⁷ promoted the idea and obtained financial cooperation from FAO to pursue this objective. As a result, the Code of Natural Resources was elaborated by a group of international experts and government officials coordinated by Mr. Julio Carrizosa, who was then the Director of INDERENA. Public consultations were not conducted during the development of this regulation.

The National Natural Resources Code²⁸ created the National Parks System in 1974. The creation of a System responded to the view of the Director and employees of INDERENA who believed that National Parks should not be perceived as separate units but rather as parts of a system, and that the government should administer them under coherent and unified criteria²⁹.

The System of National Parks has the following objectives³⁰:

- i. To "...conserve the outstanding natural values of fauna, flora, landscapes; and historic, cultural and archeological relics...".
- ii. To "...perpetuate the wild state of biological communities of physiographic and biogeographic regions, genetic resources and threatened species."
- iii. To "...protect natural, cultural historic phenomena and others of international interest to contribute the preservation of the common patrimony of humankind.

In accordance with Law 02 of 1959, the Code of Natural Resources did not make any reference to the rights of traditional local communities inhabiting areas to be declared as national parks, nor to their participation in their process of creation and administration. Furthermore, the Code did not include provisions to secure the consideration of interests such as regional economic development, social equity, etc.

Decree 622 of 1977 regulates the administration of the System of National Parks in greater detail. This Decree prohibits the development economic activities inside the

²⁵ Personal communications with Julio Carrizosa and with Margarita Botero and Manuel Rodriguez; former Directors of INDERENA (*Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources)

²⁶ Interview with Mr. Julio Carrisoza. INDERENA's Director from 1973 to 1978. July 2004. Bogotá.

²⁷ Mr. Hernán Vallejo Mejía

²⁸ Decree 2811 of 1974

²⁹ Interview with Mr. Julio Carrisoza. INDERENA's Director from 1973 to 1978. July 2004. Bogotá.

³⁰ Article 328 of Decree 2811 of 1974

areas of the park, including wood extraction, fishing, agriculture, cattle ranching, industry, oil production and mining. However, this regulation defines that the "...the declaration of a National Park is not incompatible with indigenous reserves...". Consequently, this allows national parks to be created over the traditional territories of indigenous communities. However, as in the case of Law 02 of 1959 and of the Code of Natural Resources (Decree 2811 of 1974), Decree 622 of 1977 does not include provisions to ensure the participation of indigenous communities in the processes of declaration and administration of national parks.

An elected Constitutional Assembly approved a new Constitution in 1991. The Political Constitution included a series of economic, ethnic and cultural rights³¹ and the right of all citizens to participate in decisions of environmental relevance³². In addition, the Constitution stipulates that the use of natural resources in the territories of indigenous communities must not harm the integrity of those cultures³³, and that all citizens have the right to participate in decisions of environmental relevance. Clearly prevailing regulations in relation to the creation and management of national parks are not always coherent with these constitutional precepts.

In December of 1993 the National Congress approved Law 99. This legislation ordered INDERENA to close and transfer its functions related to the administration of the National Parks to the Ministry of the Environment³⁴. Law 99 of 1993 also created, the Unit of National Parks within the Ministry of the Environment with the mandate of administering the System. Law 99 did not change prevailing regulations for the administration of national parks, namely Law 02 of 1959, the Code of Natural Resources of 1974 and Decree 622 of 1977.

According to Law 02 of 1959, the Code of Natural Resources and to Decree 622 of 1977, prior to the creation of a national park, the Administrative Unit of National Parks has to conduct the necessary scientific studies³⁵. Those regulations do not include the participation or representation of local communities (indigenous, *campesinos*, fishers, miners, etc) during the process that leads to the creation of national parks. The content of the required studies has not been regulated and the criteria for the definition of the park's boundaries have not been established. The required scientific studies have to be reviewed by the Colombian Academy for Exact Physical and Natural Sciences -*Academia Colombiana de Ciencias Exactas Físicas y Naturales*- before the Park is formally created by a Presidential Decree. If the areas to be included in the System of National Parks overlap with indigenous reservations - *resguardos indígenas* - the relevant studies have to be conducted

³¹ Title II; Chapters 1 and 2 of the Political Constitution.

³² Article 79 of the Political Constitution.

³³ Article 330 of the Political Constitution.

³⁴ Article 5 Law 99 of 1993

³⁵ Article 6 Decree 622 of 1977

jointly with the Colombian Institute for Agrarian Reform - *Instituto Colombiano de la Reforma Agraria*.³⁶

1.2 Conflicts between Communities and Conservation Agencies

Colombia has 462 indigenous reservations (*resguardos indígenas*) which occupy 30 million hectares in approximately 26 percent of the country³⁷. Twenty four percent of the total area of indigenous reservations overlaps with National Parks. Thirty tree of the 49 the parks of that system are inhabited by indigenous groups³⁸. In addition there are 23 collective black territories in approximately 3 million hectares of the Colombian Pacific Biogeographic region. They correspond to approximately 2.5 percent of the country's total area.³⁹ Forty seven of the 49 National Parks of Colombia are inhabited by traditional indigenous, black and *campesino* communities⁴⁰.

However, as indicated previously, Colombian legislation does not include provisions to secure the participation of those communities during the creation and administration of those parks. According to several officials of the National Parks Unit, none of the Parks created overlapping traditional territories of indigenous, black and *campesino* underwent a consultation process with local communities before 2003⁴¹. Between 1960 and 1968 those decisions were taken by the Ministry of Agriculture; between 1968 and 1994 they were taken by INDERENA and between 1994 and 2002 they were taken by the Unit of National parks and the Ministry of the Environment. The areas to be declared as national parks and their boundaries were autonomously defined by the technical staff of those institutions, based on their own judgment. In most cases the existence of a National Park within traditional territories took communities by surprise. In cases such as the *Catatumbo* National Park, which was created in 1989, the communities did not find out or understand that they were part of a Park until very recently.⁴²

The regulations in place since Law 02 of 1959, which impose severe restrictions for the economic use of natural resources in the areas of the national Parks, also limit the economic activities of indigenous communities. In addition, they do not make any reference to other poor communities (*campesinos*, blacks etc.) that have

³⁶ Article 7 Decree 622 of 1977

³⁷ Marcelo M. Giugale, Oliver Lafourcade, Connie Luff. 2002. Colombia Economic Foundations of Peace. The World Bank.

³⁸ Política de Participación Social en la Conservación. 2001. Unidad de Parques Nacionales de Colombia.

³⁹ Guigala et.al. *ibid*.

⁴⁰ The exceptions are *Gorogona* National Park (an island in the pacific coast) and the *Chiribiquete* National Park in the center of the Colombian Amazonian Region.

⁴¹ Interview with Carlos Acosta. Advisor to the Director of the National Parks Unit responsible for coordinating participation processes with black and indigenous communities. Bogotá. March 2004.

⁴² Interview with Carlos Acosta and Lavinia Fiori, Coordinator of the Environmental Component of the Dutch Institutional Strengthening Program of the Unit of National Parks. Bogotá. March 2004.

traditionally lived in the National Parks. A strict interpretation of the prevailing legislation leads to the conclusion that the economic use of natural resources by these communities, even for subsistence purposes, is illegal⁴³. In consequence they can not benefit from government programs such as agricultural technology transfer and credit. In addition, the prevailing legislation does not include mechanisms to compensate local communities which are affected by the creation of national parks.

The implementation of conservation strategies in protected areas, created without taking into account the social and economic realities of the local stakeholders, seems challenging. At the origin of this challenge are the very severe restrictions that Colombian law has imposed on the economic use of natural resources inside the limits of the National Parks.

As traditional indigenous, black and *campesino* communities have found that their territories are part of a National Park, several cases of conflict arose between the System of National Parks and these communities⁴⁴. Those conflicts have their origin in the restrictions imposed by Law 02 of 1959, the Code of Natural Resources of 1974 and Decree 622 of 1977, in relation to the economic and commercial use and exploitation of natural resources on the national parks. However, indigenous, black and *campesino* communities have not used the judicial system to defend the economic use of their traditional territories. The limited use of the judicial system by poor communities has been related to their lack of familiarity with their legal rights and their lack of access to the judicial system⁴⁵.

Some of these conflicts have occurred with fishing communities in the *Tayrona*, *Salamanca*, *Flamencos*, and *Corales del Rosario* National Parks in the Caribbean Coast, and in the *Utria* and *Sanquianga* National Parks in the Pacific Coast, this last one created with over 10,000 inhabitants of traditional black communities. There have also been conflicts with agricultural communities in the areas of the *Chingaza*, *Los Nevados*, and *Galeras* National Parks in the Andean Region and with miners and indigenous communities in the *Cahuinarí* National Park in the Amazon.

Testimonies of these conflicts have been recently documented in films and interviews with leaders of indigenous, black and peasant communities⁴⁶. In these

⁴³ Interview with Mrs. Eugenia Ponce expert in National Park's regulations.

⁴⁴ Interview with Mrs. Sandra Valenzuela; legal advisor to the Director of the Unit of National Parks, Carlos Acosta, Coordinator of Participation Processes, and Lavinia Fiori, Coordinator of Environmental Education and Communication for the Dutch Program for Institutional Strengthening of the National Parks System. Bogotá. March 2004.

⁴⁵ Quintero R. Iguarán. M., 2001. Acceso a la Justicia Ambiental. Una Mirada desde la Ecología Política. *En*. Justicia Ambiental. Universidad Externado de Colombia; Instituto de Estudios del Ministerio Público; CAR. Bogotá.

⁴⁶ Interview with Lavinia Fiori. Coordinator of the Environmental Component of the Dutch Institutional Strengthening Program of the Unit of National Parks who has personally filmed these testimonies. Bogotá. March 2004.

testimonies, community leaders have argued that these parks were not only created overlapping their traditional and sacred territories, but that measures and norms adopted by the Unit of National Parks affected them economically as they restricted their traditional use and commerce of natural resources. More recently indigenous and black communities have argued that they are also authorities, vested by the Law, to manage these territories, with attributions similar to those of the government⁴⁷.

The analysis of National Parks regulations evidences inconsistencies with the Political Constitution of 1991. Those inconsistencies are particularly evident in matters of public participation. Although the Political Constitution establishes that all citizens have the right to participate in environmental decisions⁴⁸, National Park's regulations, which were approved more than 15 years before the Constitution of 1991, do not include provisions to guarantee local communities such participation.

The inconsistency between the prevailing National Park's regulations and the Constitution of 1991 indicates the need for a legal reform. This reform should update National Park's regulations to ensure that they are in harmony with those precepts of the Constitution of 1991 that invoke the principles of social participation, equality and cultural diversity. The new regulations should fully recognize the rights of ethnic communities living within Parks to inhabit the areas that they have traditionally occupied. They should also regulate the economic use of natural resources by those communities. The new regulations should define criteria for the selection and delimitation of new protected areas, and should devise the mechanisms to ensure the equitable and effective participation of all relevant stakeholders during the creation and administration of national parks.

In contrast with the National Park's legislation, the Colombian legislation relative to the rights of indigenous communities underwent important developments during the last decade. The Constitution of 1991 recognized the right of indigenous communities to organize autonomous institutions for the administration of their traditional territories and public affairs⁴⁹. In 1993, the Colombian Government approved Convention 169 of the 76th meeting of the International Labor Organization of 1989⁵⁰. This Convention protects the ethnic rights of indigenous communities, including their territorial rights and their traditional cultures. During the same year, the government regulated⁵¹ the creation of "Associations of Indian Reservations"⁵² and of Traditional Indigenous Authorities. These are autonomous forms of government recognized by the Colombian Government. They can undertake social programs with resources transferred by the national government.

⁴⁷ Interview with Mr. Arregocés Conchacalá, *Cabildo Gobernador* and leader of the Kogui Indigenous group. This indigenous group inhabit the Sierra Nevada of Santa Marta which includes two national parks. Santa Marta. April 2004.

⁴⁸ Article 79 of the Political Constitution.

⁴⁹ Article 329 and Transitory Article 56 of the Political Constitution of 1991.

⁵⁰ Law 21 of 1991

⁵¹ Decree 1088 of 1993

⁵² In Spanish: "*Asociación de Cabildos Indígenas*"

Presently, indigenous authorities claim the same authority as the Unit of National Parks in the overlapping territories⁵³.

1.3 The Case of the Extension of the Corales del Rosario National Park

Since the mid fifties, the islands of the *El Rosario* archipelago in the Colombian Caribbean have been a recreation site for affluent visitors from Barranquilla, Cartagena, Bogotá, Cali and Medellín⁵⁴. Its surrounding waters have been a fishing area for traditional communities of the region. In May of 1977, the Board of Directors of INDERENA created the *Corales del Rosario* National Park⁵⁵. This Park was created following the recommendations of the institution's technical staff⁵⁶. In accordance with relevant regulations⁵⁷, the creation of the Park was preceded by technical studies conducted by INDERENA and reviewed by the Colombian Academy for Exact Physical and Natural Sciences - *Academia Colombiana de Ciencias Exactas Físicas y Naturales*⁵⁸. Consultations with local communities were not conducted.

Today there are 120 recreation houses in the islands of the archipelago. The Park has a total area of 19.500 hectares over the coral reefs and other marine ecosystems that surround the 30 small islands of the archipelago. However, the Park only included 2 of the 30 islands, hence it is largely a submarine park⁵⁹.

Towards the south of the *El Rosario* archipelago, is located the *San Bernardo* archipelago. This archipelago includes seven small islands, their associated mangroves and coral reefs, and other submarine ecosystems⁶⁰. The area has been traditionally inhabited or visited by local black communities of fishermen⁶¹. Their main traditional economic activity has been lung diving for lobsters and snails. As in the case of the *Rosario* Islands, the beauty of the *San Bernardo* islands also attracted the interest of affluent vacationers. To date, they have built 60 houses in those islands. The *San Bernardo* archipelago was not originally included in the National Park created in 1977.

⁵³ Interview with the Legal Group of the Unit National Parks. Bogotá. March 2004.

⁵⁴ Interview with Clara Sierra; Manager of the Park from 2002 to 2004. Bogotá. April 2004.

⁵⁵ *Acuerdo* 026 of 1977

⁵⁶ Interview with Mr. Julio Carrisoza. INDERENA's Director from 1973 to 1978. July 2004. Bogotá.

⁵⁷ Articles 328 and 329 of Decree 2811 of 1974; and Article 6 of Decree 622 of 1977.

⁵⁸ Unfortunately those evaluations and concepts can be found today.

⁵⁹ Those two islands are: *El Tesoro* and *El Rosario*. They were included as a part of the National Park by *Acuerdo* 093 of 1987 of INDERENA.

⁶⁰ Díaz G. 1998. Ecosistemas Marinos y Costeros. En. *En Diversidad Biológica* Tomo I. Instituto Alexander Von Humboldt. Bogotá.

⁶¹ Sierra C. L. 2002. Corales del Rosario y, San Bernardo un Ejercicio de Participación Social en el Manejo de un Área Protegida. Estudio de Caso: Pescadores en el área. *En. Parques con la Gente* II. Unidad de Parques Nacionales; Ministerio del Medio Ambiente. Bogotá.

The *San Bernardo* Islands and their associated coral reefs and marine ecosystems suffered severe deterioration since the beginning of the eighties⁶². The bleaching of coral reefs has extended significantly⁶³ and over-fishing diminished the rates of capture of some species⁶⁴. By 1995, fishing communities of the *San Bernardo* islands knew that the size of the fishing stocks was declining and that the fishing effort had increased with time⁶⁵. They attributed the growing scarcity of fish to over-exploitation by commercial fishing boats from Cartagena, the closest city in the mainland.

Ecological information gathered by the Unit of National Parks in 1996 provided evidence that the archipelagos of El Rosario and San Bernardo are not independent. According to that information, there are functional relations between the two archipelagos and the conservation of both areas is important for the maintenance of their ecological processes. Aware of the deterioration process of the *San Bernardo* archipelago and of its ecological importance, the Minister of the Environment⁶⁶ decided to extend the area of the *Corales del Rosario* National Park to include the *San Bernardo* archipelago.

The new extended park was created in December of 1996 in the presence of President Ernesto Samper during the inauguration ceremony of the new headquarters of the Ministry of the Environment⁶⁷. As in the case of the original islands of the park (*El Rosario* Islands), the decision was based solely on ecological information. No processes of social evaluation or consultation preceded the creation of the new extended park⁶⁸. As in the case of the *El Rosario* islands, the decision negatively affected the traditional rights of the local fishing communities. The new extended Park was called the *Corales del Rosario and San Bernardo* National Park. Its original area was increased from 19.500 to 120.000 hectares, including the original areas of the *Corales del Rosario* National Park and the associated submarine ecosystems of the *San Bernardo* Archipelago. It also includes two of the seven emerged islands of this archipelago⁶⁹. Close to five years passed before the traditional inhabitants of the *San Bernardo* archipelago gradually

⁶² Diaz G. 1998. Ecosistemas Marinos y Costeros. En. *En Diversidad Biológica* Tomo I. Instituto Alexander Von Humboldt. Bogotá.

⁶³ Ramírez A., D Miranda y G. and G. Viña. 1994 Estructura Arrecifal del Archipiélago de San Bernardo. Estudio Línea Base. Trianea 5:189-219. Bogotá.

⁶⁴ Mora O., 1994. Análisis de la Pesquería del Caracol Pala (*Strombus gigas L.*) en Colombia. En: Appeldoorn, R.S. and B. Rodriguez (eds.) Queen Conch Biology, fisheries and mariculture. Fundación Científica Los Roques. Caracas.

⁶⁵ Interviews with Mrs. Clara Sierra and with Mrs. Clara Osorio Managers of the Park from 2002 to 2004 and from 1992 to 1994, respectively. Bogotá. April 2004.

⁶⁶ Mr. José Vicente Mogollón

⁶⁷ Decree 1425 of 1996

⁶⁸ Interviews with Mrs. Clara Sierra and with Ms. Clara Osorio, Managers of the Park from 2002 to 2004 and from 1992 to 1994, respectively. Bogotá. April 2004.

⁶⁹ Those are the islands of *Maravilla* and *Mangle*.

became aware of the existence of a National Park in their traditional fishing areas⁷⁰.

The Ministry of the Environment, through its Unit of National Parks, has jurisdiction over the areas included in the *Corales del Rosario and San Bernardo* National Park. That is, over the 4 of the 37 islands of the two archipelagos and their submarine ecosystems. The Unit of National Parks does not have the authority to control the activities that take place on the 33 remaining islands. The municipality of Cartagena is responsible for the control of the construction activities that take place on those islands.

To this day, the presence of the Unit of National Parks in the *San Bernardo* Archipelago has been “limited and sporadic”⁷¹. It was only until the year 2000 that the Unit of National Parks sent personnel to this Archipelago. Today there are four persons assigned to the *San Bernardo* Archipelago. The deterioration processes that motivated the creation of the new extended park are still in place⁷². Among them are over-fishing, fishing with explosives by native communities, and illegal constructions of the houses and docks on the islands.

2 The Policy for Social Participation

2.1 Legal and Policy Framework

The prevailing tensions between the National Parks Authorities in parks such as Utría, where native black communities “occupied” the Park in protest for their lack of participation in the Parks’ creation and management in 1994, led the Unit of National Parks to rethink its strategy with communities.⁷³ A factor that facilitated the development of a new policy for national parks was that Mr. Juan Mayer and Mr. Juan Carlos Riascos, the Minister of the Environment and the Director of the Unit of National Parks for the 1998 -2002 period, were traditional leaders of the environmental movement in Colombia. They had directed important national NGOs⁷⁴ and had developed community work in protected areas. Their experience with local communities in protected areas allowed them to have a clear vision of the role of social participation in conservation⁷⁵.

⁷⁰ Interviews with Mrs. Clara Sierra and with Ms. Clara Osorio, Managers of the Park from 2002 to 2004 and from 1992 to 1994, respectively. Bogotá. April 2004.

⁷¹ Interviews with Mrs. Clara Sierra and with Ms. Clara Osorio, Managers of the Park from 2002 to 2004 and from 1992 to 1994, respectively. Bogotá. April 2004.

⁷² Interview with Mrs. Clara Sierra, Manager of the Park from 2002 to 2004. Bogotá. April 2004.

⁷³ Interview with Mr. Juan Carlos Riascos, Director of the Unit of National Parks. January 2004.

⁷⁴ Mr. Mayer had been the Director of the *Prosierra* Foundation which developed activities in the *Sierra Nevada* National Park. Mr. Riascos was the Director of *Fundación Herencia Verde* which developed community conservation activities in the buffer zones of the *Los Nevados* National Park.

⁷⁵ Interviews with Mr. Juan Mayer and with Mr. Juan Carlos Riascos. July 2004. Bogotá

The Policy for Social Participation in Conservation was approved in August of 1999⁷⁶ by the National Environmental Council. This Council, created by Law 99 of 1993⁷⁷, is responsible for the approval of national environmental policies. The Council is headed by the Minister of the Environment and includes the representation of different economic sectors, including the representatives of minority groups⁷⁸.

At this point it is important to clarify that the policies that are approved by the National Environmental Council do not have a legal status and are consequently not enforceable or legally binding. It is possible that the policies approved by the National Environmental Council are not always in harmony with the content of prevalent regulations. In some cases, the implementation of those policies may require changes in prevalent regulation or the approval of new regulations. In fact, this is the case of the Policy for Social Participation in Conservation, which gives high relevance to community participation in conservation while the prevalent national park's regulation completely ignores this issue. The full implementation of this policy would require regulatory changes to secure community participation in conservation.

The Policy for Social Participation in Conservation was the result of a wide and democratic process of consultation with government officials, NGOs, indigenous communities, members of Congress, multilateral agencies and the national government. The participation of indigenous communities in the consultation processes that lead to the approval of that policy was active⁷⁹. This policy is more consistent with the Constitution of 1991 than the existing national park's regulations⁸⁰ in matters of social participation. However, as indicated, the Policy for Social Participation in Conservation does not have a legal status and is not enforceable. It contains a set of good practice principles for the consultation of diverse issues related to a protected area, with the local community. In contrast, the prevalent traditional national park's regulations remain enforceable.

The Policy for the Social Participation in Conservation seeks to protect the areas of the System of National Parks by designing and implementing conservation strategies with the ample participation of local stakeholders, including indigenous organizations and black and *campesino* communities. "This new policy is based on the recognition that there is a close and inseparable interdependence between the

⁷⁶ Política de Participación Social en la Conservación. 2001. Unidad de Parques Nacionales de Colombia

⁷⁷ Article 13, Law 99 of 1993

⁷⁸ Among the members of this Council are the representatives from the municipal and regional governments (Gobernaciones); and of the Indian and black communities, the associations of producers (agricultural, mining, forest, old manufacture) and exporters, the NGOs, the Universities and the Ministers of Agriculture, Social Protection, Mines and Energy, Education, Transportation, Defense, Foreign Trade and National Planning.

⁷⁹ Correa H.D. 2002. La Construcción de la Política de Participación Social en la Conservación con los Pueblos Indígenas. *En*. Parques con la Gente II. Unidad de Parques Nacionales; Ministerio del Medio Ambiente. Bogotá

⁸⁰ Law 02 of 1959, the Code of Natural Resources of 1974 and Decree 622 of 1977

conservation of biological diversity and the protection of the cultural richness of the nation.”⁸¹.

More than defining specific strategies for conservation, the Policy for the Social Participation in Conservation is an agreement on the principles to build and adjust them at the local level⁸². The Policy includes a mix of objectives which seek to strengthen the capacity of social organizations and communities to participate in the implementation of conservation strategies. It also aims at the strengthening of the institutional capacities of the Unit of National Parks and at increasing public awareness regarding the social value of the National Parks at the local and at the national levels. The coordinated implementation of the Policy is under the responsibility of the Unit of National Parks of the Ministry of the Environment.

The Policy for the Social Participation in Conservation does not include provisions related to the criteria for the selection of new National Parks. However, it indicates that, in all cases, local stake holders should participate in the selection of the areas and in their administration. However, as mentioned previously, this policy is not legally binding and therefore the right of local stakeholders to participate in the conservation of national parks is not guaranteed. Only a reform of prevalent regulations, mainly the Code of Natural Resources approved in 1974 and Decree 622 of 1977, could guarantee such participation.

After the Policy of Social Participation in Conservation was approved, two new areas have been added to the System National Parks, through consultation processes and agreements with local indigenous communities. Among these was the *Alto Fagua Indiwasi* National Park. This Park was created in 2002 after an ample participation process with local indigenous communities⁸³. In fact, the Park was created in response to an initiative by those communities⁸⁴.

In contrast, the last Park created without a participatory process, following the procedures of the Code of Natural Resources and Decree 622 of 1977, extended the area of *Corales del Rosario* National Park to include neighboring territories of the *San Bernardo* Archipelago in April of 1988,⁸⁵ In this case, the decision was not preceded by a process of public consultation⁸⁶. In accordance with relevant regulations⁸⁷, the inclusion of the new area was technically supported by ecological

⁸¹ Interview with Mr. Juan Carlos Riascos, Director of the Administrative Unit of National Parks from 1998 to 2004. Bogotá. December 2003.

⁸² Política de Participación Social en la Conservación. 2001. Unidad de Parques Nacionales de Colombia

⁸³ Zuluaga G., Giraldo I. 2002. Proceso de Creación de un Área Especial de Conservación Biocultural. *En*. Parques con la Gente II. Unidad de Parques Nacionales; Ministerio del Medio Ambiente. Bogotá.

⁸⁴ Jiménez M. Trascendencia Jurídica y Política de la Experiencia de Constitución del Parque Nacional Natural Alto Fagua – Indí wasi. *En*. Parques con la Gente II. Unidad de Parques Nacionales; Ministerio del Medio Ambiente. Bogotá.

⁸⁵ Resolución 059 of 1988 by the Minister of the Environment.

⁸⁶ Interview with Mrs. Clara Sierra Director of the Park from 2002 to 2004. Bogotá March 2004.

⁸⁷ Articles 327 to 336 of Decree 2811 of 1974; and Decree 622 of 1977.

studies conducted by the Unit of National Parks of the Ministry of the Environment. Evidently, although the Policy of Social Participation in Conservation seeks to promote the participatory rights of local vulnerable stakeholders, the formal rules⁸⁸ do not.

2.2 Early Results of the Policy

Since the Policy for Social Participation in Conservation begun to be implemented by Unit of National Parks, more than 76 agreements have been reached with local communities throughout the country.⁸⁹ These agreements seek to: i. define management schemes with local and native communities; ii. develop Life Plans – *Planes de Vida* – of indigenous communities in a simultaneous process with the Parks` Management Plans; iii. create Consultative Boards for different Parks with the participation of communities and the Unit of National Parks; iv. develop sustainable economic alternatives for communities; and in some cases iv. define internal rules regarding the use of natural resources by communities.⁹⁰

The implementation of this policy has been effective in securing greater support from local and native communities in the conservation and sustainable management of different Parks, and for striving to solve historic conflicts with local stake holders including indigenous groups, black, fishing and *campesino* communities. Evidences of this are the communications written to the Unit of National Parks by indigenous organizations and peasant communities manifesting support to this policy⁹¹. The 14th of March of 2004 the Editorial of Colombia's most important newspaper – El Tiempo – indicated: “Programs such as “Parks with the People” which set the collaborative basis between institutions and the local population for the protection of... Parks, which has been a global model, must be revitalized and focused towards areas under the greatest threat (of illicit crop cultivation).”

In the *Corales del Rosario National Park*, which is one of the case studies provided by this document, traditional afrocolombian fishing communities are now working with the Unit of National Parks in restricting overexploitation of lobster and other fish stock, and promoting the participation of local communities in ecotourism. As a

⁸⁸ Articles 327 to 336 of Decree 2811 of 1974; and Decree 622

⁸⁹ Interview with Carlos Acosta, Advisor to the Director of the Unit of National Parks on issues related to participation of local groups. Bogotá. February 2004.

⁹⁰ Interviews with Mr. Carlos Acosta, Advisor to the Director of the Unit of National Parks on issues related to participation of local groups with the National Parks Unit and current Director of the Dutch Program for Parks in the Pacific and with Mrs. Lavinia Fiori, Coordinator of Environmental Education for the Dutch Program for Institutional Strengthening of the National Parks System. Bogotá. April 2004.

⁹¹ Interview with Carlos Acosta, Advisor to the Director of National Parks on issues related to participation of local groups with the Unit of National Parks. Mr. Acosta showed the author of this case study team letters of support towards the Policy for Social Conservation from indigenous and other local communities such as OREWA, ONIC, ASIESNA, ACIESCA, ASCALG, ACATAM, amongst others. Bogotá. April 2004.

result of this participative management strategy, between 2001 and 2002 there was a 70% reduction in the capture of undersized lobsters.⁹²

In the *Galeras* National Park, the Park Administrator recently recognized that peasant communities which used to receive Park employees with “*machetes*” before the implementation of the Policy are now working with the Unit in the development of sustainable agricultural systems in buffer zones. Since 2001 forest fires have not occurred in those sectors of the Park where 1.200 families work with the Unit⁹³ In contrast in those sectors of the Park where the Unit of National Parks is not yet working with communities forest fires are frequent.

Several Parks, including the *Cahuinarí* and the *Alto Fragua Indiwasi*, in the Amazonian region, which is one of the case studies presented in this document, have co-management schemes with Indigenous communities. In the *Cahuinarí* National Park, where the *Bora-Miraña* community leaders traditionally opposed the creation of a National Park on their territories, there is currently a Consultative Body which makes joint decisions regarding the management of the Park. In this case, the indigenous communities have undertaken zoning processes and have constructed maps where they have “...helped the Unit of National Parks to understand what we have always thought of our territories.”⁹⁴ In this case, the traditional indigenous authority oversees the compliance with fishing quotas and applies sanctions when a member of their community defies the established rules. In 2003 the indigenous communities of this Park drove away 23 illegal (Brazilian-Colombian) gold mining operations (“*dragas*”). This occurred in coordination of the local staff of the Unit of National Parks, and without the intervention of the armed forces.

Finally, in 2003, in the *Amacayacu* National Park which is located in the Amazonian flood plains, the indigenous communities that inhabit the area confiscated a shipment with 28.000 peaces of precious wood that had been illegally extracted from the park. This was the result of the coordinated and agreed actions between the Unit of National parks and local communities⁹⁵.

Although in several parks the participation of local communities in conservation efforts has increased, most of those communities derive their livelihood from the economic use of the natural resources of the parks. As indicated in section 1.2, a strict interpretation of Law 02 of 1959, of the Code of Natural Resources and of Decree 622 of 1977 would lead to the conclusion that, in most cases, those economic activities are illegal⁹⁶. For these regions, the Policy for Social

⁹² Interview with Mrs. Lavinia Fiori who coordinated a project funded by The Nature Conservancy with native communities in the islands of the *El Rosario* National Park. Cartagena. February 2004.

⁹³ Interview with Mrs. Nancy Builes, Director of the *Galeras* National Park. Bogotá. February 2004.

⁹⁴ Testimony of a Bora-Miraña leader to Mrs. Lavinia Fiori of the Unit of National Parks in a documentary which is currently being produced.

⁹⁵ Interview with Mr. Juan Carlos Riascos; Director of the Unit of National Parks. December 2003. Bogotá.

⁹⁶ Interview with Mrs. Eugenia Ponce expert in National Park's regulations.

Participation has concentrated sustainable production processes and land zoning in buffer zones of the National Parks. The lack of legal status of the Policy for Social Participation in Conservation and its incoherence with formal regulations is a menace for the long term sustainability of that policy. This is because the government (the Ministry of the Environment or the Unit of National Parks) could eventually decide to ignore the Policy for Social Participation in Conservation and apply the formal rules.

International financial support for the National Parks' System and the National Parks' Unit is relatively recent. Several international NGOs, namely The Nature Conservancy (TNC), and World Wildlife Fund (WWF), have historically been involved with the National Parks System, through their counterpart Colombian NGOs. TNC, for example, through its AID financed "Parks in Peril" program has funded the Chingaza, Cahuinari, and Sierra Nevada de Santa Marta National Parks, through programs executed by the Fundación Natura and Fundación Pro-Sierra Nevada de Santa Marta. With resources from the Macarthur Foundation and TNC, Fundación Natura implemented projects in the Utría National Park.

The first important international cooperation project was funded by the Dutch Government, as part of a World Bank loan, in 1994. This project, with an US \$ 8 million donation from the Dutch Government, financed the development of different conservation projects in the Parks of the Pacific region of the country. The European Union followed in the year 2000, with a project aimed at the Sustainable Development of the Sierra Nevada de Santa Marta (SNSM), which benefited the SNSM, Tayrona and Flamencos National Parks.

The Policy for Social Participation in Conservation has elicited much international attention and support. Since the policy was adopted in 1998, international cooperation has soared to a sum of over US\$ 35 million. The Dutch Government has been the most supportive of the new policy and financed a new phase of the Pacific Parks project worth US\$3.7 as well as a US\$ 7 million donation to strengthen the National Parks System.

Likewise, the World Bank and UNDP have implemented several GEF financed projects, more notably the GEF - UNDP Biomacizo Project and the GEF -WB Northern Andes project, which finances several parks. Recently, the GEF Secretariat and World Bank approved the formulation of a National Protected Areas Fund, and highlighted its innovative character in terms of implementing the Policy for Social Participation in Conservation. The Government also recently negotiated a debt for nature swap under the Tropical Forest Conservation Act (TFCA) with the United States Government, which will finance several national parks, buffer zones and corridors. This debt - for- nature swap agreement also highlights the Policy.⁹⁷

97 Information provided by the National Parks Unit. Emilio Rodríguez and Marcela Cañón.

2.3 The Alto Fragua Indiwasi National Park

Towards the Southeastern part of Colombia, in an area where the Andes descend rapidly from the cloud forest to the Amazonian forests, there is a region of large biological diversity⁹⁸. This region has traditionally been inhabited by various indigenous groups of the Ingaño family. The biological and cultural values of this region are "...threatened by severe process of colonization, deforestation, illicit crops ..." that could "...lead to severe environmental deterioration and to the disappearance of indigenous cultures"⁹⁹.

Since the Colony, and until recently, the *Ingaños* were dispersed by external forces into five subgroups in the south eastern Colombia¹⁰⁰. In this area, in a region known as *La Fragua*, there are five reservations and 17 communities of the *Ingaño* people.

The Political Constitution of 1991 and Law 21 of 1991 recognized the organizations of indigenous communities as public authorities. As such they had to design and undertake "Development Plans". The "Association of Indian Reservations *Tandachiridu Ingañocuna*"¹⁰¹ of the *Ingaños* adopted their Plan in 1998. However, instead of calling it a "Development Plan" they preferred to call it Life Plan - *Plan de Vida*.¹⁰² Their *Plan de Vida* has three components:

- The conservation of their ancestral territory and its resources.
- The protection of their cultural identity and traditions.
- The strengthening of their traditional medicine.

A central strategy of their Life Plan - *Plan de Vida* is the recovery of their ancestral territories. In fact, the lemma of the organizations of Indigenous Peoples of Southern Colombia¹⁰³ is that "the Indian without land is dead" ("*el indio sin tierra está muerto*").

Since 1983, Mr. Germán Zuluaga a medical doctor, and current Director of the Ethnobiologic Institute – an organization dedicated to promoting the conservation of traditional territories and medicinal plants - had maintained close relations with

⁹⁸ Etter A. 1998. Bosque Húmedo Tropical. *En* Diversidad Biológica Tomo I. Instituto Alexander Von Humboldt.

⁹⁹ Zuluaga G., Giraldo I. 2002. Proceso de Creación de un Área Especial de Conservación Biocultural. *En*. Parques con la Gente II. Unidad de Parques Nacionales; Ministerio del Medio Ambiente. Bogotá.

¹⁰⁰ Zuluaga G., Giraldo I. 2002. Proceso de Creación de un Área Especial de Conservación Biocultural. *En*. Parques con la Gente II. Unidad de Parques Nacionales; Ministerio del Medio Ambiente. Bogotá.

¹⁰¹ In Spanish: "Asociación de Cabildos Indígenas *Tandachiridu Ingañocuna*"

¹⁰² Interview with Mr. Germán Zuluaga a medical Doctor that since 1983 has maintained close relations with the *Ingaño* and who assisted them in the design of their "*Plan de Vida*". Bogotá. December 2003.

¹⁰³ In Spanish: Organización de Indígenas del Sur de Colombia.

the *Ingano* communities as he investigated and published¹⁰⁴ information related to their medical traditions. He communicated the interest of the *Ingano* communities to secure the protection of their traditional territories to Mr. Juan Carlos Riascos, the then Director of the Unit of National Parks. This initiated conversations and a negotiation process which led to the creation of the *Alto Fragua Indiwasi* National Park. The negotiation was conducted under the following agreed basic principles¹⁰⁵:

1. The difference between an investment project and a social process should be recognized: The long term objectives of the social process should be identified and agreed. Investment projects are means to achieve the long-term objectives of the social process.
2. Conservation needs to be approached from an integral and social perspective: The conservation initiatives of the *Ingano* people are motivated by health issues. Therefore, conservation strategies should include elements of education, health and social development.
3. The conservation processes have political character: Although conservation of biological resources motivated the intervention of various stakeholders, they should all recognize the indigenous nature of the territory and the autonomy of the *Inganos*.
4. Biological conservation has a multiplicity of meanings: The conservation of the area is important not only for its biological significance but also for the subsistence of the *Ingano* culture.
5. Extensive participation and consultations are needed for the successful conservation of traditional territories: The long term objectives should be defined by extensive consultations at the local level. All of the inhabitants should be able to express their opinions, to understand the scope of the process and make decisions regarding their support.
6. Appropriate methodologies have to be developed to provide support and technical advice to community based conservation processes: A methodology that ensures the maintenance of agreed objectives and that could combine scientific analyses with the traditional knowledge of the communities should be developed.
7. Conservation should be achieved by a combination of sustainable development and preservation: Conservation and environmental

¹⁰⁴ Zuluaga, G. 1994. El Aprendizaje de las Plantas: En la Senda de un Conocimiento Olvidado. Seguros Bolívar. Bogotá

¹⁰⁵ Valenzuela S., Luque A. 2001. Principles for the Creation of a Natural Protected Area with the Participation of Indigenous Groups. Unidad de Parques Nacionales. Bogotá. (Internal Document)

management should not be restricted to the boundaries of the legally protected area. They should have a regional scope and should reach all of the indigenous territory. Conservation strategies should also include the improvement of the quality of life of traditional communities.

To conduct the technical studies required by law¹⁰⁶, the Colombian Von Humboldt Institute for Biodiversity, the Unit of National Parks, and the *Tandachiridu Inganocuna* Association, conducted an evaluation of the biological resources of the *La Fragua* region during year 2000¹⁰⁷. Those studies reported that there were extensive and well preserved forests with little intervention in that region. Their indexes of biological diversity were amongst the highest so far reported in Colombia. Threatened species as well as potentially new species were found. A high diversity of insects and birds, and high frequency of endemisms¹⁰⁸ were reported. The importance of the biological and ecological resources of the area was related to its geographical position in the transition between the high lands of the Andean region and the low Amazonian forests.

The Von Humboldt Institute of Colombia, the Unit of National Parks and the *Tandachiridu Inganocuna* Association, complemented their biological evaluation with a cultural survey of the area¹⁰⁹. They identified sacred places, traditional paths, and areas where medicinal and sacred plants are endemic.

Through those studies, the *Inganos* and National Government found common reasons to protect the natural and biological resources of the *La Fragua* region. In a testimony of Mrs. Wairanina Jacanamujoy, a member of the *Ingano* community, she says "...we have sat together, the *Inganos* and the Unit of National Parks, and decided that we are going to protect this Amazonian region. But we are going to protect it from two different views; from the view of the Unit of National Parks and from the viewpoint of the *Inganos*"¹¹⁰.

In the conservation of *La Fragua*, the *Inganos* saw an opportunity to advance in their *Plan de Vida* for the reconstruction of their culture. An important element of this *Plan de Vida* is their increased control over the traditional forest territories, where some of their medicinal and sacred plants are endemic. According to Mr. Antonio Yanangona a traditional leader (*cabildo gobernador*) of the *Inganos* "...if

¹⁰⁶ Article 7 Decree 622 of 1977

¹⁰⁷ Caracterización Biológica del Territorio Indígena Ingano, Municipio de San José de la Fragua, Caquetá. 2001. Instituto Von Humboldt, Unidad de Parques Nacionales, Comité Territorial, Asociación *Tandachiridu Inganocuna*. Informe Final.

¹⁰⁸ Biologic species only found within a physically narrow habitat.

¹⁰⁹ Diagnóstico Territorial y Ambiental de la Región del Fragua. 2001. Comité Territorial, Asociación *Tandachiridu Inganocuna*. Informe Final.

¹¹⁰ Zuluaga G., Giraldo I. 2002. Proceso de Creación de un Área Especial de Conservación Biocultural. *En*. Parques con la Gente II. Unidad de Parques Nacionales; Ministerio del Medio Ambiente. Bogotá.

we do not protect the land what are we going to eat? How are we going to cure our illnesses? What will be of our medicine and of our culture?”¹¹¹.

At this point it is important to indicate that there were no *campesinos* or other communities in the territories included within the boundaries of the *Alto Fragua Indiwasi* National Park. In addition, there were not permanent dwellings of the *Inguno* communities within the area. However, those territories were regularly visited by the members of the *Inguno* communities because they include sacred sites and protect endemic plants that are part of their traditional medicine. The *Ingunos* did not develop agriculture or any other productive process in the area. In addition, it should also be mentioned that the government had not and has not granted formal property rights (*resguardos*) to the *Inguno* communities over those territories. Therefore, while the *Ingunos* did not give up formal property rights, the declaration of the *Alto Fragua Indiwasi* National Park is seen by these communities as a strategy to conserve, with the aid of the government, their sacred sites and resources (mainly medicinal plants).

On the other hand, the creation of a protected area by means of a participatory process was seen by the Government as “...a perfect opportunity for the effective implementation of its Policy for the Social Participation in Conservation adopted in August of 1999”¹¹². In addition, the process of creation of a protected area by means of participatory processes with the local indigenous groups was interpreted by the Unit of National Parks as a contribution to the protection of the principles and rights of the new Political Constitution of 1991¹¹³, and in particular that of article 63 which aims at protecting both the national parks and the ethnic diversity of the nation.

The representatives of the Unit of National Parks and the traditional *Inguno* authorities presented the cultural and ecological information collected to the *Inguno* communities¹¹⁴. The legal, economic and social implications of the creation of a National Park in the *La Fragua* region were publicly discussed and evaluated. This was done, essentially, “...to ensure the social viability, the legitimacy and the long term sustainability of the decision to create the National Park”¹¹⁵.

The process of creation of the *Alto Fragua-Indiwasi* National Park was thus jointly conducted through dialogues and negotiations between the institutions of the

¹¹¹ Interview with Mr. Antonio Yanangona. Florencia. March 2004.

¹¹² Interview with Mr. Juan Carlos Riascos Director of the Administrative Unit of National Parks from 1998 to 2004. Bogotá. December 2003.

¹¹³ Jiménez M. Trascendencia Jurídica y Política de la Experiencia de Constitución del Parque Nacional Natural Alto Fagua – Indiwasi. *En*. Parques con la Gente II. Unidad de Parques Nacionales; Ministerio del Medio Ambiente. Bogotá.

¹¹⁴ Zuluaga G., Giraldo I. 2002. Proceso de Creación de un Área Especial de Conservación Biocultural. *En*. Parques con la Gente II. Unidad de Parques Nacionales; Ministerio del Medio Ambiente. Bogotá.

¹¹⁵ Interview with Mr. Rodrigo Botero, Coordinator of the Amazonian National Parks. Bogotá. December 2003.

Government of Colombia and the traditional authorities of the *Ingano* people. It has been regarded by both government officials and representatives of the *Ingano* communities as an event of immense importance. As a part of the testimony cited previously, Mrs. Wairanina Jacanamujoy says "...we are happy to see that in these negotiating tables we can hear words such as intercultural participation, dialogue and agreement". Likewise, the government indicated that "...with the creation of the *Alto Fragua Indiwasi National Park*, the formal rights of indigenous communities are being recognized; but more than that, a more inclusive and participative society is being built in this diverse and plural country"¹¹⁶.

The creation of the *Alto Fragua-Indiwasi National Park* is seen by the Government and by the *Ingano* people as the beginning of a long term process that aims at protecting the cultural values and traditions of the *Inganos*, and conserving the ecosystems and biological resources of the region¹¹⁷. These goals are considered by the Government and by the *Inganos* to be inseparable.

In a joint ceremony, the President Andrés Patrana and the leaders of the *Ingano* people declared the creation of the *Alto Fragua-Indiwasi National Park* in February of 2002. To ensure the equitable participation of the Government and of the *Inganos* in the decisions related to the conservation of the National Park, an intercultural coordination committee was created in February of 2001¹¹⁸. This committee is integrated by representatives of the *Ingano* communities and of the Unit of National Parks. In addition to coordinating the decisions relative to the conservation of the area, this intercultural committee is also a scenario where potential conflicts between the *inganos* and the government can be prevented and eventually solved¹¹⁹.

According to Mr. Rodrigo Botero¹²⁰, Coordinator of the Amazonian National Parks, since its creation, the Committee has met regularly about every three months. Its decisions have mainly been related to the allocation and distribution of the budget, the planning and zoning of the area, the evaluation of projects and the monitoring of the effects of their decisions.

¹¹⁶Jiménez M. Trascendencia Jurídica y Política de la Experiencia de Constitución del Parque Nacional Natural Alto Fagua – Indiwasi. *En*. Parques con la Gente II. Unidad de Parques Nacionales; Ministerio del Medio Ambiente. Bogotá.

¹¹⁷ Interviews with Mr. Juan Carlos Riascos, Director of the Unit of National Parks from 1998 to 2004. Mr. Rodrigo Botero, Coordinator of the Amazonian National Parks and Germán Zuluaga advisor to the *Inganos* during the negotiations with the Unit of National Parks. Bogotá. January 2004.

¹¹⁸ Interviews with Mr. Juan Carlos Riascos, Director of the Administrative Unit of National Parks from 1998 to 2004 and Mr. Rodrigo Botero, Coordinator of the Amazonian National Parks. Bogotá. January 2004.

¹¹⁹ Interviews with Mr. Juan Carlos Riascos, Director of the Unit of National Parks from 1998 to 2004., Mr. Rodrigo Botero, Coordinator of the Amazonian National Parks and Germán Zuluaga advisor to the *Inganos* during the negotiations with the Unit of National Parks Bogotá. January 2004.

¹²⁰ Interview March of 2004. Bogotá.

The *Alto Fragua-Indiwasi* National Park has received financial support from international sources, including the “GEF - *Biomacizo*” project, the Dutch Governments’ Institutional Strengthening Program of the Unit of National Parks and the World Food Program of FAO¹²¹. Financial resources of the Park for the year 2003 were around US \$300.000, a sum significantly superior to that of other Parks. Recently US \$ 83.000 were approved by the Fund for Environmental Action¹²² to finance a project that will be conducted by the “Association of Indian Reservations *Tandachiridu Inganocuna*”. The project seeks the promotion of the sustainable use of the natural resources of the area¹²³. According to Mr. Marco Antonio Jacanamejoy, Coordinator of their *Plan de Vida* “...this project is about using the territory to satisfy our needs (medicine, food, etc.) and at the same time conserving its natural resources”.¹²⁴

3 Analysis of the Case

The two previous sections of this document described the process of creation of protected areas before and after the approval of the Policy for the Social Participation in Conservation. To illustrate the case, the declaration processes of the *Corales del Rosario* National Park, and of the *Alto Fragua Indiwasi* National Park were compared. In this section the information presented in the previous two sections is analyzed following the framework of the 2003 World Development Report. The following aspects are addressed:

1. How, and to what extent, society became aware of the environmental problems of the two protected areas.
2. The mechanisms that generated the decisions to undertake action in both cases.
3. The mechanisms that were in place to balance legitimate, compelling social interest in both cases.
4. The means by which the adopted solutions are executed and the sustainable (long term) nature of the commitments.

¹²¹ Information provided by Mr. Rodrigo Botero, Coordinator of the Amazonian National Parks. Bogotá. March 2004.

¹²² This fund administers the resources from a reduction of the bilateral debt with the Government of the United States. These resources are directed to the implementation of environmental projects by local social organizations.

¹²³ In Spanish: “*Asociación de Cabildos Indígenas Tandachiridu Inganocuna*”

¹²⁴ Interview with Marco Antonio Jacanamejoy Coordinator of the *Plan de Vida* of the Association of Indian Reservations *Tandachiridu Inganocuna*. Florencia. April 2004.

3.1 How Society Became Aware of the Environmental Problems of the Two Areas

The inclusion of *San Bernardo* Archipelago in the *Corales del Rosario and San Bernardo* National Park took place in December 1996. In this case decisions were taken by the Minister of the Environment¹²⁵. In accordance with prevailing regulations they were based on ecological information. There was not any form of public consultation with local stakeholders.

The Colombian government was aware of the ecological importance the *San Bernardo* archipelago, of its functional relations with the *El Rosario* Archipelago, and of the environmental problems caused by the overexploitation of fisheries and by the irregular occupation of its islands and mangroves^{126,127,128}. In order to create the newly extended Park, in compliance with relevant regulations¹²⁹, the Unit of National Parks of the Ministry of the Environment conducted an ecological study of the two archipelagos and their functional interdependencies¹³⁰. With that study, the government fulfilled the legal requirements for the creation of the new extended Park. Among the reasons that justified inclusion of the *San Bernardo* archipelago in the new National Park were¹³¹:

- "...the area of the *Corales del Rosario* National Park needs to be increased to secure that it better represents biogeographic diversity and to secure conditions of ecologic auto-regulation."
- "...there are vulnerable ecosystems in the *San Bernardo* archipelago including mangroves and coral reefs that are important for marine stability and productivity and that generate environmental goods and services."

The reasons for including the archipelago in the new Park are quite defensible from the ecological perspective. In addition, as indicated previously, the extension of this National Park was done in accordance with existing legislation. Nevertheless, the absence of other considerations indicates that conservation was regarded as the main priority. Additional reasons and considerations for the Park's extension indicate that other priorities, such as economic development and social equity, were not included and balanced in the decision making process.

¹²⁵ Mr. José Vicente Mogollón

¹²⁶ Díaz G. 1998. Ecosistemas Marinos y Costeros. En. *En Diversidad Biológica* Tomo I. Instituto Alexander Von Humboldt.

¹²⁷ Ramírez A., D Miranda y G. and G. Viña. 1994 Estructura Arrecifal del Archipiélago de San Bernardo. *Estudio Línea Base*. Trianea 5:189-219

¹²⁸ Mora O., 1994. Análisis de la Pesquería del Caracol Pala (*Strombus gigas L.*) en Colombia. En: Appeldoorn, R.S. and B. Rodriguea (eds.) *Queen Conch Biology, fisheries and mariculture*. Fundación Científica Los Roques. Caracas, Venezuela.

¹²⁹ Articles 327 to 336 of Decree 2811 of 1974; and Decree 622 of 1977.

¹³⁰ This study could not be found.

¹³¹ *Resolución* 1425 of December of 1996.

On the other hand, in accordance with the principles of the Policy for the Social Participation in Conservation approved in 2002, the Unit of National Parks created the *Alto Fragua-Indiwasi* National Park. The creation of this Park resulted from a process of intercultural discussions and agreements. The Life Plan - *Plan the Vida* of the *Inganos* and the biological, ecological and cultural information collected by the government, with their participation, provided the basic arguments in favor of a joint strategy for the conservation of the area.

The *Alto Fragua Indiwasi* territory has traditionally had an important cultural value for the *Ingano* people. Although the area is not inhabited, this community regularly visit their sacred sites. In addition, the *Alto Fragua Indiwasi* territory is a source of medicinal and sacred endemic plants. The *Inganos* consider the area's conservation to be strategic for the protection of their culture. In fact they included the conservation of the *Alto Fragua-Indiwasi* region as the central element of their Life Plan – *Plan de Vida*.

In order to design their Life Plan - *Plan de Vida*, the *Inganos* "...evaluated the situation of their communities and observed a dramatic reduction in the areas of their traditional territories. They noticed that their different communities were isolated and fragmented and arrived to the conclusion that new strategies were needed to recover their traditional territories and to secure the conservation of the forests, its plants, animals and sacred sites"¹³².

It is important to note that the government has not granted the *Inganos* property rights over *Alto Fragua Indiwasi* traditional territories. In addition, the *Inganos* did not develop economic activities inside the area and were interested in preventing the advances of colonization. In consequence, they had little or nothing to give up with the creation of the National Park. In fact, they gained as they assured the more active involvement of the Colombian government in the protection of a region that they consider strategic for the conservation of their culture.

For its part, the Colombian Government was aware of the ecological importance and biological diversity of the forests that connect the Andean and the Amazonian region¹³³. Ecological studies conducted by the Von Humboldt Institute of the Ministry of the Environment provided information that indicated that the region of the Amazonian *Piedemont – Piedemonte*, where the *Ingano* have their ancestral territories, was among the most biodiverse areas of Colombia. Additionally, both, the Unit of National Parks and the *Inganos* considered that the natural resources of the area were threatened by colonization, deforestation and the growth of illicit crops^{134,135}.

¹³² Interview with Mr. Germán Zuluaga a medical doctor that facilitated the agreements between the *Inganos* and the Unit of National Parks. Bogotá. February 2004.

¹³³ Etter A. 1998. Bosque Húmedo Tropical. *En* Diversidad Biológica Tomo I. Instituto Alexander Von Humboldt. Bogotá.

¹³⁴ Zuluaga G., Giraldo I. 2002. Proceso de Creación de un Área Especial de Conservación Biocultural. *En*. Parques con la Gente II. Unidad de Parques Nacionales; Ministerio del Medio Ambiente. Bogotá.

There are clear differences between the two cases, regarding the mechanisms that generated the decisions to undertake actions. In the case of the *Ingano* people, the communities saw the conservation of the forest lands as a mechanism to protect their ancestral territories, sacred sites and cultural identity, and to strengthen their traditional medicine. In the case of the *Corales del Rosario and San Bernardo* National Park the decision to create the new protected area did not take into account the expectations or economic conditions of the local communities of fishermen of the *San Bernardo* Archipelago. The presence of 60 recreation houses in the *San Bernardo* Archipelago and their possible environmental and legal implications were not considered.

3.2 The Mechanisms that Generated the Decisions to Undertake Action

Regulations for the creation and administration of Colombia's National Parks have evolved since 1959. However, they have not included mechanisms to guarantee public participation and balance conservation interests with economic and development priorities. Although the Constitution approved in 1991 recognizes the right to participate in decisions of environmental¹³⁶, early regulations still prevail. Before 2002, those regulations were applied for the creation of 47 National Parks. Between 1960 and 2002, the bases for the creation of National Parks were successively provided by the scientific and technical staff of the Ministry of Agriculture, INDERENA and the Unit of National Parks of the Ministry of the Environment. Those bases were mainly ecological in nature.

The only reference of the prevailing regulations to local communities is that of Decree 622 of 1977 which indicates that "...the declaration of a National Park is not incompatible with indigenous reserves...". However, this provision does not guarantee the protection of indigenous ancestral property rights or their participation in relevant decision making processes. In addition, other local stakeholders such as the *campesino* and black communities that have traditionally inhabited those territories are not mentioned by prevailing regulations. Furthermore, Law 99 of 1993 did not make any substantial change to main prevailing regulations related to the creation and administration of National Parks.

According to prevailing regulations, most human activities in the area of National Parks are illegal¹³⁷. The productive and economic activities, for commercial purposes, of *campesino*, black and indigenous communities are illegal. This is true even for those communities that inhabited the areas before they were declared National Parks. The fact that, according to the law, National Parks can be declared

¹³⁵ Interview with Mr. Juan Carlos Riascos, Director of the Administrative Unit of National Parks from 1998 to 2004. Bogotá. December 2003.

¹³⁶ Article 79 of the Political Constitution.

¹³⁷ Article 30 and 31 of Decree 622 of 1997.

in traditional territories without the participation of local stakeholders, and that in virtue of their creation traditional economic activities can become illegal have been sources of inequities and of conflicts between local communities and environmental authorities.

The inequities of the prevailing regulation led to the approval of the Policy for Social Participation in Conservation in 2002¹³⁸. Mr. Juan Carlos Riascos a traditional leader of the environmental movement in Colombia who was Director of the Unit of National Parks from 1998 to 2004 played a central role. As a founder of an environmental NGO¹³⁹ that developed community work for the promotion of sustainable agricultural systems in the municipalities of *Salento* and *Buenaventura* he was aware of the importance of involving local communities in conservation strategies¹⁴⁰.

Although the Policy for Social Participation in Conservation is coherent with the participatory principles the Constitution of 1991, it is not a legal instrument and it did not replace previous regulations (Law 02 of 1959, the Code of Natural Resources of 1974 and Decree 622 of 1977). The absence of a legal framework that is coherent with the Policy for Social Participation in Conservation affects local communities living in the areas of National Parks. The enforcement of prevailing regulations would be a barrier to the exercise of these communities' constitutional rights,¹⁴¹ including their economic rights and the right to participate in environmental decisions¹⁴². In addition, the prevailing legal framework impedes their access to government services such as credit and technology transfer.

The application of the Policy for Social Participation in Conservation facilitated the creation and operation of decision making mechanisms between the *Inganos* and the government, which led to the declaration and administration of the *Alto Fragua Indiwasi* National Park. It has also facilitated the creation of mechanisms for the resolution of conflicts in some of National Parks. Those experiences indicate that the future reform of the prevailing regulatory framework should take into consideration the good practice principles of that policy. Future regulations should fully recognize the constitutional rights of the *campesino*, indigenous and black communities that have traditionally inhabited the national parks. In addition, they should guarantee the effective and equitable participation of all relevant stakeholders in decisions related to the conservation and economic use of protected areas.

¹³⁸ Interview with Juan Carlos Riascos, Director of the Unit of National Parks. Bogotá. January 2004.

¹³⁹ Fundación Herencia Verde

¹⁴⁰ Interview with Mr. Juan Carlos Riascos, Director of the Unit of National Parks. Bogotá. January 2004

¹⁴¹ Included in Title II, chapters 1 and 2 of the Political Constitution.

¹⁴² Article 79 of the Political Constitution.

3.3 The Mechanisms in Place to Balance Legitimate, Competing Social Interests

Prevailing regulations for the creation and administration of National Parks do not include mechanisms to balance competing social interests. As has been previously mentioned, those regulations privilege conservation priorities over other priorities. Moreover, those regulations do not provide mechanisms to discuss priorities, such as social and cultural development, economic growth and regional development.

In the creation and administration of most of Colombia's National Parks, the preferences and expectations of local communities have not been considered, and their economic rights have been disregarded. This has been the cause of discontent among local communities and of conflict with environmental authorities. However, for the most part, the affected communities have not used the judiciary system to seek the protection of their rights related to the economic use of their traditional territories. This could be attributed to the fact that, for the most part, those are poor communities with limited awareness of their legal rights and access to the judicial system.

The judiciary system has been more active in cases of stakeholders with greater economic and political power. In 2001 a high court, in response to a law suit installed by the Office of the General Attorney, ordered the Colombian government¹⁴³ to recuperate the property of the islands of the *El Rosario and San Bernardo* National Park¹⁴⁴. In compliance with this decision of the judiciary system the national government ordered that a luxury hotel that was built in the *El Rosario* islands be handed over to the national Government. This decision was in turn challenged and the legal process is still in its early phases. This event is a signal that in the future the judiciary system could become more involved in disputes related to economic use of the national parks.

Most of the conflicts between the Unit of National Parks and the owners of recreational infrastructure in the islands are dealt with through legal mechanisms. The Unit of National Parks has initiated several processes aimed at imposing legal sanctions to the owners of docks on the islands. However, "...those processes are long and complex and, on the average, they take about 10 years to generate minor sanctions"¹⁴⁵. Therefore, they have not been effective in discouraging the construction of new docks.

¹⁴³ The order was given to INCORA (*Instituto Colombiano de la Reforma Agraria*). This was an institute of the Ministry of Agriculture which was responsible, among other things, for policies related to the management of public lands. This institute was replaced in 2003 by INCODER (*Instituto Colombiano de Desarrollo Rural*).

¹⁴⁴ EL TIEMPO, newspaper. May 13 2004.

¹⁴⁵ Interview with Mrs. Clara Sierra Manager of the Park from 2002 to 2004. Bogotá. February 2004.

The Office of the General Attorney has a Delegate Office for Environmental Matters (*Procuraduría Delegada para Asuntos Ambientales*)¹⁴⁶. This office is responsible for controlling and ensuring that environmental institutions effectively enforce environmental legislation and regulations. As has been indicated, the creation and administration of National Parks without the participation of local stakeholders does not contravene National Parks' regulations. Therefore, this office has not had a legal basis for intervening. However, after the Constitution of 1991 was approved, the intervention of this office could be justified under the argument that prevailing National Park's regulations are limiting the exercise of some of the local community's constitutional rights¹⁴⁷, including the right to participate in environmental decisions¹⁴⁸.

In addition, the Delegate Office for Environmental Matters of the General Attorney's Office has the legal mandate to evaluate the results of environmental institutions as they enforce environmental regulations. In consequence, this office could evaluate the results of the conservation efforts of the Unit of National Parks. In that case, that office would probably find that, in some cases, the declaration of some national parks has not contributed to the objectives of conservation. This type of evaluation has not been conducted. The limited actions of the Delegate Office for Environmental Matters of the General Attorney's Office in relation to the results of the adopted conservation strategies could be related to its institutional, technical and budgetary shortcomings¹⁴⁹. As a result, General Attorney's Office has a limited capacity to ensure the accountability of decisions related to National Park's creation and administration.

In the case of the *San Bernardo* archipelago, severe restrictions were imposed on local communities regarding the economic use of fishing resources¹⁵⁰. The social interests of the traditional fishing communities were not regarded. The economic effects of the new restrictions and the potential legal consequences of the existing 60 recreation houses and docks were not evaluated¹⁵¹. Although local fishing communities have expressed annoyance at the limitations on their traditional economic activities¹⁵², they have not accessed the judiciary system to seek the protection of their traditional rights. In fact, the judiciary system has rarely been used in Colombia to protect property rights inside the areas of the System of National Parks¹⁵³.

On the other hand, the *Alto Fagua Indiwasi* National Park was created through a negotiation process in which coinciding conservation interests between the

¹⁴⁶ It was originally created by article 97 of Law 99 of 1993. Then it was modified by Laws 201 of 1995 and 617 of 2000.

¹⁴⁷ Included in Title II, chapters 1 and 2 of the Political Constitution.

¹⁴⁸ Article 79 of the Political Constitution.

¹⁴⁹ Interview with Mrs. Adrina Guillén, head of the Delegate Office for Environmental Matters of the General Attorney's Office. June 2004. Bogotá

¹⁵⁰ Interview with Mrs. Clara Sierra Manager of the Park from 2002 to 2004. Bogotá. February 2004. Bogotá. February 2004.

¹⁵¹ Interview with Mrs. Clara Sierra Manager of the Park from 2002 to 2004. Bogotá. February 2004.

¹⁵² Interview with several fishermen of the *El Rosario* Archipelago. Barú Island. April 2004.

¹⁵³ Interview with Mrs. Eugenia Ponce legal expert in matters of National Park's regulations.

Inganos and the Unit of National Parks were identified. When the Park was created, an Intercultural Coordination Committee was formally installed. However, other stakeholders such as municipal majors, NGO's, and the *campesino* communities of the surrounding areas were not included. That Committee has the objective of guaranteeing the balance of interest between the Unit of National Parks and the *Ingano* communities. This Committee directs the activities of the Park, and allocates the budget, plans the zoning of the area, evaluates projects and monitors the effects of its own decisions. The Committee has equitable participation of the Government and of the *Inganos*. According to several relevant sources¹⁵⁴, the performance of this Committee has been "very satisfactory" and has secured the participation of local communities in the development of the conservation strategy. This committee also serves as a mechanism for the discussion and prevention of potential conflicts between the *Inganos* and the government.

It is possible that, in the future, conflicts of interests could eventually arise between the *Inganos* and the *campesinos* that are colonizing and advancing with deforestation towards the *Alto Fragua-Indiwasi* National Park¹⁵⁵. Those potential conflicts of interests should be foreseen and attended opportunely by the Government. Currently there is not a formal institutional mechanism for the prevention and solution of those potential conflicts in relation to the conservation of the protected area.

3.4 The Means by Which the Adopted Solutions are Executed and the Sustainable Nature of the Commitment

After 2002, the principles of the Policy for Social Participation in Conservation have been the driving force behind National Park management. That is clearly the case of the *Alto Fragua-Indiwasi* National Park. In this case, current National Park's legislation and regulations have been interpreted simultaneously with indigenous legislation, thus granting greater consideration to the rights of local stakeholders.

The coordinated conservation efforts of the *Ingano* traditional local institutions and of the Unit of National Parks of the Ministry of the Environment should contribute to the sustainability of the adopted solutions. The fact that the conservation of the *Alto Fragua-Indiwasi* National Park is part of the Life Plan - *Plan de Vida* of the *Ingano* people, should be an important factor. However, as indicated before, the *campesinos* that are colonizing the surrounding areas of the Park are not taking

¹⁵⁴ Interviews with Mr. Juan Carlos Riascos Director of the Unit of National Parks, Mr. German Zuluaga the medical Doctor who facilitated the agreements for the creation of the Park, and Mr. Rodrigo Botero Coordinator for the Amazonian Region of the Unit of National Parks. Bogotá. January 2004.

¹⁵⁵ Interviews with Mr. Juan Carlos Riascos Director of the Unit of National Parks (1998-2004) and with Mr. Rodrigo Botero Coordinator for the Amazonian Region of the Unit of National Parks. Bogotá. January 2004.

part in decisions relevant to its conservation. Their absence from the processes poses a risk for the long term conservation objectives.

In the case of the *Corales del Rosario and San Bernardo* National Park, particularly in the case of its new areas, the presence of the Unit of National Parks has been “limited and sporadic”¹⁵⁶. Problems such as over-fishing, fishing with explosives and the irregular occupation of islands are still in place. According to Mrs. Clara Sierra, Manager of the Park from 2002 to 2004, “...local communities do not feel a commitment towards the Park and the Unit of National Parks has not had the capacity nor the resources to include them in the development of long term activities oriented towards its conservation”.

During the process for the declaration of the *Corales del Rosario and San Bernardo* National Park, mechanisms to ensure the long term and sustainable commitment of relevant local actors were not created. The challenges to implement conservation plans in a protected area that was created based only on ecological information, ignoring social and economic local realities, seems significant. In essence, those challenges derive from the very severe restrictions that Colombian law imposes for the economic use of natural resources inside the limits of the National Parks.

4 Lessons and Recommendations

The following are the main lessons and recommendations derived from this case study:

- Most National Parks in Colombia were selected based solely on ecological considerations. Other factors such as the cultural diversity of their inhabitants, their traditional productive processes, their economic expectations and their property rights were not considered. Additionally, broader considerations such as regional and economic development were not taken into account.
- Decisions to create Colombia’s National Parks have been prompted by recommendations of the technical and scientific staff of the different institutions that have been responsible for the administration of the Parks throughout the years. Other stakeholders at the local, regional and national level have not been able to express their views regarding the creation of these protected areas. Consequently, most of Colombian national parks have not resulted from balanced and equitable agreement processes.

¹⁵⁶ Interview with Mrs. Clara Sierra Manager of the Park from 2002 to 2004. Bogotá. February 2004.

- The creation of National Parks by the government, without taking into account local economic, cultural and social realities and expectations, has been detrimental to the rights of local stakeholders. Protected areas legislation, which is still in effect, has severely limited the use of traditional production systems and natural resources by local inhabitants, has allowed for parks to be created without compensations, and has made many traditional economic activities illegal.
- The implementation of conservation plans in protected areas that were created based solely on ecological information, ignoring social and economic local realities and broader regional and national priorities, poses significant challenges. At the local level those challenges derive from the very severe restrictions that Colombian law has imposed on the economic use of natural resources within the limits of the National Parks.
- Prevailing National Park's regulations are incoherent with the content of the Constitution of 1991. Incoherencies are particularly noticeable in the case of the constitutional precepts related to the rights of all citizens to participate in decisions of environmental consequence. In order to harmonize National Park's regulations with the content of the Constitution of 1991, Law 02 of 1959, the Code of Natural resources of 1974 and Decree 622 of 1977 would have to be reformed. Future regulations should ensure the effective participation of all relevant actors and interests at the local, regional and national levels. Special consideration should be given to the inclusion of the most vulnerable stakeholders in these processes.
- Greater involvement of local stakeholders through application of the Policy for Social Participation in Conservation has already begun to show positive results, despite its recent application. Since the adoption of this policy in 1999, several agreements have been reached between the government and the traditional communities of the national parks. These agreements include the creation of coordinating mechanisms for the conservation and sustainable economic use of the protected areas. The support and the involvement of local communities in the implementation of conservation strategies have increased in several parks. This is true even in those cases where there had been conflicts in the past between local communities and the responsible governmental agencies.
- The Policy for Social Participation in Conservation does not have a legal status; it is not legally binding, and contradictory with prevailing regulations. The reform of the existing legal framework should solve the incoherencies that exist between prevailing regulations and the Policy for Social Participation in Conservation. The experience indicates that the future reform of the regulatory framework should take into consideration the good practice principles of that policy. They should fully recognize the constitutional rights of the local *campesino*, indigenous and black

communities. They should also ensure the equitable participation of all relevant actors, including the most vulnerable, in decisions related to the conservation and economic use of protected areas.

- Although an Intercultural Coordination Committee was created for administering the *Alto Fragua indiwasi* National Park, and for preventing and solving potential conflicts between indigenous communities and the national government, no provisions have been made to deal with the potential conflicts which could arise with the *campesino* communities which are colonizing and advancing with forest clearings towards the National Park. Future regulations should include provisions to prevent and to deal with those potential conflicts.
- Future regulations should develop institutional mechanisms to prevent and solve conflicts between conservation interests and other social priorities such as regional, social and economic development.
- Future regulations should define, in greater precision, the criteria for the selection and delimitation of National Parks, the conditions that justify their creation, the consultation processes required, and the coordination mechanisms for their administration. Those regulations should ensure that in the process of creation of a National Park and in the definition of its boundaries, special consideration is given to the potential implications for regional and local economies. This should be particularly the case where poor communities are involved. Future regulations should ensure that fair compensations are recognized.
- Future regulations should allow for the development of ecologically sustainable production processes by local communities within National Parks, and for the protection of property rights in those protected areas. For these purposes, Law 02 of 1959 and the Natural Resources Code should be reformed¹⁵⁷.

¹⁵⁷ In the opinion of Mrs. Eugenia Ponce, Legal Expert in National Parks' regulations, Article 13 of Law 02 of 1959 should be reformed.