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PRIVATELY PROTECTED AREAS AS A POLICY TOOL FOR NATURE CONSERVATION: THE CASE OF PORTUGAL

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Resumo

À escala global, as abordagens para a conservação da natureza passam actualmente por uma mudança de paradigma de governação. Há um reconhecimento crescente de que os esforços para combater a degradação da natureza devem focar no envolvimento de múltiplos atores, e no envolvimento das comunidades locais. Ao mesmo tempo, generalizam-se áreas de propriedade privada e geridas por ONGs internacionais, nacionais ou locais, por fundações, empresas ou proprietários privados. O envolvimento voluntário dos atores privados é visto como uma abordagem promissora para melhorar e ampliar os sistemas existentes de reservas naturais, onde as áreas protegidas geridas por agentes públicos ainda são a pedra angular das estratégias de conservação. Um número crescente de países constituem quadros legais para o reconhecimento de áreas protegidas privadas também permitindo a sua integração na rede nacional de áreas protegidas e implementado mecanismos para incentivar a sua criação. Neste texto exploram-se as potencialidades e os desafios das áreas protegidas privadas como instrumento complementar nas políticas de conservação da natureza. Cumulativamente, analisa-se em detalhe o caso Português fornecendo uma classificação preliminar das iniciativas de conservação por particulares, que vão desde a gestão dos sítios da rede Natura 2000 por ONGAs, até o caso de uma área protegida privada (a Reserva Natural da Faia Brava) integrada na rede nacional desde 2010.

Abstract

Approaches for nature conservation are undergoing a change of governance paradigm. There is a growing recognition that efforts to tackle nature degradation should be directed toward the engagement of multiple actors, and the involvement of local communities. Concurrently, areas owned and managed for nature conservation purposes on a voluntary basis by international, national or local NGOs, foundations, companies and private landowners are gaining momentum. The involvement of private landowners is seen as a promising and flexible approach to enhance and extend the existing systems of natural reserves where protected areas run by public actors are still the cornerstone of conservation strategies. A growing number of countries have provided legal frameworks for the recognition of private protected areas also permitting their integration in the national network of protected areas - and have eventually implemented government-led mechanisms to incentivize their creation. The article discusses potentialities and challenges of private protected areas as a complementary policy instrument for nature conservation strategies. It then focuses on the Portuguese case providing a preliminary classification of private conservation initiatives in Portugal that range from NGOs management of Natura 2000 sites, to the case of a private protected area (the Faia Brava Natural Reserve) classified and integrated in the national network of protected areas in 2010.

Palavras-chave: Proteção da natureza, áreas protegidas privadas, ONGs

Keywords: Nature conservation, Private protected areas, NGOs

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1. Introduction: towards more inclusive and voluntary approaches for nature conservation?

The Millennium Ecosystem Assessment (MEA, 2005) has shed light on the effects of human activity on the environment and on the factors causing environmental degradation and biodiversity loss which have been more rapid in the past 50 years than ever before in human history. In turn, the mainstreamed concept of “ecosystem services” has increased public awareness on the contribution of biotic nature to human well-being. Among the strategies and policy approaches implemented worldwide for nature conservation, protected areas are still key policy tools for ecosystem conservation and the preservation of cultural and esthetic values arising from human-nature relationships.

According to the last Global Protected Area Report (Juffe-Bignoli *et al.*, 2014) 15,4% of the planet’s terrestrial areas and inland water areas, and 3,4 % of the oceans are covered by protected areas. Despite this diffusion, the implementation of complementary policy instruments (e.g. payments for ecosystem services, “greening” conditions for agri-environment schemes, programs for land-stewardship etc.) the rates of human induced environmental degradation are not slowing down.

While the discouraging results of global efforts to tackle nature degradation should be attributed to the lack of integration and articulation of national and international policy tools for nature conservation with other public policies, and more radical changes in the current paradigm of development, relevant issues also arise from an assessment of the effectiveness of protected areas networks distribution and management.

More in details, some key ecosystems and specific ecoregions and biodiversity hotspots are considered poorly represented (Juffe-Bignoli *et al.*, 2014), and designed protected areas are found to be biased towards location where the cost opportunity for conservation is low, often lacking a strategic and systematic planning aiming at privileging threatened species coverage (Venter *et al.*, 2014). Also, limited participation of local people in the management of the protected area has been growingly recognized as a factor that may undermine conservation objectives (Nolte *et al.*, 2010). The creation of a protected area requires the imposition of limits on human actions and economic development activities on the delimited zone, at different degrees, according to the management objectives. This can generate conflicts and the opposition of local communities that bear the costs of the restriction of resources use and of specific activities considered to harm the functioning of ecosystems services and threaten the survival of animals or plants species, without sharing the benefits of environmental conservation, at least in the short run. In some cases the depletion of resources and the degradation of natural habitats within the parks, as well as intensified pressure on natural resources outside the parks’ borders, are caused by the disaffection and resentment of excluded and forcibly displaced local people that suffer for a weakened cultural identity and disruption of traditional access to natural resources and their management (Agrawal and Redford, 2009).

A paradigm shift from an exclusive model to more inclusive governance arrangements aiming at the implementation of community-based conservation has marked nature conservation debate and innovative practices during the last decades (Jeanrenaud, 2002). The designation of the first national park in the U.S in 1872, the Yellowstone National Park, involved the denial of indigenous peoples’ rights, and their forced eviction from the site (Colchester, 2004). This hierarchical approach also referred as “fortress conservation”- that had become a model for several national systems of protected areas- has been called into question starting from the late 70s. The articulation of conservation objectives with the development of local communities, co-management solutions and participatory planning that incorporate socio-ecological approaches are nowadays widely promoted. According to Benjaminsen and Bryceson “*This ‘win-win discourse’ consists of two main elements. First, it states that it is necessary to let people in and around the protected areas participate in the management of these areas. Second, the local population must benefit from conservation.*” (Benjaminsen and Bryceson, 2012: 338).

The reorientation of conservation thinking is revealed by the International Union for Conservation of Nature (IUCN) and the Convention on Biological Diversity's statements that encourage governance settings facilitating people's participation in the management of protected sites. Moreover, it is worth noting that IUCN recognizes territories and areas established and managed by indigenous peoples as a distinct governance type in its guidelines (Borrini- Feyerabend *et al.*, 2013). Nevertheless, according to the last Global Protected Area Report (Juffe-Bignoli *et al.*, 2014) protected areas governed with shared governance arrangements represent only about 1% of the total number of protected areas, the same percentage of those held by indigenous communities.

Concurrently, we are observing a growing attention on another governance typology of protected areas: Private Protected Areas (PPAs). These sites are owned and managed by environmental NGOs, foundations, private landowners or for-profit actors (e.g. companies). In these cases, private landowners decide voluntarily to manage the land for conservation purposes, avoiding dangerous activities for ecosystems functioning, usually implementing active measures for the recovery of degraded habitats and possibly for environmental education and recreational activities.

The voluntary involvement of private landowners is seen as a promising and flexible approach to enhance and extend the existing systems of natural reserves run by public actors (Langholz and Lassoie, 2001; Langholz, 2010). It allows to reduce public intervention and command-and-control approaches that, depending on the historical evolution of the national network of protected areas, has consisted in the acquisition of private-held lands through expropriation or in the imposition of regulatory restrictions through legislation, or in a combination of the two (Kamal *et al.*, 2015). Against the backdrop of public fiscal restraints, complementing the existing protected sites systems with the voluntary participation of private actors is thus expected to mobilize private actors resources and skills, reducing management costs on public budgeting, and to avoid social conflicts and oppositions arising when conservation requires the top-down imposition of limits on human action and economic development activities.

2. A growing momentum for Private Protected Areas on institutional and research agenda

PPAs historical roots date back to the restriction on the use of resources and game hunting reserves in medieval Europe (Runte, 1979 *apud* Langholz, 2010). The earliest land trust in US (the Trustees of Reservations) has operated continuously since 1891 (Bernstein and Mitchell, 2009); and more than 50 years ago PPAs were discussed at the first IUCN World Congress on National Parks, in 1962 (Langholz and Lassoie, 2001). Despite growing evidence, the diffusion of PPAs is still relatively neglected, especially in Europe (Holmes 2013); public sector has been a traditional focus of study since protected areas managed by government bodies or regional and local authorities reflect the most common governance typology; in addition, their data and access are more readily available for researchers. Yet, there has been growing momentum to promote protection on private lands evidenced by the publishing of reports on PPAs and on other similar instruments for land stewardship over the last years. As an illustration, on international level IUCN has produced a report on private protected areas (see Stolton *et al.*, 2014) and at E.U. level it is worth referring the report commissioned by the LIFE program, Alternative Ways to Support Private Land Conservation (Disselhoff, 2015). Moreover, in October 2015 the international land conservation network have organized its first meeting in Berlin to discuss about innovative instruments to support conservation on private lands.

Thus, PPAs and other approaches and tools for the conservation of nature on private land are being increasingly discussed. To date, the emerging body of academic literature on PPAs has focused on:

i) Their contribution to the extent of protected area coverage in specific regions and countries (Langholz, 1999; Carter et al., 2008). These studies suggest that PPAs make a relevant national and local contribution to protected land in some countries: Carter and his colleagues (2008) estimated that PPAs cover 13% of Tanzania, while in Klein Karoo region in South Africa PPAs cover more land than State PAs (Gallo et al., 2009 *apud* Holmes, 2013). In Costa-Rica at least 1,2% of the territory is protected by PPAs (Langholz, 1999). PPAs extension and contribution to the global total of PAs appear to be less significant at a global level. According to the World Database of Protected Areas (WDPA) in 2016 protected areas with private governance represent almost 5% of the total number of protected areas recorded in. Nevertheless, we should consider that much data is not reported since many national governments that supply records to WDPA do not provide any legal framework for PPAs. Additionally, discussion on PPAs contribution to systems of protected areas should explore their distribution amongst biomes and endangered habitats; in this respect, Langholz and Lassoie (2001) argue that many PPAs serve as buffer zones and biological continuum to link existing State protected sites.

ii) Their management effectiveness (Krug, 2001; Sims-Castley *et al.*, 2005). As discussed above, flexible management structures and limited local opposition due to the fact that PPAs do not challenge private property rights are relevant factors that may make PPAs more effective than other PAs (Krug, 2001; Cooke *et al.* 2011). On the other hand, concerns over resilience and financial sustainability arise when PPAs are funded exclusively by ecotourism business and commercial activities (Langholz and Lassoie, 2001).

iii) The social impacts of the creation of new PPAs that raise debates about land grabbing and “greenwash” especially in Latin America countries (Quintana and Morse, 2005; Langholz and Lassoie, 2001).

iv) Political and economic factors identified as drivers for their proliferation. The diffusion of PPAs in Africa and in Latin America in the 1980s was stimulated by the global ecotourism boom, while in the 1990s several countries (e.g. Australia, Peru, Brazil etc.) created legal frameworks for PPAs (Langholz, 2010). In Costa Rica and Paraguay formalization and recognition has been important, particularly when it strengthens landowners’ tenure and when government provides assistance in case of squatter invasion. (Langholz 1999; 2010). In countries with developed economy, tax deductions, others financial incentives and funding of private land acquisition have influenced the proliferation of PPAs (e.g. in U.S and Australia) (Merenlender et al., 2004). However, it is worth noting that Pasquini et al.’s (2011) survey found that PPAs owners in South Africa were more motivated by conservation than financial objectives. Also, referring to conservation easement in the U.S. (see below) Korngold identifies as relevant explanatory factor for their diffusion the belief in private actions along with the trust in “*non profit organizations [that], unlike government officials, are not subject to the political and financial pressures of pro-development forces demanding the watering down of an easement*”. (Korngold, 2010:603).

3. Private protected areas: an heterogeneous governance model

In the U.S. nonprofit private actors for conservation have a long history and still play a key role for the preservation of ecological features of land thanks to the use of conservation easements. A conservation easement is a binding agreement entered in a voluntary basis, between a property owner and a nonprofit organization- typically a land trust; it creates a restriction on the use of the subject property binding the owner not to take actions that would altering the environmental or scenic characteristics of the land, in return for compensation (tax benefit). Since it does not grant a right but defines restrictions usually with a perpetual duration, its enforceability was initially not clear-cut. The 1981 Uniform Conservation Easement Act gave recognition and legal validation to conservation easements as “legitimate and nonpossessory property interests” (Korngold, 2010: 596). According to the available data on the National Conservation Easement databaseⁱⁱ, updated at July 2016, in the U.S there are 116.864 conservation easements, that cover 24 million

acres. Despite the success of this model a growing number of scholars have pointed out some pitfalls and opportunities for reforms (Korngold, 2010; Gattuso, 2008). Concerns include the perpetual duration that may undermine the adaptability of the tool considering the changing natural context, the lack of a systematic strategy to incorporate conservation easements in land use planning and to articulate them with other instrument in a policy mix for nature conservation, and issues of transparency and accountability especially arising when tax subsidies (deductions or credits) are used as incentives. Additionally, Korngold argues that the use of tools similar to conservation easements or covenants are not always a well fitted solution for different legal systems considering policy challenges that need to be addressed. In Mexico NGOs have been able to have a law approved which authorizes conservation easements and allow them to be held by third parties (Environmental Law Institute, 2003). While, in France the proposition of reforming property law in order to allow the U.S. model of conservation easementⁱⁱⁱ is being debated (Račinska *et al.*, 2015).

While land trusts are well-established practices in the United States (Kamal *et al.*, 2014), also other common law jurisdictions, namely South Africa and Australia, have a well developed system of protected areas owned and managed by private actors (Stolton *et al.*, 2014). A relevant number of Latin American countries (e.g. Costa Rica, Mexico and Brasil) are also pioneers in the development and implementation of legal frameworks and incentive mechanisms for PPAs through figures of voluntary reserves and conservation easements^{iv}.

In Europe, some countries that have traditionally based their nature conservation policies on public parks systems have recently provided policy and legal frameworks for the recognition of private protected areas, and their integration in the national network of protected sites. These are usually smaller than public protected areas but they are expected to play a relevant role as a complement. Concurrently, strategies to improve the effectiveness of the management of natural parks or other lands protected through regulation (e.g. the E.U. Natura 2000 network) have led to the implementation of public-private partnerships.

Each country's historical, institutional and socio-economic contexts have shaped the way private land and private actors have been involved in nature conservation efforts. Distinct governance arrangements have given birth to different figures of public-private partnerships, and according to the national or regional legislation private actors that are recognized as owner and/or manager of PPAs may be nonprofit organizations or also for profit actors such as companies.

Each national model (or models) has a specific degree of public actors intervention as enablers of private actors involvement that deals, for example, with PPAs legal recognition, their integration in the national networks of protected areas and their inclusion in public financing schemes (see Stolton *et al.*, 2014). Also, legal frameworks may define criteria for PPAs recognition, in terms of location and ecosystems coverage, and public authorities may implement monitoring actions to ensure the protection of environmental values and long-term commitment for conservation.

According to the Common Database on Designated Areas^v, that holds information about protected areas and national legislative instruments in European countries, the countries that both formally recognize PPAs as a distinct governance typology within national protected area networks, and have a list of officially recognized PPAs are: Finland, France, the Netherlands and Portugal. The case of Finland is outstanding with almost 80% of the protected areas included in its national network, owned and managed by private actors, which is explained by the implementation of a public-led program addressing private forest-owners. Other countries such as Spain have witnessed an increase in the number of agreements between organization for land stewardship and landowners, that culminates in the integration in public policy of the figure of “*custodia del territorio*” (land stewardship) through its inclusion in the 2007 Biodiversity Law^{vi}.

4. The case of Portugal: just one private protected area?

The diachronic study about the Portuguese protected areas system conducted by Pinto and Partidario (2012) analyzes the successive and in some cases coexistent management philosophies underpinning the designation and management of protected sites. The creation of the first National Park, Peneda-Gerês and the establishment of several Nature Reserves that were influenced by the international pressures resulting from the U.N. Conference of the Environment held in Stockholm in 1972^{vii}, followed the exclusive and wilderness model embodied in the American example of the Yellowstone Park. After this initial management model, the “Landscape model” was adopted aiming at integrating human activities in the context of traditional agricultural landscapes. Later, this “Landscape model” gradually changed to a “Nature conservation model” (*ibidem*); the two have also coexisted more recently with an approach focused on biodiversity representativeness within the sites.

Against the backdrop of the succession and overlapping of distinct designation and management models it is interesting to note the key role played by Portuguese environmental NGOs in nature conservation policies. In a context characterized by the regime change and the management of the impacts due to the rapid (sub)urbanization along with the abandonment of rural areas, the first national network of protected areas was created in 1976 taking into account an inventory made by the LPN (Liga para a Proteção da Natureza) (Schmidt, 2008). Also, it was thanks to the successful campaign entitled “Save the lynx and the Malcata mountain” organized by the LPN that the Malcata Nature Reserve was established in 1981.

Starting from the 1990s, due to the actions and strategies of national environmental NGOs land purchase emerged as an alternative for securing conservation within properties located outside the national PA system (Pinto and Partidario, 2012), in a country where private property is by far the main type of land tenure. Projects co-financed by the European Commission enabled the purchase of 600 ha lands in the northeast of Portugal in the conservation project of Tejo Internacional of the Portuguese NGO Quercus in partnership with the Spanish association Adenex, as well as the acquisition of 1700 ha in Castro Verde by the LPN. These two natural sites have been integrated in the national systems of classified areas through the Natura 2000 European network. Another national NGO, Geota, is managing with the local association PATO a natural reserve in partnership with the local municipality: Paul de Tornada, in Caldas da Rainha which was recognized by the government authority for nature conservation and forest management (Instituto da Conservação da Natureza e da Floresta, ICNF) as a local natural reserve.

More recently, the Faia Brava Reserve, was legally recognized in 2010 as the first national Private Protected Area within a specific legal framework. Precisely, the Decree-Law n. 142/2008, regarding nature and biodiversity conservation, states that a private land that is not included in classified natural sites may be given the designation of private protected area and integrated in the national network of protected areas. In case of recognition, a binding management plan will be agreed with the national authority (ICNF) that manages protected areas and belongs to the Portuguese Ministry of Environment. The application process and recognition of PPAs was established a year later (Portaria n. 1181/2009). It requires that the designation of a PPA can be requested by the owner(s) of properties in the area, as well as a different right-holder that the owners have authorized for that purpose, or by environmental NGOs or legal entities under private law the owner(s) have concluded an agreement with for the submission of the application. Conservation activities planned for the area management must comply with the objectives stated by national laws. The Faia Brava Reserve is owned and managed by the ATN (Associação Transumância e Natureza) an environmental NGO that was created in 2000, at Figueira de Castelo Rodrigo, in the northeastern part of Portugal. Its aim is to achieve species and habitat conservation contributing to the “economic and social dynamism of the region”^{viii}, a mission that include the purchase of lands for conservation purposes. Funding for the management of the Faia Brava reserve comes largely from national and EU programmes (e.g PROVERE and Life programme) and international foundations (e.g. MAVA foundation).

Outside the network of classified areas that are formally recognized by ICNF it is worth referring the experience of Montis^{ix}, an association which is purchasing lands for conservation purposes using crowdfunding initiatives.

To sum up, a preliminary mapping of sites owned and managed by non-state actors in Portugal shows a differentiated landscape of governance models, in a context shaped by the successive layers of legislation and the evolution of management paradigms. Despite the formal recognition of just one site as “private protected area” (the Faia Brava reserve) other experiences of *privately* protected areas exist within the system of classified areas and outside it. The patterns identified revealed that in Portugal non-profit actors, mainly environmental NGOs are key actors in the creation of PPAs and in the absence of a public-led programme targeted to incentivise PPAs designation, EU funds are crucial for the purchase of lands or the financial sustainability of management activities.

These findings display the relevance of international actors’ roles in shaping national policies for nature conservation, an influence (or pressure?) already pointed out as regards the evolution of Portuguese environmental policies (Schmidt, 2008) and which is in line with a growing body of literature focusing on biodiversity conservation that outlines a shift of responsibilities from State authorities upward to transnational and international actors and downward to local level and non-state actors (Apostolopoulou *et al.*, 2014).

5. Concluding remarks

Protected areas owned and managed by private actors are considered to hold great potentialities to complement the action of other protected areas governance typologies (namely those managed by public authorities and the less diffused community-conserved areas) and to create synergies with other flexible instruments implemented within the nature conservation policy portfolio, such as payments for ecosystem services and agri-environmental measures (Doremus, 2003).

As additional instrument to the other models of protected area, its primary objective is to support sustainable use of resources, nature preservation and ecological restoration also aiming at conserving and promoting nature cultural values. Specifically, if properly designed and managed PPAs are expected to function as stepping stones for biological continuum and buffer zone in protected areas’ national and international networks (Langholz and Lassoie, 2001). Moreover, it is worth noting that the establishment of a protected area (publicly or privately-run) is “*sometimes expected to serve as a motor for regional development*” (Hammer, 2007: 28), especially when created in peripheral rural areas, through tourism-related revenues.

On the other hand, concerns have been raised regarding PPAs accountability, and their capacity to secure public interest and equity (Holmes, 2013). This is due to the mismatch that may occur between the policy tool objective, shaped in order to provide public outcomes (e.g. nature conservation) and the interests of private actors that own and manage the sites.

The definition given by IUCN to protected areas with private governance model is far reaching. According to IUCN guidelines PPAs are “*clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values*” (Dudley, 2008: 8), “*under individual, cooperative, NGO or corporate control and/or ownership, and managed under not-forprofit or for-profit schemes(...)[where] the authority for managing the protected land and resources rests with the landowners, who determine the conservation objective, develop and enforce management plans and remain in charge of decisions, subject to applicable legislation*” (Dudley, 2008: 26).

However, focusing on different experiences worldwide and on the Portuguese case we have shown that under this broad definition many governance arrangements emerge depending on contingents settings, property laws, the role of environmental NGOs and the implementation (or lack) of public policies and incentive mechanisms for the promotion of PPAs. These factors should be taken in consideration within a multi-level governance perspective when discussing the potential role of voluntary mechanisms for nature conservation, when assessing the social impacts of PPAs (e.g in terms of local communities inclusiveness) or their effectiveness for nature conservation objectives, and when suggesting improvements.

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ⁱ The grantee may be also a government agency.

ⁱⁱ Available at: www.conservationeasement.us

ⁱⁱⁱ Without the obligation of a dominant tenement.

^{iv} For a review see: Environmental Law Institute (2003).

^v Maintained by the European Environmental Agency. Last accessed: June 2016.

^{vi} Ley 42/2007 del Patrimonio Natural y de la Biodiversidad.

^{vii} Pinto and Partidario also refer the window of opportunity “*during the opening of the dictatorship and the reestablishment of the democracy*” (Pinto and Partidario, 2012: 800)

^{viii} See ATN website: <http://www.atnatureza.org/index.php/atn>

^{ix} <http://montisacn.blogspot.pt/>