

# IMPROVING PROTECTED AREA MANAGEMENT IN TRINIDAD AND TOBAGO

## *Legal and Institutional Framework*



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**IMPROVING FOREST AND PROTECTED AREA MANAGEMENT  
IN  
TRINIDAD AND TOBAGO**

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**REPORT ON THE ESTABLISHMENT OF A LEGAL AND INSTITUTIONAL  
FRAMEWORK**

**FOR A FORESTRY AND PROTECTED AREAS SYSTEM FOR  
TRINIDAD AND TOBAGO**

## **1.0 INTRODUCTION**

The Terms of Reference requires a review of current national legislation and identify gaps in the legislation in terms of effective protected area (“PA”) management. Propose the revisions needed to develop a National PA system, create new PAs and enforce law more effectively.

## **2.0 POLICY REGIME FOR PROTECTION OF PROTECTED AREAS IN THE REPUBLIC OF TRINIDAD AND TOBAGO**

Within the last three years the Government of the Republic of Trinidad and Tobago (“GORTT”) GORTT has approved a number of policies relating to the conservation of protected areas through the establishment of a system of protected areas.

### **2.1 General Policies**

#### **2.1.1 National Environmental Policy**

The National Environmental Policy is the GORTT GORTTs overarching statement relating to the environment and conservation of natural resources. Unlike other policy documents which are guiding in nature, the National Environmental Policy (“NEP”) has been given legislative force through Section 31 of the Environmental Management Act Ch.35:05 (“the EM Act”).

Section 31 of the EM Act provides: “The [Environmental Management] Authority and all other governmental entities shall conduct their operations and programmes in accordance with the National Environmental Policy...”

Chapter 3 of the NEP sets out the government's recognition of biological diversity and the need to ensure its conservation and wise use. The NEP provides *inter alia* that the GORTT shall promote:

- (a) The conservation and management of biologically significant areas of Trinidad and Tobago through the designation of environmentally sensitive areas;
- (b) The protection and conservation of threatened, vulnerable, rare or endangered species through the declaration of environmentally sensitive species;
- (c) Enhanced management of our biodiversity resources;
- (d) Communication and cooperation with agencies that have responsibility for biodiversity and with other interested stakeholders;
- (e) Opportunities for the sharing of information on biological diversity among government agencies, the public and private sector, NGO's, CBO's and other special interest groups;
- (f) Adoption of procedures and practices to integrate biodiversity concerns into national sectoral policies, plans and programmes;
- (g) Education and Awareness on biodiversity conservation to all sectors of the society to empower people of all stakeholders in the development and management of living resources;
- (h) The involvement of all stakeholders in the development and management of living resources, through the institutionalisation of public participation in the decision making process;
- (i) Promotion of ex-situ conservation approaches, where appropriate, as a complement to in-situ conservation programmes;
- (j) Implementation of international commitments relating to the Convention on Biological Diversity, UNCCD, Ramsar, CITES and SPAW.

At Section 3.1 of the NEP, the GORTT expressed its commitment to the establishment of

a system of protected areas through the designation of Environmentally Sensitive Areas for parts of the environment that are significant examples of the country's national heritage and of great importance to the sustenance of life, science, the country or the international community.

The NEP also specifically addresses certain ecosystems such as coastal and marine systems and forests. Section 3.5 of the NEP outlines the objectives of the NEP with respect to forest which are:

- (a) To ensure that lands best suited for the provision of forest produce and services for the community remain under permanent forest cover;
- (b) To maintain the total areas of land zoned for forest reserve and prevent its conversion into non-forest uses such as agriculture and mining;
- (c) To ensure sustainable use of forests including extraction of timber and wild meat;
- (d) Establish and enforce legislation to ensure the protection and wise use of forest resources and to regulate the harvest of these resources; and
- (e) To maintain protected forest areas for conservation purposes.

Wetlands are also specifically addressed in the NEP at Section 3.6. The commitment is to “protect, manage and restore wetlands in order to sustain their ecological and socio-economic values and functions for current and future generations”. Section 3.7 of the NEP focuses on water resources and the promise of the GORTT to “ensure that development decisions that impact on water resources are guided by acceptable water quality and quantity criteria and that these criteria can be met on a sustainable basis”.

The NEP also recognizes the impact of certain economic activities on biological diversity and seeks to integrate its needs in such activities. Section 3.8 of the NEP acknowledges the exploitation of mineral resources but seeks to promote its sustainability. It provides:

A variety of naturally occurring non-renewable resources (e.g. petroleum, natural gas, sand and gravel, oil) are extracted for use in different aspects of economic development. The extraction methods can cause short- or long-term negative impacts on the environment such as habitat loss, soil, water, air or noise pollution, aesthetic degradation, through the visual scarring of the landscape and irreversible damage to the environment. In order to minimise these negative impacts, Government will:

- (a) Enforce rehabilitation programmes by operators at mining sites;
- (b) Regulate mining activities in environmentally sensitive areas; and
- (c) Discourage wastage of mineral resources such as oil and gas.
- (d) Establish and enforce pollution reduction and control for extractive industries, so as to protect the quality of water, land and air.

### **2.1.2 National Climate Change Policy**

The National Climate Change Policy (“NCCP”) aims to provide guidance for the development of an appropriate administrative and legislative framework, in harmony with other sectoral policies, for the pursuance of a low-carbon development path for Trinidad and Tobago through suitable and relevant strategies and actions to address climate change, including sectoral and cross sectoral adaptation and mitigation measures.

The NCCP is guided by the following mutually interactive objectives:

- (a) reducing or avoiding greenhouse gas emissions from all emitting sectors;
- (b) enhancing carbon sinks;
- (c) conserving and building resilience of human and natural systems to adapt to the adverse impacts of climate change, including through capacity building and the application of cleaner and energy efficient technologies;
- (d) protection of the natural environment and human health ; and
- (e) enhanced agricultural production and food security

The NCCP proposes that the goal of the policy to achieve a low carbon development path would be achieved in part through the incorporation and integration of the core objectives into existing and proposed sectoral policy by revising relevant policies where applicable as well as through the drafting and amendment of relevant legislation. The NCCP also envisages that it would be implemented through the development of relevant strategies and action plans implementable over defined time periods.

Some of the mitigation and adaption measures proposed by the NCCP include:

- (a) Increasing the use of alternative fuels and fuel switching in the transportation sector;
- (b) Conserving forests and protecting natural systems that contribute to carbon sequestration;
- (c) Maximising the use of the carbon market ;
- (d) Assessing sectoral vulnerability to climate change by conducting vulnerability analyses and formulating adaptation options, including technological application, in biophysical and socio-economic systems; and
- (e) Enhancing the resilience of natural biophysical systems so as to maximize ecosystem services such as the natural coastal defence properties of coral reefs and mangrove systems, through the development of a system of national protected areas, including for water catchment.

The NCCP identifies the Multilateral Environmental Agreements Unit of the Ministry responsible for the Environment as the coordinating body for the implementation of the NCCP.

### **2.1.3 National Biodiversity Strategy and Action Plan for Trinidad and Tobago**

The National Biodiversity Strategy and Action Plan (“NBSAP”) was formulated to provide support to the GORTT to plan for the conservation and sustainable use of the country’s biodiversity, within the context of its socio-economic development programmes. The NBSAP defines biological diversity as the variety of all living things and the habitats in which they live.

The NBSAP provides a blueprint for tangible action, and suggests systems and programmes to enhance our capacity to manage and use biodiversity sustainably. These include measures that will:

- (a) Build Education and Awareness Programmes in biodiversity conservation on existing initiatives and fill gaps in formal approaches;
- (b) Collaborate with corporate business, (e.g. the industrial sector) as they can contribute financing, expertise on advertising, public relations and communications;
- (c) Use cultural and artistic traditions, including drama, as vehicles for environmental education and awareness programmes;
- (d) Improve law enforcement success rate and utilize it as an important tool for management and sensitization on biodiversity conservation.
- (e) Strengthen NGOs and CBOs to play a greater role in the conservation and management of biodiversity towards sustainable livelihoods;
- (f) Integrate policy objectives for biodiversity conservation into policy statements for all sectors;
- (g) Develop a clear policy process for adoption by Government entities (incl. National Budgets) and ensure that strategic action plans of these entities incorporate implications on biodiversity conservation and the environment as a whole; and
- (h) Institutionalize public participation in the development of government policy for the conservation and management of biodiversity

#### **2.1.4 Working for Sustainable Development in Trinidad and Tobago (2012)**

The Working for Sustainable Development in Trinidad and Tobago Policy (“WSDTT”) states the vision of Trinidad and Tobago is to pursue a Green Economy.<sup>1</sup> A stated goal of the green economy is to prevent the loss of biodiversity and ecosystem services.<sup>2</sup>

With its stated objective of forging a green economy, the third Pillar of the WSDTT is the environment. It is recognized that environmental sustainability is a critical component of global economic and social well-being.<sup>3</sup>

The WSDTT pays homage to the importance of biodiversity and protected areas. It provides:

Biodiversity is the variability of all living organisms including animal and plant species and their genetic make-up and of the terrestrial, aquatic and marine ecosystems of which they are part... Trinidad and Tobago has a high biological diversity to surface area ratio due to its small size and geographical relationship shared with the South American continent. Its terrestrial ecosystems include evergreen seasonal, semi-evergreen seasonal, seasonal montane forests, littoral woodlands, forests, marshes, mangrove woodlands, palm marshes and savannahs. The marine ecosystems includes the nation’s water masses, mud bottoms, coral reefs, sandy bottoms, rocky shores, sea grass beds and mudflats. Both these ecosystems support 2,160 species of flowering plants, 420 species of birds, 100 mammals, 55 snakes, 25 amphibians, 85 reptiles, 36 species of reef building corals and a wide array of corals. The islands’ biological resources are of significant importance to all sectors in Trinidad and Tobago namely agriculture, fishing, recreation, tourism and culture. However, society’s growing consumption of resources and increasing populations has led to a rapid loss of biodiversity, eroding the capacity of earth’s natural systems to provide essential goods and services on which human communities depend.<sup>4</sup>

The WSDTT advocates the establishment of a network of protected areas. It provides:

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<sup>1</sup> WSDTT, p.1

<sup>2</sup> WSDTT, p.2

<sup>3</sup> WSDTT, p.9

<sup>4</sup> WSDTT, p.89

One of the ways in which biodiversity can be protected is through the establishment of protected areas...The primary reason of establishing PAs for biodiversity is the conservation of genetic diversity, species, ecosystems and natural habitats, and as a tool for the maintenance and recovery of viable populations of rare or threatened species in their natural environment. Trends indicate that the present rate of exploitation of Trinidad and Tobago's natural biodiversity is detrimental for sustainable development. For instance, the national current hunting rates have resulted in a serious decline of the game animal population, while fishing and forestry data also show that these resources are in decline. In addition, development pressures and increasing pollution are imposing an additional burden on ecosystems and their ability to provide their services.<sup>5</sup>

The Buccoo Reef has been singled out in the WSDTT for specific mention in terms of its management and protection. It recognizes its importance as a tourism destination but the adverse impacts associated with the said tourism activity. It provides:

Buccoo Reef receives an estimated 45,000 visitors every year. Glass-bottom-boat tours of Buccoo Reef typically include a stop at Coral Gardens, where the boat anchors on sand adjacent to the coral formations to allow passengers to snorkel over the Coral Gardens. The improper use of anchors is a major cause of coral reef damage on many reefs around Tobago, where marine tourism activities are concentrated....An initiative undertaken by the Department of Marine Resources and Fisheries as well as the Buccoo Reef Trust to counteract this problem involved the installation of suitable moorings in Buccoo Reef Marine Park to be used by reef tour operators.<sup>6</sup>

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<sup>5</sup> WSDTT 75,90

<sup>6</sup> WSDTT, p.67

The WSDTT identifies the need for the sustainable use of land resources of Trinidad and Tobago. The WSDTT acknowledges the need for a New National Physical Development Plan. It provides:

Competing demands for limited land resources have become more critical. Land area under built development is currently in the vicinity of 14% (2010), with approximately 53% of the country's land space allocated to forestry and conservation and 33% to agriculture. This emphasizes the urgency of a new National Physical Development Plan.<sup>7</sup>

The drive for a new development plan would include legislative intervention. The WSDTT further provides:

Likewise, the Planning and Facilitation of Development Bill, subject to Parliamentary review in mid-2012, will assist in correcting the disconnect between the socio-economic and physical planning dimensions, as well as several other deficiencies plaguing the administration of planning. This new legislation will be introduced shortly and is geared towards significantly altering the way in which planning is undertaken, particularly in the delegation of powers" (WSDTT, 2012 p.75). As an interim measure, a firm decision has been taken by the Government of Trinidad and Tobago, which debars development of any kind and construction on and beyond 300 feet contour line of the Northern Range (WSDTT, 2012 p.47).<sup>8</sup>

In focusing on land issues, there is express attention paid to forested areas. There is recognition that in Trinidad and Tobago, forestry reserves are being degraded at an unprecedented rate. There is now a National Forest Policy ("NFP") but it is recognized that currently ecological services and added-value and downstream industries are not recognised in national accounting. The WSDTT provides:

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<sup>7</sup> WSDTT, p.75

<sup>8</sup> WSDTT, p.47,75

Forestry is included as part of the agricultural sector and is currently estimated to contribute approximately 0.69% to the Gross National Product, approximately \$85.7 million. In order to sustainably manage national forests Trinidad and Tobago needs to optimally use its forest resource while simultaneously protecting native genetic species and ecosystem diversity. While Trinidad and Tobago has a strong history of Sustainable Forest Management, significant institutional and policy weaknesses can lead to further deterioration of this tradition unless remedial measures are taken. Both natural forests and plantations are affected by over-harvesting, encroachment, fires and other forms of damage; although the extent of these have not been quantified and police patrols probably help reduce illegal activities. Forest conservation is receiving decided emphasis.<sup>9</sup>

Green intervention in Tobago also includes initiatives to protect the coastal and watershed areas. The Integrated Watershed and Coastal Area Management Project (“IWCAM”) is one of these projects in eight Caribbean Sea countries, funded by the Global Environment Facility (“GEF”).<sup>10</sup>

A major problem identified by the WSDTT was the disparate number of institutions engaged in water management. Accordingly, “the formulation and subsequent approval of the National Integrated Water Resources Management Policy (“NIWRMP”) in 2005 constituted a major step in this country’s water sector reform since it has established a coherent, cohesive and sustainable institutional framework for Integrated Water Resources Management”.<sup>11</sup>

The WSDTT mentions quarrying as a specific problem facing land resources in Trinidad and Tobago. Quarrying has been highlighted as a serious problem in terms of the use of the country’s land resources. “In Trinidad and Tobago, quarries provide a source of aggregate materials for the construction industry. Noise pollution, air pollution, high water

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<sup>9</sup> WSDTT, p.76

<sup>10</sup> WSDTT, p.67

<sup>11</sup> WSDTT, p.71

consumption, however, are serious issues that are typical in the industry. Additionally, habitat loss and flooding adversely affects biodiversity and reduces the sustainability of land use. Fortunately there are means of mitigating these effects and reducing their long-term impact without requiring the cessation of the activity...Stronger regulation of quarry operators requires the combined efforts of multi-stakeholder teams, and a greater awareness by quarry operators of the value of biodiversity.”<sup>12</sup>

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<sup>12</sup> WSDTT, p.77

## **2.1.5 Medium -Term Policy Framework 2011 – 2014: Innovating for Lasting Prosperity (2011)**

The Medium Term Policy Framework (“MTPF”) articulates an action plan for the GORTT over the period 2011-2014 and is intended to bring focus to the work of the Government over the next three (3) years. The MTPF embraces the “theme ‘Innovation for Lasting Prosperity’ outlines Government’s perspective and intent on the socio-economic transformation that needs to take place in order to achieve our commitment to the people of Trinidad and Tobago of ‘Prosperity for All’. <sup>13</sup>

The MTPF pledges to introduce new administrative arrangements for the conservation of biological resources. It provides:

The country’s biological resources will be conserved for future generations through new administrative arrangements for their management namely the implementation of the National Parks and Recreation Authority. The setting up of the Authority will protect environmentally sensitive areas while simultaneously creating green spaces for recreational activities thus enhancing the quality of life of citizens. The new Forest Policy and the new Protected Areas Policy will be implemented through the proposed Forest and Protected Areas Management Authority.<sup>14</sup>

## **2.1.6 Comprehensive Economic Development Plan for Tobago: Clean, Green, Safe and Serene**

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<sup>13</sup> MTPF, p.1

<sup>14</sup> MTPF, p.16

The Comprehensive Economic Development Plan for Tobago: Clean, Green, Safe and Serene (“CEDPT”) came into effect in Tobago in the year 2006. The CEDPT sets out the strategies and development initiatives for Tobago for a four year period ending in 2010. It was envisaged that the policy would be updated after this period. To date the policy has not been updated but the strategies and initiatives proposed therein continue to be implemented.

The CEDPT arose out of a decision taken by the Cabinet of the GORTT in consultation with the Tobago House of Assembly (“THA”) in light of the urgent need to improve the quality of life of the people of Tobago and to bring the island within the mainstream of national economic development in the medium term.<sup>15</sup>

The overarching strategy is to increase Tobago’s contribution to the GDP of the archipelagic State, redefine existing sources of foreign exchange to make them more productive and identify new high value added products and services that can be targeted for growth. The CEDPT provides a number of strategies to promote the development of Tobago to provide a high standard of living for present and future generations within an environment that is clean, green, safe and serene.<sup>16</sup>

The CEDPT envisages an environmentally sensitive and conscientious Tobago promoting the conservation of its natural resources with the establishment and implementation of standards, systems and regulations to ensure sustainable use and protection of the environment.

The CEDPT identifies two opportunities for achieving this vision. These are the proposed shift to use of environmentally friendly natural gas (CNG) and the high level of natural diversity which underlies Tobago’s tourism product. A number of challenges have been identified these include unregulated change in land use, poor monitoring and enforcement, inability to treat with garbage and waste and lack of vulnerability assessments in the design and construction of infrastructure.

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<sup>15</sup> CEDPT, p.1-3

<sup>16</sup> CEDPT, p.109

The CEDPT also proposes the establishment of a CEDP Implementation Secretariat located within the Division of Finance and Planning of the THA which would have responsibility to ensure that the strategies of the Plan are implemented in the various departments of the THA. Also proposed is the establishment of a Committee to oversee the implementation of the CEDPT and other development plans for Tobago. While the THA has primary responsibility for matters in Tobago, the Environmental Management Authority (“EMA”) and Town and Country Planning Division (“TCPD”) also has jurisdiction over environmental and planning in Tobago. The CEDPT envisages a full devolution of national agencies such as the EMA and the TCPD to the THA in the light of the higher environmental standards that need to be adhered to in the island.<sup>17</sup>

## **2.2 Specific Policies**

### **2.2.1 National Forest Policy**

National plans have been promulgated to address specific components of biological diversity. One such plan is the NFP. The NFP provides:

The purpose of this National Forest Policy is to guide the sustainable management of the forest resources of Trinidad and Tobago, including the use of these resources, and the impacts and consequences of that use. ... This Policy addresses forests located on both public and private lands, and therefore encompasses State Lands, protected areas, Forest Reserves and lands that are in private ownership. <sup>18</sup>

The NFP advocates six major objectives. These include:

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<sup>17</sup> CEDPT, p.123-125

<sup>18</sup> NFP, p.11

- (a) To optimise the contribution of forest resources to livelihoods; cultural and spiritual/religious use, while ensuring sustainable use of forests, including extraction of timber and wildlife;
- (b) To protect native genetic, species and ecosystem diversity;
- (c) To maintain and enhance the natural productivity of forest ecosystems and ecological processes (watershed functions, etc.) to provide important ecosystem services;
- (d) regulate access to forest goods and genetic resources through appropriate legislative, administrative and policy measures which ensure that these goods are sustainably extracted, without compromising biodiversity and ecosystem patterns, processes and services;
- (e) To develop legislative, administrative and policy measures to protect intellectual property rights arising from forest resources; and
- (f) To ensure that the results of research and development, including traditional knowledge, and the benefits arising from the commercial and other utilisation of genetic resources are shared in a fair and equitable way to benefit local and national stakeholders.<sup>19</sup>

## **2.2.2 National Integrated Water Resources Management Policy**

The NIWRMP recognizes that:

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<sup>19</sup> NFP, p.14-20

The national goal for the water sector is to support the socio-economic development of Trinidad and Tobago through the integrated management of the water resources and the water environment (land, air, flora and fauna), satisfying and managing the growing demands for all water users in a sustainable, efficient and effective manner, while maintaining and/or enhancing the quality of the environment and the integrity of eco-systems, and minimizing damage and losses to life and property due to water related disasters.

Some of the objectives of the NIWRMP that impacts on biological diversity are:

- (a) To protect and co-manage watersheds and wetlands as sources of water.
- (b) To promote conservation and wise use of water resources;
- (c) To establish an integrated framework for water resources management, particularly as it relates to planning and environmental management;
- (d) To maintain and enhance the quality of Trinidad and Tobago's surface, ground, and coastal waters;
- (e) To restore natural water systems in forests, rivers, wetlands, and coastal areas to restore water conservation capacity and maintain healthy ecosystems;
- (f) To protect water systems from pollution;
- (g) To prevent and minimise the impacts of flood, drought, and other water-related emergencies;
- (h) To protect and enhance the enabling environment of natural water systems (i.e. land, aquifers, and natural ecosystems); and
- (i) To integrate the management and development of watersheds and coastal areas.

### **2.2.3 National Water Resources Management Strategy**

The objective of the National Water Resources Management Strategy "NWRMS" is:

To support the socioeconomic development on the basis of sustainable resource use (surface water and groundwater), while protecting and restoring the natural environment, in particular the wetlands and forests.

Amongst the measures being proposed in the NWRMS are:

Environmental measures aim at improving the environmental and ecological condition of the water system and the ecosystems that depend on it; these measures might involve the construction of waste water treatment plants but also a different priority setting of water distribution in favour of the ecological system; pollution monitoring, effluent permit and water quality criteria.

#### **2.2.4 National Wetlands Policy**

The National Wetland Policy (“NWP”) for Trinidad and Tobago provides a rational framework through which the wise use of our wetlands can be achieved. These principles are also consistent with fulfilling our obligations under the Convention on Wetlands of international Importance especially as waterfowl habitat (Ramsar);

The NWP sets out the wetland policies of the government of Trinidad and Tobago as follows:

- (a) The GORTT will promote awareness and understanding of the wetland resources in Trinidad and Tobago and actively encourage participation of landowners, non-governmental organizations and institutions in wetland conservation;
- (b) The GORTT in keeping with the wise use principle as defined under the Convention on Wetlands, will develop exemplary practices in support of wetland conservation and sustainable wetland use when it designs and implements government programmes on publicly owned land and waters;
- (c) The GORTT will preserve outstanding examples of all wetland types in Trinidad and Tobago by including them in a system of national parks and other protected natural areas;

- (d) The GORTT will be an active partner in cooperative activities, which promote wetland conservation in Trinidad and Tobago and the Caribbean region;
- (e) The GORTT will support and promote the development within Trinidad and Tobago of the scientific and technological expertise needed for wetland conservation and ensure that this expertise is accessible to planners, managers, regulators and other decision-makers; and
- (f) The GORTT will identify weaknesses in the present institutional and organizational structures relevant to wetland conservation and will develop activities for their improvement.

An important objective of the wetlands policies contained in the NWP is to “commit all levels of government to a goal of no net loss of wetlands and their values and function, on publicly-owned lands and waters”.

#### **2.2.5 National Protected Areas Policy**

The National Protected Areas Policy (“NPAP”) was developed to “provide guidelines for the selection, designation and management of all PAs established for the conservation of natural heritage in Trinidad and Tobago. The Policy recognises that these areas may contain features with significant cultural, spiritual/religious, historical, and archaeological heritage value and will therefore require specific management in collaboration with relevant stakeholders”.

The main goal of the NPAP is to “establish an appropriate framework for the selection, legal designation and management of a national system of PAs. This includes elaboration of a classification system for the designation of a comprehensive and rationalised system of PAs, the establishment of effective institutional arrangements for management, development of mechanisms for sustainable financing, identification of human resource capacity needs, resolution of policy conflicts, development of enabling legislation and tools and guidelines for effective management.”

The NPAP sets out seven strategic actions necessary for achieving its goal of the establishment of a system of protected areas. These include:

- (a) clear classifications for protected areas;

- (b) criteria for the identification of protected areas;
- (c) recommendations for rationalising institutional arrangements for management of protected areas;
- (d) guidelines for institutionalising participatory approaches to protected areas management;
- (e) guidance for development of an enabling legislative framework;
- (f) guidance on conflict resolution for conflicting uses of protected areas; and
- (g) guidelines for the development of the necessary human and financial resource capacity.

## **2.2.6 National Action Programme to Combat Land Degradation in Trinidad and Tobago**

The National Action Programme to Combat Land Degradation in Trinidad and Tobago “NAPCLDTT” aims “to promote and enable the population of Trinidad and Tobago to exercise better choices as they relate to the use and management of land resources. The approach of the NAPCLDTT is one which engages the Government, the private sector, affected communities, the NGO and community sector and the population at large to work in partnership to reduce land degradation and promote wise use and sustainable land management.... The main goal of the NAP is to ensure the sustainable management and protection of land resources with a view to meeting immediate and future socio-economic development, cultural and ecological needs.”

Some of the objectives of the NAPCLDTT that are relevant to biological diversity are as follows:

### Short-Term: 2006 To 2008

- (a) Expand implementation of reforestation projects and develop a single set of criteria for measuring success;

- (b) Strengthen monitoring and enforcement mechanisms for a number of activities, including squatting (agricultural and residential), dumping of solid waste, illegal logging, illegal mining/quarrying, setting of bush and forest fires;
- (c) Strengthen the mechanism for community participation in land management projects;
- (d) Promote the principle of wise use of land resources and sustainable management by introducing ecologically sustainable agricultural production techniques in selected communities; and
- (e) Improve water resources management.

Medium -Term: 2009 To 2013

- (a) Rehabilitate degraded areas;
- (b) Protect catchment areas and surface and underground water resources;
- (c) Extend forested areas and protect existing forest areas; and
- (d) Improve river water quality.

Long- Term: 2014 To 2020

- (a) Achieve sustainable land use and management;
- (b) Establish a balance between utilisation of land resources (soils, minerals, oil and natural gas, water resources, forests) and ecological needs;
- (c) Rehabilitate all degraded land to mitigate negative efforts; and
- (d) Improve water resources management to ensure year-round water supply.

### **3.0 LEGISLATIVE REGIME FOR PROTECTION OF PROTECTED AREAS IN THE REPUBLIC OF TRINIDAD AND TOBAGO**

The legislative regime for the protection of PAs is at best fragmented in nature. Provisions addressing PAs are found in a number of pieces of legislation. One of the mechanisms by which biodiversity can be managed is through the establishment of protected areas. These areas typically contain features with significant cultural, spiritual/religious, historical, and archaeological heritage value and therefore require specific management for their conservation. Some of these PAs include forest reserves, wildlife or game sanctuaries, protected marine areas and environmentally sensitive areas.

Several pieces of legislation make provision for the declaration of PAs throughout Trinidad and Tobago. This has resulted in a scenario where a number of governmental entities have overlapping legal mandates for the designation and managing of PAs.

The main pieces of legislation which have been used to designate PAs are:

- State Lands Act (Ch 57:01)
- Conservation of Wildlife Act (Ch 67:01)
- Forests Act (Ch 66:01)
- Environmental Management Act (Ch 35:05)
- Fisheries Act (Ch 67:51)
- Chagaramas Development Act (Ch 35:02)
- Water and Sewerage Act (Ch 54:40)
- National Trust of Trinidad and Tobago Act (Ch 40:53)
- Marine Areas (Preservation and Enhancement) Act (Ch 37:02)

### **State Lands Act**

Under the State Lands Act Ch. 57:01 (rev. 2009) the Commissioner of State Lands is effectively the landlord for lands including forests belonging to the State. Approximately thirty six forest reserves have been designated under the State Lands Act Ch. 57:01 (rev. 2009) and its predecessor Crown Lands Act. Forest reserves have been established to primarily manage timber resources through a permitting system.

Section 6(1) of the State Lands Act Ch. 57:01 (rev. 2009) provides: “The Commissioner shall have the management of all lands of the State, and shall be charged with the prevention of squatting and encroachment upon the same and of spoil and injury to the woods and forests on such lands...and shall superintend the settlement and allotment of State lands and the laying out of village lots...”

### **Conservation of Wildlife Act**

Section 3 (2) of the Conservation of Wildlife Act Ch. 67:01 (rev.2009), provides for the establishment of game sanctuaries. The First Schedule to the Conservation of Wildlife Act lists the twelve game sanctuaries declared pursuant to Section 3(2) in Trinidad and Tobago. Game sanctuaries have been designated for the protection of the hunting and taking of wild animal species within a specific area.

Section 4(1) of the Act provides: “any person who (a) hunts or is a member of a party engaged in hunting any animal in a Game Sanctuary; or (b) is found within a Game Sanctuary under circumstances showing that he was hunting any animal; or (c) takes any dog or knowingly permits any dog to enter or be in a Game Sanctuary for the purpose of hunting; or (d) carries in a Game Sanctuary any gun or other weapon or device capable of being used to hunt animals, is guilty of an offence...”.

By and large responsibility for administration of this Act resides with Game Wardens. There is also a Wild Life Conservation Committee that advises on the conservation of wild life in Trinidad and Tobago.

### **Forests Act**

The Forests (Prohibited Areas) Order made under Section 2 of the Forests Act designates two categories of prohibited areas being areas forming part of a Forest Reserve or State Lands declared by the Minister. The Order lists thirteen specified areas being part of a Forest Reserve or State lands and nine game sanctuaries as prohibited areas. A number of these prohibited areas are also declared as forest reserves under the State Lands Act and as Wild Life Sanctuaries under the Conservation of Wildlife Act.

### **Environmental Management Act**

The EM Act provides for the designation of sensitive areas. Section 41 of the EM Act states:

- (1) The Authority may prescribe in accordance with section 26(e) the designation of a defined portion of the environment within Trinidad and Tobago as an environmentally sensitive area”

The Environmentally Sensitive Areas Rules, 2001<sup>20</sup> rules were made to empower the designation of sensitive areas. Section 3(1) of the Rules lists the four circumstances under which the EMA may declare an area to be environmentally sensitive. These Rules provide support for the designation of species as being environmentally sensitive through the protection of their habitat. Section 3(1) of the Rules provides:

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<sup>20</sup> Legal Notice No. 64 of 2001

“Subject to sub rule (2), the Authority may by Notice designate as an ESA any portion of the environment that is –

- (a) the actual or prospective habitat of any environmentally sensitive species;
- (b) required to be protected for the purpose of meeting the Government’s international obligations under any of the International Conventions referred to in Schedule I;
- (c) an area to which any of the Guidelines set out in Schedule II applies;
- (d) an area that is referred to in a written law set out in Schedule III.”

Schedule II of the Environmentally Sensitive Areas Rules, 2001 establishes the standards and guidelines for the designation of environmentally sensitive areas. It provides:

#### “GUIDELINES FOR ENVIRONMENTALLY SENSITIVE AREAS”

1. The designation of an area, as “environmentally sensitive” is to meet one or more of three categories of general objectives:

- (a) Conservation of natural resources and protection of the environment;
- (b) Sustainable economic and human development;
- (c) Logistic support such as environmental education, and information sharing.

2. The specific objectives are:

- (a) Appreciation of the broader ecological aspects of an area for its intrinsic values and functions as well as for its potential for direct material benefits.
- (b) Maintenance of the significance of an area in the national, regional or international context.

- (c) Preservation of the biological diversity of the area.
- (d) Preservation of the integrity of an area and its attributes with the aim of sustaining its potential for direct material benefits.
- (e) Maintenance of its role in the functioning of the wider ecosystem.
- (f) Protection, preservation, management or rehabilitation of an area that is fragile, threatened or degraded.
- (g) Regulation of the use of the natural resources contained within the area.
- (h) Maintenance of the cultural values of an area which are associated with preserving the integrity of the environment.
- (i) Maintenance of a stock of genetic resources in viable populations.
- (j) Facilitation of relevant scientific research or environmental monitoring to improve understanding of interactions between biotic and abiotic components of the environment, the processes involved and the attributes and potential of the area's resources.
- (k) Dissemination of relevant information to stakeholders and the public at large.

3. Areas will be selected on the basis of one or more of the following general or specific criteria:

*A. General*

- (a) Uniqueness, rarity or important biological features.
- (b) Good representation of a naturally-occurring ecological system or type.
- (c) Particularly good representative of an ecosystem characteristic of one, or common to more than one biogeographical region.
- (d) Rare or unusual habitat, ecosystem, or community attributes in a biogeographical region.

- (e) Critical importance to the survival or recovery of endangered, endemic or vulnerable species/communities of plants or animals.
- (f) An appreciable or significant assemblage of endangered, or threatened species of plants or animals.
- (g) Special value as a habitat for plants or animals at a critical stage of their biological cycle.
- (h) Provision of appreciable social recreational or economic benefit to local communities or to wider areas.
- (i) Forest, purely conservation purposes.
- (j) Unique geological features.
- (k) High in aesthetic value.
- (l) Regarded by the scientific community as having significant value for non-destructive research.
- (m) Potential for fostering environmental awareness, appreciation or education.
- (n) Performing an integral role in the functioning of the wider ecosystem.
- (o) Representative example of all coastal and marine ecosystems.
- (p) Representative example of all wetland types.

#### B. *Specific*

- (a) Strict Nature Reserve: an area requiring protection for science that possesses some outstanding or representative ecosystems, geological or physiological features and/or species, available primarily for scientific research and/or environmental monitoring.

(b) National Park: an area requiring: (i) the protection of the ecological integrity of one or more ecosystems for present and future generations, (ii) the exclusion of exploitation or occupation inimical to the purposes of designation of the area, and (iii) the provision of a foundation for spiritual, scientific, educational, recreational and visitor opportunities, all of which are environmentally and culturally compatible.

(c) Natural Monument: an area containing one, or more, specific natural or natural/cultural features of outstanding or unique value that require conservation because of inherent rarity, representative or aesthetic qualities or cultural significance.

(d) Habitat/Species Management Area: an area requiring conservation through management intervention to ensure the maintenance of habitats and/or to meet the requirements of specific species.

(e) Protected Landscape/Seascape: an area, that may contain coast and sea requiring protection for conservation and recreation, where the interaction of people and nature over time has produced an area of distinct character with significant aesthetic, ecological and/or cultural value, and often with high biological diversity.

(f) Managed Resource Protected Area: an area containing predominantly unmodified natural systems that require sustainable use and management to ensure long term protection and maintenance of biological diversity, while providing at the same time a sustainable flow of natural products and services to meet community needs.”

To date, three areas have been designated as Environmentally Sensitive Areas in Trinidad and Tobago. These include the Aripo Savannas Strict Nature Reserve (Legal Notice No.152 of 2007), Nariva Swamp Managed Resource Protected Area (Legal Notice No. 334 of 2006) and the Matura National Park (Legal Notice No. 323 of 2004).

### **Chaguanas Development Act (Ch 35:02)**

The Chaguanas area of the North Western Peninsula of the island of Trinidad has been developed pursuant to legislation and the rights vested in the Chaguanas Development Authority under the Chaguanas Development Authority Act Ch. 35:02 (rev. 2009). The Act places the responsibility on the CDA regarding the establishment and maintenance of green spaces. Section 14 (3) (b) of the Act provides: that the CDA may provide and maintain car parks, piers, public parks or gardens and other public amenities. Section 21(1) of the Act also prohibits the occupation and possession of lands vested in the CDA without its permission.

### **Water and Sewerage Act**

The Water and Sewerage Authority pursuant to the Water and Sewerage Authority Act Ch. 54:40 (rev. 2009) has been vested with the powers to restrict land use and activities to protect against pollution to its water supply.

Section 42 of the Act provides: “The Authority is responsible for maintaining and developing the waterworks and other property relating thereto...and for administering the supply of water thereby established and promoting the conservation and proper use of water resources and the provision of water supply in T&T.”

Section 51(1) of the Act provides: “If it appears to the Authority to be necessary for the purpose of protecting against pollution any water, whether on the surface or underground which belongs to it or which belongs to a water purveyor or which the Authority or a water Purveyor is for the time being authorised to take, the Authority may, after consultation with the Minister of Health, by bye-laws - (a) define the area within which it deems necessary to exercise control; and (b) prohibit or regulate the doing within that area of any act specified in the bye-laws.”

Section 51(2) of the Act provides: “Where an area has been defined by the bye-laws (under section 51), the Authority...may by notice require either the owner or occupier of any premises within that area to execute and keep in good repair such works as they consider necessary for preventing pollution of their water and, if he fails to comply with any such requirement, is liable on summary conviction.”

Byelaws have been made to prevent pollution of two water systems, the Courland Waterworks and the Quare River of Valencia. These are known as the Prevention of Water Pollution (Quare River and Valencia) Bye Laws respectively.

### **Marine Areas (Preservation and Enhancement) Act**

Protected marine areas may be declared under the Marine Areas (Preservation and Enhancement) Act Ch. 37:02 (rev. 2009).

Section 3(1) of the Act provides: “The Minister may by Order designate any portion of the marine areas of T&T as a restricted area where he considers that special steps are necessary for - (a) preserving and enhancing the natural beauty of such areas; (b) the protection of flora and fauna of such areas; (c) the promotion of the enjoyment by the public of such areas; (d) the promotion of scientific study and research in respect of such areas.”

Section 6(1) of the Act provides: “The Minister may make regulations generally for the purpose of giving effect to this Act, and in particular...provide for... (a) the protection of the flora and fauna in restricted areas and the establishment of offences in connection therewith; (b) the care, control and management of the restricted area; (c) the regulation of the use and enjoyment of such areas.”

Only one area has been designated a restricted area, that is the Buccoo Reef off Tobago.<sup>21</sup> Regulations have also been made to prevent the taking or removal of any fish, bird or mangrove from restricted areas as per Regulations 3(1) (c) and (d) of the Marine Areas [Preservation and Enhancement] Regulations (rev. 2009).

### **Fisheries Act**

The Fisheries Act 67:51 (rev.2009) also provides for the declaration of prohibited areas that may be used to protect spawning grounds of commercially important species of fish.<sup>22</sup> To date no prohibited areas have been declared.

Section 3 of the Act provides: “This Act shall extend to all rivers, whether tidal or otherwise, and to the Territorial Sea of T&T as defined by the Territorial Sea Act.”

Section 4 of the Act provides: “The Minister may make regulations - (a) for prescribing the size of mesh, form, and dimensions of nets or appliances for fishing, and for the manner of using the same; (b) for restricting the size of fish, crabs, shrimps and turtles that may be taken, and prohibiting the sale or exposing of such as are under such size as may be prescribed by the regulations; (c) declaring any area to be a prohibited area; (d) prohibiting the killing, harpooning, taking, removing, catching or any other forms of taking possession of fish or any variety thereof either absolutely or at such times and within such areas as may be prescribed.”

### **National Trust of Trinidad and Tobago Act**

Section 4 of the National Trust of Trinidad and Tobago Act Ch 40:53 (rev.2009) provides for the establishment of the National Trust of Trinidad and Tobago. The National Trust of Trinidad and Tobago (“NTTT”) has been vested with the powers to protect the built heritage

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<sup>21</sup> Marine Areas [Restricted Area Order] (1973)

<sup>22</sup> NPAP, p.6

of Trinidad and Tobago and any associated natural ecosystem. Specifically, Section 5 of the Act provides that the functions of the National Trust are to —

- (a) listing and acquiring such property of interest as the Trust considers appropriate;
- (b) permanently preserving lands that are property of interest and as far as practicable, retaining their natural features and conserving the animal and plant life;
- (c) preserving, maintaining, repairing and servicing or, arranging for the preservation of property of interest other than land and where such property of interest comprises buildings, augmenting the amenities of such buildings and their surroundings;
- (d) making provision for the access to and enjoyment of property of interest by the public;
- (e) encouraging research into property of interest including, where applicable, any animal, plant or marine life associated therewith;
- (f) compiling photographic or architectural records of property of interest;
- (g) making the public aware of the value and beauty of the heritage of Trinidad and Tobago; and
- (h) advising the Government on the conservation and preservation of property of interest and on any or all of the matters referred to above

While the NTTT have inventoried a number of properties none of these have been listed for protection to date.

#### **Ordinance – Tobago Main Ridge**

The Tobago Main Ridge Forest Reserve is on record as the oldest legally protected forest reserve geared specifically towards a conservation purpose. It was established on April 13th,

1776 by an Ordinance which states in part, that the reserve is "for the purpose of attracting frequent showers of rain upon which the fertility of lands in these climates doth entirely depend."<sup>23</sup> The Main Ridge Reserve was submitted in 2011 as a UNESCO World Heritage Sites and is currently on its tentative listing.

## **4.0 INSTITUTIONAL FRAMEWORK FOR PROTECTED AREAS IN TRINIDAD AND TOBAGO**

The multiplicity of laws permitting the establishment of PAs has given rise to the presence of numerous governmental entities with legal mandates for designating and managing PAs.<sup>24</sup>

- ***Forestry Division, Ministry of Housing and the Environment:*** directly responsible for managing Wildlife Sanctuaries, Forest Reserves, and Prohibited Areas designated under the Conservation of Wildlife Act (Chap. 67:01) and Forests Act (Chap. 66:01), respectively.
- ***Tobago House of Assembly (THA):*** directly responsible for formulating and implementing policy for the conservation of biodiversity resources in Tobago, including land and marine protected areas. The various Divisions and Departments involved in PAs management include:
  - ***Division of Agriculture, Marine Affairs and the Environment***
  - ***Department of Natural Resources and the Environment (DNRE):*** responsible for managing the Main Ridge Forest Reserve, a proposed ESA, and the Tobago wildlife sanctuaries.
  - ***Department of Marine Resources and Fisheries:*** responsible for managing the Buccoo Reef /Bon Accord Lagoon Complex Protected Marine Area, a proposed ESA.
  - ***Division of Tourism and Transportation:*** provides training and guidance to resource users on the marketing of protected areas in Tobago for educational interpretation

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<sup>23</sup> United Nations Education, Scientific and Cultural Organization, World Heritage Convention, Website accessible at: <http://whc.unesco.org/en/tentativelists/5646/>

<sup>24</sup> This section 4 is reproduced from the National Protected Areas Policy, 2011.

and recreation.

- **EMA:** directly responsible for designating and coordinating the management of ESAs by the legally designated management authorities such as the Forestry Division and the Tobago House of Assembly.
- **CDA:** established under the Chaguaramas Development Act (Chap. 35:02) to undertake development of the North-West Peninsula of Trinidad in accordance with a development plan. The entire North-West Peninsula of Trinidad, including the offshore islands of Gaspar Grande, Gasparillo, Monos, Huevos and Chacachacare, were vested in the CDA on October 9, 1974.
- **Fisheries Division, Ministry of Food Production, Land and Marine Resources:** is directly responsible for managing marine fisheries and has legislative responsibility for designating prohibited areas in the marine environment of Trinidad and Tobago. To date, only restrictions for demersal trawling have been established.
- **Water and Sewerage Authority:** under the Water and Sewerage Act (Chap. 54:40), may define and prohibit or regulate activities in areas (known as watershed protection areas) for the purpose of protecting surface or groundwater water against pollution.
- **Ministry of Community Development and the National Heritage Trust of Trinidad and Tobago:** directly responsible for appointing the National Heritage Trust of Trinidad and Tobago, this in turn is responsible for conducting inventories of, and approving, properties of interest as heritage sites, and maintaining a Register of these properties.
- **Town & Country Planning Division (TCPD), Ministry of Planning, Economic and Social Restructuring and Gender Affairs:** is engaged primarily in development planning, and development control, which includes monitoring of development. This includes managing the physical environment by ensuring that development on land does not adversely affect the coastal and marine environments. This includes the location of pipeline wayleaves, sea protection structures attached to the coast, and liquid effluent being discharged from coastal developments. In addition, the Town and Country Planning Division in conjunction with the Forestry Division and the

Environmental Management Authority allocates lands for communal parks, game and bird sanctuaries, protection of marine life as well as environmentally sensitive areas and species habitat. The legislation also allows the Minister responsible for town and country planning to issue a “tree preservation order” where this is considered to be merited. The National Physical Development Plan for Trinidad and Tobago was made statutory in 1984 and had a 20-year time line. Given the fact that the next 20 year plan is still to be prepared, and the validity of the strategic initiatives of the 1984 Development Plan, planning activities continue to be guided by the existing National Physical Development and the several Local Area Plans being prepared for the country.

- ***The Commissioner of State Lands*** is the landlord of **All State Lands** inclusive of the sea bed in Trinidad and Tobago and has the power to designate other agencies to manage such land under the State Lands Act (Chap. 57:01).

## **5.0 DEFICIENCIES IN LEGISLATIVE REGIME FOR PROTECTED AREAS IN TRINIDAD AND TOBAGO**

In the State of Environment Report prepared by the EMA in 1999<sup>25</sup> identified numerous deficiencies in the legislative and institutional framework for the protection of the environment. Over ten years later many of the issues continue to limit the effective management of protected areas.

### **5.1 Multiplicity of Legislation Granting Protected Areas Status**

There are several pieces of legislation used to protect areas in Trinidad and Tobago depending on the purpose for the protection.<sup>26</sup> The existing legislative framework and in particular the enactment of the Environmentally Sensitive Areas Rules has resulted in the greater protection and conservation of two main areas namely the Nariva Swamp and the

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<sup>25</sup> EMA, State of Environment Report 1999, p.29-33

<sup>26</sup> See Section 2.3.1, p.31 *supra*

Aripo Savanna. In the Nariva Swamp field stations have been established even with live-in quarters.

However, the fact that there are a multiplicity of laws providing the legal basis for establishing PAs, has led to a lack of co-ordination, conflict in use and the failure to designate protected areas. For example, the Melajo Forest was declared a Forest Reserve under the Forests Act Ch. 66:01 (rev.2009) but the Ministry of Energy and Energy Affairs has granted a licence undertake quarrying operations within the Melajo Forest.

An example of the challenges faced by a governmental entity charged with responsibility for a category of protected areas can be found in the record of the NTTT. Pursuant to Section 5 of the National Trust of Trinidad and Tobago Act as amended (Ch. 40:53), the NTTT has been vested with a wide mandate including permanently preserving lands that are property of interest and as far as practicable, retaining their natural features and conserving the animal and plant life and encouraging research into property of interest including, where applicable, any animal, plant or marine life associated therewith. Accordingly the NTTT has a potential role in designating and managing properties of interest and its associated biodiversity and ecosystems.

The National Trust of Trinidad and Tobago Act as amended (Ch. 40:53) was first assented to on August 14, 1991 but was not proclaimed by the President until the 30<sup>th</sup> December 1999 due to a number of errors and omissions. This included the need for improvement of the wording and structure of subsections, the correction of typographical errors and clarification of the power of the NTTT to constitute itself as guardian of listed monuments where such the monument is occupied as a dwelling house.

The key mechanism contemplated in the National Trust of Trinidad and Tobago Act as amended (Ch. 40:53) for protecting properties of interest including its associated biodiversity and ecosystems is through the listing and acquisition of properties. The National Trust became fully functional in the year 2003. To date the National Trust has identified

approximately two hundred properties throughout Trinidad and Tobago as properties of interest. However to date, none of these properties have been listed in accordance with the National Trust of Trinidad and Tobago Act as amended (Ch. 40:53). The process for listing properties under the National Trust of Trinidad and Tobago Act as amended (Ch. 40:53) is subject to the approval of the Minister responsible for Culture which includes an additional layer of bureaucracy in carrying out its functions.

Furthermore, the legislation provides a limited role for private citizens and members of civil society in the NTTT. Accordingly, the implementation of the National Trust of Trinidad and Tobago Act as amended (Ch. 40:53) is primarily driven by State actors who constitute a majority within the NTTT. The Act does not provide for any incentives to the owners of properties of interest to manage and/or protect such properties. Penalties and/or fines for the commission of offences prescribed under the National Trust of Trinidad and Tobago Act as amended (Ch. 40:53) are minimal and do not provide an adequate deterrent to offenders. Under the National Trust of Trinidad and Tobago Act as amended (Ch. 40:53), the NTTT has no power to stop demolition of properties which may be of interest. As a microcosm of the larger problems facing the governmental entities charged with safeguarding protected areas, a salutary lesson can be learned from the tale of the NTTT.

## **5.2 Limited Right of Private Action**

An important weapon in the arsenal of environmentalists in many developed countries is the right to bring private actions in environmental matters. The exception can be found in the EM Act where section 69 creates a right in private persons to initiate legal action with respect to the breach of an environmental requirement.

*“Section 69 (1) Any private party may institute a civil action in the Commission against any other person for a claimed violation of any of the specified environmental requirements...”.*

According, to Section 62(f):

*“Section 62- For the purposes of this Part and Part Viii, “environmental requirement” means the requirement upon a person to—...(d) refrain from any unauthorised activities impacting on the environment in an “environmentally sensitive area”...”.*

Thus, the EM Act is unique in that it permits private persons to seek to stop unauthorized acts in sensitive areas unlike other legislation where no such authority is given.

### **5.3 Special Problems Associated with Use of Provisions for Making of Regulations**

While it is felt that sufficient laws exist in Trinidad and Tobago to deal with PAs, an additional dimension to the perception of the adequacy of laws lies in the making of regulations or the use of existing legal norms to create more effective legal powers in the fight against environmental abuse of PAs. It is accurate to say that most of the laws are worded in a general manner, with the intent being the passage of regulations to provide for specificity. This method of passing legislation can be used successfully to update laws and stipulate new standards, as may be required by changing modern conditions. Unfortunately, it would seem that there is a reluctance to use such regulatory powers and this has resulted in some laws being largely unenforceable.

### **5.4 Temporary Designation of Protected Areas**

A useful legislative tool for the protection of areas is that of temporary protection orders. Temporary protection orders can be used to protect the status quo of an area while steps are being taken to investigate the suitability of longer term protective measures. This type of power is not present in existing legislation in Trinidad and Tobago.

## **5.5 Challenges with Private Land Owners**

PAs may straddle both state and private lands and there is no legislative mechanism to bring private lands into a national protection scheme. This can only be done through the Land Acquisition Act, Chapter 58:01 (rev.200), where lands can be acquired for a public purpose. This is a long process with constitutional overtones and is not the satisfactory or appropriate solution in many instances where protection of a particular area is sought.

## **5.6 Lack of Punitive Sanctions**

Another setback faced by enforcement agencies is the absence of sanctions level that would render breaches of laws to deal with PAs quite undesirable. It would appear in Trinidad and Tobago that it is more cost-effective to break the law and pay a fine than take steps to desist from breaching laws applicable to environmental protection. The low financial penalties for breaches of the law have contributed to the lack of enthusiasm on the part of agencies for bringing court actions in order to enforce the law.

The concern about the absence of punitive sanctions in environmental legislation has been largely nullified by the provisions of the EM Act. Sanctions are both civil and criminal. In the realm of civil law, Sections 65-68 of the EM Act provide an entire range of remedies. The first step is to identify a breach of an environmental requirement and issue a notice of violation. This could result in a consent order or, where there is no such agreement, an administrative order.

An administrative order can contain the following:

1. Order to Stop Conduct
2. Order to Perform Monitoring

3. Civil Assessment
  - a. Compensation for Costs Incurred by EMA
  - b. Compensation for Damages to Environment
  - c. Damages for Economic Benefits Gained
  - d. Damages for Failure to Comply with Environmental Requirements
    - i. Individuals - \$5,000 with \$1,000 per day continuing
    - ii. Companies - \$10,000 with \$5,000 per day continuing
4. Injunctions
5. Closure of Facility
6. Prohibition of Continuing Use of Equipment or Process
7. Any other Remedies Available in Law

It should be noted that, with respect to civil liability, Section 71 of the EM Act makes it possible for company officials to have personal liability on the basis of the responsible corporate officer doctrine. Section 71 of the EM Act states that:

*Where a violation of any environmental requirement has been committed by a person (other than an individual), any individual who at the time of the violation was a director, manager, supervisor, partner or other similar officer or responsible individual, or who was purporting to act in such capacity, may be found individually liable for that violation if, having regard to the nature of his functions in that capacity, the resources within his control or discretion, and his reasonable ability to prevent the violation -*

- (a) *the violation was committed with his direct consent or connivance; or*
- (b) *he, with knowledge, did not exercise reasonable diligence to prevent the commission of the violation.*

In criminal law, Section 70 of the EM Act creates the offence of wilfully or recklessly endangering human health or the environment or sensitive species and sensitive areas. The possible penalties are fines of up to \$100,000 and two years' imprisonment. Section 70 of the EM Act addresses knowing and reckless endangerment and states that:

*(1) Any person who through the release or handling of any pollutant or hazardous substance, or the arrangement for another person through any contract or other agreement to release or handle any pollutant or hazardous substance, knowingly or recklessly endangers human life or health commits an offence and is liable, on conviction on indictment, to a fine of one hundred thousand dollars and imprisonment for two years.*

*(2) Any person who knowingly or recklessly undertakes or conspires to allow any activity in an "environmentally sensitive area" or with respect to an "environmentally sensitive species" designated under section 41, which may have an adverse impact on the environment within such area or on such species, commits an offence and is liable, on conviction on indictment, to a fine of one hundred thousand dollars and imprisonment for two years.*

*(3) A complaint for any offence under this section shall be made within three years from the commencement of this Act, or from the time when an action giving rise to such offence is first discovered by the Authority.*

*(4) For purposes of this section, endangerment of human life or health means placing one or more persons in danger of death or serious bodily injury, including unconsciousness, extreme pain, or physical or mental impairment.*

*(5) Any action under this section may be in addition to any other action taken by the Authority under this Part.*

## **5.7 Squatting on State Lands in Protected Areas**

Squatting has become a significant problem in many PAs. For example, even prior to its designation as an environmentally sensitive area, squatters had established their homes in many areas of the Ariopo Savanna.

Pursuant to Section 4(2) of the State Lands Act Ch 57:01 (rev.2009) all rights of ownership in respect of state lands is exercisable by the Commissioner of State Lands. The statutory responsibilities entrusted to the Commissioner of State Lands include inter alia the administration, management and protection of State Lands, the prevention of squatting and encroachment, the issue of mining and other leases and licenses and the grants of rights and liberties over the foreshore or lands under territorial waters.

In particular, Section 6(1) of the State Lands Act Ch 57:01 (rev.2009) provides that the Commissioner is charged with the prevention of spoil and injury to the woods and forests on State lands.

Since its enactment the functions of the Commissioner related to the use and management of State lands (in particular the use of state lands for agriculture, housing, road and industrial development) has been whittled away to other governmental entities. The core function of the Commissioner now relates to lease management of State lands. Accordingly while the Commissioner is the landlord of the State lands, the management and its regulation particularly with regards to fauna, flora and their associated ecosystems fall within mainly within the purview of various governmental entities.

The management of PAs on State lands is usually facilitated through the declaration under the appropriate legislation and the handing over of the management to the appropriate governmental entity. While the relevant governmental entity may be responsible for the management of the PA , it does not have powers to eject encroachers or squatters. Squatting and/or encroachment on State Lands have a significant impact on biodiversity especially where this occurs unregulated. In the High Court judgment of Justice Carol Gobin in 2011<sup>27</sup>, it was confirmed that it is the Commissioner who has the sole power to eject squatters or encroachers under the provisions of the State Land Act.

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<sup>27</sup> [CV.2008-03473], Balkissoon, Vida and Ors. v The Land Settlement Agency

Staffing within the Office of the Commissioner is limited thereby reducing the ability to of the Commissioner to carrying out its functions including that of monitoring and enforcement. Where inspectors and/or patrol staff of the Office of the Commissioner of State Lands observe breaches (for example relating to wildlife, forestry or timber) they are reported to the responsible governmental entity for their own action. Breaches of the State Lands Act Ch 57:01 (rev.2009) may also be addressed through the issuance of Quit Notices by the Commissioner. However there are often extensive delays in having such matters filed and determined in the relevant Court. Often by the time the matters reach the Court the offenders have relocated and cannot be found.

## **5.8 Non-Legislating of International Conventions**

The non-legislating of conventions has diminished the ability of international law to assist with PAs. For example, the non-national enactment of the Convention on Wetlands (Ramsar, Iran, 1971) in Trinidad and Tobago has meant that wetlands such as the Nariva Swamp that have been designated as a Ramsar Sites, is without national protection. It was clearly decided in the case of EA 003 of 2002 - Talisman (Trinidad) Petroleum Ltd (Appellant) v. The Environmental Management Authority in that where Parliament fails to introduce in national legislation and international treaty that the Government has signed, such treaty has no national legal standing.

## **5.9 Payment for Ecosystem Services**

Payment for ecosystem services can be used to supplement existing environmental and biodiversity laws especially where there are problems associated with monitoring and enforcement. Rather than relying on a person's responsibility to obey the law or altruistic motives payment for ecosystem services provide financial incentives to efficiently maintain ecological benefits, encourage environmental restoration, and sustain local economies.

PES is a voluntary transaction for a well-defined environmental service purchased by at least one environmental service buyer from at least one environmental service provider if and only

if the environmental service provider meets the conditions of the contract and secures the environmental service provision.<sup>28</sup> In a PES transaction the beneficiary from the ecosystem service makes a payment or provides another form of reward to the land owner or person who has the rights to use the ecosystem for managing the ecosystem in a way that secures an ecosystem service. This payment is conditional on the delivery of the service.<sup>29</sup>

The defining factor which constitutes a PES transaction is not the exchange of money for delivery of an environmental service but that the payment is the basis which stimulates the provision of the environmental service where it would not have otherwise been offered.<sup>30</sup>

Four main classes of PES that can be established are:

- (a) public payment schemes for private land owners;
- (b) formal markets with open trading between buyers and sellers;
- (c) self-organized private deals; and
- (d) Eco-Certification Programs

Trinidad and Tobago however has not had a history of using open trading mechanisms to regulate the environment such as in the United States and Europe. This is in part that it is very costly to establish such markets and secondly there is a limited local market for trading to make such a scheme feasible. Self-organized private deals involve buyers of ecosystem services such as private companies or conservationists who pay landowners to change management practices in order to improve the quality of the services on which the buyer wishes to maintain or is dependent. The demand for self-organized private deals is most likely to occur where resources are diminishing because of a declining ecosystem service. In Trinidad and Tobago, resources are often perceived as renewable or infinite such that it is only where it diminishes to the point of scarcity would such a mechanism hold potential. Eco-Certification Programs enable consumers to choose to pay a price premium for products

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<sup>28</sup> S. Wunder, Payments for environmental services: some nuts and bolts, Center for International Forestry Research Occasional Paper No.42, Bogor, 2005.

<sup>29</sup> United Nations ESCAP, Innovative socio-economic policy for improving environmental performance: payments for ecosystem services, United Nations, 2009.

<sup>30</sup> Page 3, Payment for Ecosystem Services: Getting Started, 2008 Forest Trends, The Katoomba Group, and UNEP.

produced in a way that is certified by an independent third party, according to standard criteria, to be ecologically friendly.<sup>31</sup> Accordingly, due to the immaturity of the public to concept of paying for ecosystem services in its earliest stages the use of public payment schemes may be the more feasible option. <sup>32</sup>

## **5.10 Absence of Adequate Consultations in the Establishment of Protected Areas**

The establishment of PAs are generally done without public consultations. This is a major deficiency in the existing pieces of legislation that permits the designation of PAs. An exception is the EM Act where there is some consultation but only with other governmental entities.

*Rule 3 (1) Subject to sub rule (2); the Authority may by Notice designate as an ESA any portion of the environment.*

*Rule 5 (1) Where the Authority proposes to make a Notice, it shall notify that fact, and transmit a draft of the proposed Notice to—*

- (a) the government entities having responsibility for land, the continental shelf, forestry, conservation of wildlife and fisheries; and*
  - (b) any other government entity having responsibility for planning and management in the proposed ESA*
- (2) The notification shall invite written submissions with respect to the proposed Notice to be made to the Authority*

## **5.11 Limited Opportunities for Co-Management of Protected Areas**

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<sup>31</sup> Forest Trends, Developing Future Ecosystem Service Payments in China: Lessons Learned from International Experience, 2006, p.6

<sup>32</sup> Forest Trends, The Katoomba Group and UNEP, Payments for Ecosystem Services Getting Started: A Primer, United Nations, 2008.

Modern management of PAs contemplated several models depending on existing circumstances. These can include:

1. Management by a single governmental entity.
2. Management by multiple governmental entities.
3. Management by private persons with property within a PA.
4. Management by private groups such as NGOs.
5. Combinations of the above.

Legislation in Trinidad and Tobago fails to deal with the new dynamics in management of PAs save and except to a limited extent, the EM Act.

Environmentally Sensitive Area (Matura National Park) Notice 323/2004 - Rule 2  
*“Relevant Authority” means the Authority and any other governmental entity with jurisdiction under existing law;...Part III (1) The following uses and activities are prohibited in the ESA unless otherwise approved by the Relevant Authority in accordance with existing law... ”.*

## **6.0 INSTITUTIONAL CHALLENGES IN DESIGNATING AND MANAGING PROTECTED AREAS IN TRINIDAD AND TOBAGO**

### **6.1 Insufficient Resources**

The most debilitating problem confronting state entities with responsibility for PAs is the lack of access to sufficient resources, the most important being financial resources. The problem of inadequate financial resources can be correctly interpreted as being the root of all difficulties with human, mechanical, technical and research resources. In some instances staff shortages at the field level have resulted in enforcement officers from one agency being unable to effectively perform statutory duties arising under other legislation. Forest Officers

are statutory Game Wardens by virtue of Section 23(1) of the Conservation of Wildlife Act.<sup>33</sup> However, due to already being over stretched in the field in the performance of their main duties under the Forests Act, they have found it almost impossible to function as game wardens.<sup>34</sup>

Access can be hard to a national tax based fund called the Green Fund for accessing financial resources needed for management of PAs. The Green Fund was established in 2004 by the Miscellaneous Taxes Act Chapter 75:01. According to Section 64-

*The purpose of the fund is to financially assist organisations and community groups that are engaged in activities related to the remediation, reforestation and conservation of the environment.*

Governmental entities such as the EMA have now been permitted to access the Green Fund so creating possibilities for the financial assistance in the designation and management of PAs.

## **6.2 Multiplicity of Governmental Entities with Responsibility for PAs**

The second most critical factor confronting enforcement agencies in Trinidad and Tobago is the sheer number of enforcement agencies. This creates problems associated with multiple agencies, such as overlapping jurisdiction, the independence syndrome, and a lack of proper co-ordination of the work of enforcement agencies. Theoretically, overlapping jurisdiction should not prove problematic in itself as it should afford greater scope for environmental protection; however, the result has not always been satisfactory. What has emerged is an informal rationalisation of activities that has not managed to serve the interest of the environment.

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<sup>33</sup> Conservation of Wildlife Act, Ch. 67:01 (Rev. Laws of Trinidad and Tobago 1980).

<sup>34</sup> Forests Act, Ch. 66:01 (Rev. Laws of Trinidad and Tobago 1980).

Another problem associated with multiple agencies can be described as the independence syndrome. This is reflected in an overly aggressive sense of independence exuded by some agencies. The Forests Act gives jurisdiction over forest matters in Trinidad and Tobago to the Forestry Division. However, Section 21(2)(b) of the Tobago House of Assembly Act gives the THA authority over forestry matters in Tobago.<sup>35</sup> To avoid conflict, the Forestry Division has, in the main, ceded control to the THA. The result is what is perceived to be some reluctance on the part of the THA to seek advice from the Forestry Division, in spite of having very few resources to deal with forest matters.

By far the most significant problem caused by the multitude of enforcement agencies and overlapping jurisdictions is the lack of co-ordination. Effective environmental protection should follow certain synergistic patterns and efficient co-ordination is vital in the battle to protect the environment. This co-ordination is even more important in the case of a country like Trinidad and Tobago where resources for environmental purposes tend to be in rather short supply. Examples of this problem are readily available in Trinidad and Tobago (see Section 5.1 above).

### **6.3 Localised Environmental Policies**

A major weakness in the management of PAs in Trinidad and Tobago arose partly as a result of agency-specific policies. Several governmental entities are entrusted with designation of PAs but little effort has been expended in preparing agency specific policies for dealing with PAs.

### **6.4 Limited Public Education Programmes**

Another impediment to the proper management of PAs is the presence of little or no public awareness of the importance of PAs to the society. Public education programs are limited and sporadic and have generally failed to transform attitudes in Trinidad and Tobago towards PAs.

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<sup>35</sup> Tobago House of Assembly Act, Ch. 25:03, as amended by the Tobago House of Assembly Act, No. 40 of 1996.

## **6.5 Outdated Policy**

For many years, the only existing comprehensive policy on PAs is the “Policy for the Establishment and Management of a National Parks System in Trinidad and Tobago”, which was developed in 1982. In addition, many of the sixty-one (61) potential PAS identified in the Policy, are now degraded. There is now the National Protected Areas Policy of 2011 which has finally arrived to modernise the previous policy of 1982.<sup>36</sup>

## **6.6 Lack of a Current National Land Use Planning Framework**

The NPAP has indicated the urgent need to address the zoning of the country for multiple land use which would ensure balance between the need for designation of areas to protect biodiversity (including maintaining ecosystem services) and demands for built development.

## **7.0 INTERNATIONAL LEGAL AGREEMENTS**

Due to the fact that Trinidad and Tobago is a common law country, international legal agreements after execution by the GORTT must be placed on the domestic legislative agenda to be debated and discussed in Parliament in order for it to have legislative standing.

### **7.1 List of Relevant International Agreements**

- Convention on Biological Diversity (CBD)
- Convention for the Protection & Development of the Marine Environment of the Wider Caribbean (Cartagena Convention)

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<sup>36</sup> See National Protected Areas Policy>

- United Nations Convention on the Law of the Sea
- Convention on the Continental Shelf
- The Ramsar Convention on Wetlands (Ramsar, 1971)
- Convention Concerning the Protection of the World Cultural and Natural Heritage

## **7.2 Overview of International Agreements**

### ***7.2.1 Convention on Biological Diversity (CBD)***

The CBD in February 2004 made the most specific PA commitments ever made by the international community by adopting the Programme of Work on Protected Areas (POWRA). It acts as a framework for cooperation between Governments, donors, NGO's and local communities in order to ensure the programmes are successful over the long term. The CBD, being a global body uses PAs as a means of meeting their obligations. Studies highlight that since 2004; nearly 6000 new PAs have been established covering more than 60 million hectares. The agreement covers all ecosystems, species, and genetic resources.

### ***7.2.2 Convention for the Protection & Development of the Marine Environment of the Wider Caribbean (Cartagena Convention)***

This is an umbrella agreement for the security and improvement of the marine environment. The Convention is enhanced by the Oil Spills Protocol, the SPAW Protocol and the LBS Protocol. The Convention covers the various aspects of marine pollution and is designed to prevent, reduce and control pollution in the marine environment. There are also effectively constructed measures to protect and preserve rare or fragile ecosystems, as well as the habitat of depleted, threatened or endangered species and to develop technical and other guidelines for the planning and environmental impact assessments of important development projects in order to prevent or reduce harmful impacts on the area of application.

### ***7.2.3 United Nations Convention on the Law of Sea***

The Law of the Sea Convention outlines the rights and responsibilities of nations in their use of the world's oceans. It is a body of international law that consists of customs, treaties and international agreements that allow governments to maintain efficiency and command in relation to the marine environment. It includes navigational rights, sea mineral rights, and coastal waters jurisdiction.

### ***7.2.4 Convention on the Continental Shelf***

This convention relates to coastal states rights to locate and improve resources of the continental shelf. It was one of four treaties agreed to at the first United Nations Convention on the Law of the Sea. It was signed on April 29, 1958 and entered into force on June 10, 1964; it was superseded by the 1982 United Nations Convention on the Law of the Sea.

### ***7.2.5 The Ramsar Convention on Wetlands***

The Ramsar Convention on Wetlands is one of the first modern instruments seeking to conserve natural resources on a global scale. It is a very active organisation that encourages international cooperation for the conservation and efficient use of wetlands and their resources. The Convention's mission is "the conservation and wise use of all wetlands through local and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world." The government of Trinidad and Tobago has designated Nariva Swamp (1993), Caroni Swamp (2005), and the Buccoo Reef/Bon Accord Reef Complex (2005) as the three RAMSAR sites.

### ***7.2.6 Convention Concerning the Protection of the World Cultural and Natural Heritage***

The World Heritage Convention understands the importance of the cultural and natural heritage and is attempting to do all that they possibly can to preserve and protect the world heritage of mankind as a whole. Its chief duty is to define and conserve this heritage, by drawing up a list of sites of outstanding value and to ensure their protection through a closer

co-operation among nations. By signing the Convention, each country pledges to conserve the sites situated on its territory, some of which may be recognised as World Heritage. Their conservation for future generations then becomes an obligation shared by the entire international public.

### **7.3 The Way Forward**

Trinidad and Tobago as a common law country, requires treaties and conventions to become binding locally when embodied in the laws of Trinidad and Tobago through the parliamentary process.

*Mr. Morgan did not say anything which may be construed as a derogation of the status and importance of Nariva Swamp as a Ramsar site and its continued designation as such, but submitted that although the Ramsar Convention was subscribed to by the Government of Trinidad and Tobago, it was not embodied into the laws of Trinidad and Tobago, since there was no Act of Parliament incorporating it into the local laws. There is that unmistakeably serious lapse and it is trite law that while the convention will be binding upon the Government of Trinidad and Tobago as a signatory thereto, its terms cannot be enforced unless they are brought locally into effect by local enactment. Per Justice Zainool Hosein in Talisman (Trinidad) Petroleum Limited v. Environmental Management Authority, No.EA3 of 2002.*

A review of the six multilateral environmental agreements reveals that only one, the Convention on the Continental Shelf has been expressly embodied in the laws of Trinidad and Tobago. This is not to say that the other multilateral environmental agreements are totally unsupported in our national environmental legal regime. For example, the Convention Concerning the Protection of the World Cultural and Natural Heritage can be implemented to some extent through the Environmentally Sensitive Areas Rules No. 37 of 2001.

Notwithstanding the fact that multilateral environmental agreements have indirectly benefited from compliance with existing laws of Trinidad and Tobago, the poor record of embedding

such agreements into the national environmental legal regime is a major obstacle to meeting the nation's international obligations to protect its biological diversity.

A number of MEAs to which Trinidad and Tobago is a party promotes the conservation of biodiversity through the protection and management of ecological resources such as the declaration of PAs. These MEAs provide valuable opportunities for the application of payment for ecosystem services as incentives.

Any new proposed legislation to deal with PAs on a comprehensive basis must provide the statutory power to enact regulations to give effect to our international legal commitments. As such the Government can create a comprehensive law that deals with PAs and can use the regulatory power to give effect to international legal agreements to which it is a party.

Such regulations may deal with inter alia the following—

- the co-ordination of the implementation of the instrument;
- the allocation of responsibilities in terms of the instrument, including those of other organs of state;
- the gathering of information, including for the purposes of compiling and updating reports required in terms of the instrument and for submission to the Legislative Council;
- the dissemination of information related to the instrument and reports from international meetings;
- initiatives and steps regarding research, education, training, awareness raising and capacity building;
- ensuring public participation; and

- implementation of and compliance with the provisions of the instrument, including the creation of offences and the prescription of penalties where applicable.

## **8.0 LEGAL REFORMS FOR AN EFFECTIVE PROTECTED AREAS MANAGEMENT SYSTEM**

### **8.1 Consolidating Legislation Granting Protected Areas Status**

There are many pieces of legislation in Trinidad and Tobago that operate to create and maintain PAs. The presence of numerous pieces of legislation has not redounded to the benefit of PAs.

The fact that various PAs have been designated under multiple categories and legislations have led to overlaps and conflict in the management of PAs. A notable example of this is evident in the Aripo Savannahs which has been declared a Prohibited Area as well as an ESA and is simultaneously being managed by the Forestry Division as a “Scientific Reserve.”

In order to rectify this situation these multiple legislations can be revoked and one main law that addresses the designation and management of PAs should be created. The advantages of having one general piece of legislation outnumber the disadvantages in that, there is no area for overlaps and as such, it reduces the conflict in relation to PAs in Trinidad and Tobago. It also addresses the species aspect of biological diversity as that is often part of the basis for the designation of PAs.

### **8.2 Creating Right of Private Action**

Direct private party action or citizen’s suit is a mechanism used to facilitate a wider enforcement of environmental law by permitting citizens to act on breaches of environmental

law where the state enforcement agency is reluctant or has failed to act. It is an important tool in the arsenal of environmentalists to achieve proper enforcement of environmental law. Existing laws in Trinidad and Tobago that deals with PAs as a general rule, does not provide for direct private party action and this must be an instrument introduced in any new legislation having regard to the abysmal enforcement record of governmental agencies currently responsible for PAs.

### **8.3 Creating the Ability for Temporary Designation of Protected Areas**

Temporary Protection Orders are great mechanisms that can assist in protecting the status quo of an area while long-term protective measures are explored. There are many advantages surrounding this concept of temporary protection orders as it allows opportunity for management to be able to stabilize a particular area or take quick measures to curtail a possible threat. Temporary designation also can assist in determining whether or not it will be feasible for long-term protective measures to be instituted.

### **8.4 Establishing Mechanisms to Deal with Private Land Owners**

In the Stanford Journal of Animal Law and Policy (2010), Nathan Paulich encouraged the idea of increasing private conservation through incentive mechanisms. He outlined solutions for private landowners both current and future incentive mechanisms that may be utilised to bring private land into a national protection scheme. Incentives are able to give agencies more flexibility and allow them to efficiently implement policies and decisions. Incentives like compensation programs and market-based solutions can assist in changing the negative behaviours of private lands into a national protection scheme.

Compensation requirements will allow the government to assess both the costs and benefits of regulations more closely and in doing so increase the transparency and accountability for government agencies. It will also have a positive impact on private landowners as well as it

will encourage them to consider both the economic and ecological value of their land and act in a manner that allows them to maximise the value. Compensation programs can be classified into three categories: fee simple acquisition, subsidies and conservation easements. Fee simple acquisitions revolve around a voluntary transaction between the landowner and conservator as it allows market forces to determine the price of the transaction. Subsidies are more flexible as they often take the form of cash, loans or grants to the private landowners in order to maintain the land or mitigate the impact of development on the environment conservation easements however are voluntary exchange that are negotiated between the private landowner and the government or non-profit organisation.

Market based approaches are also incentives that can be utilised whereby private landowners are rewarded for their conservation efforts. Therefore if legislative mechanisms are created to bring private lands into a national protection scheme PAs will strive successfully.

## **8.5 Establishment of Punitive Sanctions**

In Trinidad and Tobago since it is more cost effective to break the law and pay a fine instead of taking steps to desist from breaching laws many people deliberately breach laws applicable to environmental protection. By establishing an appropriate structure of fines and other penalties this will serve as a deterrent to inappropriate use of PAs or engaging in activities detrimental to PAs. When the financial penalties are increased and enforced members of the public would rather avoid breaching laws applicable to PAs protection instead of having to pay fines or being incarcerated.

## **8.6 Squatting on State Lands in Protected Areas**

The State is the major landlord in Trinidad and Tobago, owning over fifty-two percent of all lands in the country. Due to the non-enforcement of existing rules and regulations in Trinidad

and Tobago there has been a major increase in squatting. Other factors that contribute to squatting are: lack of employment opportunities and the disproportionate state-ownership of land in relation to the actual demands of the population. This problem cannot only be rectified through legislative measures. Instead penalties for squatting and new but strict laws should be implemented. New encroachers should be evicted quickly and promptly. Squatters should also be ineligible to receive state land in the future as well as, they should be publicized through the national press. More education programs should also be implemented in order to sensitize the public to the fact that squatting on state land in protected areas is unlawful and that once they engage in this act they will have to suffer the consequences.

## **9.0 INSTITUTIONAL REFORMS FOR EFFECTIVE MANAGEMENT OF PROTECTED AREAS**

### **9.1 Multiplicity of Governmental Entities**

Due to the sheer number of enforcement agencies problems are created with multiple agencies, such as overlapping jurisdiction, the independence syndrome and also a lack of proper co-ordination of the work enforcement agencies. As such, instead of encouraging the multiplicity of Governmental entities with responsibility for the PAs, there should be the creation of one central/main governing body which is in charge of PAs. In doing so, conflict will be avoided and matters will be able to run smoothly.

The most appropriate model for a small developing country such as Trinidad and Tobago would for one single agency with responsibility for the ‘green’ agenda, that is, wildlife and PAs. The EMA which is currently responsible for the ‘brown’ issues, should continue in that role and focus on pollution and planning.

This is similar to what has been documented in the report on Forest Biodiversity: Honduras and Nicaragua National Legislations and the International Framework by Francesa Felani Robles, in Honduras, it is evident that there has been the establishment of the Department of Protected Areas and Wild Life (DAPVS) within the National Forest Service (AFE-COHDEFOR). It is responsible for the regulation and management of the flora and fauna

resources as well as the protection and administration of certain PAs. In addition to the DAPVS there is also the System of Protected Areas of Honduras (SINAPH) whose focus is to preserve the natural ecosystems, the natural resources and biodiversity of PAs while promoting sustainable development. However, SINAPH is structured into three distinct administrations. The first level consists of the National Council of Pas (CONAP). At the managerial level policies that have been developed by the CONAP are implemented and the regional national plans of the PAs are accepted. The third level comprises of both CORAP and COLAP as they work simultaneously to ensure that forest biodiversity is not destroyed. They are in charge of coordinating the efforts and initiatives for the maintenance of PAs. In addition, the PAs can also be managed by local inhabitants once they are supervised.<sup>37</sup>

## **9.2 Insufficient Resources**

In order to ensure the effective management of PAs it is essential to ensure that there are sufficient resources. Section 8 above details different mechanisms that can be used to ensure adequate funding of any institution formed for the purpose of designating and managing PAs.

## **9.3 Localised Environmental Policies**

In Trinidad and Tobago, environmental policies such contemplate the characteristics of local communities when addressing PAs as this would lead to greater acceptance of the objectives of designating and managing PAs. In Honduras it was recommended that it would be feasible to adopt measures to engross communities such as the Local and Regional Councils on Protected Areas. As such if this measure is adopted in dealing with Trinidad and Tobago's PAs it can prove to be very efficient.

## **9.4 Limited Public Education Programmes**

In order to curb this problem of limited public education programmes the government and

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<sup>37</sup> Robles Felicani Francesca, Forest Biodiversity: Honduras and Nicaragua National Legislations and the International Framework, 2007.

other relevant agencies should involve the public through various forums and advertisements so that they become familiar with the need for these PAs. Once the public understand the need for these PAs and become involved, they will be willing to participate and as such there will be a greater public response as well as the effective management of PAs.

### **9.5 Outdated policy**

Policies are usually constructed to ensure that the duties of those involved in the management of PAs are outlined and adhered to the extent possible. Policies should be reviewed on at least a two year basis in order to ensure that it is up-to-date with the current times and deal with evolving issues. The advantages of having updated policies are numerous. It includes ensuring that those involved understand what is expected of them, plans are already in place in case of an emergency and it also helps to protect the overall image of the organisation. Therefore, updated policies are effective in addressing current issues thereby resulting in the effective management of PAs.

### **9.6 Lack of a Current National Land Use Planning Framework**

An updated national land use planning framework ensures that there is a proper balance between the need for designation of PAs and demands for built development. This national land use planning framework aims at developing the country with an emphasis on the effective use of land as the driving force. A national land use planning framework will support the government's aim to achieve sustainable and equitable development through special planning and land and marine areas management.

## **10.0 FUNDING A PROTECTED AREAS LEGAL REGIME**

Funding Mechanisms of a PAs legal regime are multiple and though each method is working towards achieving the same goal, each method consists of numerous similarities and

differences. These mechanisms can be classified into several main categories.

External sources consist of financial mechanisms that control the funding of the PAs by Government, donor countries, assistance provided by international and national NGOs as well as, private and volunteer donations. External funding for PAs may be generated by the Government, donations from donors and private and volunteer donations, debt for nature swap and environmental conservations. Funding by multilateral cooperation for example the World Bank through investment loans is another effective funding mechanism. Volunteer donations and contributions are also strategies used in environmental conservation.

Foundation for conservation is used for both private and public facilitation and management of PAs, their resources. Financial instruments offered to groups and entities that use and impact on PAs for the establishment of funding sources to be used for PAs conservation.

Service fees and payments are for collecting and retaining all necessary payments and fees e.g. ecosystem service payments and fees of tourism activities and use of resources as market economic payments for use of PAs and their resources. Payments for Ecosystem Services (PES) deals emerge wherever businesses, public-sector agencies, and non-profit organizations have taken an active interest in addressing particular environmental issues and are crucial in promoting sustainable development. PES provides a new source of income for land management, restoration, conservation, and sustainable use activities, Through PES markets for ecosystems are established as well as provide incentives to address market failure.

Government subvention may also be used as a funding mechanism once participation and lobbying in the budgeting process is present. The international assistance agency may also be plausible once it is requested by the government and there is cooperation among the parties involved. Trust funds are also effective once there is a Governing board and proper management.

The NPAP makes mention of financial mechanisms for establishment and management of PAs in Trinidad and Tobago. These include:

- Creating a Forestry and PAs Fund via enabling legislation to fund management of PAs
- Facilitating revenue collection through application of appropriate user fees, PES schemes taxes, penalties and charges for offences
- Formulating and implementing a system of incentives to promote and support designation and management of private land as a PA, as well as to promote and support the conduct of environmentally-friendly activities on lands surrounding PAs (e.g. eco-friendly agricultural systems, urban forestry, green spaces, greening of residential developments)
- ensuring harmonisation of incentives for PAs management with other fiscal policies (e.g. taxation and subsidy schemes);
- providing adequate annual budgetary allocations to the Forest and PAs Management Authority encourage/promote the use of the Green Fund to support civil society participation in PAs management;
- providing increased funding for PAs research; take advantage of opportunities offered by new global environmental markets (e.g. carbon trading), whenever they are relevant and potentially beneficial to Trinidad and Tobago take advantage of multilateral and bilateral donor grant funding, whenever they are relevant and potentially beneficial to the development and management of PAs in Trinidad and Tobago.

By promoting the use of the Green Fund this supports civil society participation in PAs management. The goal of this policy is to ensure sustainable development with regards to the environment. The purpose of the fund is to provide financial assistance to Organizations and Community Groups. The focal areas of the Green Fund are: remediation, reforestation and conservation. Remediation involves restoring an environmental resource that was damaged by either natural or man-made causes for example, land restoration after mining. Reforestation involves replanting a previously forested area and conservation is using resources with regard for the future generations. The Green Fund thereby creates possibilities

for the financial assistance in the designation and management of PAs.

## **11.0 CREATION OF Pas**

### **11.1 Notice of Intention to Designate a Protected Area**

Before any area is designated as a PA, there should be the publication of a notice indicating intent to designate an area as a PA in order to sensitize the public. PAs must be created using an all-inclusive approach so as to ensure greater acceptance of the objectives being sought.

### **11.2 Proposal for Designation of Protected Areas**

Entities proposing the creation of a PA must ensure that there is proper justification for the taking of such action. Critical therefore is the preparation of a Statement of Intent to Designate which should include items such as the following:

- justification for establishment of the area and the category of protection proposed, including an evaluation of the advantages and disadvantages of establishing the area;
- an analysis of the socio-economic impact of the designation of the area on the local human population, in particular traditional users of the natural resources in the area proposed for designation;
- a description of the factors determining the boundaries of the area proposed for designation;
- recommendations with respect to any steps and compensatory measures that may need to be taken as a result of designation of the area as a protected area;
- a description of land ownership rights within the area proposed for designation;
- summary of human activities if any, taking place within the area proposed for designation;

- a legal description of the area to be protected giving particulars of the size and boundaries of the area, as shown wherever practicable on an accurate map or survey plan; and the description of activities that would be permitted in the protected area and the description of activities that would be prohibited in the protected area.

### **11.3 Public Consultations for Designation of Protected Areas**

Public Consultations are crucial as they help to educate those who may be directly or indirectly affected by the creation of the PA. In order to inform the public about the proposed plans, public consultations should be conducted as follows:

- A Notice of the Statement of Intent to Designate shall be published and announced for a period of one week on at least one local radio station.
- The Notice of the Statement of Intent to Designate shall advise of:
  - (a) the request to the public to submit written comments on the proposed designation of the protected area;
  - (b) locations where relevant information (including the Statement of Intent to Designate) can be obtained or reviewed by the public;
  - (c) duration of the public comment period which shall be no less than thirty days; and
  - (d) advising where public comments can be sent.
- The Department shall specifically invite any person who may be directly affected by the proposed protected area to present their concerns with respect to the proposal outlined to designate the protected area
- After the written public comment process, a public hearing shall be conducted where it shall receive any additional claims of right or interests, objections or representations regarding the designation of the specified area as a protected area.

### **11.4 Preparation of Management Plan**

The preparation of a Management Plan is essential as it will contain important details regarding the administration of the PA. Wherever applicable, every management plan for a PA may contain the following information:

- the terms and conditions of any applicable biodiversity management plan;
- a co-ordinated policy framework;
- such planning measures, controls and performance criteria as may be prescribed;
- procedures for public participation, including participation by the owner (if applicable), any local community or other interested party;
- zoning of the area indicating what activities may take place in different sections of the area, and the conservation objectives of those sections.
- the long term goals of the protected area and the associated conservation, restoration, research, educational and recreational objectives of the protected area to meet these goals;
- an analysis of existing and potential conflicts arising in relation to the use of the area by the owners of private lands in the protected area and persons resident in communities in the locality who are traditional users of the protected area;
- the measures to be adopted for the management of the protected area, including guidelines for the control of activities in buffer zones;
- if appropriate, the measures to be adopted for sharing the benefits of the protected area with the owners of private lands in the protected and persons resident in communities in the locality who may be affected by the designation of the protected area including assistance to and the training of such persons;
- the programmes to be adopted for the protected area, public awareness and education and to enhance the appreciation and understanding of users and the general public of the objectives of the designation of the protected area;
- a description of the manner and time within which various management measures will be undertaken, including the kinds of activities that will be regulated or prohibited within the protected area;
- an estimate of the projected capital and recurrent costs of implementing the management plan and an analysis of funding strategies for defraying these expenses;

- a monitoring plan, including objective verifiable indicators for the determination of the effectiveness of management strategies;
- development of economic opportunities within and adjacent to the protected area in terms of the integrated development plan framework;
- development of local management capacity and knowledge exchange;
- proposals and conditions for any co-management agreement for the protected area; and
- financial and other support to ensure effective administration and implementation of any co-management agreement within the protected area.

## **11.5 Revision of Management Plan**

It is important that there be periodic review of a management plan and, if it is not updated and does not support the present circumstances then it must be revised.

## **11.6 Designation of Temporary Protected Areas**

An important aspect of creation and management of PAs is the ability to temporarily designate PAs. It may be a sudden ecological crisis or potential ecological crisis that prompts to act swiftly without recourse to the recommended formalities for creation of PAs. While there will be a short circuited of the normal process for creation of a PA there must still be some level of public awareness.

A notice of designation of a Temporary Protected Area should be published advising of:

- justification for establishment of the Temporary Protected Area and the category of protection proposed;
- a description of the factors determining the boundaries of the Temporary Protected Area;
- a description of land ownership rights within the Temporary Protected Area;
- a legal description of the Temporary Protected Area giving particulars of the size and boundaries of the area, as shown wherever practicable on an accurate map or survey

plan; and

- other information is reasonably necessary to assist the public in understanding its decision to designate the area as a Temporary Protected Area.

A Temporary Protected Area should be for a specified period of time and the designation may lapse or be extended to facilitate the formal process of transforming the PA into a permanently protected area.

## **11.7 Revocation and Variation of Designation Orders**

While creation of PAs is important, it must also be recognized that at times there may be the need to revoke or vary the designation of a PA. To facilitate the revocation or variation of a PA, there should be public involvement in the decision making process. This will necessitate the publication of a Notice of Revocation or Variation of a Designation Order which shall advise of:

- the request to the public to submit written comments on the proposed variation or revocation of the protected area; and
- the basis for proposed variation or revocation of the protected area;

## **11.8 Buffer Zone Management Plan**

It must be recognised that PAs are inevitably defined by geographical indices and therefore it is sometimes necessary to ensure that adjacent areas are managed in a manner that does not compromise the designated PA. This can be achieved by the creation of a buffer zone management plan. As with the creation of PAs, the buffer zone management plan should be accompanied by public consultation, in particular with anyone who is lawfully involved with the buffer zone.

## **11.9 Offences**

In order to ensure that the objectives intended by the designation of PAs are achieved, there should be consequences for those who do not follow them. Those who do not adhere to the rules outlined should be subjected to both criminal and administrative proceedings depending on the nature of the infractions.

## **12.0 DEVELOPING ALTERNATIVE MANAGEMENT MODELS**

In a study conducted by the United Nations Development Programme in the field of PAs it was noted that PAs need a range of different management approaches in order to be successful. It was also highlighted that a suitable mix of management approaches should be included in the process of planning. As such, they encouraged the idea of privately protected areas: areas that are managed by private individuals, trusts or companies. An example of this concept is noted in Brazil whereby these privately-owned PAs recognize the law and impose the same restrictions as the state.

According to Graham et al., 2003; Pansky, 2005 there are several notable lessons in protected area governance. One notable lesson focused around the idea that, “no single governance structure will be sufficient for meeting the goals of the Convention on Biological Diversity- a plurality of governance structures will likely be needed.” A mixture of management strategies or techniques will prove to be effective as it will improve conservation and management effectiveness of PAs.

A recommendation posed in the document by Francesca Felicani Robles that may be of assistance in dealing with local PAs is ensuring that the system of information is available to rural communities as well and specific regulation should guarantee and prioritize this aspect. Surveys should also be done on various sites before finalising management plans as this will ensure the effective management of PAs both in Honduras and Trinidad and Tobago.

### **12.1 Management by Single Government Entity**

This type of governance revolves around the overall idea that the government body is

responsible and accountable for managing the PA. In this model of management the approach revolves around the idea that the government is in charge of creating a management plan and ensuring that it is enforced. In this single government entity the government may decide the objectives of managing the area.

## **12.2 Management by Multiple Governmental Entities**

This type of governance of PAs, commonly called “co-management” focuses around the sharing of management and responsibilities. An example of shared governance is where a PA might be a watershed and also an important ecological centre for an endangered species. Thus, in Trinidad and Tobago such a PA might be jointly managed by the governmental entity responsible for water resources and the entity responsible for biological diversity.

## **12.3 Management by Private Persons/Entities**

Management by private persons with or without legal interest in PAs is one way of expanding the availability of the appropriate expertise in the governance of PAs. This could be achieved under individual, cooperative and NGO stewardship. There are instances where private governance is preferable especially where ownership of a PA is shared or solely with private entities with expertise and interest in the protection of a PA.

## **12.4 Mixed Management Structure**

The Mixed Management Structure of government is a combination of management by governmental entities as well as by private persons with or without legal interest in PAs. In this type of governance both parties work together in order to ensure the best interest of the PAs. Each body is involved in the decision-making processes as well as the management of the protected area. The advantage of this type of management is that it allows for a mixture in the type of leadership in order to maximise the benefits to the PAs.

## **13.0 CONCLUSION**

### **13.1 Gaps in Current National Legislation**

- The multiplicity of laws providing the legal basis for establishing PAs, has led to a lack of co-ordination, conflict in use and the failure to designate protected areas.
- Only the EM Act creates a right in private persons to initiate legal action with respect to the breach of an environmental requirement. This allows private persons to seek to stop unauthorized acts in sensitive areas unlike other legislation where no such authority is given. In circumstances where official enforcement is questionable, this is an important feature of legislation intended to deal with PAs.
- Most pieces of legislation dealing with PAs require the making of regulations to ensure adequacy in carrying out legislative mandate, yet there is a general reluctance to make the necessary subsidiary legislation.
- Temporary protection orders can be used to protect the status quo of an area while steps are being taken to investigate the suitability of longer term protective measures. This type of power is not present in existing legislation in Trinidad and Tobago.
- PAs may straddle both state and private lands and there is no legislative mechanism to bring private lands into a national protection scheme.
- There is an absence of sanctions level that would render breaches of laws to deal with PAs quite undesirable.
- Squatting has become a significant problem in many PAs and there would appear to be some hesitation in addressing this issue.
- The non-legislating of conventions has diminished the ability of international law to assist with PAs.
- There are no provisions in the law that contemplates payment for ecosystem services as a mechanism for enhancing management and protection of PAs.
- The establishment of PAs are generally done without public consultations. This is a major deficiency in the existing pieces of legislation that permits the designation of PAs.

- Modern management of PAs contemplated several models depending on existing circumstances. Legislation in Trinidad and Tobago generally fails to deal with the new dynamics in management of PAs.

### **13.2 Revisions in the Legal Regime Needed to Develop a PA system**

- evocation of multiple legislations and one main law enacted that addresses the designation and management of PAs.
- introduction of direct private party enforcement power as an instrument to counteract the abysmal enforcement record of governmental agencies currently responsible for PAs.
- creating the power for issuing Temporary Protection Orders which can assist in protecting the status quo of an area while long- term protective measures are explored.
- introduction of legislative mechanisms to bring private lands into a national protection scheme.
- establishing an appropriate structure of fines and other penalties that will serve as a deterrent to inappropriate use of PAs or engaging in activities detrimental to PAs.
- the State is the major landlord in Trinidad and Tobago, owning over fifty-two percent of all lands in the country. The State must therefore strengthen its legislative power to deal with squatters generally, and specifically on PAs.

### **13.3 Creation of New PAs**

It is important to put in place proper systems for the creation of PAs as this will go a long way to assisting in their effective management and protection.

- Before any area is designated as a PA, there should be the publication of a notice indicating intent to designate an area as a PA in order to sensitize the public. PAs must be created using an all-inclusive approach so as to ensure greater acceptance of the objectives being sought.
- Entities proposing the creation of a PA must ensure that there is proper justification for the taking of such action.
- Public Consultations are crucial as they help to educate those who may be directly or indirectly affected by the creation of the PA. In order to inform the public about the proposed plans and to allow their voices to be heard.
- The preparation of a Management Plan is essential as it will contain important details regarding the administration of the PA and should be made part of the designation plan. It is important that there be periodic review of a management plan and, if it is not updated and does not support the present circumstances then it must be revised.
- An important aspect of creation and management of PAs is the ability to temporarily designate PAs. While there will be a short circuited of the normal process for creation of a PA there must still be some level of public awareness.
- While creation of PAs is important, it must also be recognized that at times there may be the need to revoke or vary the designation of a PA.
- It must be recognised that PAs are inevitably defined by geographical indices and therefore it is sometimes necessary to ensure that adjacent areas are managed in a manner that does not compromise the designated PA. This can be achieved by the creation of a buffer zone management plan.
- As with the creation of PAs, the buffer zone management plan should be accompanied by public consultation, in particular with anyone who is lawfully involved with the buffer zone.

### **13.4 Enforcement**

Three major steps are required to improve enforcement of legislation targeting the management and protection of PAs.

- Improving institutional enforcement capacity.

- Imposition of more punitive sanctions.
- Introduction of direct private party action as a mechanism to complement the enforcement efforts of the State.

### **13.5 Institutional Challenges in Designating and Managing Protected Areas in Trinidad and Tobago**

- The lack of access to sufficient resources, the most important being financial resources.
- The proliferation of enforcement agencies which creates problems associated with multiple agencies, such as overlapping jurisdiction, the independence syndrome, and a lack of proper co-ordination of the work of enforcement agencies.
- The absence of agency specific policies for dealing with PAs.
- Public education programs are limited and sporadic and have generally failed to transform attitudes in Trinidad and Tobago towards PAs.
- There is now the National Protected Areas Policy of 2011 which has finally arrived to modernise the previous policy of 1982.
- The urgent need to address the zoning of the country for multiple land use which would ensure balance between the need for designation of areas to protect biodiversity (including maintaining ecosystem services) and demands for built development.

### **13.6 Institutional Reforms for Effective Management of Protected Areas**

- The most appropriate model for a small developing country such as Trinidad and Tobago would for one single agency with responsibility for the ‘green’ agenda, that is, wildlife and PAs. The EMA which is currently responsible for the ‘brown’ issues, should continue in that role and focus on pollution and planning.
- In order to ensure the effective management of PAs it is essential to ensure that there are sufficient resources.

- In Trinidad and Tobago, environmental policies such contemplate the characteristics of local communities when addressing PAs as this would lead to greater acceptance of the objectives of designating and managing PAs.
- In order to curb this problem of limited public education programmes the government and other relevant agencies should involve the public through various forums and advertisements so that they become familiar with the need for PAs and their protection and management.
- Policies are usually constructed to ensure that the duties of those involved in the management of PAs are outlined and adhered to the extent possible. Policies should be reviewed on at least a two year basis in order to ensure that it is up-to-date with the current times and deal with evolving issues.
- There is need for an updated national land use planning framework to ensure that there is a proper balance between the need for designation of PAs and demands for built development.

### **13.7 Governance Structures and Institutional Arrangements at Project Site Level**

A mixture of management strategies or techniques will prove to be effective as it will improve conservation and management effectiveness of PAs. There must be flexibility and use of different management models depending on the characteristic of the specific PA being designated.

- Management by a single government entity which revolves around the overall idea that a single governmental entity is responsible and accountable for managing the PA.
- Management by multiple governmental entities focussing on the sharing of management responsibilities.
- Management by private persons with or without legal interest in PAs is one way of expanding the availability of the appropriate expertise in the governance of PAs.
- The mixed management structure of governance is a combination of management by governmental entities as well as by private persons with or without legal interest in PAs.

### **13.8 Enhancing Implementation Capacity**

Funding mechanisms of a PAs legal regime are critical to ensure enhancement of implementation capacity of a project to address management and protection of PAs.

- Use of external sources by donor countries, international and national NGOs as well as, private and volunteer donations.
- Service fees and payments are for collecting and retaining all necessary payments and fees e.g. ecosystem service payments and fees of tourism activities and use of resources as market economic payments for use of PAs and their resources.
- Government subventions.
- Creating a PAs Fund via enabling legislation to fund management of PAs.
- Promoting the use of the Green Fund.

