

# Approaches to Environmental Licensing and Compliance in Caribbean Countries

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## Executive Summary

Country safeguard systems are the first line of defense to mitigate the environmental and social impacts of projects, such as roads, ports, power plants and waste treatment facilities that the Inter-American Development Bank (IDB) finances in the Caribbean. Indeed, the capacity of authorities to prescribe appropriate environmental and social requirements, and consistently enforce compliance with them, allows countries to control the way human activities impact natural resources, protect public welfare and sustain prosperity. The performance of licensing and compliance functions<sup>1</sup> is increasingly critical in Caribbean countries, as the effects of climate change compound challenges already inherent to the economic growth of small, geographically unique states.

While factors that hinder capacity for environmental licensing and compliance assurance are ubiquitous throughout the region – persistent structural challenges, variable political priorities, and inadequate funding – the national nuances of these challenges are diverse. Few comparative analyses of Caribbean country systems for environmental licensing and compliance exist to date.

Towards building knowledge and promoting shared thinking, this paper presents the IDB's current understanding of the diverse types of environmental licensing and compliance systems found throughout the Caribbean region. The analysis depicts three loosely-defined conceptual models<sup>2</sup> and identifies commonalities and differences in the institutional frameworks and the administration of environmental and social impact assessments (ESIA). The paper briefly illustrates a country system as an example of each model.

The three conceptual models are:

1) *The Advisory Body Model*, in which the process is administered by an environmental advisory body that is adjunct to a top-level environmental ministry. In these countries, ESIA procedures are not implemented under legislatively established regulatory provisions.

2) *The Town and Country Planning Model*, wherein land use planning boards are the primary government authority responsible for oversight of the process. In these countries, these authorities have a legislative mandate to utilize ESIA as a component of the land use planning approval process.

3) *The Consolidated Environmental Authority Model*, where a centralized agency has the primary authority for environmental matters. In these countries, ESIA procedures are mandated by legislation and formally regulated in varying degrees of detail.

The IDB seeks to build the capacity of partner countries to effectively control environmental and social impacts and risks that influence the achievement of positive project outcomes. In this regard, the Regional Policy Dialogue (RPD) offers an opportunity to learn from the experiences of Caribbean countries, to foster dialogue on common approaches and to advance collective thinking on how to effectively mitigate adverse environmental and social impacts of large, high-risk investment projects. It is

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<sup>1</sup> The terms used in this paper, such as licensing, monitoring, and enforcement, refer to functions and processes in their broadest sense – not specific ways of carrying them out. In many countries, “licenses” and “permits” have different specific meanings, which are not addressed here for simplicity.

<sup>2</sup> The three conceptual models provide only snapshots of systems as they appear to exist to the IDB at the present time, and are limited in that they do not address questions of efficiency and effectiveness within each country system.

our hope that this paper will spark discussion among the participants of the Regional Policy Dialogue and act as a catalyst for exploring possible synergies among countries to address capacity needs.

## Discussion Questions

- a. Are there opportunities for common approaches to ESIA review, licensing, and compliance notwithstanding political and historical differences among participant countries?

For example: standardized categorization (screening) criteria, shared performance indicators, model terms of reference, a common accreditation system for qualifying ESIA consultants, or other standards that could avoid duplication of effort and enable transferability of standards among Caribbean countries.

- b. If the licensing process could be changed, what would be different? What opportunities exist to make ESIA more likely to result in positive environmental and social results, within current institutional frameworks?

For example: Strengthening two-way channels for feedback between environmental licensing and enforcement authorities, improved monitoring of the developer's mitigation requirement specified in the authorization document.

- c. How can the competent authorities involved in reviewing ESIA and drafting environmental risk management, mitigation and monitoring requirements maximize what can be accomplished with finite access to budget allocations, qualified staff, information technology, vehicles and other resources?
- d. Are there mechanisms, such as inter-agency agreements, that could provide better coordination between authorities that have a role in the ESIA process, including sectoral agencies?
- e. What experiences and opportunities exist for South-South cooperation?
- f. How can we better engage with affected communities and the public during the licensing and compliance process in order to align with best practices for access to information and consultation?
- g. Are there opportunities for partnerships with the private sector in promoting sustainable and environmentally compliant project design and execution?
- h. Are there areas in which countries could collaborate to build capacity for carrying out licensing and enforcement functions?

## Abbreviations

BEST	Bahamas Environment, Science and Technology Commission
CARICOM	Caribbean Community
CEC	Certificate of Environmental Clearance (Trinidad and Tobago)
CEO	Chief Environmental Officer (Antigua and Barbuda)
CTP	Chief Town Planner (Barbados)
DCA	Development Control Authority (Antigua and Barbuda)
DOE	Department of the Environment (Belize)
EAB	Environmental Assessment Board (Guyana)
ECP	Environmental Compliance Plan (Belize)
EIA	Environmental impact assessment
EIS	Environmental impact statement
EMA	Environmental Management Authority (Guyana)
EP Act	Environmental Protection Act (Guyana)
EPA	Environmental Protection Agency (Guyana)
ESIA	Environmental and social impact assessment
IDB	Inter-American Development Bank
NEAC Grenadines)	National Environmental Appraisal Committee (Saint Vincent & the
NEPA	National Environment and Planning Agency (Jamaica)
NIMOS	National Institute for Environment and Development of Suriname
NRCA	Natural Resource Conservation Authority Act (Jamaica)
NRM	National Council for the Environment (Suriname)
OECS	Organisation of Eastern Caribbean States
PPA	Physical Planning Act (Antigua and Barbuda)
PPDB Grenadines)	Physical Planning and Development Board (Saint Vincent & the
PPU	Physical Planning Unit (Barbados)
RPD	Regional Policy Dialogue
TCDPO	Town and Country Development Planning Office (Barbados)
TCP	Town and Country Planner (Antigua and Barbuda)
TCPA (bb)	Town and Country Planning Act of 1968 (Barbados)
TCPA (svg)	Town and Country Planning Act (Antigua and Barbuda)
TOR	Terms of reference

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## 1. Introduction

The Inter-American Development Bank (IDB) is deeply aware that the projects that it helps finance have impacts beyond the addition of new roads, ports, power generating capacity, and waste treatment facilities. As a result, IDB has a strong interest in improving its knowledge of how the implementation of national regulatory procedures, in practice, influence environmental and social aspects of the Bank' activities in the countries it serves. Even though IDB has country offices in Bahamas, Barbados, Guyana, Haiti, Jamaica, Suriname, and Trinidad and Tobago, its exposure and institutional knowledge does not encompass the experiences and practical details of prescribing and enforcing the national requirements for projects that pose a high risk of adverse environment and social impacts. Furthermore, IDB does not have official representation in OECS countries.<sup>3</sup> In order to understand differences in how these mechanisms are implemented, IDB believes that it is best to learn directly from the practitioners within each country's competent authorities who have first-hand experience with the functioning of the principal tasks.

Given the differences in historical and political contexts among Caribbean countries, it is understood at the outset that universal prescriptions for environmental permitting, compliance monitoring, and enforcement mechanisms are neither feasible nor desirable. Despite varied national approaches, many of the factors that impede capacity to prescribe and enforce environmental requirements are present throughout the world, in diversity of permutations: shifting political priorities, inadequate funding, and built-in structural challenges, such as legislative gaps, overlapping roles, and weak inter-agency coordination.

The Regional Policy Dialogue (RPD) is intended as an opportunity for the IDB and all participants to learn from dialogue that elicits the most salient details concerning successful approaches and priority areas for improvement. The information obtained from these discussions can then be used in identifying and exploring possible synergies and common approaches for strengthening environmental licensing and enforcement capacity. IDB realizes that even with access to high quality information, the Bank's role should be properly limited to *supporting* the effective operation of the competent agencies in its partner countries. As a starting point, IDB presents in this document an initial summary of salient characteristics and knowledge.

## 2. Importance of environmental licensing and enforcement

Environmental licensing, monitoring, and enforcement are the principal mechanisms that government authorities use to ensure that developers of high-profile projects follow through with plans for minimizing the adverse environmental and social impacts of their activities.<sup>4</sup> These mechanisms encompass a range of steps that begin with a process for prescribing environmental management, mitigation and reporting requirements that are "appropriate" for a proposed activity, and continue with all

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<sup>3</sup> IDB has begun to have exposure in OECS countries through financial intermediaries such as the Caribbean Development Bank

<sup>4</sup> See *generally* INECE, Principles of Environmental Compliance and Enforcement Handbook, Chapter 2: Overview of Compliance and Enforcement Programs (April 2009) [http://inece.org/principles/02\\_overview\\_sept09.pdf](http://inece.org/principles/02_overview_sept09.pdf); For brevity, the term "enforcement" is used broadly in this paper to refer to government follow-up functions that include both compliance monitoring and actions taken by the government to compel compliance with the law.

subsequent steps taken to assure compliance with these requirements. In this context, “appropriate” requirements are those that establish clear rules for the developer’s performance, capture ESIA commitments in specific and enforceable terms and contain contingency plans to address project impacts that exceed quantitative limits established in the ESIA study.<sup>5</sup>

Environmental licensing and enforcement mechanisms are important because the mitigation measures that these functions establish and ensure are the first line of defense against adverse impacts in the places where development occurs. They are critical to avoiding impacts that contaminate water supplies, harm livelihoods (such as commercial fishing and tourism), and threaten future supplies of the natural resources on which Caribbean economies depend. Without these mechanisms, even the most well executed impact assessment efforts can easily fail to ensure desirable environmental and social outcomes from projects that otherwise have potential to enhance economic growth. IDB’s own safeguards complement these, but are never a substitute for national systems and capabilities.

### **3. Analysis of Commonalities and Differences Between the Licensing and Enforcement Systems Studied**

#### **3.1 ESIA and licensing functions in the Caribbean**

Not all Caribbean countries have a formal legislative framework for ESIA in force, but arrangements for conducting ESIA exist in some form in all the countries studied, whether through non-binding guidelines, draft regulations, international lending institution requirements and non-government stakeholder proposals. In many parts of the Caribbean, ESIA functions as part of a vetting process for land use, ensuring conformity to environmental and social criteria that are determined by land use authorities. In addition, ESIA serves as an important risk management tool, helping to reduce the uncertainty that accompanies large commercial or infrastructure projects that have significant environmental and social impacts. It is important to recognize, however, that ESIA is one of a number of tools that Caribbean countries use to control the way that human activities utilize land and natural resources. Alternative regulatory mechanisms exist and operate in parallel with ESIA, such as planning and pollution regulations, construction permits, zoning laws and coastal zone development controls.

Ideally, the licensing process that is subsequent to ESIA generally works as follows: After the accuracy and completeness of an ESIA is confirmed through a robust review process, the central task for competent authorities is to secure the developer’s commitment, in a legally binding manner, to an appropriate set of conditions (including environmental and social management, mitigation, and monitoring requirements) and then consistently enforce compliance with those conditions.<sup>6</sup> The ESIA process is not expected to eliminate risks and impacts altogether, but instead to minimize and mitigate them. It must factor in the need for improved living standards and a favorable climate for investment, and must not unduly hinder economic growth opportunities.

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<sup>5</sup> Wasserman, Cheryl, *Enforcement of Environmental Impact Assessment Requirements*, INECE Ninth Conference 8 (2011).

<sup>6</sup> *Id.*

## 3.2 Approaches to the administration of ESIA systems

Based on the general characteristics of national systems for ESIA administration, this paper groups the countries into three loosely-defined typologies or approaches, which exist solely for the purposes of aiding discussion within this paper. These approaches are used to illustrate differences in how government licensing and enforcement tasks are legislatively delegated and carried out. This paper does not advocate convergence on one “ideal” model that is most efficient or effective. Instead, it is assumed that countries that follow any of these typologies may pursue their own successful path toward strengthening and refinement within their current structures.

The three typologies discussed in this paper include countries where (1) an advisory body to an environmental ministry supervises the ESIA process, (2) Town and Country planning boards utilize ESIA as a component of the land use planning and control process, and (3) systems where environmental regulatory oversight of human activities and nature conservation are consolidated in a centralized environmental authority. For the sake of simplicity and clarity, this document focuses on only one country that exemplifies each administrative approach.

### A. The Advisory Body Model

*Example Countries:* The Bahamas and Suriname

#### Developing appropriate ESIA requirements and assuring compliance in the Bahamas

In the Bahamas, the ESIA process is administered by environmental advisory bodies that are adjunct to a top-level environmental ministry, rather than being implemented under legislatively established regulatory provisions. Although ESIA is not an officially mandated function, it is used as an important planning and evaluation tool, particularly in connection with large commercial and infrastructure projects that pose a heightened risk for adverse environmental and social impacts.

ESIAs are conducted for large projects under the auspices of the Bahamas Environment, Science and Technology (BEST) Commission.<sup>7</sup> The BEST Commission was formed by a directive from the Chief of State in 1994 and is an advisory division of the Ministry of the Environment. The Commission carries out many functions traditionally performed by an environmental agency and is responsible for developing and proposing environmental and natural resource management policies for the government of the Bahamas.

#### Determining whether an ESIA is required

As a matter of established policy, the BEST commission makes determinations concerning the need for an ESIA for proposed projects that are likely to have significant environmental impacts. BEST initiates a technical inquiry following a request for an ESIA that is made by a government agency or the National Economic Council.<sup>8</sup>

#### Securing an accurate and complete ESIA

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<sup>7</sup> Bahamas Petroleum Company PLC., *Environmental Impact Assessment for Exploratory Drilling in the Bain, Cooper, Donaldson and Eneas Blocks, Offshore The Bahamas*, (March 2012).

<sup>8</sup> Bahamas Petroleum Company PLC., *Supra* note 5 at 3-16.

The government sectoral agency that requests an ESIA may ask BEST for technical expertise and support related to carrying out the ESIA study. BEST is involved in a technical advisory capacity during this process and may make site visits. The BEST Commission has developed general guidelines for developers to follow in undertaking their ESIA's and has also developed sector-specific guidelines for resort and hotel projects, ports and harbors, agricultural projects, aquaculture projects and housing developments.<sup>9</sup>

#### Selecting mandatory license conditions for the developer to follow

After providing technical expertise and support during the development of the ESIA, the BEST Commission is responsible for the technical review of the accuracy and completeness of the final ESIA study. The BEST Commission makes recommendations to the national Cabinet concerning the conditions that approved projects must follow for environmental management and the mitigation of impacts.

#### Verifying developer compliance with license conditions

In the Bahamas, draft ESIA legislation has been proposed containing provisions for monitoring and enforcement. At the present time, the Bahamas' Department of Environmental Health Services conducts monitoring and control functions in connection with polluting activities, including the discharge of chemical effluents, wastewater, and solid waste.

#### Facilitating public participation

In the Bahamas, the Cabinet decides on a case-by-case basis whether an ESIA will be publically available for scrutiny. The draft ESIA legislation that is currently under review addresses the topic of additional integration of public consultation into the ESIA process.

### **B. The Town and Country Planning Model**

*Example Countries:* Antigua and Barbuda, Barbados, and Saint Vincent & the Grenadines

#### Developing appropriate ESIA requirements and assuring compliance in Barbados

Caribbean countries that exemplify Town and Country planning systems have maintained or made policy decisions to reaffirm land use planning boards as the primary government authority responsible for oversight of the ESIA process. In Barbados, these authorities have a legislative mandate to utilize ESIA as a component of the land use planning approval process. Town and Country planning boards are derived from English land use systems and reflect British colonial heritage.<sup>10</sup>

In Barbados, The Town and Country Development Planning Office (TCDPO) has primary responsibility for ensuring that development activities conform to land use and physical development policies. ESIA is incorporated into the country's framework planning

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<sup>9</sup> Stacey Wells-Moultrie, *The Evolution of Environmental Management in The Bahamas, 1994-2005*, <http://www.open.uwi.edu/sites/default/files/bnccde/bahamas/conference/papers/wellsmoultrie.html>.

<sup>10</sup> Anderson, Winston, *Principles of Caribbean Environmental Law*, Environmental Law Institute, 171-174 (2012).

legislation, the Town and Country Planning Act of 1968 (TCPA/bb), as one of several planning tools that helps the TCDPO carry out its role. The Chief Town Planner is the head of the TCDPO and has discretionary authority to request an ESIA in support of an application to undertake a new development activity.

#### Determining whether an ESIA is required

The requirement for an ESIA is determined in one of two ways. First, it is mandatory in cases where ESIA is explicitly mandated by law, such as for developments within the Coastal Zone Management Area. Secondly, it is discretionary in cases where the Chief Town Planner determines that an ESIA is needed to support an application due to the likelihood of significant environmental impacts.<sup>11</sup> The *Barbados Physical Development Plan* (Amended 2003) established a mandatory list of ten categories of activities that are automatically subject to the ESIA process.<sup>12</sup> The categorized list became legally operative through a Ministerial notice in 2006.<sup>13</sup>

#### Securing an accurate and complete ESIA

If the TCDPO determines that an ESIA is necessary for a proposed project, it identifies other government agencies that have relevant expertise and should be involved. The TCDPO then composes an EIA Review Panel comprised of members of these agencies to oversee the developer's preparation of the ESIA study. After completing the ESIA, the developer must hold a public meeting to obtain stakeholder input after 28 days of public review of the ESIA report. After incorporating public concerns into the ESIA, the TCDPO distributes the amended report to the EIA Review Panel for evaluation. The Review Panel may approve the ESIA, with or without conditions, require the developer to resubmit the document with revisions, or reject the proposal.

#### Selecting mandatory license conditions for the developer to follow

In Barbados, terms and conditions for projects that require an ESIA become legally binding on a developer when the Chief Town Planner grants approval for a project on the condition that mandatory requirements will be implemented.<sup>14</sup> Under the 2007 Amendment to the TCPA (bb), when a developer receives authorization to carry out an activity that is subject to the requirement that "specified operations or activities" be carried out or places restrictions on land use, this establishes a planning obligation that is enforceable against the developer.<sup>15</sup>

#### Verifying developer compliance with license conditions

In Barbados, the principal mechanism for enforcing compliance with approved project requirements is the use of Enforcement Notices, which take a remedial approach that offers a developer an opportunity to remedy noncompliance with environmental management and mitigation requirements. The Chief Town Planner (CTP) provides a notice to the developer "where it appears to him that there has been a breach of

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<sup>11</sup> Town and Country Planning Act, Cap. 240 (1968).

<sup>12</sup> Barbados Physical Development Plan (Amended 2003), Available at <http://www.graemehall.com/press/resource-plan-2003.htm>.

<sup>13</sup> Town and Country Planning Physical Development Amended Plan, 2003 (Approval) Notice, 2006, <http://www.townplanning.gov.bb/content.aspx?c=53>

<sup>14</sup> Barbados, TCPA, § 16.

<sup>15</sup> Town and Country Planning (Amendment) Act 2007-51 (TCPA 2007) § 32E.

planning control” – i.e., of prescribed conditions. The notice specifies the actions required to come back into compliance and allows a reasonable time period for the developer to perform them.<sup>16</sup> Enforcement Notices may be also used in cases where an activity is carried out without authorization.

#### Facilitating public participation

Before project approval in Barbados, the Minister responsible for physical planning must require the publication of public notices, stating the place and time that the public may view the developer’s proposal. Any interested party having an objection or comment may submit them in writing to the Minister, who then appoints a representative to conduct a public hearing. The hearing allows the discussion and consideration of the objections and comments, and may include the examination of witnesses. If the Minister decides that any authorities or nongovernment actors that provided input in the hearing should be heard directly, the Minister must directly consult with them to determine whether their input should be considered in the approval process.

### **C. The Consolidated Environmental Authority Model**

*Example Countries: Belize, Guyana, Haiti, Jamaica, and Trinidad & Tobago*

#### Developing appropriate ESIA requirements and assuring compliance in Belize

Belize is one of five countries that have consolidated environmental assessment planning and natural resource conservation functions under a centralized agency with primary authority for environmental matters. With the exception of Haiti, each country retains Town and Country planning bodies that derive from their British colonial heritage and which have overlapping land use planning functions. In these countries, procedures for ESIA are mandated by legislation and specified in varying degrees of detail.

In Belize, the legal foundation for ESIA is established in Part V of the Environmental Protection Act (the Act) and the Environmental Impact Assessment Regulations (the EIA Regulations).<sup>17</sup> The Department of the Environment (DOE) is the government body in Belize that has principal authority for almost all matters pertaining to environmental protection, including administration of ESIA during the entire life cycle of development activities, from project conception to decommissioning and closure.<sup>18</sup> The DOE’s responsibility encompasses the licensing of activities following ESIA review and approval, and the implementation of monitoring and enforcement functions.

#### Determining whether an ESIA is required

Developers must submit project proposals to the DOE’s Project Evaluation & EIA Unit, which undertakes a screening procedure to determine which of three levels of environmental assessment will be necessary. If an activity is contained in a mandatory list under Schedule I of the EIA Regulations, an ESIA is required for the project. If the

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<sup>16</sup> Town & Country Planning Act Cap 240, § 33.

<sup>17</sup> The Environmental Protection Act as amended (Environmental Protection (Amendment) Act, 2009), the Environmental Impact Assessment Regulations (2003) and its 2007 amendment. Sectoral legislation provides additional requirements for activities subject to ESIA in those sectors.

<sup>18</sup> Part V of the Environmental Protection Act.

activity is listed in Schedule II, a discretionary list, the DOE determines the need for an ESIA is based on the size and location of the project. For projects in Schedule II that do not require an ESIA, a Limited Level Environmental Study is needed.<sup>19</sup> For activities listed in Schedule III, the EIA Regulations provide guidelines to be used by permitting agencies other than the DOE (such as a sectoral agency) to determine which type of projects must be submitted to the DOE for Environmental Clearance. The list-based categorization scheme in Belize is similar to screening systems that are mandated by legislation in most other Caribbean countries. Like other consolidated environmental authority systems, a centralized agency with environmental expertise makes discretionary screening determinations.

### Securing an accurate and complete ESIA

The National Environmental Appraisal Committee (NEAC) of Belize is an independent advisory body that is adjunct to the DOE and comprised of the heads of nine sectoral agencies and two ad hoc appointees. NEAC is responsible for reviewing the accuracy and completeness of an ESIA study. Additionally, NEAC advises the DOE of circumstances where a public hearing is desirable or necessary to obtain further input from stakeholders.<sup>20</sup>

### Selecting mandatory license conditions for the developer to follow

NEAC is responsible for making a decision to approve or deny an Environmental Clearance (approval) for proposed activities subject to the ESIA process.<sup>21</sup> This Unit is responsible for developing an Environmental Compliance Plan (ECP) that governs the design and implementation of the project's follow-up program and which contains requirements the proponent must follow. Pursuant to the Environmental Impact Assessment (Amendment) Regulations (2007), the ECP is a legally binding agreement specifies in detail the "environmental conditions, guidelines, policies and restrictions which the developer or his representative agrees to in writing to abide by as conditions for project approval."<sup>22</sup>

### Verifying developer compliance with license conditions

The DOE's Environmental Enforcement & Compliance Monitoring Unit is responsible for enforcing environmental laws and monitoring the developer's compliance with project-specific requirements for preventing, mitigating, and controlling environmental impacts.<sup>23</sup> Under Section 5 of the Act, authorities may enter project premises at any reasonable time to take and remove samples, make copies of computer records, seize evidence, and other necessary measures to determine whether there have been any violations of license conditions or environmental regulations. Noncompliance with the ECP or provisions of the Act can lead to penalties that include revocation of the project license, fines of up to \$10,000, and/or confinement in the local prison.<sup>24</sup>

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<sup>19</sup> World Bank. 2014. Belize - Climate Resilient Infrastructure Project. Washington, DC (82-83): World Bank Group. <http://documents.worldbank.org/curated/en/2014/07/19914285/belize-climate-resilient-infrastructure-project>.

<sup>20</sup> Belize, Environmental Protection Act (Cap. 328) (2003), Art. 25.

<sup>21</sup> Department of the Environment (Belize), The Environmental Clearance Process, <http://www.doe.gov.bz/index.php/about-us/19-services/75-environmental-clearance-process>.

<sup>22</sup> Environmental Impact Assessment (Amendment) Regulations (2007), Art. 2.

<sup>23</sup> 2014 ESIA, p.14.

<sup>24</sup> Environmental Protection Act, Art. 22.

## Facilitating public participation

The EIA Regulations of Belize contain requirements for soliciting public input and facilitating public consultation. A developer is required to publish two DOE-approved notices in a local newspaper, specifying the location and dates when the ESIA document will be available for viewing. The EIA regulations give discretion for the DOE to conduct public hearings with community and other interested stakeholders, based on the magnitude and type of impact, the nature of the geographical area, degree of interest in the proposed undertaking, and complexity of the issues.<sup>25</sup>

## **4. Discussion**

### **4.1 Overview**

The three approaches to ESIA administration presented above provide only snapshots of systems as they appear to exist at the present time. These descriptions do not address the efficiency and effectiveness within each country's environmental licensing and enforcement systems. It is the details of how these systems actually operate on the ground, in day-to-day practice within each system that determine system effectiveness. In practice, the ESIA process is always tied to a specific type of activity, a specific location, an actual set of risks, and a specific group of government experts and nongovernment stakeholders. The factors that must be considered for a coastal highway development may require vastly different areas expertise from government authorities than building a wastewater treatment plant or resort complex. Thus, there is a caveat to analyzing a country's ESIA system in the abstract.

Apart from using caution in analyzing ESIA systems in the absence of specific facts, an important question is raised in performing desktop analysis on Caribbean ESIA systems: whether Town and Country Planning systems or Consolidated Environmental Authority systems generally can deliver a more robust process for capturing developer commitments to appropriate environmental and social requirements and enforcing them. The Advisory Body approach is not considered in this analysis, since it does not involve a legislative mandate and consistent basis for performing ESIA, licensing and enforcement functions.

### **4.2 Mandates and structural differences**

One factor to be considered is whether Town and Country Planning systems, with their focus on land use planning, have a built-in bias toward allowing development to proceed within specified areas, versus Consolidated Environmental Authority systems, where there may be no presumption of the eventual issuance of a license. Simply stated, does a subtle "how" versus "if, and if so, how" difference exist between the two approaches, with respect to the treatment of any development proposal? Does this affect the accuracy, relevance, and completeness of developer requirements? Answering these questions requires, in part, the knowledge and experience of the key actors involved. However there are some factors that can help focus this inquiry.

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<sup>25</sup> Id. p.16, EIA Regulations, Arts. 20(1) and 22.

Each country's legal and institutional framework defines structures for ESIA, licensing, monitoring and enforcement might provide insights as to whether each task is subject to an objective and adequate process. For example, in Belize, does the comprehensive scope of the DOE's mandate mean that each project proposal is subject more thorough scrutiny concerning a complete range of environmental and social impact considerations? In practice, how likely is it that the decision-maker in a Town and Country system will simply reject a project outright, after an ESIA has been performed? Does Belize's National Environmental Appraisal Committee (NEAC) have any more relevant technical expertise at its disposal than, for example, Barbados' Town and Country Development Planning Office (TCDPO)? Do the technical staff and decision-makers in the DOE and NEAC have different unofficial mandates than their counterparts in the TCDPO? How are the criteria for imposing warnings and sanctions for noncompliance actually applied in practice in the two approaches? It is hoped that the RPD may shed light on questions such as these.

### 4.3 Specificity in licensing requirements

The specificity of mandatory terms and conditions that are part of the environmental license may affect the likelihood that the developer will carry out appropriate requirements and that government inspectors can confirm compliance with them. Although detailed requirements may theoretically be prescribed under any of the country ESIA systems or approaches, a legislative mandate that describes the form and substance of project management, mitigation, and monitoring requirements in detail may be more likely to prevent adverse environmental and social impacts.

For example, in Belize, Environmental Clearance (project approval) requirements are contained in the Environmental Compliance Plan (ECP), which is defined as "a set of legally binding environmental conditions, guidelines, policies and restrictions which the developer or his representative agrees to in writing to abide by as conditions for project approval."<sup>26</sup> The ECP specifies in detail the management actions that must be performed after the ESIA is approved by the DOE, in terms of required mitigation and monitoring practices for environmental protection. However, in Belize, here is no regulatory mandate for how these details are established.<sup>27</sup>

Guyana's legislative mandate goes further in building auditable and appropriate management, mitigation, and monitoring requirements into the licensing process. For example, in Guyana, the document containing the terms and conditions of the Environmental Authorization (approval) must contain specific language concerning the performance indicators to be used, expressed in quantitative terms, and describe metrics for subsequent compliance monitoring of the activity.<sup>28</sup> It specifies details such as pollution and prevention measures, sampling and instrument calibration techniques used to monitor activity processes, and "laboratory controls and the appropriate quality assurance procedures and back-up or auxiliary facilities to achieve compliance with the

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<sup>26</sup>Environmental Impact Assessment (Amendment) Regulations (2007), Art. 2.

<sup>27</sup> World Bank. 2014. Belize - Climate Resilient Infrastructure Project. Washington, DC : World Bank Group. <http://documents.worldbank.org/curated/en/2014/07/19914285/belize-climate-resilient-infrastructure-project>.

<sup>28</sup> Both self-monitoring and reporting (prescribed by legislation) and compliance monitoring by the EPA and other competent authorities.

environmental authorization.”<sup>29</sup> The requirements also incorporate by reference best practices by which the developer must abide.

In countries that follow the Town and Country approach, the legal mandate for licensing requirements delegates all discretion concerning specificity of project requirements to the licensing authority. For example, in the legislation of Barbados, licensing requirements are not specified. In Trinidad and Tobago, a project approval resulting in the issuance of a Certificate of Environmental Clearance (license) must include, in addition to project name, location, and approval date, “the mitigation measures that the applicant is required to undertake” and “other terms and conditions as the Authority sees fit.” Similarly, in Antigua and Barbuda, the Town and Country Planner may grant project approval “subject to such conditions as it thinks fit.”<sup>30</sup>

Where legislative mandates for license terms and conditions are vague, specifying appropriate license requirements depends heavily on the qualifications, incentives and capacity of environmental consultants, ESIA reviewers and license granting authorities. Furthermore, without clear requirements, there is no mechanism to ensure consistency in the application of standards from one project to another, particularly when resources and staff are stretched thinly. Differences in the quality and stringency of environmental licenses between countries may lead to economic advantages for some countries at the expense of others. The standardization of performance indicators for key sectors might provide regional consistency and permit the sharing of costs in developing such standards.

#### **4.4 Inter-agency coordination**

The effectiveness and efficiency of coordination among agencies is a third factor that may contribute to the efficiency and effectiveness of licensing and enforcement processes. Although information on interpersonal behavior in the context of shared tasks is not readily available, the coordination of certain key tasks is mandated in the legislation of many countries.

For example, in Belize, the National Environmental Appraisal Committee is comprised of the heads of nine sectoral agencies, as well as two ad hoc appointees. In Jamaica, any of fourteen sectoral agencies may participate in the review of an ESIA. In addition, an Internal Review Committee (IRC), a Technical Review Committee (TRC), the Town & Country Planning Authority, and the Board of the Natural Resources Conservation Authority are all involved in establishing license requirements.<sup>31</sup> In Barbados, the TCDPO composes an EIA Review Panel comprised of members of all relevant agencies to oversee the developer’s preparation of the ESIA study. In Antigua and Barbuda, the DCA must consider input from other government agencies and departments before issuing an authorization document.<sup>32</sup>

For each of the countries above, it is unclear from the information available how these collaborative processes work in terms of human interactions and the actual weight given to input from sectoral agencies. Apart from active representation in committees, no information suggests that other structural devices, such as inter-agency agreements,

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<sup>29</sup>Environmental Protection Authorizations Regulations, Art.12(1)(c)

<sup>30</sup> TCPA 2007 §26.

<sup>31</sup>NEPA, Development Applications Process in Jamaica: Development Guide (December 2012).

<sup>32</sup> PPA, Section 23(7) and (8).

are being used to facilitate sharing and the hand-off of tasks. Other issues that may be considered at the RPD include the degree to which sectoral agencies share in post-decision monitoring of compliance (and how the division of roles is implemented), the effectiveness of sanctions in assuring compliance, and the manner in which competent agencies prioritize tasks when constrained by limited financial and human resources. To help elicit these details, the list of questions at the beginning of the paper has been prepared for the Regional Policy Dialogue.

## **5. Conclusion**

Countries in the Caribbean region are increasingly united by common challenges that strain resources and suggest a need for joint ownership in building shared solutions to address important areas of concern. Building confidence in country by country responses to regional issues, such as climate change and transboundary pollution, requires a heightened level of trustworthiness for metrics used to assess the results of mitigation steps implemented for new development activities – metrics that substantiate avoided pollution in marine environments, avoided contamination of water supplies, and increases in the quality of living and working conditions, to name a few. Environmental licensing and enforcement are key functions for meeting this challenge.

Another key area of inquiry of the RPD is whether there are any efficiencies that may be gained by Caribbean nations acting collectively, applying common standards, performance indicators, accreditation qualifications, and technology platforms to address their needs. Where resources are thinly-spread, duplication of effort by each country may in many instances be avoidable, allowing continuing strengthening of ESIA practice without crippling investments in new systems. Shared insights may also foster ideas for engaging existing obstacles and limitations, justifying increased political support, advancing legislation, and finding better tools for inter-agency collaboration.

None of the ideas presented above impair the value of new ideas for strengthening ESIA licensing and enforcement systems within the boundaries of each country's own sovereign approach to authorizing activities that significantly impact the environment and the country's citizenry. Each country presents a unique context for imposing requirements on the implementation of development activities and for assuring that requirements are carried out. A core objective of the RPD is to further ideas for strengthening national systems according to the needs of their distinctive models.

## Appendix – Additional Caribbean Country ESIA Governance Systems

*ESIA Governance Approach: Town and Country planning system*

### A. Antigua and Barbuda

In Antigua and Barbuda, governance of the environment is centered within the Development Control Authority (DCA), which is responsible for managing all development and land use planning issues. The Town and Country Planner is the chief officer in charge of overseeing the implementation of the DCA's activities. The legislative foundation for ESIA specifically is established in the Physical Planning Act (PPA).<sup>33</sup>

#### Determining whether an ESIA is required

In Antigua and Barbuda, an ESIA is required for any proposed activity contained in the Third Schedule, a single mandatory list in the Physical Planning Act, as well as for activities that the Chief Environmental Officer (CEO) determines are likely to have significant environmental impacts.<sup>34</sup> The CEO must make this assessment based on factors that include the nature of the activity, its location and scale, the extent of anticipated environmental impacts, and the activity's compatibility with general development plans for the area.

#### Securing an accurate and complete ESIA

In Antigua and Barbuda, once the need for an ESIA is determined, the DCA has a duty to solicit input from all other government agencies that have responsibility for the type of activity proposed before issuing any license or authorization to the developer. After the other government agencies and departments have been notified, it must wait for input from them before issuing an authorization document.<sup>35</sup> The Minister has authority to compose a registry of accredited ESIA practitioners with the "requisite qualification, skills, knowledge and experience" to carry out ESIA studies.<sup>36</sup> The Draft EIA Regulations for Antigua and Barbuda prescribe procedures for conducting and reviewing ESIA's including the minimum content. Interestingly, the mandatory content also includes an indication of "gaps in knowledge and uncertainties which may be encountered during EIA" and whether "any other State or areas beyond the national jurisdiction is likely to be affected by the proposed development or alternatives."

#### Selecting mandatory license conditions for the developer to follow

In Antigua and Barbuda, the Town and Country Planner has broad discretion to specify environmental management and mitigation conditions, including unconditional approval or granting approval "subject to such conditions as it thinks fit."<sup>37</sup> It is not clear which document contains the prescribed requirements and restrictions and how these conditions are specified in the document.

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<sup>33</sup> Physical Planning Act, 2003 (No. 6 of 2003). Part IV, 23), Part IV Control of development of Land

<sup>34</sup> PPA, Section 23(2).

<sup>35</sup> PPA, Section 23(7) and (8).

<sup>36</sup> CARICOM, *Guide to the Integration of Climate Change Adaptation into the Environmental Impact Assessment (EIA) Process, Adapting to Climate Change in the Caribbean (ACCC) Project*, 66-68, (September 2004).

<sup>37</sup> TCPA 2007 §26.

### Verifying developer compliance with license conditions

In Antigua and Barbuda, the Town and Country Planner is the authority responsible for enforcement. In the cases of noncompliance with ESIA requirements, the Town and Country Planner may serve an Enforcement Notice on the developer stating in detail the breaches alleged to have occurred. The TCP may request remedies that include compliance with the original ESIA conditions, the restoration of land, the demolition of a building, or work stoppages. Failure to comply with an Enforcement Notice will result in the issuance of a Stop Notice. For violations following a Stop Notice, the developer is subject to a fine of up to fifty thousand dollars, as well as daily amounts for continuing offences.

### Facilitating public participation

In Antigua and Barbuda, when the Minister responsible for physical planning determines that a proposed activity may cause adverse impacts to people or properties, or if the activity appears on the mandatory list of activities requiring an ESIA (the Third Schedule), the Minister must require the developer to publish a notice concerning the project details and inviting “comments and representations,” orally or in writing.<sup>38</sup> By law, the Development Control Authority must consider all stakeholder comments provided.<sup>39</sup>

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<sup>38</sup> Antigua and Barbuda, Physical Planning Act, § 22.

<sup>39</sup> *Id.* at § 22(3)(b).

## B. Guyana

### *ESIA Governance Approach: Consolidated environmental authority system*

In Guyana, the Environmental Protection Agency (EPA) is the centralized top-level authority for administering Guyana's regulatory system for ESIA.<sup>40</sup> The Environmental Protection Act (EP Act) provides a broad mandate that invests comprehensive authority in the EPA for managing the sustainable use of natural resources, promoting public participation, and coordinating the environmental roles of all relevant entities, as well as establishing, monitoring, and enforcing licensing requirements with a high degree of specificity.

### Determining whether an ESIA is required

Guyana utilizes a mandatory list of activities, coupled with discretionary authority (by the EPA). If a developer proposes an activity that appears in the Fourth Schedule of the EP Act<sup>41</sup> or the EPA determines that it has the potential to significantly affect the environment, the project is subject to the ESIA process. In Guyana, developers may also be required to obtain other types of environmental licenses and permits, in addition to the license associated with the ESIA.

### Securing an accurate and complete ESIA

In Guyana, a developer who applies for an Environmental Authorization (environmental license) to conduct an activity that requires an ESIA must initially draft and submit to the EPA a terms of reference.<sup>42</sup> The developer prepares a preliminary ESIA report that describes the characteristics of the proposed activity, including significant impacts on the environment and project risks, best available technology to be used, mitigation measures to be undertaken, a monitoring plan, and other details. The ESIA report, as well as an accompanying environmental impact statement (EIS), must conform to the terms of reference.

After the developer receives a last round of pre-decision comments from the public and from the EPA, the developer incorporates these considerations into a final ESIA. At this point, Guyana's Environmental Assessment Board (EAB), an independent government body that supports the development and finalization of ESIA's, makes recommendations concerning the ESIA that advance the principles of the EP Act on behalf of regulatory agencies, developers, and the public.<sup>43</sup> The EAB then recommends to the EPA whether the ESIA is acceptable and which project-specific terms and conditions should apply.

### Selecting mandatory license conditions for the developer to follow

In Guyana, if the EPA makes a decision to approve a project, it issues an Environmental Authorization (EA) to the developer. The EA document contains specific language concerning the requirements the developer must follow during project implementation.

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<sup>40</sup> The Environmental Protection Act (1996) established Guyana's Environmental Protection Agency.

<sup>41</sup> Environmental Protection Act, Section 11(1).

<sup>42</sup> Preparation of the draft ESIA must be performed by a consultant that meets legislatively defined qualification/accreditation criteria.

<sup>43</sup> The EAB is involved in developing the ESIA from the scoping phase to the drafting of project-specific requirements in the Environmental Authorization. The EAB also plays an important role in facilitating public participation.

This language includes performance indicators to be used during ongoing compliance monitoring, specified in terms of quantitative metrics.<sup>44</sup> For example, these may include sampling and instrument calibration techniques to be used in the monitoring processes, effluents, and other impacts. Additionally, the requirements incorporate by reference best management practices, best available technologies and the specific standards concerning pollution and prevention measures, laboratory controls, and quality assurance procedures for achieving compliance with the EA.<sup>45</sup>

#### Verifying developer compliance with license conditions

In Guyana, the EPA is responsible for compliance monitoring and inspections in connection with ESIA license requirements.<sup>46</sup> Guyana's 2014 draft regulations on compliance monitoring establish in specific detail the follow-up tasks that authorities must perform on an ongoing basis to ensure that developers comply with the terms and conditions of the permits.<sup>47</sup> The objective of the draft regulations are to monitor, verify, and ensure compliance with the EP Act, as well as with "permits, licenses, authorizations, standards, codes of practice, prescribed processes, and other instruments."<sup>48</sup> Under the draft regulations, inspectors must carry out inspections on and off developers' premises to verify compliance with the EP Act and project-specific requirements. Analysts are responsible for analyzing samples submitted to them and preparing written reports concerning the findings of their analyses.<sup>49</sup>

#### Facilitating public participation

In Guyana, public participation is a core element of the ESIA process – a point affirmed throughout the country's legislation. When the EPA determines that a project requires an ESIA, the developer's draft terms of reference are published in at least one daily newspaper for 28 days. During this period, the EPA accepts written submissions from members of the public, NGOs, and other interested stakeholders. After this period, the EPA convenes a public consultation meeting in which the Environmental Assessment Board (EAB) acts as facilitator. Stakeholder comments obtained at the meeting are considered and, where appropriate, integrated into the ESIA.

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<sup>44</sup> Both self-monitoring and reporting (prescribed by legislation) and compliance monitoring by the EPA and other competent authorities.

<sup>45</sup> Environmental Protection Authorizations Regulations, Art.12(1)(c).

<sup>46</sup> Environmental Protection (Amendment) Authorisations Regulations (2000)

<sup>47</sup> Draft Regulations on Compliance and Enforcement (2014), It is unclear if this legislation has been approved or reflects existing de facto procedures while it is being considered for approval.

<sup>48</sup> Draft Regulations on Compliance and Enforcement at Art. 3(a).

<sup>49</sup> *Id.* at Art. 9.

## C. Haiti

### *ESIA Governance Approach: Consolidated environmental authority system*

In Haiti, generalized rules for ESIA are embedded in the country's framework environmental legislation, and the Decree on Environmental Management and Regulation of Citizen Conduct for Sustainable Development of 2006 (*Décret*) defines national environmental policy and specifically establishes the legal provisions for the ESIA process.<sup>50</sup> In Haiti, the Ministry of the Environment has primary responsibility for ESIA review and compliance monitoring functions.

### Determining whether an ESIA is required

Article 56 of the *Décret* establishes the required components of the ESIA system and states that any "policies, plans, programmes, projects, and activities" that have a potential to impact the environment must be subject to the ESIA process. The *Décret* states that a list of activities subject to ESIA will be elaborated by the Ministry of the Environment (MDE). The MDE fulfilled this mandate by issuing a set of ESIA guidelines in 2002 (updated in 2011).<sup>51</sup> These guidelines provide for the classification of projects (1st, 2nd and 3rd class) according to potential for impacts. The guidelines also specify the administrative procedures for implementing ESIA, an impact assessment form, and a data sheet of potential project impacts and mitigation concerns.

### Securing an accurate and complete ESIA

The Ministry of the Environment (MDE) has primary responsibility for ESIA review. Within the MDE there is an Environmental Impact Study and Assessment Unit (UEEIE / MDE), which has authority for the validation of impact assessments. At the county level, Departmental Directorates of Environment (DDE) are also involved in the implementation and validation of impact studies.

### Selecting mandatory license conditions for the developer to follow

In Haiti, at the time of project approval, or *non-objection*, the Minister of the Environment receives input from technical specialists in sectoral agencies. Each sectoral agency has a Sectoral Technical Environmental Unit (UTES) that provides sector-specific supplementary expertise.

### Verifying developer compliance with license conditions

Responsibility for monitoring compliance with ESIA license conditions is distributed among a number of competent authorities. Haiti's environmental *Décret* mandates that environmental monitoring responsibilities are to be shared by the Ministry of the Environment and the Ministry of Justice, but adds that *all* public authorities are responsible for environmental monitoring according to the purview of each of their

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<sup>50</sup> *Décret portant sur la Gestion de l'Environnement et de Régulation de la Conduite des Citoyens et Citoyennes pour un Développement Durable* (January 2006) The Decree on Environmental Management and Regulation of Citizen Conduct for Sustainable Development (*Décret*).

<sup>51</sup> *Projet de Renforcement du Secteur de l'Energie et d'Expansion de l'Accès en Haïti*, Final report, (July 2012); World Bank Group (Ruth Tiffer-Sotomayor et al.) *Legal framework of Environmental Impact Assessment in Latin America* (2015).

regulatory oversight concerns.<sup>52</sup> In addition, Haiti has an Environmental Surveillance Corps, whose varied functions include aerial surveillance, developing public awareness, reporting of environmentally harmful activity, and enforcing land use plans.<sup>53</sup> Finally, the National Police are designated as “direct authorities” designated for legal inquiries into environmental infractions.<sup>54</sup>

#### Facilitating public participation

Article 58 of the *Décret* states that for each project subject to the ESIA process, the Ministry of Environment will establish procedures to facilitate public consultation and to convene public hearings in such a way as to ensure the widest participation of the population.

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<sup>52</sup> *Décret*, Article 63.

<sup>53</sup> *Décret*, Article 64.

<sup>54</sup> *Décret*, Article 65.

## D. Jamaica

### *ESIA Governance Approach: Consolidated environmental authority system*

Jamaica has developed an environmental regulatory system that combines certain features of Town and Country land use planning boards with those of environmental management authorities that focus more exclusively on environmental concerns. The merging of a Town and Country land use system and a natural resource conservation authority, through the enactment of the Natural Resources Conservation Authority Act (NRCA) in 1991, resulted in the creation of the National Environment and Planning Agency (NEPA), which has primary authority for administering the ESIA process.

The Town and Country Planning Act (TCPA) provides framework legislation for land use planning and fulfills a land use role that overlaps with that of NEPA.<sup>55</sup> Section 31 of the NRCA states that:

“The grant of a permit or a licence under this Act does not dispense with the necessity of obtaining planning permission when such permission is required under the Town and Country Planning Act, and in such circumstances, an application under that Act for planning permission in respect of any development which, pursuant to an order under section 9 (1), is of a prescribed description or category shall be made thereunder simultaneously with the making of an application for a permit or licence under this Act.”

### Determining whether an ESIA is required

As with most other Caribbean ESIA regimes, Jamaica’s criteria for determining the requirement for an ESIA are based on mandatory and discretionary lists of categories of activities. Jamaica has a list of activities that are always subject to ESIA, which is supplemented by the right of NEPA to require an ESIA whenever it determines that one is warranted by the specific characteristics of a proposed new activity or a major revision to one.

### Securing an accurate and complete ESIA

In Jamaica, the developer must prepare draft terms of reference following a determination that the proposal is subject to the ESIA process. NEPA, other competent authorities, and other stakeholders review the draft TOR to determine whether it is acceptable. The application is reviewed by NEPA’s Internal & Technical Review Committees. After the number of iterations needed to secure all stakeholder input, the Technical Review Committee’s recommendations (technical decision) are presented to NEPA’s Board, which then makes a decision on whether to grant a permit.

### Selecting mandatory license conditions for the developer to follow

NEPA is responsible for issuing the document that contains binding rules that project developers must follow. Currently there is little information available to IDB on the process of drafting these requirements, other than that they derive in part from

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<sup>55</sup> Anderson, Winston, *Supra* note 14 at 175.

environmental management, mitigation, and monitoring requirements refined during the ESIA review.

#### Verifying developer compliance with license conditions

In Jamaica, Section 20 of the NRCA Act states that NEPA and its officers have a right of entry into the premises of any party “to ensure compliance with the NRCA Act or any other law pertaining to the protection of the environment.” Sanctions for violations of licensing terms include monetary fines, work stoppages, or the revocation of licenses.

#### Facilitating public participation

In Jamaica, public input is obtained by the publication of newspaper notices, at two different points during the ESIA process, which solicit public comment. In addition, the terms of reference are displayed in public buildings, and there is a public presentation forum after at least three weeks of notice. Some comments from the public may become conditions of the issuance of the permit.

## E. Saint Vincent and the Grenadines

### *ESIA Governance Approach: Town and Country planning system*

In Saint Vincent & the Grenadines, legislation concerning environmental and social development, including the process for the administration of ESIA, is established by the Town and Country Planning Act (No. 45, 1992).<sup>56</sup> Article 29 of the TCPA provides a mandate for the requirement of an ESIA for proposed activities that are likely to have significant environmental impacts. The Physical Planning Unit (PPU) is a government body that has primary authority with respect to environmental management issues generally, including specific authority to administer the ESIA process.<sup>57</sup> The PPU functions as the technical and advisory arm of the Physical Planning and Development Board (PPDB), which oversees national development.

### Determining whether an ESIA is required

The Town and Country Planning Act (TCPA/sv) states that an ESIA is required for projects or activities that are likely to have an adverse effect on the environment.<sup>58</sup> The *Draft Environmental Impact Assessment Regulations* (2009), which currently provide the operative rules governing ESIA, include a mandatory list (Schedule I) of activities for which ESIA is always required, as well as two discretionary lists (Schedules II and III) of activities for which the PPU may require an ESIA, based on the specific attributes of the proposed project.

### Securing an accurate and complete ESIA

Terms of reference governing the development of the ESIA study are confirmed through a multi-step dialogue between the developer and the PPU. An iterative process is used in developing the ESIA, consisting of a series of progressive refinements of the ESIA by the proponent, matched in each stage by constructive comments and critiques by the PPU. This process is repeated until the ESIA is sufficiently accurate, complete, and lacking in red flags that the PPU can approve it.<sup>59</sup> A National Environmental Appraisal Committee (NEAC) is appointed to advise the PPDB concerning the adequacy of the ESIA and to determine whether a hearing is needed to gather stakeholder comments. If the Committee does not find deficiencies in the ESIA that require additional information or studies from the developer, it will recommend that the PPDB notify the developer to commence undertaking the project.<sup>60</sup>

### Selecting mandatory license conditions for the developer to follow

In Saint Vincent and the Grenadines, establishing developer requirements is a two-stage process that involves (1) a preliminary set of comprehensive conditions established prior to construction governing the life of the project, and (2) a final set of additional

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<sup>56</sup> The Town and Country Planning Act (No. 45, 1992).

<sup>57</sup> The Physical Planning Unit in Saint Vincent and the Grenadines is a department within the Ministry of Housing, Informal Human Settlement, Physical Planning, Lands and Surveys.

<sup>58</sup> Town and Country Planning Act, Article 29 (1992).

<sup>59</sup> Environmental Resources Management, *St. Vincent Geothermal Project Phase I Exploratory Drilling Environmental and Social Impact Assessment* (ESIA), Draft Report (April 2016); Interviews by IDB with staff of the PPU.

<sup>60</sup> *Id.*

operating conditions imposed, as needed, after construction.<sup>61</sup> The PPDB formulates initial requirements at the time the project is approved. During the construction stage of the activity, the developer is required to faithfully implement the conditions imposed on the approval of the ESIA.<sup>62</sup> Following construction, the PPDB conducts an inspection and review of the project site to confirm compliance with original requirements and then issues supplemental operating conditions, which may include mitigation, management, and compensatory measures to be followed throughout the life of the project.<sup>63</sup>

#### Verifying developer compliance with license conditions

The *Draft Environmental Impact Assessment Regulations* (2009) specify that during the construction, operation, and closure phases of a project, the PPDB shall monitor the implementation of the project by the developer and verify compliance with all “the Environmental Conditions, as approved.”<sup>64</sup>

#### Facilitating public participation

The PPDB requires publication of a notice before it can approve a project, providing specifics of a proposed project. It may also invite written comments and objections from interested persons at any time during the ESIA process concerning the impacts of the proposed activity. The PPDB may forward these written comments to the developer, who must answer any pertinent questions raised.<sup>65</sup> As a general practice, the PPDB provides public notice that the draft ESIA is available at their offices for comment, through advertisements in three local newspapers and in the *Gazette*, an official publication<sup>66</sup>

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<sup>61</sup> TCPA 2007 §28(2).

<sup>62</sup> TCPA 2007 §26(1).

<sup>63</sup> TCPA 2007 §28(2)(a).

<sup>64</sup> Draft Environmental Impact Assessment Regulations (2009), Art. 28(2)(b) and 29(3).

<sup>65</sup> SVG, Draft Environmental and Social Impact Assessment Regulations, Art. 15 (2009).

<sup>66</sup> St. Vincent Geothermal Project Phase I Exploratory Drilling Environmental and Social Impact Assessment (ESIA), Draft Report (April 2016).

## F. Suriname

### *ESIA Governance Approach: ESIA systems administered by advisory bodies*

In Suriname, the ESIA process is administered by environmental advisory bodies that are adjunct to a top-level environmental ministry, rather than being implemented under legislatively established regulatory provisions. Although ESIA is not an officially mandated function in Suriname, it is nevertheless used as an important planning and evaluation tool, particularly in connection with large commercial and infrastructure projects that pose a heightened risk for adverse environmental and social impacts.

The practice of ESIA is a relatively recent phenomenon in Suriname.<sup>67</sup> At the present time, the National Institute for Environment and Development (NIMOS) is playing a central role in developing a national regulatory system for ESIA. NIMOS was established in 1988 as the executive and research arm of the National Council for the Environment (NRM) and provides the government of Suriname with advice on developing and implementing environmental policy. NIMOS has proposed ESIA procedures and guidelines, which are followed in practice in preparation for large projects.<sup>68</sup>

### Determining whether an ESIA is required

NIMOS has proposed a three-tier ESIA screening system that is based on the World Bank model and similar to that which is used in many countries.<sup>69</sup> Under this categorization scheme, ESIA is mandatory for Category A projects, which includes a list of high-risk activities. Category B is comprised of activities where the need for an ESIA must be determined by authorities after considering additional information. Category C activities do not require an ESIA.

### Securing an accurate and complete ESIA

NIMOS is the body that approves the technical adequacy of the ESIA report, while a licensing agency (such as sector ministry) is responsible for making the political decision on granting the license. Following ESIA review, NIMOS may advise for or against approval of the project, or may recommend approval only if certain conditions are met.<sup>70</sup> NRM and NIMOS work closely with sectoral ministries in evaluating and approving projects that are likely to have a significant impact on the environment. An Inter-Ministerial Advisory Commission (IMAC) may also act as a coordinating body.

### Selecting mandatory license conditions for the developer to follow

The ESIA guide NIMOS published states that NEMOS “should “bring together a multidisciplinary team together to assist in evaluating an ESIA study.”<sup>71</sup> When a project is approved, NIMOS may make a finding that the study adequately describes the

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<sup>67</sup> Netherlands Commission for Environmental Assessment (NCEA), *Suriname EIA profile*, <http://www.eia.nl/en/countries/sa/suriname/eia>. In Suriname, there is already an obligation to conduct an ESIA for investments over US \$ 40 million. By default, all such ESIA's must be outsourced.

<sup>68</sup> NIMOS, *Manual: The Environmental Impact Assessment processes in Suriname* (June 2009) <http://www.nimos.org/smartcms/downloads/Wegwijzer%20voor%20het%20Milieu%20Effecten%20Analyse%20Proces%20in%20Suriname-Juni%202009.pdf>.

<sup>69</sup> *Id.*

<sup>70</sup> NIMOS guidelines, p. 7.

<sup>71</sup> *Id.* at p. 12.

mitigation and management steps the developer should follow, or it may add additional measures that should be taken.

#### Verifying developer compliance with license conditions

In Suriname, NIMOS periodically verifies whether a developer is implementing the licensed activity in accordance with the environmental management plan.<sup>72</sup> NIMOS and the sectoral (licensing) ministry jointly review the monitoring results and annually conduct a post-decision performance evaluation. Based on the findings, the licensing agency and NIMOS may require the developer to undertake additional mitigation measures and/or add supplementary requirements to the permit.<sup>73</sup>

#### Facilitating public participation

The ESIA guidelines state that the project proponent should publish an announcement in at least one daily newspaper in national circulation. Interested stakeholders have 30 to 90 days to submit written comments, based on the complexity of the project. NIMOS may also require the developer to hold a public meeting to gather additional comments. During the review phase, the developer is responsible for organizing additional public meetings for stakeholder groups impacted by the proposed project, such as indigenous peoples.

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<sup>72</sup> *Id.* at p.18.

<sup>73</sup> NCEA

## G. Trinidad and Tobago

### *ESIA Governance Approach: Consolidated environmental authority system*

Like Jamaica, Trinidad and Tobago has developed an environmental regulatory system that combines certain features of Town and Country land use planning boards with those of environmental management authorities that focus more exclusively on environmental concerns. In Trinidad and Tobago, the Environmental Management Authority (EMA) is the central governing body for environmental matters and oversees the ESIA process. The Minister responsible for The Town and Country Planning Division plays a complementary role in granting permission for land development issues.<sup>74</sup>

### Determining whether an ESIA is required

Section 35 of the Environmental Management Act (the Act) provides that anyone proposing new projects or major expansions that appear in a list of designated activities (the Designated Activities Order) must apply to the Environmental Management Authority (EMA) for a Certificate of Environmental Clearance. The Certificate of Environmental Clearance Rules (2001 and later amendments) were enacted pursuant to the Act to provide guidance for the ESIA process.

### Securing an accurate and complete ESIA

In Trinidad and Tobago, terms of reference are used to guide the applicant/developer in their preparation and of the ESIA report, which in turn is used by the EMA in the decision-making processes. Following an iterative process in which the developer-applicant produces an ESIA report that fulfills all TOR requirements and requests for additional information by the EMA, the review process begins. The selection process of reviewers is determined based on the project under consideration, expertise required, and whether other agencies are required to give subsequent approvals and need to know the content of the Report. It is not known whether (and how) the technical decision by reviewers on the accuracy and completeness of the ESIA document is differentiated from the political decision to allow or deny the proposed activity.

### Selecting mandatory license conditions for the developer to follow

The EMA is the body that issues licenses following a decision to approve a project that is subject to the ESIA requirement. Upon approval, EMA issues a Certificate of Environmental Clearance to the developer which contains environmental mitigation and monitoring measures that must be strictly followed.<sup>75</sup>

### Verifying developer compliance with license conditions

In Trinidad and Tobago, Environmental Police Officers (police officers appointed by the Commissioner of Police and assigned to the EMA) assist in ensuring environmental compliance and receive special training in environmental protection, monitoring, and enforcement. In addition to policing littering infractions, they investigate project

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<sup>74</sup> The Town and Country Planning Act Chapter 35:01 provides framework legislation for land use.

<sup>75</sup> The Environmental Management Authority, A Guide to the Application for a Certificate of Environmental Clearance 16, [http://www.ema.co.tt/new/images/guides/cec\\_application\\_guide.pdf](http://www.ema.co.tt/new/images/guides/cec_application_guide.pdf).

activities that have been issued CECs to monitor compliance with the conditions they contain.

#### Facilitating public participation

In Trinidad and Tobago, the EMA provides notice to potential interested parties through an advertisement of the pending ESIA decision in a daily local newspaper. There is a mandatory timeframe of at least 30 days for the public to submit comments to the EMA. The public may also participate in the EIA process by attending public hearings, which may be required to allow impacted stakeholders an opportunity to voice their concerns related to a proposed project.