

9-1-2006

Civil Society and Environmental Protection: The Case of Jamaica

Harold A. McDougall

Follow this and additional works at: <https://elibrary.law.psu.edu/pselr>

Recommended Citation

Harold A. McDougall, *Civil Society and Environmental Protection: The Case of Jamaica*, 15 *Penn St. Envtl. L. Rev.* 1 (2006).

This Article is brought to you for free and open access by the Law Reviews and Journals at Penn State Law eLibrary. It has been accepted for inclusion in Penn State Environmental Law Review by an authorized editor of Penn State Law eLibrary. For more information, please contact ram6023@psu.edu.

Articles

Civil Society and Environmental Protection: The Case of Jamaica

Harold A. McDougall*

ABSTRACT

The article examines the problems of environmental protection in developing countries, using the island nation of Jamaica as a case study. Solid waste management and water pollution are perhaps the most pressing issues, but problems of social organization and financial resources are perhaps equally important.

Jamaica has tried to respond, with the meager resources at its disposal by engaging civil society. This approach focuses primarily on nongovernmental organizations, which assist in setting and implementing policy, as well as in seeking funds from international donors.

Part of the traditional role of the nongovernmental organization is to stand between the government and the people, keeping the former accountable to the latter, however. Thus, the Jamaican strategy of necessity creates some civic and political tension.

* Harold A. McDougall is a Professor of Law at Howard University School of Law. Professor McDougall is also a member of the Board of Directors of the Council for the International Exchange of Scholars and a member of the Board of Trustees for the Paul J. Aicher Foundation.

Table of Contents

I. Overview: What's the Problem?	2
II. Solid Waste Management is Key.....	3
III. Where Did the Problem Come From?	4
IV. What Solutions Have Been Tried Already?	4
A. The Protected Area System.....	5
B. The "Category II" Strategy.....	9
C. The Emergence of NEPA	10
V. What New Solutions Can Be Tried? The "Category II" Alternative in Portland.....	12
VI. Obstacles to Success	15
A. The Need for Government Engagement.....	15
B. The Need for Citizen Engagement	19
VII. Conclusion.....	27

I. Overview: What's the Problem?

In the summer of 2003, as Director of the Howard University Caribbean Law Program, I supervised fourteen students from the Howard University School of Law and five other U.S. Law Schools, as well as two from the Norman Manley Law School in Kingston, Jamaica, in a program of clinical study and research in Jamaica. The project was underwritten by a 2001-2003 Alumni Initiatives Award grant I received from the U.S. Fulbright program, a follow-on to my service as a Fulbright Scholar in 1999 at the Norman Manley Law School.

Our group researched the feasibility of increasing the level of environmental protection in Jamaica's Portland Parish. The study, took place between June 2nd and June 27th, 2003 and was commissioned by Jamaica's National and Environmental Planning Agency ("NEPA") and the Portland Environmental Protection Association ("PEPA"), a nongovernmental organization active in environmental issues in the Parish.

Of Jamaica's fourteen parishes, only two are smaller than Portland.¹ Portland Parish which is also Jamaica's third most sparsely populated parish² with only 80,000 residents. Portland has some of Jamaica's most beautiful and under-utilized land, including the island's last remaining

1. Portland has a population of 80,205; Trelawny (73,066) and Hanover (67,037) are smaller. *See* Parishes of Jamaica, <http://www.statoids.com/ujm.html> (last visited Feb. 22, 2006).

2. The current population is 80,000. *See* World Gazetteer, Jamaica: Administrative Divisions (2006), http://www.world-gazetteer.com/t/r_jm.htm.

block of lowland rainforest, connecting its highest mountains to its most extensive system of reefs.³ Jamaica's economy is heavily dependent upon tourism's ability to bring in foreign currency. Portland is clearly the next frontier in tourist development because of its picturesque beauty and relatively underdeveloped tourist industry. Portland stands to benefit as well—the parish's unemployment rate was 40% in 1998, and 18% of the population lives below the poverty line.

With environmental problems common to many other parts of the island, an undeveloped tourist economy, and the possibility of public-private collaboration, Portland was an ideal area for the group to study. Our primary focus was why and how balanced and sustainable development should be initiated.⁴

II. Solid Waste Management is Key

Portland already faces some serious environmental problems, and those problems would most likely be exacerbated by unplanned development. The most crucial environmental issue in Portland, as in much of the developing world, is poor waste management.⁵ Poor waste management leads to air pollution, water pollution, and litter that ultimately affect Portland's core industries (fishing, agriculture, and tourism), as well as undermining the quality of life for the parish's citizens in general. Ultimately, the problems of poor waste management may affect public health, by leading to an outbreak of diseases.

Portland's infrastructure, particularly for waste management and water treatment, is thus clearly unprepared for rapid and intense economic and population growth. To make matters worse, Portland currently has no central system for managing human waste, and no hazardous waste facility (medical waste, for example, is improperly disposed of through incineration.)

3. National Environment and Planning Agency, Portland Parish Council and Parish Development Committee, *The Parish of Portland: A Sustainable Development Profile* (December 2000).

4. By interesting the "environmentally friendly" tourist, who is specifically seeking out scenic and rugged environments, not only would the people of Portland benefit economically but it would also provide a significant source of income for re-investing into environmental protection and sustainability, particularly from the standpoint of ecotourism.

5. See *Urban Solid Waste Management: Waste Reduction in Developing Nations 2-3* (April 2003) (unpublished manuscript, Michigan Technological University), available at: http://64.233.179.104/search?q=cache:f3kkG1l4YoUJ:www.cee.mtu.edu/peacecorps/documents_july03/Waste_reduction_and_incineration_FINAL.pdf (last visited Feb. 22, 2006).

III. Where Did the Problem Comes From?

The capital of Portland parish, Port Antonio (with about 15,000 residents), generates 42-45 tons of waste a day by itself, depending on one dumpsite that is three hours away. The rest of the parish, at the very least matches the waste production of Port Antonio. North Eastern Parks and Market (NEPM), the agency responsible for garbage collection, has only one other collection site, and the two together have a combined capacity of only 30 tons. Collection is erratic, and often flooded roads cause delays in Portland, which experiences the island's heaviest rainfall. As a result, residents often burn their trash (polluting the air) or simply dump it in waterways or on the side of the road.

The problem of solid waste disposal in Portland is worsened by large quantities of plastic bottles entering the country and also being produced by local bottlers. According to a citizen petition being circulated island-wide,⁶

Plastic "PET" bottles comprise the most numerous and identifiable component of solid waste in our country. After usually just one use, they end up as unsightly litter on our roads, school compounds and beaches; debris choking our gullies, rivers and in-shore waters; toxic air pollution when they are burnt; an health hazards as they pile up in illegal garbage dumps throughout Jamaica.

A major contributing factor to the proliferation of plastic waste is the importation and manufacture of a wide range of non-biodegradable containers and packages, without provision for their recovery, recycling, or safe disposal. Apart from the environmental damage, plastic waste costs the Government and taxpayers millions of dollars annually in solid waste management services.

IV. What Solutions Have Been Tried Already?

With the exception of costal land, pursuant to The Town and Country Planning Development Order of 1963,⁷ Portland has no system of environmental regulations currently in place. The 1963 Development Order regulates zoning on the coast, however, it is poorly enforced and development is either unregulated or self-regulated.⁸ This is one reason for the disconnection between development and the environment.

6. Copy on file with author.

7. Landslide Hazard Mitigation and Loss-Reduction for the Kingston Jamaica Metropolitan Area, <http://www.oas.org/CDMP/document/kma/planning.htm>. (last visited Feb. 22, 2006).

8. Interview with Marguerite Guoron, Chair of the Board, PEPA, in Port Antonio, Jamaica (July 2003).

Developing a more intensive regime of environmental protection could help NEPA and PEPA achieve significant sustainable development goals. Until then unplanned development will only serve to magnify the environmental problems in Portland.

Before the passage of the Natural Resources Conservation Authority Act in 1991,⁹ the Town Planning Authority and the local Parish Councils were the principal agencies for land use regulation, pursuant to the Town and Country Planning Act (revised, 1990). Jamaican law now permits the imposition of varied levels of environmental regulation in geographically and ecologically distinctive areas on the island.¹⁰

The Natural Resources Conservation Authority Act established the Natural Resources Conservation Authority (NRCA) as the Government of Jamaica's lead environmental agency.¹¹ NRCA was invested with broad powers to manage Jamaica's physical environment, to ensure its protection and conservation. Importantly, the NRCA took responsibility for the "protected area" system.¹²

A. *The Protected Area System*

There are six general types of Jamaica's system of protected areas, ranging from the most intensively regulated to the least intensively regulated.¹³ The first type of protected area is the National Nature Reserve/Wilderness Area (Equivalent to IUCN¹⁴ Category I). These are lands or waters with unique biodiversity (flora, fauna) or other ecological values which require strict protection.¹⁵ Primary uses permitted are for

9. The Natural Resources Conservation Authority Act of 1991: Preamble "An Act to Provide for the management, conservation and protection of the natural Resources of Jamaica, to establish a Natural Resources Conservation Authority, to make consequential amendments to certain enactments and to provide for matters incidental thereto or connected therewith." Copy on file with author.

10. The Natural Resources Conservation Authority Act, 1991 (Act 9 of 1991), section 3 (copy on file with Author).

11. *Id.* section 5. See also *It Inna Di Law, infra*, note 74.

12. An "Environmental Protection Area" within the meaning of Jamaica's Natural Resources and Conservation Act of 1991, is the cornerstone of Jamaica's environmental law. See *supra* note 10.

13. CEP TECHNICAL REPORT NO. 36 1996: STATUS OF PROTECTED AREA SYSTEMS IN THE WIDER CARIBBEAN REGION (1996), <http://grid2.cr.usgs.gov/cepnet/pubs/techreports/tr36en/countries/jamaica.html> (last visited Feb. 22, 2006).

14. The IUCN is the International Union for the Conservation of Nature and Natural Resources and it was founded in October 1948 as the International Union for the Protection of Nature (IUPN) following an international conference in Fontainebleau, France. www.iucn.org/en/about (visited Feb 8, 2006). IUCN CATEGORY I: Strict Nature Reserve/Wilderness Area: protected area managed mainly for science or wilderness protection (Guidelines For Protected Area Management Categories Part II, The Management Categories, *IUCN Publications Service Unit*, p. 2.

15. *Id.*

biodiversity/ecological protection, scientific research, and education while restricted ecotourism may be appropriate as a secondary use.¹⁶ The second type of protected area is exemplified by the designation of an area as a “National Park” or as a “Marine Park.”¹⁷ These lands or waters usually require intensive management, restraints on use and tourism development. Primary uses include biodiversity and ecological protection, tourism, recreation, scientific research, and education. The third type of protected area is Natural Landmark/National Monument.¹⁸ Primary uses of this type include preservation of natural and/or cultural values with compatible research, education, public access and public recreation.

Habitat/Species Management Area¹⁹ is the fourth type of protected area. Areas in this fourth category are managed mainly for conservation through management intervention to ensure the maintenance of habitats of specific species. The fifth type of protected area is the National Protected Landscape, or Seascape.²⁰ Protected landscapes are areas of land (often with coast and sea) where the interaction of people and nature over time has produced a distinct character with significant cultural, aesthetic and ecological value. This category also includes areas with outstanding scenic or other natural values important for outdoor recreation. Lands in this category may be either public or private. Primary uses may vary but include recreation and tourism, combined with protecting the area’s quality by preventing incompatible

16. *Id.*

17. *Equivalent to IUCN Category II: National Park: protected area managed mainly for ecosystem protection and recreation—natural area of land and/or sea, designated to (a) protect the ecological integrity of one or more ecosystems for present and future generations, (b) exclude exploitation or occupation inimical to the purposes of designation of the area and (c) provide a foundation for spiritual, scientific, educational, recreational and visitor opportunities, all of which must be environmentally and culturally compatible. Id. at 4.*

18. *Equivalent to IUCN Category III: Natural Monument: protected area managed mainly for conservation of specific natural features—area containing one, or more, specific natural or natural/cultural feature which is of outstanding or unique value because of its inherent rarity, representative or aesthetic qualities or cultural significance. Id. at 5.*

19. *Equivalent to IUCN Category IV: Habitat/Species Management Area: protected area managed mainly for conservation through management intervention—area of land and/or sea subject to active intervention for management purposes so as to ensure the maintenance of habitats and/or to meet the requirements of specific species. (Id. at 6.)*

20. *Equivalent to IUCN Category V: Protected Landscape/Seascape: protected area managed mainly for landscape/seascape conservation and recreation—area of land, with coast and sea as appropriate, 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. Safeguarding the integrity of this traditional interaction is vital to the protection, maintenance and evolution of such an area. Id. at 7.*

development or use.

Finally, the sixth type of protected area is the Managed Resource Protected Area.²¹ These are lands and waters with important natural resource and environmental values. They are managed primarily for sustainable consumptive use of natural resources (e.g. forestry, fishing, water supply), combined with environmental conservation. Secondary uses include tourism, recreation, research, education.²²

There are six goals for Jamaica's system of protected areas. The first goal is economic development.²³ The aim here is to expand and diversify Jamaica's natural resources based on the economy. The second goal is to conserve the environment.²⁴ The third goal is sustainable resource use, which would protect those ecological systems which provide goods and services.²⁵ The fourth goal is recreation and public education.²⁶ By providing recreational and educational opportunities, the quality of life for all Jamaicans and visitors would inevitably improve. The fifth goal of Jamaica's system of protected areas is public participation and local responsibility.²⁷ This would also encourage local interest, commitment, and support for the protected areas. The final goal is to achieve and maintain financial sustainability for the protected areas.²⁸

NRCA is charged with ensuring that all protected areas meet their various objectives to the greatest extent feasible, and assuring or improving the quality and appropriate use of public resources and facilities within protected areas. NRCA today issues permits and licenses and engages in administrative adjudication regarding environmental issues.²⁹

NRCA has the authority to recommend to the Minister of Land and Environment, who has regulatory authority to declare Jamaican land or sea areas as subject to any of the six levels of environmental protection.³⁰ The NRCA has developed a ten-step process for establishing protected

21. *Equivalent to IUCN Category VI: Managed Resource Protected Area: protected area managed mainly for the sustainable use of natural ecosystems—area containing predominantly unmodified natural systems, managed 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.* *Id.* at 8.

22. *Id.*

23. *Policy for the National System of Protected Areas*, (Jam.), Nov. 1997, at 6.

24. *Id.* at 7.

25. *Id.*

26. *Id.*

27. *Id.* at 8.

28. *Id.*

29. Natural Resources Conservation Authority Act of 1991, Part 1(9)(6) and Part 5(34).

30. *Id.* at Part 1(5)(1).

areas.³¹

- Stage 1: *Initiation of Action*: A community based organization (CBO), NGO, the NRCA, Protected Area Advisory Council, other agency or individual identifies possible new protected area. Groups outside the NRCA initiate planning and/or request assistance from the NRCA in starting planning. The NRCA assigns staff to work with any of the above stated entities. A planning team is then formed comprised of private and public stakeholders and community representatives.
- Stage 2: *Building of Community Participation*: Workshops, community meetings and other means are used to identify community issues, interests and needs. Typically, a local organization takes the lead in this effort. If no appropriate local organization exists, organizing community participation becomes the responsibility of the initiating agency or group with the assistance of the NRCA and NEST.
- Stage 3: *Assessment of Feasibility of Protected Area*: The planning team completes a feasibility assessment for proposed protected areas. Issues to be examined include boundaries, land ownership, land use, local management potential and costs. The study may result in a recommendation that the area be formally added to the protected area system.
- Stage 4: *Declaration Sought*: At this stage the NRCA will seek to have the protected area declared under the NRCA Act. The process of protected area establishment continues while declaration is being pursued.
- Stage 5: *Preparation and Submission of Management Plan*: Prepare a comprehensive management plan for all aspects of management of the area, following NRCA guidelines. This plan will be prepared jointly by local organizations, the NRCA and any other agencies with major responsibilities in the area and submitted to the NRCA for approval.
- Stage 6: *Preparation and Submission of Operations Plan*: The potential management or co-management organization prepares a proposal for managing the area in accordance with

31. *Policy for the National System of Protected Areas*, (Jam.) Nov. 1997, at 24-25.

the management plan; this includes a business plan for the operation and a long term financial sustainability strategy. Operations plans will be prepared according to NRCA guidelines and will be prepared according to NRCA guidelines and will be approved by the NRCA.

- Stage 7: Review and Approval of Management and Operations Plans: Plans are to be reviewed by the NRCA multi-disciplinary team. This team will be comprised of representatives from each of the sections of the NRCA. Clarification and changes will be sought prior to approval.
- Stage 8: Declaration: For all other stages to be executed declaration of the protected area, by the Minister with such responsibility will be obtained. Declaration orders and schedules will be developed.
- Stage 9: Delegation: Once the entity has met criteria outlined by the NRCA it will be delegated management authority. Broad categories for these criteria include environmental advocacy, community involvement, management experience as well as management, operations and financing proposals. Delegate an instrument outlining roles and responsibilities of each party agreed upon and signed. Authority to manage can be revoked if performance standards are not met.
- Stage 10: Evaluation and Monitoring: While the various aspects of the management and operations plans are being put in place, the NRCA will conduct implementation monitoring. Annual, unscheduled and emergency evaluations will be carried out to ensure achievement of protected area objectives.

B. The "Category II" Strategy

The original mission statement of the NRCA was "... to provide the management framework for the conservation, protection and sustainable use of Jamaica's natural resources in collaboration with its partners in the public and private sectors."³² This charter promotes management strategies leading to partnerships with other entities,

32. See Natural Resources Conservation Authority Act of 1991, *supra* note 13; see also National Environment and Planning Agency, *available at*: <http://www.nrca.org/> (NRCA website) (last visited Feb. 22, 2006).

because the government of Jamaica does not have the finances or the staff to manage the country's natural resources on its own. One of the most significant partnership strategies to emerge has been the delegation of some of NRCA's authority to a nongovernmental organization (NGO) located within the boundaries of a protected area.

The first "Category II" regulations issued pursuant to ministerial declaration were the Marine Parks Regulations of 1992, which declared Montego Bay in St. James parish a "Marine Park," and the National Parks Regulations of 1993, which declared the Blue and John Crow Mountains of Portland Parish a "National Park." These declarations were accompanied by delegations of NRCA authority, pursuant to carefully drafted delegation instruments, to resident nongovernmental organizations: the Montego Bay Marine Park Trust and the Blue and John Crow Mountain Park Trust, respectively.³³

Two other sites have also been placed under Category II projection since the first two. Negril has been divided into a coral reef protected area and a beach and coastline protected area, with two NGO delegations—the Negril Coral Reef Protection Society (NCRPS) and the Negril Environmental Protection Trust (NEPT), respectively. The newest is the Portland Bight area of the South Coast, with a delegation of authority to the Caribbean Coastal Management Association (CCMA).

The delegation of NRCA authority to a "resident" NGO under Category II is equally as important as the higher level of environmental protection afforded by the category. Because NRCA has only limited staff and resources,³⁴ the NGO (with the potential for grants from international donors that will not make direct grants to the Jamaican government³⁵) may actually be in a better position to enforce the law. A delegate NGO under a Category II declaration would have many of the powers granted to the NRCA under Jamaican environmental statutes and regulations.³⁶

C. *The Emergence of NEPA*

Ten years after the NRCA Act became law, the functions of the Town and Country Planning Agency (TCPA) and NRCA were merged.

33. Interview with Brian Zane, Executive Director, Montego Bay Marine Park Trust, Montego Bay, Jamaica (June 5, 2005). The Montego Bay Marine Park Trust delegation instrument became eligible for renegotiation and renewal in 2005.

34. Interview with Laleta Davis-Mattis, General Counsel, NEPA, in Kingston, Jamaica (June 28, 2005).

35. Robert Buddan, Jamaica Gleaner, Credit Agencies, Governance and Credibility, (2003), <http://www.jamaica-gleaner.com/gleaner/20030504/focus/focus3.html>.

36. See Mattis, *supra* note 35 (permitting the agency to delegate any and all powers it possesses, with the exception of the power to make administrative regulations).

Their powers were coordinated and subsumed under the authority of a new entity, the National Environment and Planning Agency (NEPA), through an internal administrative reorganization within the Ministry of Land and Environment.³⁷

New environmental legislation was being prepared as of the drafting of this article. The proposed legislation will formalize the new status of NEPA, as well as merge the environmental and land-use permit systems. This will create a “one-stop shop” for developers since the environmental protection, planning and development management will be considered together. In the meantime, NEPA has assumed responsibility for identifying areas of Jamaica which deserve special environmental attention.

Pursuant to the NRCA Act, NRCA brings to the new combination authority over building permits and licenses to discharge effluents, Environmental Impact Assessments, and the imposition and collection of fines and other penalties for violation of the environmental laws.³⁸ Though NRCA is not mentioned in any of the following pieces of legislation, it has become the primary agency enforcing these laws, as successor to the agencies originally named.³⁹

Pursuant to the administrative reorganization, NRCA, as a sub-unit of NEPA, also has authority under the Town and Country Planning Act.⁴⁰ One of the most important functions NRCA now shares with the TCPA (and the local authorities) is the ability to create and enforce Development Orders,⁴¹ a combination of comprehensive planning and zoning functions in U.S. terms. The Development Order outlines the type of development that may take place in a designated area over time, similar to an American comprehensive plan. It also provides for the issuance or denial of building permits, depending upon the consistency of the application with the provisions of the Order. The administering authority also has the power to enforce the Order through injunction,

37. See Mattis, *supra*, note 35 (explaining that this type of reorganization was sanctioned by the Executive Agencies Act of 2001. NEPA was not at the time recognized as an executive agency, however, so the reorganization remained informal until last year, when legislation recognizing NEPA as an executive agency was passed. A loophole still remained, however, because NEPA's powers were not specified in the legislation. The new environmental legislation being drafted (*infra*) will correct these and other inconsistencies. See Mattis *supra* note 35.

38. Natural Resources Conservation Authority Act of 1991 pts. 1 and 3 (1991) (Jamaica).

39. To avoid ambiguity the delegation instruments to the various NGOs have specified a transfer of authority not only under the NRCA Act, but under other acts with environmental implications as well, such as the Beach Control Act. Beach Control Act 12 (1956) (Jam.), <http://www.elaw.org/assets/pdf/ja.coast.pdf>.

40. Mattis interview, *supra* note 35.

41. See Natural Resources Conservation Authority Act, *supra* note 10, at 7.

eminent domain, fines and other penalties.

Because the National Solid Waste Management Authority reports to the Minister of Land and the Environment, which also supervises NEPA, the NGO delegate would presumably have some influence with the local solid waste agency as well.⁴² The Act also gives the administering agency authority to institute recycling programs, including furnishing and charging for recycling receptacles, and organizing pick-up services.

Other legislation granting NRCA (or NEPA) special powers include the Watersheds Protection Act, the Beach Control Act, the Water Resources Act and the Wildlife Protection and Endangered Species Acts. The Watersheds Protection Act grants NRCA extensive power to formulate regulations for watershed areas. Land uses which can be regulated for conservation purposes, include the planting of crops, the destruction or felling of trees, and the clearing of vegetation.⁴³ The Beach Control Act has a protected areas component which authorizes NRCA to limit the use of foreshore and sea floor, closely regulating activities such as fishing, power boating, waste disposal, waterskiing, dredging, or otherwise disturbing the sea floor or coral reefs.

Under the Wildlife Protection Act,⁴⁴ NRCA has authority to regulate hunting and create wildlife sanctuaries. Under the Endangered Species Acts,⁴⁵ the agency may take measures to protect endangered species. NRCA also has implicit authority under the Country Fires Act (trash burning) and the Pesticide Act (regulating the manufacture, use, sale and importation of pesticides in Jamaica).

V. What New Solutions Can Be Tried? The “Category II” Alternative in Portland

Thus far in Portland, NEPA has followed an IUCN “*Category VP*” approach,⁴⁶ which is the least intensive form of regulation. NEPA has divided the natural watershed areas in Portland into five watershed management units (WMUs). The Social Development Commission

42. Indeed, section 6 of the National Solid Waste Management Act allows the Authority to delegate its functions to an “agent,” which might possibly include an NGO delegate under a Category II declaration. National Solid Waste Management Act 12 (2002) (Jam.), <http://www.elaw.org/assets/pdf/ja.waste.pdf>. In addition, NSWMA may refer matters to NEPA where a solid waste disposal operation is likely to have an adverse environmental impact. Mattis Interview *supra* note 35.

43. NRCA/NEPA’s authority in this regard overlaps with that of the Water Resources Authority.

44. See A Pocket Guide to Environmental and Planning Laws of Jamaica, NEPA 2003, http://www.enact.org.jm/Publications/191_3300. (last visited Feb. 22, 2006).

45. *Id.*

46. See *supra* note 24, at 7.

(SDC) has adopted the WMUs as a basis for community planning.⁴⁷ The watersheds are: Buff Bay River, Spanish River, Swift River, Rio Grande, and Draper's River. SDC has added a sixth unit for the parish capital of Port Antonio. The IUCN Category II approaches presently in place in Montego Bay, the Blue Mountains, Negril, and Portland Bight are thus considerably more intensively regulated environmental protection regimes than the Category VI protections now in place in Portland.

PEPA initiated a request for a Category II protected area declaration in the early 1990s. Specifically, they asked that the harbor of Port Antonio and some of Portland's adjoining coastline be declared a Marine Park, with a forest corridor stretching to the boundaries of the Blue and John Crow Mountain National Park.⁴⁸

By 1994, PEPA had processed its request with NRCA through Stage Five (preparation and submission of a management plan). The application stalled at that point, and was inactive when the Howard-Norman Manley group entered the parish in 2003. At that time, PEPA made a second proposal to NEPA, that it consider declaring the entire parish of Portland as a Category II Protected Area. The student group was commissioned by PEPA and NEPA to investigate the feasibility of both proposals, and also to consider other alternatives that might occur to them in the course of their research.

Our group decided to review the existing proposal from Stage One ("Initiation of Action"), in which an NGO such as PEPA recommends the identification of a new protected area. This permitted us to get a firm focus on the new area and also to provide the students with an opportunity to experience the declaration process from the beginning. At the end of the summer, we presented three options to PEPA and NEPA for environmental protection in Portland parish. Each explored, to a greater or lesser degree, declaring substantial portions of the parish a Category II Protected Area.⁴⁹

The first would use a "cut and paste" approach, creating a system connecting small, protected "micro-climatic" areas located within the

47. Interview with Machel Donegan, Executive Director, PEPA, in Portland, Jamaica (June 21, 2005).

48. See Portland study, *supra*, note 3. (Map, p. 2-17).

49. Certain problem-specific alternatives should also be considered. For example, the government could allocate land for a fishing complex and a fish market, centralizing fishing and fishermen, aiding enforcement of regulations currently in place. A National Sewage Effluent Regulation currently being considered calls for waste management upgrades, creating central sewage systems and alternate waste disposal systems to support increased growth. This requires a multi-sector management program involving agencies, community, hoteliers & government as an advisory Monitoring Committee in each of the five watersheds and Port Antonio.

five NEPA/SDC Watersheds that encompass Portland Parish. Nineteen such areas in Portland were identified in NEPA's White Paper on Protected Areas of 1997.⁵⁰ These areas are all contained within at least one of the NEPA/SD watershed areas. A system of conservation servitudes would fill in the gaps in coverage between micro-areas. Drawbacks to this approach would be unevenness of coverage.

The second would declare the entire parish a Category II Protected Area as per PEPA's 2003 proposal.⁵¹ NEPA staff was resistant to this idea, arguing that Portland Parish is a political, rather than an environmental jurisdiction.

The third would create a Marine Park as per PEPA's 1996 proposal,⁵² with a greater amount of coastline incorporated into the Park area. The plan contemplates a more extensive buffer zone between the New Marine Park along the coast and the existing Blue and John Crow Mountain National Park, which already covers the southern third of Portland Parish (see map, Figure 1). Thus, much of Portland would be thereby encompassed. NEPA staff was interested in this proposal, which apparently comported with their own most recent thinking.

Each of the options explored by the research group for Portland raised distinct issues of management, enforcement and private property ownership as well as the constant issue of financing. As a result, each option requires community participation and awareness, as well as coordination between national and local government and collaboration between discrete government agencies at all levels.

Expansion of a National System of Protected Areas is still the official policy of the Jamaican government. Activities in the existing protected areas need to continue, and new protected areas need to be created. All groups receiving authority to manage protected areas will need increased support. Yet with many claims on general revenues, it is highly unlikely that current revenues will be reallocated or new taxes imposed to support the protected area system.

In a climate of scarce financial resources and development pressure, a precise and favorable balance between the overarching government authorities and citizen engagement must be struck to make the protected areas system work. Both national government and local NBO must collaborate to identify and husband new financial resources, develop procedures for managing and disbursing funds that are fully transparent,

50. Mark Figueroa, Co-management and Valuation of Caribbean Coral Reefs: A Jamaican NGO Perspective, http://www.worldfishcenter.org/Pubs/coral_reef/pdf/section3-5.pdf (last visited Feb. 22, 2006).

51. Donegan interview, *supra* note 48.

52. *Id.*

and ensure that expenditures are in line with resources.⁵³ At the same time, the NGO must collaborate with the local population to create a culture of participation that will enable resources identified to be stretched as far as possible.

VI. Obstacles to Success

A. *The Need for Government Engagement*

Vertical power-sharing is the sharing of management authority and responsibility between the national government and the lower-levels of government and/or community. It is important to note that the partner with whom the central government shares power, and the extent and nature of the power-sharing which occurs are variables, which depend on the social, political, and economic context unique to the protected area in question. The context includes the will of central government to share power; the existing legal and policy framework; the type of group/groups in the community that power is to be shared with; the capacity of partner group/groups; and the objectives of the management initiative. Any power-sharing arrangement must be carefully and realistically tailored to the site-specific context of the environmental management scenario at hand.

1. The National Government

The national context was, in 2005, in a state of flux. Jamaica's environmental protection agency, NRCA/ NEPA, has undergone a protracted period of administrative reorganization. First the Town and Country Planning Agency (TCPA) was merged with the NRCA, to form NEPA, but this change has not been formally codified in legislation. As a result, NRCA is still the official environmental entity. "NEPA" is in fact an administrative fiction, accomplished by requiring the heads of the NRCA and the TCPA report to a Chief Executive Officer who is considered the NEPA Director. The founding Director, Franklin McDonald, retired several years ago, and subsequent NEPA CEOs have not stayed long. A number of key staff members have also left the agency.

Other agencies which must be engaged include the Ministry of Local Government, the Ministry of Finance, and the National Solid

53. The fact that tourism is Jamaica's number one generator of foreign exchange currency gives significant impetus to such measures actually being taken. Jamaica Tourism Impacts (JAMTOUR), <http://www.american.edu/TED/jamtour.htm> (last visited Feb. 22 2006).

Waste Management Authority, all of which have similar bureaucratic difficulties.⁵⁴ Further exacerbating the situation is the devastation of Hurricane Ivan, which hit Jamaica hard in 2004. Much of the government's attention and revenue has been necessarily focused on the reconstruction effort, carried on by the Office of National Reconstruction.⁵⁵

Because of the financial constraints in the national budget, and because existing NGO delegates in protected areas are having difficulty enforcing their mandates due to lack of resources, NEPA has decided not to process any new NGO requests for protected area declaration unless the NGO has identified a sustainable source of funding. The level of funding needed is determined by a review of the NGOs budget, which is part of the Management Plan (Stage Five) and Operations Plan (Stage Six), respectively.⁵⁶

PEPA's CEO, Machel Donegan, estimates that the cost of managing the Portland Marine Park and PEPA's operation as a delegate authority would come to J\$ 10-12 million annually (approximately 200,000 U.S. dollars per year).⁵⁷ There would also be separate start-up costs to cover, such as equipping a lab facility for water quality testing,⁵⁸ the purchase of patrol boats, tanks, buoys, and other marine equipment for monitoring and regulating use of Portland's foreshore, and sea floor areas.

User fees would make up some of the operational costs, but an eternal source of funding would have to be identified for sustainability, probably an international or more likely an American donor. Peter Espeut, CEO of CCAM, identified such a funding source for his own

54. See generally <http://www.jamaicamarketplace.com/government.asp> (last visited Feb. 22, 2006).

55. See Jamaica Gleaner, <http://www.jamaica-gleaner.com/pages/hurricaneivan/bulletins/1.html> (last visited Feb. 22, 2006). There is an island-wide perception that the reconstruction effort has been badly handled, and is moving far too slowly. In addition, wages have been frozen but inflation continues to increase, partially driven by high gas prices, but also by consistent increases in the regressive GCT. People feel they are "working hard and playing by the rules" yet moving backwards.

56. See Mattis interview, *supra* note 35. The newer delegation applications are also being viewed as what we would call "RFPs," a process Ms. Davis-Mattis refers to as "putting out to tender." In other words, when the Jamaican government is considering the delegation of authority over a protected area, it will take an ad in the newspaper of record to solicit proposals from NGOs within the geographical area covered. Previous declarations were essentially negotiated rulemaking processes, in which NEPA already had a dialogue ongoing with a particular NGO in the geographical area to be protected. Now, as for example with the Port Royal protected area, proposals are being solicited from a wide variety of NGOs.

57. Donegan interview, *supra* note 48.

58. *Id.* To be developed collaboratively with CASE one does not need blue Flag certification, because it is not a primary aspect of Portland tourism (in contrast with Negril). Portland's product is more likely to be ecotourism.

organization, which became the first NGO approved under NEPA's new policy in 2004.

In this more conservative fiscal atmosphere, PEPA is approaching environmental regulation incrementally, applying for small grants for specific projects, such as water quality testing and the creation of a wild bird sanctuary at Portland's community college, CASE. Their next step is to apply to an international donor for funds to update their management plan, which is now more than ten years old and out of date, particularly the financial projections. When the new management plan is finished they will use it to seek full funding for their operation, conditional upon a successful campaign for a Portland Category II declaration.⁵⁹

At the same time, the National Coalition of NGOs with Category II delegation authority Jamaica Protected Area Network, (JPAN) has collapsed due to strong differences of opinion and approach among the constituent organizations. These differences were amplified by variances in the contractual arrangements NEPA granted each one, pursuant to individual and private negotiations.

2. Local Government

The Howard-Norman Manley group was especially concerned that the same lack of resources, personnel, and inter-agency infrastructure and coordination that hinder delivery of basic municipal services such as waste and water quality management would also be obstacles to the enforcement of environmental protection plans and regulations at the local level, where violations actually occur. Since these obstacles are all traceable to Jamaica's distressed economy, it is unlikely that they would be cured except by massive grants from outside the country or the creation of a "culture of participation" among the citizenry that would make voluntary compliance a key part of any environmental protection strategy.

This has not been the civic culture of Jamaica for some time, though

59. Timing is very important. Peter Espeut found himself in a bit of a bind because he secured funding approval from an international donor before the Declaration process was complete. Delays and red tape in the Declaration process, even though the funding issue was resolved, almost cost him the grant.

It seems as if some kind of "escrow" procedure would have to be used, somewhat like a real estate closing, to resolve the following paradox: NEPA won't recommend that the Minister declare an area protected until funding is identified; funders will not finalize the funding until the declaration takes place. The catch is that the funding cycles are fixed, whereas the time for a declaration procedure to be completed is not. If the declaration process drags out, it could extend beyond the funder's fiscal year window, in which case the NBO would have to reapply, and essentially, be back in the paradox again.

there were many indigenous conservation practices as recently as a generation ago.⁶⁰ Today, many environmental protection regulations, such as those limiting fish catches, are experienced by the target population as “top down, command and control.”⁶¹ This complicates enforcement. The agencies do not have the resources to collect data or in some cases, even send enforcement officers to track the population’s compliance.

Further, since the target population—in this case, the fishermen—were not involved in the development of the laws; they lacked education and understanding of the importance of over fishing. Worse yet, they felt alienated from enforcement agencies themselves, and withhold that civic participation that could make enforcement much more effective. Thus, environmental and natural resource protection can be hindered not only by the absence of the resources necessary for an effective “top down” approach, but also by the lack of the civic engagement needed for an effective “bottom up” approach.⁶²

The research group concluded that all paths to sustainable development in Jamaica must be grounded on community involvement to guarantee success; otherwise, these are theoretical exercises without chance of ownership or acceptance by those whose involvement is critical to the outcome. Compliance, self-monitoring and enforcement must come from within the community. By fostering participation and awareness, we can increase the likelihood that citizens will see themselves as stakeholders in these environmental protection strategies, work together and promote compliance.

Thus, the next step of our work was to help PEPA engage the citizens of Portland in identifying the best regime of environmental protection regulations for the parish. From summer 2003 to summer 2005, I continued this process pursuant to a New Faculty Grant from Howard University.

60. Donegan interview, *supra* note 48.

61. Jamaica’s coastal waters are the most “over fished” of any nation in the Caribbean, creating a serious danger to a country which depends heavily on fishing for food and employment.

62. The problem of overfishing thus points up the four key reasons for ineffective enforcement of environmental measures currently in place in Portland: 1. lack of resources, 2. ineffective enforcement, 3. lack of community education and awareness, and 4. lack of research and data collection on any given environmental problem.

*B. The Need for Citizen Engagement*⁶³

1. Renovating Portland's Civic Infrastructure

There are several reasons for including the community in coastal management processes at the earliest possible stage. The input of those who use and rely on the coastal zone is of great importance in the design of the management process, as they often have valuable insights regarding both the management needs and the economical opportunities that the management program should address. The constituency support of the community for development and implementation of a management

63. Section I of Agenda 21 of the United Nations Conference On Environment And Development, addresses the Social and Economic Dimensions of Sustainable Development. These include international cooperation to accelerate sustainable development; combating poverty; changing consumption patterns; assessing demographic dynamics and sustainability; protecting and promoting human health conditions; promoting sustainable human settlement development; and integrating environment and development in decision-making. These chapters highlight the United Nations' recommendations on how all countries can be involved in the process of making development sustainable. The specific activities identified in this paper, most closely parallel Agenda 21's declarations on combating poverty and strengthening the role of major groups, such as, women, children, indigenous people, and NGOs.

The UN recognizes that there is no uniform solution to the problem of poverty that will work through global application, rather, country-specific programs that target poverty, and international efforts supporting these national efforts, as well as the parallel process of creating a supportive international environment are the crucial elements necessary for the solution. An environmental policy that focuses mainly on the conservation and protection of resources must take due account of those who depend on the resources for their livelihoods, as well as manage resources in a sustainable manner. To this end, a specific anti-poverty strategy has to be one of the basic conditions for ensuring sustainable development. An effective strategy for developing such a policy, would begin by focusing on resources, production and people, and should cover demographic issues, enhanced health care and education, the rights of women, the role of youth and of indigenous people and local communities, and a democratic participation process in association with improved governance.

Specific objectives of combating poverty would include a strategy for empowering communities. Agenda 21 recognizes that sustainable development must be achieved at every level of society, and that peoples' organizations, women's groups and NGOs are important sources of innovation and action and the local. Consequently, governments, in cooperation with appropriate international and non-governmental organizations, should support a community-driven approach to sustainability, which would include: empowering women through full participation in decision-making; respecting the cultural integrity and rights of indigenous people and their communities; *promoting or establishing grass-roots mechanisms to allow for the sharing of experience and knowledge between communities*; giving communities a large measure of participation in the sustainable management and protection of the local natural resources in order to enhance their productive capacity; and establishing a network of community-based learning centers for capacity-building and sustainable development. UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, Rio de Janeiro, Brasil (June 3-14, 1992).

program can also be crucial to its success.⁶⁴

From 2003 to 2005, pursuant to this conclusion, I investigated the feasibility of specific ongoing civic engagement vehicles to deepen the culture of participation and “renovate the civic infrastructure” of Portland Parish. A solid foundation of community organization already exists in Portland and could serve as a springboard for developing “cultural participation.” In collaboration with the Social Development Commission (SDC), the Portland Parish Development Committee (PPDC), and the Jamaica Literacy Project (JAMAL), I have worked on launching a new project, designed to enhance community involvement, education, and literacy in each watershed through the use of “study circles” to engage the citizenry on environmental questions.

Modeled after a very successful Swedish technique of adult education, study circles are small forums (5-20 persons) which meet periodically to discuss problems and provide input on solutions. I first became aware of these techniques as I did the research for my book, *Black Baltimore: A New Theory of Community* (1993). In 2004, I made preliminary contact with representatives of the Swedish government assigned to Jamaica, for support and technical assistance. I also discovered that some rural development and education efforts carried on in Jamaica in the 1930s, managed by Dr. Tom Girvan, utilized a technique which he called “study clubs,” and which looked remarkably like study circles. This has led me to speculate that he may have traveled to Sweden or been exposed to the Swedish technique.⁶⁵

In 2004, a year after the Howard-Norman Manley research group had finished its work, I worked in collaboration with PEPA, the Study Circles Resource Center (SCRC) in the United States, and Jamaican editorial cartoonist Clovis Brown, to produce an illustrated guide for study circle development in Portland. Two hundred copies have been printed thus far. The first 100 were distributed to community groups in Portland, and the second 100 are being distributed to environmental NGOs around the island of Jamaica. It has been very well received, and the authors are presently considering ways to produce a high volume of copies. Suggestions have also been made that the guide be translated into French and Spanish, for use in Latin America and elsewhere in the Caribbean.

64. Interview with Edwin Jones, Professor, Univ. of the West Indies, Mona Campus, in Kingston, Jamaica (June 19, 2003).

65. VIJAYENDRO RAO AND ANA MARIA IBANEZ, *The Social Impact of Social Funds in Jamaica: A “Participatory Econometric” Analysis of Targeting, Collective Action, and Participation in Community-Driven Development*, Centre for International Studies, U. of Toronto, Q-Squared Working Paper No. 16, December 2005, pp. 7-8, available at http://www.q-squared.ca/pdf/Q2_WP16_Rao&Ibanez.pdf.

The guide tells a story of a Portland citizen named Joseph who, with his wife and friends, joins a study circle started in their local church to figure out a way to engage with the environmental problems of their community. According to PEPA CEO Michael Donegan, the study circle approach has proven especially useful in helping community members focus on the task at hand, allocating responsibility for actions agree upon, and organizing follow-through and implementation activities.⁶⁶

In 2005, I was appointed to the Board of Trustees of the Paul J. Aicher Foundation, which supports and oversees the work of SCRC. Located in Pomfret, Connecticut, SCRC is a nongovernmental organization dedicated to providing citizens with the resources and training needed to start study circles, and use them for deliberation and problem-solving. This creates added possibilities for the development of the study circles approach in Portland, and in Jamaica as a whole.⁶⁷

The ultimate objective is a parish-wide meeting. Sponsored by PEPA, and based on a year's work of citizen capacity-building, the meeting would consider and vote for not only an environmental protection strategy but also for a plan to create the civic infrastructure necessary to implement the strategy.

There are six primary stakeholder groups that must be engaged in this process. These are: (1) fisherman; (2) hoteliers; (3) farmers; (4) the National Government, through the Northeast Regional offices of NEPA and of the Ministry of Youth, Education and Culture; (5) the Local Government, through the Portland Parish Council, and the Parish Development Committee and (6) community organizations & NGOs, PEPA in particular, but including many others.⁶⁸ Study circles and other

66. Donegan interview, *supra* note 48.

67. Another technique, which could be used in tandem with the study circles is a micro-lending model (such as that used by the Grameen Bank in Bangladesh) to reach out to small business owners in Portland. Small loans, conditioned upon environmentally sound business practices, would be given to street vendors, artisans, musicians, small shopkeepers and the like, in collective groups of 5-20 persons. Building on the indigenous Jamaican cultural tradition of "partners," each participant would draw down from the loan in turn. If the previous drawer has not repaid, or failed to observe environmental conditions, money would not be available for the next. In this way, each participant has an incentive to comply with the conditions of the loan and to ensure that other participants do so as well.

68. One example is the church. On the one hand, the Seventh Day Adventist church is very active in Portland, with churches established in even the smallest rural hamlets. The 7DAs also have a very highly developed ethos of conservation and respect for nature. In addition, many parishes have what are called "Ministers Fraternal," ad hoc discussion groups of area ministers, through which clergy make common cause on issues, speaking from their pulpits to support one course of action or another. (In our comic book, a minister's fraternal group has decided to promote the use of study circles).

deliberation approaches (including, for example, those developed by the Kettering Foundation in the United States⁶⁹) would be attractive techniques to build the capacity needed to bring these diverse groups together in a productive format.

Study circles are a good way to build capacity in Portland parish and strengthen the PEPA organization itself. Further, the avowed objective of achieving some kind of Category II protection for Portland, with concurrent delegation of authority to PEPA, will give the NGO and the community more leverage with national and local government and with the private sector. This will enable PEPA to better achieve its broad environmental objectives.

2. Building Alliances

Another benefit of the study circle approach is to build capacity for more comprehensive advocacy strategies. Study circles could broaden and deepen some of the island-wide advocacy projects currently being initiated by a more sophisticated NGO community. An example for such a strategy, which shows promise of building “common cause” among environmental NGOs like PEPA, is the Coalition for The Protection of Environmental Rights.⁷⁰ CPER has been spearheaded by the Jamaica Environment Trust (JET),⁷¹ pursuant to a grant from the Environmental

69. Apparently, these are being utilized presently by the Civic Dialogue project of the United Nations Development Programme in Jamaica. http://www.jis.gov.jm/local_gov/html/20041225T100000-0500_4526_JIS_UNDP_CIVIC_DIALOGUE_PROJECT_HEALING_COMMUNITIES.asp (last visited Feb. 22, 2006).

70. See *Environmentalists Call for Recycling Programme*, JamaicaObserver.com, Sept. 7, 2005, http://www.jamaicaobserver.com/news/html/20050906T200000-0500_87785_OBS_ENVIRONMENTALISTS_CALL_FOR_RECYCLING_PROGRAMME.asp (reporting that the CPER is made up of groups from across the island including the Jamaica Environment Trust, Friends of the Sea, Northern Jamaica Conservation Authority, National Environmental Societies Trust, Gideon Education Centre, International School of Jamaica, Harbour View Citizens Association and the Oracabessa Fishermen's Association).

71. Akilah Anderson, JET's legal counsel is one of a handful of environmental lawyers on the island, and the only one employed by an NGO. According to Ms. Anderson, the grant was to select two communities to develop advocacy skills, with one issue in each area. As they worked in these two communities, with what they thought were simple issues, they were brought into an inside loop of information as NEPA and other government agencies sought their help in mediating with the communities in which they had started to work. (In one community, Harbor view on the border of the capital city of Kingston, residents had blocked roads with burning tires to protest the breakdown of a municipal, sewage plant). Word got around that JET had a lawyer; they began to get invitations to appear on radio and television. They initiated letter-writing campaigns and held press conferences, raising their profile considerably. Their collaboration with the Carter Center on ATI implementation also broadened their reputation, to the point where expectations for JET far outstrip the small organizations' actual capacity. Akilah is a good organizer, however, and is very good at getting other organizations and activists to

Foundation of Jamaica (EFJ).⁷²

The Coalition has taken on the issue of solid waste management. Its present focus is on one of the island's most pressing solid waste problems, the inadequate disposal of plastics, particularly the plastic bottles that have virtually overwhelmed Jamaica's solid waste management capacity.⁷³ The proposed new NEPA law, the application of the Access to Information Act (mandating information sharing by all units of government upon citizen petition)⁷⁴ to NEPA beginning July 2005, and the possibility of permission to sue privately under the new law have created a particularly favorable environment for the Coalition's work.

A petition, drafted by JET's legal counsel, calls for the Jamaican government to implement an "effective collection and recycling program" for plastic bottles. It also asks that the government introduce financial incentives to encourage the reduction and proper disposal of solid waste in general. Important steps for the government to take include (1) assisting bottling companies to advance their very successful pilot "Recycle for Life" program⁷⁵ and (2) introduce a deposit/refund system on plastic bottles to encourage citizens to collect plastic bottles

step in and help with the heavy lifting. One manner in which this has been accomplished is in the creation of the Coalition for Environmental protection, a burgeoning, broad-based coalition of NGOs and CBOs interested in environmental issues. Moreover, JET's CEO, Diana Macaulay, has been appointed to the advisory board of NEPA itself, providing JET with a unique insight into how decisions are actually made, creating a level of transparency which has never before existed. LDM sees new approaches like these as evidence of a growing sophistication of environmental NGOs on the island. Interview Akilah Anderson, in Kingston, Jamaica June 22, 2005.

72. See generally ENVIRONMENTAL FOUNDATION OF JAMAICA, STRATEGIC PLAN 2004-2009, Feb. 2005, <http://www.efj.org.jm/pdf/StrategicPlan.pdf> (EFJ is a debt-for-environment "swapping" fund set up by The Enterprise for the Americas Initiative in Jamaica).

73. CPER petition (copy on file with author).

74. The ATI of 2002 gives the public access to official documents held by public authorities such as ministries and other government agencies, local government agencies, and companies where the government owns at least fifty percent of outstanding shares. Before this law was passed, citizens had no enforceable right to government-held information or even the right to a response. Request can be made orally or in writing, and the information can be requested in hard copy, electronics copy, or graphic form. Once a request is made, the respondent authority has 30 days in which to produce the desired information. It can file for a 30-day extension of the period if the information is particularly difficult to compile. Failure to comply with the law is reviewable by the Ministry of Permanent Secretary to whom the agency reports, or, if these administrative remedies fail, the aggrieved citizen may bring action in court. Jamaica Environmental Trust, *It Inna Di Law! A Guide to Jamaica's Environmental Laws*, 58 (2005) (copy on file with author) available at: <http://www.jamentrust.org/Publications/It%20inna%20di%20law.pdf>.

75. CPER petition, *supra*, note 73.

rather than simply throwing them away.⁷⁶

Attending one of the coalition's meetings in Ocho Rios in June 2005, I was struck by the similarity of the meeting to a study circle. While it is not comprised of "grass roots" people typical of a study circle, many of the same protocols regarding the management of discussion apply. In a sense, these environmental leaders are forming a peer group for deliberation which tracks the study circles format very closely.

3. New Tools for Implementation

Certain changes in Jamaican law may well facilitate broad-based as well as local environmental advocacy. The ATI, for example, will apply to NEPA as of July 2005. This should facilitate PEPA's lobbying efforts. Other legal developments include the redrafting of the foundation NRCA legislation, a process which is moving slowly and without a timetable.⁷⁷ The ATI will provide NGOs with more access to the process, however, strengthening their hand when it comes to the public period of notice and comment, and amendments to the NRCA legislation itself.

One critical feature which some NGOs hope will be included in the new law is a private right of action which would enable private citizens to sue to enforce the law. Private citizens and organizations can sue under the existing law, but only with the permission of the national government ("permission to prosecute").⁷⁸ They can also bring a civil action in the nature of *mandamus* to review NEPA or NRCA's failure to act in the face of an environmental violation. Environmental disturbances such as air pollution and the improper disposal of hazardous waste typically constitute common-law public nuisances as well as violations of the environmental statutes. In such a case, any private citizen can sue a perpetrator if the plaintiff can prove personal injury. This is a very heavy burden of proof, however; the complainant must not only prove unique personal injury but also that the conduct in question was in fact the cause of the injury.

76. *Id.*

77. Because of a lack of funds for travel and public meetings, Ms. Davis-Mattis has postponed moving forward with the public comment period necessary for moving the draft legislation forward. See Mattis interview, *supra* note 35.

78. Thus far, such permission has not been granted nor has it been requested. For one thing, there were no environmental lawyers on the island other than, Laleta Davis-Mattis, NEPA General Counsel and Carole Excell, head of the legal services division, who has left NEPA to work for the Carter Center. Since there has been so little litigation, only a few cases initiated by NEPA itself—there is very little jurisprudence to let people know what the law actually means. In addition, there has been no "administrative procedure" litigation, in the nature of *mandamus*, to ensure that government agencies are following the terms of their chartering legislation. Anderson interview, *supra* note 72.

A broadening of the ability of private citizens and NGOs to sue under the Environmental laws and regulations directly would greatly facilitate citizens' rights in this arena. According to Laleta Davis-Mattis, General Counsel of NEPA, just such an expansion is at least on the drawing board for the new legislation. Under the rubric of "third party rights," draft legislation empowers private citizens to petition NEPA to take enforcement action, or to challenge a lack of action.

In either case NEPA will have a set period for time in which to respond, after which the citizen (or, presumably, NGO) can petition a court to order NEPA to move forward (*mandamus*), or they can proceed in civil court themselves for damages or injunctive relief against the private party causing environmental damage. The requirements of direct personal harm found in nuisance law will, under the policy objectives of the new legislation, be considerably relaxed. Judges will also be specifically empowered by the legislation to assess the evidence via scientific models of environmental protection and ecological damage.

4. Going to Scale

In beginning my work with the Aicher foundation, I have been particularly interested in their developing approach to the issue of "going to scale." Going to scale is the strategy of magnifying the impact of individual study circles by linking them together. Each individual study circle builds capacity for democratic deliberation and civic engagement among its members, and the Foundation is clear that deliberation, problem identification and problem solving need to continue at that level.

To go to scale while retaining the study circle format intact, in my own view, calls for linking individual study circles together by means of what I call a "center-periphery" model. (See Figure 2). If we consider the existing study circles as "primary," the center-periphery model would proceed by aggregating representatives of primary study circles into a series of "secondary" study circles. For example, every seven study circles could each select a representative.⁷⁹ These seven representatives would meet periodically, in study circle format, to deliberate on issues

79. The selection of seven as the optimal number is simply a guess, educated, however, by the work of Don Anderson, one of Thomas Jefferson's African-American descendants, who discovered some of Jefferson's work on the creation of citizen assemblies that were designed to enhance a "civic republican" approach which Jefferson promoted successfully in other areas. See, e.g., David Hozel, *The Assembly Man*, Michigan Today News, 2002, <http://www.umich.edu/news/MT/03/Fal03/assembly.html> (Jefferson's assemblies would have linked seven councils of seven households to elect a representative to the state legislature); Donald L. Anderson, *The Assembly: A Tool for Transforming Communities*, Presentation at the Sixteenth Annual E.F. Schumacher Lecture (Oct. 1996), http://www.smallisbeautiful.org/publications/anderson_96.html.

common to them all and identify those which might be appropriate for common action.

The primary study circles form a large outer ring in the diagram in Figure 2. The secondary study circles form a concentric ring within the larger one. Tertiary study circles could be formed by selecting one representative from each of every seven secondary study circles, forming a concentric ring within the first, and so on, until a center, or nucleus of the model is created. The representational scheme and the deliberative protocols in place throughout the system enable the aggregation of many people and groups with common objectives, without sacrificing the peer-to-peer energy, insight and deliberation that distinguishes the study circle approach from top-down, command and control approaches employed by officialdom and indeed by many "grassroots" organizations.⁸⁰

An approach like this could be used by the environmental NGOs in Jamaica, to nurture their roots in the community while at the same time enabling them to join together in common cause on the broad issues, like plastic bottle recycling, that engage them all. In addition, the deliberative protocols developed by the Study Circles Resource Center would become infused in the entire operation, top to bottom, making deliberation smoother and easier at all levels.⁸¹

The secondary and tertiary study circles, which are in real sense coalitions, can broaden and deepen environmental advocacy, both locally and in coalition form. For them to play this role, new rubrics will have to be developed, speaking not only to common deliberation in representative contexts but to common action as well. We would want this larger scale study circle structure to develop and implement coordinated strategies such as lobbying, public information campaigns, high-impact litigation, and demonstrations.

"Action-oriented" protocols for campaigns such as these would include the need for each representative to stay within the limits of their authority as delegated by their primary study circles, for example, in order to maintain the confidence and trust of their constituencies. No coalition can take a position that is disruptive of the internal unity of any component organization.⁸² An important work would be the

80. Mass meetings, in my view do not build civic capacity because there is insufficient social space for the participants to bond with one another.

81. These existing protocols are designed to accommodate people with different styles and paces of processing information, for example.

82. Other examples include: 1. meetings of representative groups need to be hosted at least once by each member of the group, to spread around the cost and inconvenience of travel, 2. everyone's schedule needs to be respected and accommodated 3. responsibility for actions needs to be evenly shared—letter and proposal writing, arranging meetings, following the "paper trail" of government decision-making, organizing press conferences and media events, fundraising, membership and outreach,

development of a complete set of such protocols, comparable to those which already exist for the operation of primary study circle; however, that project is, or course beyond the scope of this article.

VII. Conclusion

PEPA cannot look to NEPA to carry through any new protected area designations in the immediate future, and cannot look to its peer organizations for help in pressuring NEPA to move forward. The ATI can help PEPA become a more effective whistle-blower when development permits (whether from central or from local government) are improperly granted, but Category II designation remains an essential step forward for PEPA, if only to provide a core funding source.⁸³ The new delegation instruments provide for NGOs to collect user fees in the Marine or national parks they administer.⁸⁴ In addition, the delegation approach was developed to enable NGOs to seek funding from outside Jamaica for environmental protection activities on the island, particularly international donors such as UNDP, US AID, the Canadian International Development Agency (CIDA) and various instrumentalities of the European Union.

At the same time, PEPA's incremental, piecemeal approach has proven sustainable, if not large-scale. This in fact is in the back of Laleta Davis-Mattis' mind as she asks whether so many protected areas are in fact necessary. "Are the environmental laws already in place sufficient to handle the problem? Is it only for funding that we are engaging in these delegations? Perhaps we should reduce the number of protected

canvassing and circulation of petitions, etc. In most cases, lobbying should be carried on by the entire group, but in some cases, a few representatives can do this, as long as it does not become a pattern. Because the government power brokers will soon sense a loss of constituent support if they begin to see the "usual suspects" every time an environmental issue comes up.

83. US AID, in particular, has become interested once again in protected area designations. Their first attempt to advance this approach was a program called Development of Environmental Management Organizations (DEMO). See US AID, The USAID FY 1998 Congressional Presentation, (1998), <http://www.usaid.gov/pubs/cp98/lac/countries/jm.htm>. However, DEMO ended amidst allegations of fiscal irregularities on the part of one NGO leader, an American citizen. US AID then moved into watershed and coastal zone management approaches which were more closely controlled, with the US AID subcontractor, Associates in Rural Development (a consulting firm based in Vermont) assuming responsibility for program design, execution and management. Cf. <http://www.ardinc.com/>.

84. A large and comprehensive manual was prepared by the Legal Services division under Carole Excell before her departure. It has to be approved by the Minister of Finance and then published in the Jamaica Gazette for public notice and comment before it can be used by the NGO delegates in the protected areas. Twenty-five percent of the user fees under the Beach Control Act will go to the NGO. See Mattis Interview, *supra* note 35.

areas to two, and see if we actually make a difference in terms of legal enforcement. Then we could expand the program based on proven success.”⁸⁵

85. See Mattis interview, *supra*, note 35.