Commentary on the Environmental Commission of Trinidad and Tobago

Introduction

“A tribunal to be known as the Environmental Commission was established by the Environmental Management Act of Trinidad and Tobago in 2000 for the purpose of exercising the jurisdiction conferred upon it by this Act or by any other written law.”

The Commission shall have jurisdiction to hear and determine-

a) Appeals from decisions or actions of the Authority as specially authorized under this Act;
b) Applications for deferment of designations made under section 25 or deferment of designations made under section 41;
c) Applications by the Authority for the enforcement of any Consent Agreement or any final Administrative Order, as provided in section 67;
d) Administrative civil assessments under section 66;
e) Appeals from the designation of “environmentally sensitive areas or environmentally sensitive species” by the Authority pursuant to section 41;
f) Appeals from a decision by the Authority under section 36 to refuse to issue a certificate of environmental clearance or to grant such a certificate with conditions;
g) Appeals from any determination by the Authority to disclose information or materials claimed as a trade secret or confidential business information under section 23(3);
h) Complaints brought by persons pursuant to section 69, otherwise known as the direct private party action provision; and
i) Such other matters as may be prescribed by or arise under this Act or any other written law where jurisdiction in the Commission is specifically provided.

Access to the Courts/Standing to Sue

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The first issue this commentary will address is whether this legislation will enhance access to the courts (and justice). The first clause of Principle 10⁴ of the Rio Declaration is that: “Environmental issues are best handled with participation of all concerned citizens, at the relevant level”.

The Commission ensures that information on its role, function, and services is freely accessible to the public. The Commission provides citizens with a forum for addressing their environmental concerns either where ‘locus standi’ is specifically provided under the EM Act, 2000 and subsidiary legislation made thereunder, or as an interested party to proceedings in accordance with the Environmental Commission Rules of Practice and Procedure, 2001.⁵

**Scientific Knowledge**

The next inquiry addresses the question of whether the Rules of Procedure for Environmental Cases facilitates the application of environmental science to decision-making.

The Commission shall be comprised of a full-time Chairman and five other members, including a Deputy Chairman, each of whom may be appointed to serve in a full-time, part-time, or periodic capacity as may be required to fulfill the objectives of this Act. The Chairman and Deputy Chairman of the Commission shall each be an attorney-at-law of not less than ten years standing, and shall be appointed by the President. The members of the Commission, other than

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⁴ Principle 10 of the Rio Declaration on Environment and Development states the following: “Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy shall be provided.”, Rio Declaration on Environment and Development, [http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163](http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163) (last visited May 16 2011)

⁵ The Environmental Commission of Trinidad and Tobago [http://www.ttenvironmentalcommission.org/default.htm](http://www.ttenvironmentalcommission.org/default.htm) (last visited May 17 2011)
the Chairman and Deputy Chairman, shall be appointed by the President from among such persons as appear to the President to be qualified by virtue of their knowledge of, or experience in environmental issues, engineering, the natural sciences or the social sciences. All members of the Commission shall hold office under such requirements and conditions of services and for such term, not less than three years, as may be determined by the President and set forth in the terms of reference at the time of their appointment, and shall be eligible for reappointment.

“Notwithstanding the significant level of expertise and many years of professional experience that reside among the Commissioners, in recognition of the dynamic nature of environmental functions and the need to enhance training in environmental law, arrangements were being made in 2000 for the Chairman and Deputy Chairman of the Environmental Commission of Trinidad and Tobago to undergo a period of internship at the internationally renowned Environmental Commission of New Zealand. Grant funding for this purpose was acquired by the Ministry of the Environment.”

Effectiveness

The next factor that must be evaluated is the extent to which the legal process protects nature and improves the environment instead of simply determining that one particular party prevails and the other party does not. The fourth clause of Principle 10 of the Rio Declaration

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6 This is an extremely interesting example of how the environmental courts and tribunals have started the process of working with and helping one another and a great example of a trend that should continue. Information on how this worked and the success of this internship program would be an excellent addition to the articles and books that have been written on this topic and excellent for the further development of the proposed International Judicial Institute for Environmental Adjudication, see International Judicial Institute for Environmental Adjudication, http://www.pace.edu/school-of-law/international-judicial-institute-environmental-adjudication-ijiea (last visited May 18 2011)

states that, “Effective access to judicial and administrative proceedings, including redress and remedy shall be provided.”

The Environmental Trust Fund is a unique way in which the Environmental Management Act provides for the long-term protection of the environment. Part VII of the Environmental Management Act, entitled “Environmental Trust Fund and Finances”, delineates the areas where the funds will be directed.

Section 72 of Part VII states the following:

“There is hereby established an Environmental Trust Fund which shall be used to fund the operations of the Authority and for other purposes authorized under this Act, including:

a) Incentive measures for reducing environmental pollution, protecting the environment and conserving natural resources;
b) Demonstration projects of innovative technologies which reduce pollution, or which reduce or eliminate the use of hazardous substances or the generation of wastes;
c) Emergency response activities to address actual or potential threats to human health or the environment, including remediation or restoration of environmentally degraded sites, containment of any wastes, hazardous substances or other environmentally dangerous conditions, or other appropriate precautionary measures to prevent significant adverse effects on human health or the environment; and
d) Public awareness and education programs to enhance the understanding of environmental protection and natural resource management issues within Trinidad and Tobago.”
The establishment of this fund ensures that the protection of the environment is not limited to the end of a particular case but will continue to be a priority in the long-term.

_Procedural Elements_

Procedural issues with respect to the environmental courts and tribunals can be evaluated in a variety of ways. This includes general accessibility, the costs in creating environmental tribunals, the efficiency or lack thereof when multiple states in one country have to create environmental tribunals, the existence of an appellate system, the issue of transparency, the existence of online electronic filing systems to make access to the courts logistically easier, and global transparency as a whole. The second clause of the Rio Declaration provides that at the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous activities in their communities and the opportunity to participate in the decision-making process.

Appeals shall be instituted by filing with the Registrar of the Commission a notice of appeal and serving a copy thereof on the secretary of the Authority or other respondent. Any appeal instituted under this section shall be filed within twenty-eight days of the service on the person seeking to appeal the decision of the Authority or other respondent, or within such other time as may be prescribed by rules made under section 84(15). An appeal may be instituted out of time if the Commission is satisfied that there was reasonable cause for not appealing within the time limit and that the appeal was filed thereafter without unreasonable delay. The notice of appeal shall describe the specific dispute and specify the grounds of appeal, and shall be in such form as may be prescribed by the rules of the Commission.

The Environmental Commission provides “Guidelines for Litigants” in the form of the following documents: 1) Checklist for Persons Filing Documents- Application for Extension of

Access To Information

The concept of access to information is that whereby the public is given access to information that is being decided by a particular court or jurisdiction. The third clause of Principle 10 of the Rio Declaration on the Environment and Development provides that “States shall facilitate and encourage public awareness and participation by making information widely available.”  

The objective of the Aarhus convention is that in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

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8 *Publications of the Environmental Commission of Trinidad and Tobago*, The Environmental Commission of Trinidad and Tobago, [http://www.ttenvironmentalcommission.org/publications.htm](http://www.ttenvironmentalcommission.org/publications.htm) (last visited May 17 2011)

9 Principle 10 of the Rio Declaration on Environment and Development states the following: “Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy shall be provided.”, *Rio Declaration on Environment and Development*, [http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163](http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163) (last visited May 16 2011)
The main website for the Environmental Commission has the following subject headings across the left margin of the website and is quite comprehensive. The categories whereby one could access information include: 1) Vision and Mission, 2) Structure, 3) The Commissioners, 4) History, 5) About the logo, 6) Legislation 7) Jurisdiction, 8) Rules, 9) Judgments, 10) Services, 11) Addresses, Speeches and Presentations, 12) Statistics, 13) Publications, 14) Code of Ethics, 15) Questionnaire, etc.

Traditional measures

How does this legislation/tribunal/court address traditional concerns expressed by courts that litigation is costly and wastes time?

A major cost-cutting and time saving measure is the use of alternative dispute resolution. The Commission has been mandated by section 84(3) to encourage and promote alternative dispute resolution, which is any mechanism for resolving disputes other than by way of litigation. Mediation has been identified by the Commission as the alternative dispute resolution process best suited to resolving environmental disputes. As of 2008, the Commission had an eighty-six percent (86%) success rate in resolving matters through the use of mediation.

Another cost-saving measure is the fact that the commission may sit in different areas and is not limited to one central location for adjudication. Subject to any rules which may be made under this section, the Commission may sit in more than one division at

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10 The Chairman of the Environmental Commission of Trinidad and Tobago noted that the Environmental Commission of Trinidad and Tobago is very similar to the Land and Environment Court of New South Wales.
such times and in such places in any part of Trinidad and Tobago as may be most convenient for the determination of proceedings before it.

According to George\textsuperscript{12} and Catherine Pring\textsuperscript{13}, the environmental court of Trinidad and Tobago heard only seven cases in 2009 because of the high costs of filing lawsuits.\textsuperscript{14}

\textit{History}

A final factor one must consider when analyzing environmental acts creating environmental tribunals is the rationale which led to the creation of the environmental tribunal.

“Trinidad and Tobago are signatories to several multilateral environmental agreements which are subject to the imposition of trade sanctions where environmental obligations are not honored. Examples of these are: the Basel Convention on the Control of Transboundary Movement of Hazardous Waste and their Disposal, the Convention on Biodiversity, the Framework Convention on Climate Change, the Vienna Convention for the Protection of the Ozone Layer, and the Montreal Protocol on Substances that Deplete the Ozone Layer.” \textsuperscript{15}

It was important for Trinidad to apply its’ international participation locally. A few of the milestone achievements to ensure development in the area of environmental policies, laws,

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\textsuperscript{14} Rick Docksai, \textit{Ecosystems Get Their Day In Court}, 44 The Futurist 11 (2010)
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\textsuperscript{15} The Honorable Dr. Reeza Mohammed, Minister of the Environment, Feature Address on the Occasion of the Inauguration of the Environmental Commission (November 16, 2000), http://www.ttenvironmentalcommission.org/speechadd/Feature%20Address%20by%20Dr%20Mohamed.pdf (last visited May 17 2011)
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and enforcement include the re-enacting of the Environmental Management Act (discussed in further detail below), the appointment of a Minister of the Environment, and the establishment of a Ministry of the Environment.

The Environmental Management Authority was established by proclamation of the Environmental Management Act # 3 of 1995. On January 21, 2000, the government of the Honorable Dr. Reeza Mohammed, Minister of the Environment, repealed the Act of 1995 and re-enacted the Environmental Management Act # 3 of 2000 with a two thirds parliamentary majority, which was assented to on March 8, 2000. This became necessary in order to allay any constitutional doubts which may arise as to the legality of the appointment of the Commissioners to the Environmental Commission. Between 1995 and 2000, the Environmental Management Authority (EMA) was severely and unjustifiably criticized for its lack of enforcement of the Environmental Management Act of 1995. “The citizens of Trinidad and Tobago, according to Dr. Reeza Mohammed, Environment Minister, were innocently unaware that enforcement of the Act by the Environmental Management Authority (EMA) with the exception of Section 25 of the Act, was contingent upon the establishment of the Environmental Commission, in keeping with section 81 to 90 as Part 8 of the Act.”

“With the passage of the Environmental Management Act, businesses were no longer able to focus on the costs of raw materials, energy, transportation, and marketing, but must now consider the consequences of the impact of their business activities on the environment. Furthermore, businesses in all sectors whether private, state, or public, must consider that they will be dealing with an enlightened public that will recognize environmentally irresponsible

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behavior and practices, and may choose to report these matters to the Environmental Management Authority (EMA). Citizens in civil society may wish to take advantage of Section 69 of the Environmental Management Act #3 of 2000 which provides for direct private party actions through the institution of a civil action with the Environmental Commission.”