

FEATURE ADDRESS BY DR. THE HONOURABLE REEZA MOHAMMED
MINISTER OF THE ENVIRONMENT
ON THE OCCASION OF THE INAUGURATION OF
THE ENVIRONMENTAL COMMISSION

Festival Ball Room, Crowne Plaza,
Port of Spain, Trinidad, W.I.
November 16, 2000

Good Evening, Ladies and Gentlemen,

It is indeed my great pleasure and privilege to address you on the occasion of the inauguration of the Environmental Commission. This is truly an historic occasion, as the establishment of this Superior court of Record represents a bold accomplishment on the part of my Government to place the management of Trinidad and Tobago's environment and its rich and unique biodiversity, at the forefront of its national development objectives.

Ladies and Gentlemen, the establishment of the Environmental Commission is intended to facilitate the expeditious adjudication of matters arising from the decisions and actions of the Environmental Management Authority in the exercise of its functions under the Environmental Management Act #3 of 2000, thereby ensuring that the effectiveness and implementation of enforcement action undertaken by the EMA is not compromised by inordinate delays in the judicial system.

My Government remains committed to the vision of promoting social and economic development, in order to maintain and improve the quality of life to which all citizens are entitled, in a balanced and sustainable manner.

In this regard, I am privileged to reiterate my Government's commitment to achieve for the citizens for the citizens of Trinidad, the highest performance in environmental management, in order to create and maintain healthy and safe surroundings for the benefit of current and future generations.

It is important to recall Ladies and Gentlemen, the global environmental issues which have occurred over the past decades. As many of you are aware, environmental issues became an important area of public policy in the late 1960s, when the far-reaching effects of human activities on the environment became more apparent.

Whilst global environmental policies have become the order of the day, policy implementation has been slow and somewhat limited, as evidenced by the continuing degradation of the environment and the discovery of the growing array of complex and global environmental issues, including ozone depletion, global warming, rapid loss of

bio-diversity, increased pollution from toxic and hazardous chemicals, transboundary movement of air pollutants and nuclear waste, to name a few.

It was not until 1987, Ladies and Gentlemen, that the World Commission on Environment and Development (The Brundtland Commission) promulgated one of the most important reports of the decade on the future of the world, entitled 'OUR COMMON FUTURE'. In her report, Madame Gro Brundtland brought to the attention of world leaders the urgency of the deepening and widening environmental crisis resulting from non-sustainable development and the threat it presented to national security – and to our very survival on planet earth.

In response to the concerns expressed in the Report, the United Nations convened one of the largest international conferences ever held in Rio de Janeiro, Brazil, in 1992 – THE EARTH SUMMIT. This conference served urgent notice to the international community that the time had come to begin seriously investing in the management of our environmental resources nationally, regionally and internationally in order to sustain human progress and indeed human survival.

We all came to the realisation that the impact of human activities on the biosphere was reaching critical thresholds which threatened to undermine future economic development and the health and well-being of peoples and communities. It soon became an accepted truism that in order to foster national capacity for sustainable development it was necessary to establish environmental management regimes which provide a comprehensive and integrative framework for protecting, conserving and enhancing the environment.

Ladies and Gentlemen, it must also be recognised that if the forces of globalisation and trade liberalisation set out by the World Trade Organisation are to fulfill the promise of substantial improvements in the socio-economic well being of the global community, these paradigm shifts in trade must be underpinned by sustainable economies. Furthermore, to ensure a level playing field for trade it is imperative that environmental costs be internalized in final products rather than passing these costs on to future generations.

In addition, Trinidad and Tobago is signatory to several multilateral environmental agreements, which are subject to the imposition of trade sanctions where environmental obligations are not honoured. 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.

As a result, environmental functions are today more important than ever before, consequent upon the realisation that without a healthy and safe environment there can be no sustainable economic development.

It is important to note Ladies and Gentlemen, that as a Small Island Developing State, we have come a long way since the Rio Earth Summit of 1992. The Environmental Management Authority (EMA) was established by proclamation of the Environmental Management Act #3 of 1995. On January 21 of 2000, my Government 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 08, 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. Over the past five years, the Environmental Management Authority (EMA) was severely and unjustifiably criticized for its lack of enforcement of the Environmental Management Act of 1995. Unfortunately, the citizens of Trinidad and Tobago 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 at Part 8 of the Act, of which I propose to speak to later in my address.

Mr. Chairman, another milestone development embarked upon by my Government in its continuing efforts to establish a sound and effective system for the sustainable management of the resources of Trinidad and Tobago was the appointment of a Minister of the Environment by the President of the Republic of Trinidad and Tobago and the establishment of a Ministry of the Environment on October 22, 1999. This institutional development undoubtedly provided significant impetus to Government's efforts to safeguard and enhance our environment. The hosting of this ceremony this evening Ladies and Gentlemen is ample testimony to the significant accomplishments of my Ministry after a mere one year in existence.

Ladies and Gentlemen, permit me to say a few words to you on the Environmental Management Act #3 of 2000, since it provides the framework for the result we seek to achieve through an environmental management regime which my Government has put in place for the continued social and economic growth of Trinidad and Tobago in an environmentally sustainable manner.

Firstly, the act binds the executive and the State, and commits the Executive at Section 18 to develop and implement a National Environmental Policy (NEP) in support of social and economic growth and environmental sustainability. I am honoured to inform you Ladies and Gentlemen, that such a policy was developed and laid in Parliament by my Government on September 02, 1998 as required by Sub-Section 6 of Section 18 of the Act.

The National Environmental Policy identifies management and conservation of the environment as a shared responsibility requiring co-operation and co-ordination among the public, and private sectors and civil society; recognises public authorities and other institutions which perform various environmental functions under existing laws, and the need for a co-ordinated approach to ensure application of laws; it encourages economic and non-economic incentives; and supports "The Polluter Pays" principle.

The Environmental Management Authority is required to co-ordinate, facilitate and oversee execution of the National Environmental Policy and Programmes; promote Public Awareness of the environment; and establish an effective regulatory regime which will protect, conserve and enhance the environment of Trinidad and Tobago.

Ladies and Gentlemen, the framework set out in the National Environmental Policy and the establishment and implementation of an effective regulatory regime will impact, in a profound way, on the structure and management systems of private, state and public sector institutions operating in Trinidad and Tobago.

An entirely new set of considerations will become important to management and must therefore be factored into the decision making process. The time has come for Government agencies as well as private sector organisations to recognise the importance of the environment in conducting their affairs, and move to introduce into their organisational structure a director with responsibility for Environmental Affairs. Managers must be taught to account for the impacts of their operations on ecosystems and habitats and to promote sustainable operations in such a manner that such operations will not stymie economic growth and development.

No longer can business focus exclusively on the cost 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 recognise environmentally irresponsible behaviour 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.

Ladies and Gentlemen, as one of our strategies to ensure the protection of the environment, the Environmental Management Authority (EMA) and the Ministry of the Environment are working towards the enactment of several pieces of legislation for the protection of the environment. These would be primarily in the area of Rules and Regulations made pursuant to the Environmental Management Act #3 of 2000 and includes the Certificate of Environmental Clearance Rules and the Certificate of Environmental Clearance Order; the Water Pollution Rules and the Water Pollution Fees Regulations; the Sensitive Species Rules; the Sensitive Areas Rules; the Noise Pollution Control Rules; the Air Pollution Rules and Air Pollution Fees Regulations and the Solid Non-Hazardous Waste Rules. The rationale for the flurry of rule and regulation-making activities would become manifestly clear when superimposed on the sectors identified in the Environmental Code as set out at Section 19 of the Environmental Management Act #3 of 2000 and which was laid in Parliament by the Honourable Minister of the Environment on June 02, 2000.

There is absolutely no doubt in my mind that unless we aggressively and vigorously enforce the supplementary Rules and Regulations to which I have referred, the best efforts of the Environmental Management Authority (EMA) and other environmental agencies will come to nought. I have therefore given the Environmental Management Authority (EMA) in my capacity as Minister of the Environment and in keeping with Section 5 of the Environmental Management Act #3 of 2000 a mandate to complete the drafting of the outstanding Rules and Regulations, as well as to implement and enforce those which have been enacted, without fear or favour.

It is indeed unfortunate Ladies and Gentlemen, that many of our citizens, in spite of our environmental awareness programmes and our efforts at environmental education, find it difficult to comply voluntarily with environmental Rules and Regulations. As a consequence, it has become necessary to incorporate penalties for non-compliance. In this regard, there several legal remedies which would soon be available to the Environmental Management Authority (EMA) for violations of our environmental laws. For example, to participate in any prohibited activity in an environmentally sensitive area will be regarded as a violation of an environmental requirement. Violation of an environmental requirement (such as breach of a permit or certificate of environmental clearance or engaging in unauthorized activities in a sensitive area) brings sanctions at different levels.

At the first level, there is the issuance of a notice of violation which can mandate changes in activities that are deemed to be responsible for the infraction, or invite the perpetrator to meet with the Environmental Management Authority (EMA). At the second level where the notice of violation fails to achieve its purpose, an administrative order may be issued. This order can accomplish several objectives including directing the person to cease the violation; directing the person to remedy the violation; and directing a person to initiate an investigation or to engage in monitoring activities with respect to the infraction.

The administrative order may include a civil assessment which can be used to compensate the Environmental Management Authority (EMA) for costs incurred in responding to the infraction; to provide an avenue for obtaining damages for environmental harm caused to public lands or holdings; damages for economic benefits gained from ignoring an environmental requirement; and damages for failure to comply with the applicable environmental requirement.

In addition to an administrative order, the Environmental Management Authority (EMA) may seek a restraining order or injunction to prohibit a continuing violation or where necessary, seek closure of the facility causing the breach of an environmental requirement.

To adjudicate in this maze of rules and regulations, administrative orders and civil assessment, fines and penalties, and even imprisonment, Part VIII (8) of the Environmental Management Act #3 of 2000 at sections 81 to 90 provides for the

establishment and jurisdiction of an Environmental Commission. Section (81) Sub Section (1) of the Act reads as follows and I quote: “A tribunal to be known as the Environmental Commission is hereby established for the purpose of exercising the jurisdiction conferred upon it by this Act or by any other written law.” Sub Section (2) of Section (81) of the Act goes on to state that “The Commission shall consist of a Chairman and such other members, including a Deputy Chairman, as may be appointed under or in pursuance of section.” Sub Section 3 of Section (81) establishes the Commission as a superior court of record with an official seal and which “shall be judicially noticed, and shall have in addition to the jurisdiction and powers conferred on it by this Act, all the powers inherent in such a court.”

Sub Section (4) of Section (81) of the Act Ladies and Gentlemen, is very instructive and reads as follows: “the Commission shall have the power to enforce its own orders and judgments, and the same power to punish contempts as the High Court of Justice.”

Section (5) establishes the jurisdiction of the Commission to hear and determine *inter-alia* – appeals from decisions or actions of the Environmental Management Authority (EMA) and applications by the Environmental Management Authority (EMA) for the enforcement of any Consent agreement or final administrative order.

Section 82 of the Environmental Management Act #3 of 2000 Ladies and Gentlemen, speaks to the constitution of the Commission as follows;

(82) (1) “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 objects of this Act.”

(82) (2) “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.”

(82) (3) “The members of the Commission, other than 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.”

(82) (4) “All members of the Commission shall hold office under such requirements and conditions of service 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.”

(82) (5) “Notwithstanding that his/her term of office has expired, any member of the Commission may, with the permission of the President acting of the advice of the Chairman of the Commission, continue in office for such a period after the expiry of his/her term, as may be necessary to deliver judgment, or to do any other thing in relation

to proceedings that were commenced before such member prior to the expiry of his/her term of office.”

(82) (6) “Any member of the Commission may, at any time be notice in writing to the President, resign his/her office.”

(82) (7) “The President may remove from office any member of the Commission for inability, misbehaviour or on the ground of any employment or interest which is incompatible with the functions of a member of the Commission.”

(82) (8) “Where any member of the Commission is ill, or otherwise unable to act, or where his/her office is vacant, the President may appoint a person to act in the stead of such member during his/her illness or incapability or until the office is filled, as the case may be.”

(82) (9) “No defect in the qualifications or appointment of any member of the Commission shall vitiate any proceedings thereof.”

The remaining Sections of Part VIII of the Act deals with salary, allowances and conditions of service of the Commissioners at Section 83, the procedure and jurisdiction of the Commission at Section 84, Notices of appeal at Section 85, hearing and determination of appeals at Section 86, Statement of case for opinion of court of appeal at Section 87, Order of deferment at Section 88, direct private party action at Section 89 and regulations for the Commission at Section 90. It is within this framework Ladies and Gentlemen that the Environmental Commission is to be established.

It is evident therefore, why it is necessary to operationalise the Environmental Commission prior to my giving the EMA the directive to aggressively protect the rights of the citizens of this country to a clean and healthy environment. An environment that has one of the earth’s greatest concentrations of biological diversity, an environment that is the habitat of a vast array of flora and fauna, an environment that is our home.

In order for the Commission to exercise its jurisdiction effectively, and for its judgments to be respected nationally, regionally and internationally, every effort was made in the selection process to ensure that the persons appointed as Commissioners subscribed to a high level of morality and integrity, are independent, and well respected professionally in their respective field of expertise. I am sure that you will agree with me, that the people of Trinidad and Tobago are extremely fortunate in obtaining the services of Justice Zainool Hosein, Ms. Sandra Paul, Dr. Eugene Laurent, Dr. Judith Gobin, Ms. Anne Marie Sirju and Mr. Roger Carrington. I have full confidence that they would rise to the challenges which will confront the, and discharge their responsibilities in keeping with the highest tradition of our judicial system, as envisaged by the Environmental Management Act #3 of 2000.

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 are being made for the Chairman and Deputy Chairperson to undergo a period of internship at the internationally renowned Environmental Commission of New Zealand. Grant funding for this purpose has already been acquired by the Ministry of the Environment. Additionally, discussions have been significantly advanced with the Government of Japan to provide technical assistance to the Commission and the Ministry of the Environment in the enforcement of environmental law, through the provision of an international expert in Environmental law. All Commissioners are expected to benefit from such technical assistance.

The Commission will be accommodated on two floors of the ‘Telly’ Paul Building (The Ground Floor and Level One) at the Corners of New and St. Vincent Streets, Port of Spain. The refurbishment of the offices and court room for the Commission and the provision of requisite office furniture and equipment has already been completed and was partly financed with resources from the World Bank Environmental Management Project Loan.

In closing, let me state that I look forward to a time in the not too distant future, when lead poisoning of our children, the emission of toxic gases including visible vapours from vehicles into our atmosphere and the presence of toxic effluent and sewage in our water courses would be relics that mark the end of an era when the only consideration was to explore and exploit our natural resources for economic gain. Let us embrace the dawn of an era where co-existing with nature is our most important priority.

In my capacity as Ministry of the Environment, I extend my sincerest congratulations to the Chairman, Deputy Chairperson and other Commissioners of the Environmental Commission.

I wish them every success in their deliberations and in the operations of this very important Court, by virtue of which, Ladies and Gentlemen, Trinidad and Tobago has now become the first country in the CARICOM to have established a Superior court of record for the environment.

With these few words Ladies and Gentlemen, may God Bless us all and I Thank You.
