



The Government of the Republic of Trinidad and Tobago

MINISTRY OF RURAL DEVELOPMENT & LOCAL GOVERNMENT

27 February, 2018

Ms. Jacqui Sampson-Meiguel
Clerk of the House
Public Accounts Committee
Level G-9 Tower D
The Port of Spain International Waterfront Centre
1A Wrightson Road,
Port of Spain.

Dear Ms. Sampson-Meiguel,

Re: Eleventh Report of the Public Accounts Committee on the Examination of the Audited Financial Statements of Land Settlement Agency for the Financial Years 2008 and 2009

I refer to your letter referenced Parl.: 5/1/38 dated 25 January, 2018 and received 16 February, 2018, with respect to the Report at caption.

Attached please find relevant response, consistent with Standing orders 100 (6) and 110 (6) of the Senate and House of Representatives respectively, which require the Minister with responsibility for the Ministry/Body reported on by a Joint Select Committee to present to each House, a paper responding to the recommendations /comments contained in the Report.

You may contact the office of the Permanent Secretary at Sbrathwaite@gov.tt or call Ms. Sandra Brathwaite at 622-7410/622-1979 Ext. 3207, should any further clarification or information be required.

Respectfully,

Desdra Bascombe
Permanent Secretary



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Background:

The Committee's comments and recommendations respectively with respect to the Ministry of Rural Development and Local Government as reflected in pages fourteen (14) to twenty two (22), of the Eleventh Report of the Public Accounts Committee on the Examination of the Audited Financial Statements of the Land Settlement Agency for the Financial Years 2008 and 2009 are:

Comments:

1. The Regularization of Squatters On State Lands:
 - The LSA stated, that one of the main factors that contributed to the significant increase in squatting since 1998 was the failure of the state agencies to implement the existing laws. These agencies include the Commissioner of State Lands, Regional Corporations and the Town and Country Planning Division. These powers if exercised effectively, will greatly assist in the containment of the unabated escalation of squatters.

Recommendations:

- The MHUD, Ministry of Agriculture, Lands and Fisheries and Ministry of Rural Development and Local Government should initiate inter-agency collaboration between the Central Statistics Office (CSO), Town and Country, Municipal Corporations and the Commissioner of State Lands and LSA to properly manage state lands and review and implement the existing laws and standards to regularize persons;
- LSA when conducting its patrol of sites should report its findings to the Commissioner of State Lands and Regional/Municipal Corporations effective immediately;
- The Commissioner of State Lands and the Ministry of Rural Development and Local Government should identify liaison officers to receive and process this information in a timely manner. MHUD should ensure that reports are indeed submitted to the Commissioner of State Lands and Regional/Municipal Corporations; and
- As a matter of urgency, LSA, the Municipal Corporation and the Commissioner of State Lands, should set out how they intend to improve the regularization of state lands for which they are responsible and submit a report to the Committee by February 28, 2018.



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RESPONSE

On review of both the Comments and the Recommendations, it appears that there is a perception that the Ministry of Rural Development and Local Government (MRDLG) and by extension the Municipal Corporations, have a pivotal role to play in the Containment of Squatting and the Regularisation of State lands under their remit.

However, by virtue of the relevant Vesting Orders made pursuant to section 7A(5) of the **Municipal Corporations Act (MCA), No. 21 of 1990** all land, other property and any of the rights privileges, advantages, liabilities and obligations of the former County Council, were transferred to and became vested in the fourteen Municipal Corporations. Further, all other lands or property owned or vested in a Corporation subsequent to the relevant Vesting Orders, would have been acquired pursuant to section 123 of the Municipal Corporations Act for such purposes as were identified.

It is important to note though, that the **State Lands Act Chap. 57:01 (“the SLA”)** expressly provides at Sections 4(1) and (2) that **all rights of ownership** that are vested in the State in respect of ‘State Lands’ **may be exercised by the President** on behalf of the State and that the President may in turn **empower the Commissioner of State Lands by way of Order** or any Deputy Commissioner of State Lands, **to exercise these rights**.

No mention whatsoever is made of the Municipal Corporations in this specific piece of legislation, nor are they identified at all, in this regard.

The issue of squatting on “State Lands” however falls under the remit of the Commissioner of State Lands by virtue of the State Lands Act Chap 57:01 which states as follows:

6 (1) The Commissioner shall have the management of all lands of the State, and shall be charged with the prevention of squatting and encroachment upon the same and of spoil and injury to the woods and forests on such lands, and shall superintend the settlement and allotment of State Lands and the laying out of village lots in such districts as the President from time to time directs.

6(2) The Commissioner shall also take possession of, and shall be charged with the care...of all lands which may belong...and become vested, in the State.”



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It thereby follows that the **function regarding the prevention of squatting and encroachment on State Lands is not delegated to any other statutory body or entity other than the Commissioner of State Lands** and section 20 (1) of the State Lands Act further sets out the procedure for the removal of squatters/persons in illegal possession of State Land .

20 (1) Any Magistrate, on information that any person is in possession, without any probable claim or pretence of title, of any State Lands, may issue a summons calling on the person to appear and answer to the information, and if the person, after being duly summoned, does not appear or appearing fails to satisfy the Magistrate that he has or had, or those under whom he claims, have or had, some probable claim or pretence of title to the lands, the Magistrate shall make an order for putting the person in possession of the lands out of possession, and the delivering of the possession to the Commissioner.

The complaint before the Magistrate under section 20(1) is issued using Form 1 or 3 as set out in the Schedule of the Act and **identifies the complainant as the Commissioner of State Lands or an authorised officer under the State Lands Act as being empowered to seek the Court's intervention for the removal of squatters and obtaining an Order for possession.**

While the Act focuses on the issue of those persons found in possession of State Lands, it is silent on the issue of the consequential removal of the illegal structure which is not specifically addressed, as it is understood, that, prior to any such removal, there is the need for persons residing therein, to be ejected.

Reference is also made to the High Court Judgement of **Arjoon, Lalita and Ors. v The Land Settlement Agency [CV. 2009-00098]. Singh, Bhisham and Ors v The Land Settlement Agency [CV 2009-1386]. Reed, Voleta and Ors. v The Land Settlement Agency. [CV. 2009-02059]** which is also instructive in this regard.

At paragraph 19 of the said Judgment, the Honourable Madame Justice Gobin, in reference to the foregoing Sections, stated:

“...Where a statute clearly and directly authorizes identifiable persons to exercise specific power or where it confers a duty on them, an interpretation which allows for persons other than those



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specifically identified and authorized to assume responsibility for or to do the very acts contemplated would clearly be inconsistent with the express language of the Act.

The State Lands Act is a special Act dealing with power and responsibility in relation to lands owned by the State. A Court cannot properly ignore the express provisions. Indeed, it must have been considered necessary and sensible to grant specific power and responsibility for State Lands to the holders of the offices specified so as to avoid the uncertainty, chaos and lack of accountability which would result if such rights were left to be exercised by any number of unidentifiable persons.

The Municipal Corporations Act Chap 25:04 authorises the Municipal Corporations to remove new structures or additions to existing structures within their respective municipality, which were not constructed or undertaken in accordance with the Town and Country Planning Act and the Building Regulations.

159 A new building shall not be constructed within a municipality otherwise than in accordance with the provisions of the Town and Country Planning Act and the Building Regulations.

Section 162 and 163 of the Municipal Corporations Act Chap 25:04, sets out the procedure for the removal of such structures and states:

162 (1) Where any person commences to do any work in contravention of the provisions of this Act or of the Building Regulations or of the Town and Country Planning Act or any other written law, the Engineer may serve a written notice on the owner of the premises on which such work is being done, or on the builder, or on both such owner and builder specifying the contraventions and requiring him or them forthwith to cause such work to be discontinued.

Section 163 of the Municipal Corporations Act also confers on the Corporation the authority to move, alter or demolish any illegal structure:

163 (1) Where any building or other structure is commenced or completed within a Municipality or any work is done in contravention of any of the provisions of this Part or of any Building Regulations of



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the Council or of the requirements of the Town and Country Planning Act or any other written law, the Council may serve on the owner or builder of the building, structure or work a written notice specifying the contraventions and requiring such owner and builder

- (a) on or before a day to be specified in the notice, by a statement in writing, to show cause why such building or other structure or such work should not be removed, altered or pulled down;*
or
- (b) on such day and at such time and place as shall be specified in the notice to attend personally or by an agent duly authorised in writing in that behalf before the Council and show sufficient cause why such building or structure should not be removed, altered or pulled down.*

(2) When an owner or builder upon whom a notice was served under subsection (1) fails to show sufficient cause why the building or other structure or work which is the subject of the notice should not be removed, altered, or pulled down, the Council may remove, alter or pull down the building or other structure or work.

As such, Section 162(1) and Section 163(1) of the MCA and Section 47 the Public Health Ordinance Ch. 12. No. 4 (“the PHO”) of the MCA, confers a **discretionary power** on Municipal

Corporations which is subject to the approval of the politically appointed Councils. Furthermore, **no power whatsoever has been afforded to Municipal Corporations** under these pieces of legislation, to **eject persons or to lay information before a Magistrate in pursuance of same.**

It thereby follows that, where a **Show Cause Notice** has been served and a Municipal Corporation is thereafter minded to exercise its discretionary power to remove a building or structure, if persons are residing within the said building or structure, as is the case with squatting, **it is necessary for the Commissioner of State Lands to first exercise his power under Section 20 of the SLA, so as to have such squatters removed by Order of a Magistrate.**

It is clear, that this was contemplated by the State Land (Regularisation of Tenure) Act (“the SLRA”), which provides for the issue of **ejectment or relocation** of squatters (as the case may be), by referring to



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Section 20 of the SLA and the power of the Commissioner of State Lands therein. The SLRA which was created, inter alia, to protect certain squatters from ejectment from State Land, expressly provides at Section 1(2), that the SLRA will not affect the operation of the SLA except in so far as Section 4(1) of the SLRA confers security from ejectment on any squatter and in particular, Section 20 of the SLA continues to have effect in any case where a person squats on State Land.

*(3) **Subject to section 182,** the expenses incurred by the Council in removing, altering or pulling down a building or other structure or work under this section shall be **a joint debt due to the Corporation by the owner and builder and, until payment, shall be a charge on the premises on which the building or other structure was commenced or completed, or the work executed.***

(4) The power conferred by this section is in addition and without prejudice to any other remedy provided by this Part or by any written law providing for the recovery of any penalties for breach of any Building Regulations.

It should be noted that although the MCA confers the authority on the Municipal Corporations to remove an “illegal structure”, such removal is subject to section 163(3) which provides that the cost of such action by the Corporation becomes a joint debt by the “owner of the building” and the “builder”, and also becomes a charge on the premises until such sums are paid 163(1).

In cases where illegal structures or additions are constructed upon private lands within a municipality, the enforceability of the provisions of section 163(3) are only stymied by the potential cost implications to the Corporation. However, the situation can become quite complicated where State Lands are concerned, as the enforcement of the debt as against the Commissioner of State Lands, can be challenged on several grounds, including (1) the absence of proof that the owner (the State) had knowledge of such illegal construction or (2) that the Commissioner was in fact taking its own steps to have the illegal occupier removed under Section 20(1) of the State Lands Act.

Consequently, the Corporations would be quite hesitant to incur the cost of removal of squatters or illegal structures on state lands, since (1) the cost would most likely be irrecoverable as against the State and (2) ultimately the enforcement of the provisions of section 163 of the Municipal Corporations Act remains subject to any existing Squatting Policy or Squatter Regularisation Policy in effect.



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Policies and Procedures

Notwithstanding the provisions of the Municipal Corporations Act, currently there is no definitive policy in place for the MRDLG and by extension the Municipal Corporations to deal with the removal of illegal structures on State Lands.

Since the Commissioner of State Lands is ultimately responsible for the management of State Lands and prevention of squatting, any statutory entity or other body purporting to exercise any land management function on state lands must first consult with and be subject to the overarching jurisdiction and approval of the office of the Commissioner of State Lands.

Further the Ombudsman Section of the Office of the Commissioner of State Lands has documented the following procedure with respect the removal of illegal structures on State Lands:

- i. The Office of the Commissioner of State Lands may receive complaints/reports from citizens, or otherwise, that an illegal or unauthorized structure has been or is being erected on a parcel of State Lands.*
- ii. Upon receiving a complaint/report Inspectors of State Lands will conduct a site visit on the said parcel of State Land on which the report/complaint was received.*
- iii. The Inspector of State Lands will then produce a comprehensive report on the matter to the Commissioner of State Lands.*
- iv. The Commissioner of State Lands will conduct an investigation to determine whether the person who has erected or is erecting a structure on State Lands has bona fide title to do so or is authorized to so do, and is not erecting or has not erected a structure illegally.*
- v. Once the investigations reveal that the person has no legal title to the lands or that the structure is being or has been illegally erected on State Lands, then the Commissioner will serve a Quit Notice giving the person a reasonable time to vacate the premises and/or remove the structure.*
- vi. Once the Quit Notice has been served, the Commissioner will conduct a re-*



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investigation of the matter, during the period of the Notice.

- vii. ***Failure to comply with the Notice will result in legal proceedings being commenced against the person who has erected or is erecting an unauthorized structure on State Lands, in accordance with section 20 (1) of the State Lands Act, Chap 57:01.***

Based on these steps, it is only after the Commissioner of State Lands has obtained possession of the lands, whether by voluntary removal of the structure or by the Order of the Magistrate to put the person out of possession and deliver possession to the Commissioner, can the illegal structure be removed.

However, once such possession has been obtained by the Commissioner of State Lands, it would be seemingly illogical for the Corporation to issue a Show Cause Notice to the Commissioner for the consequential removal of such structure, as the Commissioner can as of right remove same without further interference.

In conclusion, it is apparent that the Municipal Corporations have limited authority and scope to comprehensively deal with the removal of squatters / illegal structures on state lands and therefore there is need for more vigilance by the Commissioner or State Lands over the lands it superintends, in order to contain the extent and reach of squatting.

As such, the recommendations of the Eleventh Report of the Public Accounts Committee on the Examination of the Audited Financial Statements of the Land Settlement Agency for Financial Years 2008/9– Regularization of squatters on State Lands should therefore be amended accordingly to take into consideration the issues raised above.