



LAND TENURE
CENTER
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Consultancy Services to
The Government of the
Republic of Trinidad & Tobago

LAND USE POLICY AND ADMINISTRATION PROJECT (LUPAP)

FINAL REPORT

AN ANALYSIS OF THE LEGAL FRAMEWORK FOR STATE LAND MANAGEMENT IN TRINIDAD AND TOBAGO

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1.0 SUMMARY

This Report provides an **analysis of the hypothesis that “the legal framework for State land management in Trinidad and Tobago is based on consistent policies and is composed of harmonized laws and regulations for all State owned land”**. It describes the Land Management functions of the major statutory and administrative bodies which have been established in Trinidad and Tobago since Independence for this purpose and which are charged with the responsibility of some aspect or aspects of State land management. It attempts to determine where the policies of these entities appear to conflict with the provisions for State land management functions conferred by the **State Lands Act**, through its repository of power, the Commissioner of State Lands. It also identifies the areas which are harmonious and which seem to accord with a uniform policy of Land Management.

1.1. A 1992 document entitled “**A New Administration and Policy for Land**” produced by the Ministry of Planning and Development of the Government of the Republic of Trinidad and Tobago (GORTT) sets out the land use policy of the GORTT and lists 42 pieces of legislation relating to Land Management and Administration. These are set out in Appendix 2 to this Report.

1.2. This Report assumes that the 1992 document which sets out this policy is the governing policy document over land in Trinidad and Tobago. Indeed, since then, no known policy document has been formulated and adopted by the GORTT.

1.3. Since 1994 however, a number of other pieces of legislation directly or indirectly affecting Land Management have been passed in Trinidad and Tobago or are in the form of Bills which are awaiting the necessary legislative Parliamentary Procedure for passage. Some of these pieces of legislation either create State land management responsibilities for newly formed statutory bodies or create the responsibility for land management in an indirect way. Among the more important pieces of legislation are:-

- (i) The Environmental Management Act
- (ii) The Tobago House of Assembly Act
- (iii) The Planning and Development of Land Bill
- (iv) The State Lands (Regularization of Tenure) Act
- (v) The Agricultural Small Holdings Tenure Bill
- (vi) The National Parks and Other Protected Areas Bill
- (vii) The Municipal Corporations Act
- (viii) The Tourism and Industrial Development Company of Trinidad and Tobago Limited Vesting Order Act.

1.4. This Report is a component of a wider attempt by the GORTT to modernize its land policy and management to accord with modern patterns of Land Administration and Management in the face of changing global patterns in this discipline.

In particular it attempts to describe the situations where the hypothesis cannot be supported and provides recommendations for correcting the problems identified.

2.0 METHODOLOGY

2.1. This report was prepared between the period January 20th to February 15th, 2000 by a Legal Consultant contracted as part of the Land Use Policy and Administration Project (LUPAP) of the

Agricultural Sector Reform Programme (ASARP) of the Ministry of Agriculture, Land and Marine Resources of the GORTT.

2.2. The Terms of Reference of the Consultant are contained in Appendix One (1). The Report is prepared pursuant to Clause 2.1.3 of the Terms of Reference. In examining the hypothesis, the Report uses as its base, the definition of land management contained in the Consultant's Terms of Reference.

2.3. By the working definition, the term Land Management is used to describe decision making by the owners of the land about the use and enjoyment of the land. The term "land" includes land parcels and buildings attached to the land. Land Management including the management of State owned land can be both the direct use of that land by State agencies or enterprises, or the leasing of State land by the State to private holders of the land and the supervision of those leases by a State agency. State land management also includes the acquisition of private lands for public purposes.

2.4. In preparing the Report, the Consultant has examined and analysed the available literature in Trinidad and Tobago on Land Use Policy including studies and reports. The Consultant has also examined the legislation set out in Appendix 2 of this Report and the legislation which have passed since 1994, *ante* and those which are proposed, insofar as they relate to State Land Management. The role and function of the Commissioner of State Lands under the legislative ambit of the **State Lands Act Chapter 57:01** has also been examined in detail by the Consultant. In particular, the Report attempts to identify situations where the Commissioner of State Lands as the body created by Statute in whom the repository of the plenitude of power is vested for State Land Management, conflicts or appears to conflict with the expressions of Land Management Policy which have been formulated in Trinidad and Tobago either by convention or organized bureaucratic structure or which can be discerned from the pieces of legislation which exist on the Statute books.

2.5. It must be remembered that the Statutes which confer State land management functions or power, like all other Statutes are really a codification of expressions of policy. In particular, the more recent legislative enactments where State land management powers are conferred upon some entities have been examined by the Report.

Using the definition of land management stated above, the Consultant has examined the land management functions of the various entities. This is done through an examination of land management functions under various pieces of legislation.

3.0. THE POLICY FOR STATE LAND MANAGEMENT

3.1. State lands (other than constituted forests) cover 179,288 hectares in Trinidad and 3,665 hectares in Tobago. State lands therefore constitute a significant portion of the land mass in Trinidad and Tobago. The necessity to properly and adequately manage this most important resource is paramount in the face of increasing competition for land in Trinidad and Tobago by industry, agriculture, tourism concerns and housing. Above all, the social concerns as regards the availability and access to land by the poor and landless as a form of social empowerment has been advocated.

3.2. In pursuance this philosophy, certain policy goals have been formulated which significantly affect State lands. The philosophy uses as its base that the **Constitution of the Republic of Trinidad and Tobago** recognises that there is the fundamental right of each citizen to the use and enjoyment of property and the right not to be deprived thereof except by due process.

3.3. Any State land management policy, must to the rational policy maker, have a philosophy which must maximize this limited resource for sustainable development and the achievement of realistic social goals, while at the same time have due regard to environmental concerns.

3.4. **It is indeed ironic that the term “State land” is not defined in the State Lands Act Chapter 57:01 of the laws of Trinidad and Tobago. An examination however, the various other pieces of legislation reveals that there are varying definitions of the term as it appears in these Statutes in Trinidad and Tobago. The term "State land" is defined in these Acts to suit the ends and objects of each particular piece of legislation.** Generally however, the term is intended to mean lands in Trinidad and Tobago which are not privately owned or held, and over which the State, through the Commissioner of State Lands, exercises the bundle of rights conferred upon that office by the State Lands Act. They include lands held by the various State enterprises, e.g. Caroni (1975) Limited and Petrotrin and other entities which are either wholly in the main, funded by the State. In respect of the latter however, it is these entities which exercise management functions over the lands though in many instances, there is no formal vesting of proprietary interest in them.

3.5. In recognition of existing land and resource tenure problems, in November of 1992 the Ministry of Planning and Development of the GORTT published a document entitled **A New Administration and Distribution Policy for Land.** This new policy has as its general policy, the goal to: **“...maximize the benefits which the community derives from national land resources, while seeking a balance between current gains and sustainable development.”** The policy also proposes goals of:-

- (i) preventing prime agricultural land from being subjected to non-agricultural uses through the institution of land zoning;
- (ii) providing adequate security of tenure for tenants of State lands;
- (iii) discouragement of land speculation and putting idle land into production; and
- (iv) promoting development that is economically, socially and ecologically sustainable.

3.6. The New policy sets out a series of proposals and a legal framework to promote better land administration, including:

- (i) new mapping for Trinidad and Tobago with modern geodetic and topographic formats;
- (ii) full cadastral surveys for all state lands;
- (iii) a new computer-based graphic and non-graphic land information system using a uniquely-defined parcel numbering system;
- (iv) a strengthened land-use zoning system;
- (v) establishment of a system of protected areas for eco-tourism development and for preserving fragile ecosystems backed by new legislation;
- (vi) rental rates based on market values of land; and
- (vii) approaches to prevent further land fragmentation (i.e. minimum parcel sizes based on economical and environmental criteria for land use).

3.7. The policy also proposes that all agricultural leases be subjected to guidelines in order to prevent environmental degradation caused by inappropriate production practices, as well as respecting the fragile ecosystems.

3.8. The Report now attempts to examine the major aspects of the legal framework for management of State lands in Trinidad and Tobago and to compare the policies which seem to guide the entities. It identifies areas where the policies and functions conflict or appear to conflict with the role of the Commissioner of State lands under the State Lands Act or where there is duplication in function.

4.0. STATE LAND MANAGEMENT INSTITUTIONS IN TRINIDAD AND TOBAGO

4.1. State land management agencies in Trinidad and Tobago include the following which is not an exhaustive list:-

Ministry of Housing and Settlements:

Commissioner of State Lands - Lands Section of Lands and Surveys Division

Land Settlement Agency

National Housing Authority (NHA)

Sugar Industry Labour Welfare Committee

Urban Development Companies of Trinidad and Tobago (UDECOTT)

Ministry of Agriculture, Land and Marine Resources:

Land Administration Division;

Forestry Division;

Caroni (1975) Limited;

Non Pareil Estates, Ltd.

The Chief Game Warden

Tobago House of Assembly:

Department of Land Management Services;

Department of Natural Resources;

Division of Settlements, Tourism and Information

Ministry of Public Administration

Property and Real Estate Division

Ministry of Energy:

PETROTRIN

Palo Seco Agricultural Enterprises Limited

Ministry of Planning:

Chagaramas Development Authority

Ministry of Local Government

Municipal Corporations

Ministry of Finance

NIPDEC

Property and Industrial Corporation of Trinidad and Tobago (PIDCOTT)

Port Authority of Trinidad and Tobago

Public Transport Services Corporation (PTSC)

Point Lisas Industrial Development Company (PLIPDECO)

The Environmental Management Authority. (EMA)

The proposed entities which are not yet legally constituted and which exist in the form of Bills are:-

- (i) The National Physical Planning Commission; and
- (ii) The National Parks and Wildlife Management Authority.

5.0. THE STATE LANDS ACT

5.1. The **State Lands Act Chapter 57:01** of the laws of Trinidad and Tobago vests the right of ownership of State lands in the President. The President empowers the Commissioner of State lands to exercise those rights. The repository of the plenitude of power exercised over State land therefore vests in the Commissioner of State lands. The Act is an amalgam of 8 pieces of legislation, with its original form first published and passed in 1918 dealing with Crown Lands.

5.2. Section 6(1) of the Act states that the Commissioner of State lands shall have the management of all lands of the State, and shall be charged with the prevention of squatting and encroachment of State lands. The Commissioner is also empowered with the responsibility of “preventing 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 direct.

5.3. Under the Act, (Section 6(2)), the Commissioner is to take possession and is charged with the care and letting (leasing) of State lands and the power to collect rents in respect of all State lands. The Commissioner also has power to grant permits to use certain roads on State lands. He signs deeds and instruments as regards mining and licences and other leases, surrenders, grants and exercises rights over the foreshore or lands under territorial waters or for reclaiming lands from the sea.

5.4. Apart from these functions, the Commissioner of State lands (who is also the Director of Surveys in the Public Service), has the power to enter upon private lands adjoining State lands for the purpose of ascertaining whether State lands have been encroached upon. The Director also has power to enter upon private lands to ascertain boundaries when it is required for a public purpose.

The Act also provides for a system of offences and penalties in relation to certain activities on State lands including digging or removing material without licence and for other offences.

5.5. **Most importantly however, the Act provides a comprehensive system for dealing with squatting and encroachment. The issue of squatting and encroachment upon State lands are given paramount importance under the State Lands Act and the Commissioner exercises, in respect thereof, wide powers.** He institutes prosecutions for encroachment on State lands through the Director of Public Prosecutions at the Magistrates' Courts and ensures that the State's land reserves are preserved. The Act devotes a number of Sections to this function and it is presumed that the intention of Parliament and of the framers of the legislation at the time it was passed, was to curb the practice of squatting and encroachment on State lands (formerly Crown lands) through this office and the body of law.

5.6. **Under this legislation the Commissioner of State lands is the Statutory office which is responsible for management of State lands.** He exercises functions over those lands as the repository of those lands. **The plenitude of power is wide encompassing and the Statute which creates this office is a fundamental piece of the body of law dealing with State land management functions.**

That this is so is seen from the fact that the Act does not appear to delegate the functions of the Commissioner to any other Statutory or other entity except to say that it creates the office of Deputy Commissioners of State lands who may exercise any of the powers and rights conferred upon the Commissioner. It is submitted that the intention of the framers of the legislation governing this office, was that this Act should have superseding jurisdiction over all State land management functions **and there should perhaps be an obligation upon any other Statutory entity purporting to exercise State land management functions to consult with this office and be subject to the governing jurisdiction of the Commissioner. Subsequent legislators have, however, had different views and have conferred State land management responsibilities on other agencies.**

5.7. In particular, **the recent Statutory enactments and proposed pieces of legislation create a number of instances and situations where the position or power or jurisdiction of the Commissioner of State lands (qua manager) is superseded or usurped. These other entities appear to exercise important State land management functions. Very often they appear to do so in isolation and without either in consultation with the Commissioner of State lands or without reference to each other.** Indeed, at times the legislation do not even mention the requirement for consultation.

That is not to say however that Parliament cannot pass legislation which give other bodies and entities the power of State land management. Parliament is entitled to legislate for the peace, order and good Government of the Country. **What is patently obvious from the recent enactments however, is that wherever State land management functions are conferred upon these entities, there is no consensus in State land management policy. The approach to State land management therefore seems to be piecemeal and operative in an ad hoc manner thereby contributing to lack of coherence and cohesiveness in policy.**

5.8. **The issue therefore arises whether the management functions exercised by these entities are consistent with the expressions of policies cited above, or policies expressed or codified by other Statutes or contained in the State Lands Act.**

In this regard, this Report now attempts to examine State land management functions under various other pieces of legislation in an attempt to refute the hypothesis forming the subject matter of this Report.

State land management functions are now examined under the following pieces of legislation:-

6.0. THE FORESTS ACT CHAPTER 66:01

6.1. Though the **State Lands Act** provides no definition of the term “State land”, **The Forests Act** defines State land as:-

"2. “State land includes-

- (a) the waste or vacant land of the State within Trinidad and Tobago;
- (b) all lands vested in the State, whether by forfeiture, escheat, purchase or exchange, and not dedicated to the public.”

6.2. The provisions of **The Forests Act**, are in the main, administered by the Forestry Division of the Ministry of Agriculture, Land and Marine Resources of the GORTT. **The Division is headed by an office known as the Director of Forestry. The Director of Forestry carries out the land management functions of lands on which the forests are contained. These are on State lands.** Among other functions, the Director grants permits to remove timber and forest produce and to conduct other activities on State lands.

6.3. It is the Director of Forestry who holds the repository of power over forests on State lands, clearly having acquired this power from the Commissioner of State Lands.

6.4. The Ministry of Agriculture, Land and Marine Resources administers the provisions of this Act (**The Forests Act**) insofar as it relates to the declaration and designation of Forest Reserves. These are portions of State lands which are declared as prohibited areas or protected areas because of the forest resources they contain.

6.5. During the period 1953 to 1968, 7 such areas were declared and between 1987 to 1993, 8 areas were so declared and orders were also made in 1997, 1998 and 1999. These powers were all exercised by Orders made by the Minister of Agriculture (who also has jurisdiction over Land and Marine Resources). The Minister declares these areas on the advice of the Director of Forestry, or his predecessor entity, the Conservator of Forests.

6.6. Trinidad and Tobago is endowed with abundant natural forests which provide socio-economic benefits including recreation, scientific research and opportunities for eco-tourism. The National Environmental Policy for Trinidad and Tobago published in June 1998, states that the objectives of the policy relating to forests are:-

- (a) to encourage sustainable use of forests including timber and wild meats;
- (b) to maintain the total area of land zoned for forest reserve and prevent its conversion into non-forest uses such as agriculture and mining.

The role of the Commissioner of State lands is no where mentioned in this policy and apparently the objectives are to be achieved through the office of the Director of Forestry.

6.7. The GORTT has drafted a new **Forest Resources Bill** which is pending. It is intended that this Bill should repeal and replace the existing legislation. Clause 25 of that Bill provides that:-

“When this Act comes into force, all leases of State land areas that are declared a conservation area, are deemed to be terminated subject to the payment of such compensation by the State to lessees, as is agreed upon between the parties, for the property in the lease”

The termination of these leases is made by the Director of Forestry (or Minister of Agriculture).

6.8. The Director of Forestry of the Ministry of Agriculture, Land and Marine Resources is responsible for the management of State lands (forests) under the proposed Bill. It also establishes a system of permits for cutting, processing and other activities. The proposed Bill establishes the power to the Minister to declare forest reserves and conservation areas.

The Bill also grants the power to the Minister to serve enforcement notices to perpetrators of violations committed within a conservation area.

6.9. What is evident from the Bill is that it gives important State land management functions to the Director of Forestry, administered by the Forestry Division of the Ministry of Agriculture, Land and Marine Resources.

7.0. THE HOUSING ACT

7.1. The provisions of this Act, are in the main, administered by the Ministry of Housing and Settlements of the GORTT and the National Housing Authority. The National Housing Authority is a body corporate established under this Act. An examination of the powers of the Authority (the NHA) reveals, *inter alia*, that it has the power “to construct housing units for experimental purposes upon land owned by the State or to be acquired for such purpose.” (Section 10 (1) (d)). **Here, a State Agency is exercising management and land use decision making power over State lands.**

The definition of “Housing Project” under Section 2 of the Act is that it means a project:-
“together with the land upon which it is situated” (emphasised)

7.2. The Act does not provide a reference to building housing estates on lands owned by the State in consultation with the Commissioner of State lands. This is in spite of Section 77 of the Act which provides that

“The administrative control of any lands or interests therein vested in the State may by Order of the President be transferred to the Authority and thereupon those lands or interests shall be held and dealt with by the Authority under this Act.” (emphasised)

The intent and purport of this Section, it is respectfully submitted is that there is an obligation of the National Housing Authority, before any project is commenced, to seek the transfer and vesting of the lands (State lands) on which it intends to build, to itself, by order of the President.

7.3. The Consultant could find no published Legal Notice or Order under Section 77 where the President has so transferred the administrative control of any State lands to the NHA. That this is so, is particularly of concern since over the past three decades, several housing projects have been constructed by the NHA on lands which are State lands. These include the following which is not an exhaustive list:-

| NAME | SIZE(ha.) | STATUS |
|-------------------------|------------------|--|
| Malabar Phase I | 27.7093 | State lands |
| Valencia (old) | --- | State lands |
| Powder Magazine | --- | Port of Spain City Corporation and State |
| Crown St. Arouca | 2.0087 | State |
| Diamond Vale Phase I | --- | State |
| Graham Trace | 4.09 | State |
| Old Boys' Lane D'abadie | 5 | State |
| La Horquetta | 118.47 | State |
| Maracas, St. Joseph | 20 Lots | State |
| Picton | 0.5742 | State |
| Beetham | --- | State |
| Malick Phase II | --- | State |

7.4. The NHA exercises land management functions over all these housing estates, though the lands are State lands. The NHA is now constrained in granting deeds to the beneficiaries or occupants of these lands since the lands are not yet vested in the name of the NHA. At the time of preparation of this Report, the NHA had commissioned steps to vest these lands in its name for eventual granting of deeds to occupants and beneficiaries.

7.5. The foregoing provides another instance where important State land management functions are exercised by yet another Statutory entity.

8.0. THE STATE LAND (REGULARIZATION OF TENURE) ACT 25 OF 1998.

8.1. By far one of the most controversial pieces of legislation recently passed by the GORTT and upon which far reaching State land management policies and functions are exercised, is the **State Land (Regularization of Tenure) Act 25/98. This law has serious implications for State land management and presents some difficulties for defining the role of the Commissioner of State lands.**

8.2. The Act was passed to protect squatters on State lands from ejection, to facilitate the acquisition of leasehold titles by squatters and tenants in designated areas and to provide for land settlement areas. The Act also establishes an administrative body corporate known as the Land Settlement Agency.

“State lands “ under Section 2 of the Act includes:-

“...land held by the National Housing Authority, State land vested in the Tobago House of Assembly and any other land transferred to the State from time to time by any State agency for the purpose of this Act.”

"State Agency" means:-

“a Ministry or department of the Government of the Republic of Trinidad and Tobago, the NHA and a State Enterprise wholly owned by the State.” (emphasised)

8.3. The Act effectively confers security from ejection of squatters on State lands (which effectively means NHA lands, Caroni (1975) Limited lands, Petrotrin’s and Palo Seco Enterprises Limited and other entities). The latter bodies are privately constituted bodies under the Companies Act of the laws of Trinidad and Tobago, but they are wholly owned by the State. These bodies exercise their own management power over lands. They have their own land use and distribution policy, and all decisions made in relation to lands are subject to ratification by their Board of Directors.

8.4. The Land Settlement Agency established by Section 5 of the Act is charged with the responsibility of administering the Act with respect to State land in the Island of Trinidad. The Tobago House of Assembly (THA) is responsible for administering and carrying out the provisions of the Act with respect to State lands vested in the THA. **By this Section, two (2) entities are empowered to carry out State land management functions. Both exist under different pieces of legislation, are physically separated from each other and in the case of the Tobago House of Assembly, subject to the policies of the Department of Land Management Services, Department of Natural Resources and the Division of Settlements, Tourism and Information.**

The potential for conflict in policy and lack of harmony in State land management practices is therefore real from this situation. It is to be noted that the problem of squatting is not as prevalent in Tobago as it is in Trinidad.

8.5. In the exercise of its functions, the LSA (Land Settlement Agency) shall act in accordance with directions given to it by the Minister of Housing. What is evident about the legislation is that:-

- (i) **it supersedes the powers of the Commissioner of State lands who is vested with the responsibility of management of State lands and the prevention of squatting and encroachment of State lands. The Land Settlement Agency is now the supervisory body exercising power over squatting.**
- (ii) By the very nature of the legislation, the Land Settlement Agency appears to be more of a facility agency rather than a containment body.
- (iii) **the Minister of Housing gives directions and formulates policy with respect to State land** which are "designated areas") instead of **the Commissioner of State lands;**
- (iv) **the functions of the Commissioner of State lands in relation to squatting and encroachment are fettered in the exercise of his powers under Section 20 of the State Lands Act** (a section which provides a procedure for ejection of squatters). Section 2(2) of the **State Land (Regularization of Tenure) Act 25/98** states that “...Section 4(1) of this Act confers security from ejection on any squatter, and.....” (emphasised)
- (v) the present status of prosecutions initiated by the Commissioner of State lands against squatters and encroachers and which are pending before the Courts is one of uncertainty. In the main, the pending matters have since the

legislation been left in abeyance and the Courts have adjourned these matters *ad infinitum*. **Faced with this new legislation and the expressions of policy contained in it, the Courts are in a legal quagmire.**

- (vi) the definition of "State land" under this Act is extended to include any lands owned by a State enterprise. This refers to limited liability companies registered under the Companies Act, for instance Petrotrin, Caroni Limited and Palo Seco Enterprises Limited;
- (vii) the Act gives **an entitlement to a Certificate of Comfort for squatters on State lands and a Statutory lease to squatters on State lands, before an appointed date**. The functions of the Commissioner of State lands for grants and leases of State lands are thereby usurped. **The conferring of an entitlement by the legislation to a Certificate of Comfort creates a virtual legitimate expectation to qualifying persons that the "entitlement" under the legislation provides a bundle of legal rights and remedies with a resulting policy from which it is difficult to depart. It has long since been judicially recognized that a legitimate expectation (in law) may arise either from an expressed promise given by a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue. This confers procedural protection in the form of a right to be heard before a benefit is withdrawn or a statement overridden. (See R v Secretary of State for the Home Department, ex p. Ruddock [1987] 2 All ER 518; Aldous and Alder Applications for Judicial Review Law and Practice of the Crown Office 2ed., Butterworths London 1993).**
- (viii) under Section 25 of the Act, the Minister of Housing may declare certain areas of Land Settlement Areas for the purpose of facilitating the provision of shelter to citizens and residents who are landless and relocating squatters. This overrides Section 6(1) of the **State Lands Act** which gives the Commissioner of State Lands the power to "superintend the settlement and allotment of State land and the laying out of village lots in such districts as the President may direct."
- (ix) the Act identifies a number of areas of State lands and deems them to be Designated Areas. **Under Section 18, the Minister has the power to add areas of land to the scheduled areas. The Minister may do so on his own notice or an application to him by the Land Settlement Agency, a squatter or any other criteria set out in Section 18 (b) (iii);**
- (x) **The effect of this Section is that the Minister of Housing exercises land management functions over designated pieces State lands.** The Act gives powers to the Minister to add to these designated areas. **The Minister assumes, thereby, some of the responsibilities of the Commissioner of State lands which were previously under the State Lands Act "superintend the settlement and allotment of State lands and the laying out of villages in lots and districts."**

Another effect of this legislation also is that it has forced the Ministry of Agriculture, Land and Marine Resources to effectively devise a policy for dealing with agricultural squatters.

8.6. In pursuance of this, the Cabinet by **Cabinet Minute No. 436** of February 25th, 1999 has approved a policy for the regularization of tenure of agricultural squatters in Trinidad. The new policy envisages, *inter alia*, that:-

- (a) persons in occupation of State agricultural lands without formal tenure be regularized and given standard agricultural leases up to a maximum of 2 years, provided that such persons have met certain criteria;
- (b) that agricultural squatters who encroach only slightly into a protected or prohibited area be regularized and be given title only for the portion of the area occupied outside of the border;
- (c) agricultural squatters in areas of zero tolerance who are residents in the area of zero tolerance be brought under the provisions of the **State Land (Regularization of Tenure) Act 25/98** and relocated in Land Settlement Areas identified by the Land Settlement Agency

The effect of the State Land Regularization of Tenure Act is that by allowing the status of squatters to be regularized, it may permanently convert valuable State agricultural land into other uses.

8.7. The functions of land management with respect to agricultural land leases are administered by the Land Administration Division of the Ministry of Agriculture, Land and Marine Resources. The leases are prepared by the Chief State Solicitor in the name of the Commissioner of State Lands, and the actual decision making is carried out by the Land Administration Division. The need to harmonize policy is therefore of significant importance. The potential also exists for significant portions of valuable State lands to fall into the hands of squatters.

9.0. STATE LAND MANAGEMENT UNDER THE PROPOSED PLANNING AND DEVELOPMENT OF LAND BILL

9.1. The Planning and Development of Land Bill, 1997 is a legislative enactment which has been proposed but not yet been passed by both Houses of Parliament or proclaimed in Trinidad and Tobago.

The Bill has been published since 1997 and is intended to repeal and replace the existing **Town and Country Planning Act**.

9.2. Among other features, the Bill creates a Statutory corporate entity known as the National Physical Planning Commission. When enacted into law, the legislation would have binding effect on the State.

Among the functions of the proposed **National Physical Planning Commission**, are:-

- (a) to advise the Minister (with responsibility for physical planning) with respect to the framing and development of policies with respect to all land in Trinidad and Tobago (this obviously includes State land);
- (b) to make land Policy Statements to be laid in Parliament; and
- (c) to provide, advise and assist the Government and the Tobago House of Assembly on policy proposals and legislation affecting the development and utilization of land and its resources.

The Bill makes no distinction between State land and privately owned lands. Indeed “land” in Section 2 includes:-

“buildings and land covered by water and any interest in or over the land.”

9.3. Under the Bill, the **National Physical Planning Commission** is to appoint a Director of Planning who is to have the responsibility, inter alia, to:-

“investigate and make recommendations to the Commission with respect to all proposed changes of zoning, zoning or other regulations, proposed classification of use, subdivision, compulsory acquisitions of land, land development proposals, enforcement of planning control, conservation, environmental protection and planning matter generally.”

9.4. Since the Act binds the State, it is assumed that before the State conducts any activity or development of land, (which is a decision making by the holder of the land), it must as a matter of law, seek the approval of the Director of Planning.

Among the major functions of the National Physical Planning Commission (NPPC) is to prepare development plans for Trinidad and Tobago. A development plan so prepared, shall designate areas for agricultural, forestry, residential, industrial, recreational (including National Parks) and other classes of uses. These will include designating conservation, environmentally sensitive and special areas. (It is to be noted that some of these functions are already exercised by the Director of Forestry, The Environmental Management Authority and the proposed National Parks and Wildlife Management Authority.) **The need to harmonize land policy is therefore a most obvious one from this situation.**

9.5. Under the proposed **Planning and Development of Land Bill**, the Minister where in his discretion the objectives of any development plan require that any land be subject to compulsory acquisition for planning purposes, has the power to instruct the NPPC to prepare the plan designating the land as subject to compulsory acquisition. Administratively in this regard, the Minister has to publish a notice advising of the Compulsory Acquisition. The function of compulsory acquisition of lands for a public purpose, are conducted by the Commissioner of State lands.

9.6. Under Clause 22 of the Bill, permission is required for development of land, including mining. This function is also contained in the **State Lands Act 57:01**. Procedures have to be defined to specify how this permission is granted.

By Clause 23, the Minister may make an Order for the development of:-

"(b) any land specified in the Order."

9.7. The Commissioner also has power to issue compliance Orders for breach of planning control.

9.8. By Clause 48, the Minister may by order provide for the regulation of areas subjected to Spontaneous Settlements and areas reserved for the relocation of spontaneous settlements.

9.9. The term "Spontaneous Settlement" is not defined in the Bill but it may be the same as that provided for under the **State Lands (Regularization of Tenure) Act 25 of 1998** which provides for a system of settlements in designated areas. Clarification of this point is needed.

9.10. The proposed legislation in itself attempts to co-ordinate and harmonize land development policy which is a positive step in the GORTT's attempt to harmonize its legislative framework. The Bill may provide an opportunity within which a land management entity may be founded and in so doing, policies and decisions may be harmonized and co-ordinated.

10.0. ENVIRONMENTAL MANAGEMENT ACT, 1995

10.1. Under the **Environmental Management Act**, a statutory administrative body is created with the functions, inter alia, to develop and implement programmes for the effective management and wise use of the environment. **"Environment" under the Act includes, "all land area, the land surface,natural resources within the jurisdiction of Trinidad and Tobago" (Section 2)**

10.2. **The Environmental Management Authority also has power to declare under Section 41, a defined portion of the environment (which by logical implication includes State land) as an Environmentally Sensitive Area.** This is to be done by notice which will specify the specific limitations on use of or activities within such areas which are required to adequately protect the environment.

10.3. There is presently drafted by the GORTT, the proposed Environmentally Sensitive Areas Rules, 2000. This piece of subsidiary legislation sets out the criteria for the designation of an Environmentally Sensitive Area and the objectives which are to be achieved.

10.4. What is evident from the **Environmental Management Act and the Environmentally Sensitive Areas Rules is that the Environmental Management Authority has the power to declare and designate an Environmentally Sensitive Area and prescribe limitations on land use within these areas.**

10.5. Under the **Environmental Management Act**, the authority is to co-ordinate with any governmental entity (which obviously includes the Commissioner of State lands) in the performance of its functions and in carrying out the objects of the Act. **But the Act gives the power to the Authority to declare and designate these areas, and it does so almost unilaterally in that it does not expressly provide that the Authority must so declare these areas in conjunction with or in consultation with any other State entity.**

11.0. THE NATIONAL PARKS AND OTHER PROTECTED AREAS BILL

11.1. Under this proposed piece of legislation, a National Parks and Wildlife Authority is created as a Statutory body corporate. The Act binds the State and **the Authority has the power to advise the Minister on selection of National Parks and Protected Areas and to make and determine policies and programmes, management plans and strategies for the conservation, enhancement and sustainable management of these protected areas. These areas obviously include areas of State lands.**

11.2. The Authority by the power given to it to designate and manage protected areas is thereby exercising State land management functions. **The Act also proposes a series of offences and penalties and prohibits use of these areas except with the appropriate licence of the Authority. In exercising these functions, the Authority acts in *vacuo* in that there is no provision for the Authority to consult with other State bodies before it so acts or designates.**

The designation of these areas shall be published in the Gazette by order of the Minister with responsibility for the environment.

11.3. By Clause 24 of the Bill, no prescriptive right in any land within a protected area shall accrue to any person. This appears to be in conflict with the State Lands (Regularization of Tenure) Act 25/98 which provides " an entitlement" to a Certificate of Comfort to qualified persons on State lands. Though a Certificate of Comfort may not have the legal force of an acquisition of prescriptive rights, it however confers a *de jure* recognition that the person holding it enjoys security from ejection. That lack of coherence in policy between the Statutes, it is respectfully submitted, is difficult to reconcile.

11.4. The Authority has power to grant licences and permits to conduct "activity" within a protected area. "Activity" under Section 2, includes the erection of a structure, the carrying out of any work, the use of any building and the exploitation of natural resources. This definition by its wide encompassing ambit conflicts with the functions of other bodies including the Environmental Management Authority, the Town and Country Planning Division and the Commissioner of State Lands, all of which perform functions of a similar nature.

11.5. At the time of preparation of this Report however, there are steps being taken by the GORTT to harmonize the functions of the Environmental Management Authority with that of a system of protected areas and National Parks. A February 14th, 2000 document entitled "Report on proposals for the legislative Harmonization of the Environmentally Sensitive Areas Rules (made under the Environmental Management Act) with a system of Protected Areas (formerly proposed under the National Parks and Other Protected Areas Bill)" prepared for the Task Force on the National Parks and Wildlife Management Project of the Ministry of Agriculture, Land and Marine Resources of the GORTT, makes proposals for the harmonization of the Environmental Management Act with that of the National Parks and Other Protected Areas Bill. By the Report, it is envisaged that the National Parks and Other Protected Areas Bill be withdrawn from Parliament and that the system of Protected Areas formerly envisaged under the National Parks and Other Protected Areas Bill be brought within the Environmentally Sensitive Area Rules made under the Environmental Management Authority. The Report recommends this course of action since certain sectoral interests were opposed to the creation of an Authority to govern the Protected Areas System, which would have existed parallel to the Environmental Management Authority.

11.6. This, it is respectfully submitted, provides a fine example where policies and goals of State land management with respect to environmental matters, could be harmonized. It provides an opportunity to create uniform policy in a system of management of these areas. The effort is to be commended.

12.0. TOBAGO HOUSE OF ASSEMBLY ACT 40/96

12.1. The Tobago House of Assembly has responsibility for the formulation and implementation of policy in respect of, inter alia, State lands in the island of Tobago. The formulation and implementation of policy directly affects management functions. By the Act, all lands and other property of every kind located in Tobago vested in the State are vested in the name of the THA. All the rights, privileges and benefits and the liabilities and obligations thereto are transferred to the THA.

12.2. The THA has in its institutional and administrative structure, established the Department of Land Management Services, Department of Natural Resources and Division of Settlements, Tourism and Information.

12.3. The State Lands Act Chapter 57:01 of the laws of Trinidad and Tobago vests all lands in the name of the President of the unitary State of the Republic of Trinidad and Tobago. The New Land Policy set out in "A New Administration and Policy for land" *supra*, sets the policy for land in Trinidad and Tobago. It makes no distinction in policy for Trinidad lands and Tobago lands.

Yet the THA is vested with the authority in and over State lands in the island of Tobago. Is it to be bound by this document and this policy in the face of its management capacity over State lands? This issue has to be resolved in the larger context of the separation of powers between the THA and the Central Government.

12.4. The State Land (Regularization of Tenure) Act 25/98 protects squatters in State lands. Given the definition of State lands in the Act as including "any other lands transferred to the State from time to time..", then it would mean that the THA (as a State Agency), is obliged to carry out the provisions of this Act. But the THA is vested with management and ownership of State lands.

12.5. The potential for conflict and disharmony in policy is real, since squatting is not as endemic in Tobago as it is in Trinidad. Further, the Tobago culture seeks to discourage squatting. The issue here has caused certain institutional and political conflicts to arise.

13.0. OTHER AGENCIES PERFORMING STATE LAND MANAGEMENT FUNCTIONS

13.1. There are many other agencies and entities in Trinidad and Tobago under various other pieces of legislation which perform some aspect of State land management but which do not have this function as a core responsibility. Some of them have been saddled with the responsibility, eg. The Regional Health Authorities under the **Regional Health Authorities Act** and the Municipal Corporations under the legislative umbrella of the **Municipal Corporations Act 21 of 1990**. This Report will not attempt to provide detailed State land management descriptions in respect of each of these entities but will deal with them collectively.

13.2. Under the **Regional Health Authorities Act**, the possession, custody and control of State properties housing hospital and health facilities are transferred to the RHAs. Apart from this, they perform no other real State land management function. Decisions are made by a Board of Directors governing the RHA body. No information could be obtained as to whether these entities have been directed to follow any set policy as regards State land management. What is evident about their *modus operandi* is that they attempt to operate in a manner much like entities in the private sector.

13.3. The **Tourism and Industrial Development Company of Trinidad and Tobago (TIDCO)** manages and administers some 19 industrial estates on State lands. TIDCO also administers certain facilities along beach fronts in Trinidad and Tobago. TIDCO manages these industrial sites and among other functions, grants leases and sets rents for them. The Company is managed much like a private entity under the Companies Act and the lands are transferred to it by a **Vesting Order Act of 1995**.

13.4. The Municipal Corporations, perform in the main, land administration functions. Under the **Municipal Corporations Act** parks and savannahs, markets, slaughter houses and certain streets, all of which are State property within the municipalities are managed by the Municipal Corporation exercising jurisdiction over them. **They also collect and receive rents for lands within their jurisdiction. In this regard it is of significance that the policy for rental of State lands puts rental at about 2% of the open market value. Agricultural rents are about 31/2%, whilst residential is about 5%. The Municipal Corporations have the jurisdiction to fix rents themselves and the practice has**

developed whereby they fix rents at very low rates. An example of this is the rental rates for the Woodbrook area in the Municipality of the Port of Spain Corporation.

13.5. There therefore exists, it is submitted an operational conflict which must be resolved to achieve the goals of harmony and equity in land management functions and decisions. Perhaps one reason for this is that the Municipal Corporations themselves are controlled by politically elected Councils. This it is submitted, strengthens the need to adhere to set policies and goals.

13.6. The Councils of the Municipal Corporations also have the power to pull down illegal structures on State lands within their Municipal jurisdictions. In this regard, they perform an important aspect of State land management.

13.7. The Agricultural Small Holdings Tenure Bill 1999 is intended to reform the law with respect to tenure and occupation of agricultural holdings of private and State regulated bodies. The Act binds the State and is not meant to apply to lands held under the **State Lands Act**. It is meant to apply to lands owned or administered or managed by State regulated bodies which are Statutory authorities or bodies which are entities registered under the Companies Act and are wholly or partially funded by the State (eg. Caroni (1975) Limited).

13.8. Though not technically State lands, these bodies control significant portions of public lands. When it comes into being, these State enterprises would be performing leasing arrangements under its legislative ambit. It is hoped that the policies set out in the "*New Administration and Distribution Policy for Land*" *supra* are followed.

14.0. CONCLUSION

14.1. The State is the major landowner in Trinidad and Tobago. A 1994 paper entitled "*Discussion Paper on State Land Management Issues for the Standing Committee on Agriculture*" posits that the State owns over 52% of lands in the country.

14.2. The sheer magnitude of the lands and the geographical spatial diversity in locality requires a reciprocal system of efficient management to ensure maximum use and sustainable development. What is evident from the overview of the legislation conferring State land management power, is that **the compendium of bodies that exercises the functions of State land management need to harmonize their respective policy and operate within one uniform policy to achieve a stated goal for State land management. Each body seems to have its own goals, its own set of policy directions and its own mandate.** In this regard, it is difficult to achieve harmony because of the diffused nature of the various responsibilities held by so many over State land management.

14.3. The State has throughout the years also devoted inadequate resources, both human and financial to manage this most important primary resource. Throughout the years too, it has failed to take rigorous action to enforce its rights of ownership over lands and this **has apparently resulted in a reciprocal culture of a conferring a feeling of security from ejection and virtual immunity from prosecution by those who illegally occupy or encroach on State lands.**

14.4. The State land management mechanisms have also failed to rigorously enforce the collection of rents on State lands. The failure to do so serve only to legally strengthen the position of the illegal occupants and further fail to provide much needed revenue to finance the efforts which are needed to pursue efficient managerial obligations.

14.5. Compounding all of this, is the plethora of existing bodies which perform State land management functions and the resultant inability to make speedy, informed and accurate management decisions to assert the State's position over its land resources. **What is evident is that in the face of outdated, inadequate and unreliable land information systems, these bodies cannot properly perform their land management functions in an efficient and reliable manner.**

14.6. The several conflicts in policy and functions further serve to fetter the decision making process. **The power of management is so diffused throughout the bureaucratic public machinations and the wheels of management are often hindered by cogs manifesting themselves in the forms of lack of information, expertise or conflict in policies within these entities themselves and amongst them.**

14.7. From the analysis of the legislation governing statutory State land and estate management responsibility, **it is seen that while the statutory responsibility for State land management originally was vested in the Commissioner of State lands, State estate management functions have become manifestly diffused amongst several agencies which either have discrete statutory responsibility for land or responsibilities enshrined in their mandates for different aspects of management, some of which exercise the same functions over the same parcels of land.** This overlapping of responsibilities must be addressed if the GORTT is to achieve its land management objectives.

14.8. The need for uniformity and harmony in policy within and among these entities is of paramount importance to the public of the Republic of Trinidad and Tobago who must feel confident that the expressions of policy are crystallized and transformed into decisions which appear to be uniform, equitable and transparent. **To do so may require the creation of mechanisms to regulate and address the very disharmony in policy which are evident and which are institutionally patent amongst the bodies. IT IS RESPECTFULLY SUBMITTED THAT THE PROBLEM SEEMS TO BE MORE OF A LACK OF CONSENSUS IN POLICY, DISARRAY, AND INCONSISTENCIES IN THE EXPRESSIONS OF LAND MANAGEMENT PRACTICES CODIFIED IN THESE STATUTES, RATHER THAN A LEGISLATIVE CONFLICT.**

14.9. That this is so is also seen in the way in which the Trinidad and Tobago Courts have interpreted the law with respect to the issue of squatting on State lands. The *locus classicus* on the matter is the case of **Krakash Singh v The Attorney General of Trinidad and Tobago H.C.A. 2443 of 1982, (Devalsingh J.)** The issue in the case was the occupation of a parcel of State land upon which squatters had taken over and erected dwelling structures. The Applicant in the matter filed a constitutional motion seeking, *inter alia*, a declaration that the destruction of his wooden chattel house by servants and/or agents of the State constituted a contravention of his right to the use and enjoyment of property and the right not to be deprived thereof except by due process of law under the Constitution. Justice Deyalsingh was required to determine whether the destruction of this house on State lands constituted such a deprivation of rights.

State Counsel argued that the Applicant's rights was not a legal right to possession but merely a right which was personal to him and therefore not a right contemplated under Section 4 of the Constitution. The Learned Judge articulated a constitutional interpretation in the matter which remains the Common Law position up to today because there was no appeal in the matter. Deyalsingh J. opined in the *dicta* as follows:-

"The fundamental right is to the enjoyment of property. It is more extensive than the right 'to acquire, hold and dispose of property' (Constitution of India) or the right not to '...be deprived of property without due process of law' (Constitution of the U.S.A)The phrase 'enjoyment of property' isin its context of section 4 of our constitution, a broad and majestic constitutional

term. It is not limited to rights of property in the strict legal sense and it must not be so limited. It must be given the widest possible meaning consistent with a free people in a free State and must remain unfettered by exhaustive definitions which seek to circumscribe it."

It is respectfully submitted that this is the position which the local Courts have in the main adopted.

14.10. While the Report in the main, raises questions about the initial hypothesis, there are instances where harmony of policy exists. The proposed **Planning and Development of Land Bill** provides great potential for harmonizing State land management functions through its operations and machinery. Recent attempts also by the GORTT in the form of the merging of the National Parks and Protected Areas System with that of the Environmental Management Authority and the attempts to restructure the work of the Lands and Surveys Division constitute important and laudable steps in the right direction. Efforts like these must be commended. The need however to formulate a land management entity to address these very problems is of paramount importance.

15.0. RECOMMENDATIONS

This Consultant had by a document entitled *"Legislative Enactments Relating To Land Management And Administration In Trinidad and Tobago, 1994-1999"* prepared as part of the LUPAP Project made certain recommendations in December 1999, which are in the main reiterated in this Report.

- 1. That the GORTT undertake a legal review of the several bodies performing State land management functions with a view to identifying the conflict in functions and conflict in policies practised by these entities;**
- 2. That there be an identification of the disharmony in policy and lack of consensus in State land management functions exercised by the various statutory bodies and other entities with the objective of harmonizing policy;**
- 3. That mechanisms be placed and adopted to co-ordinate and integrate the efforts and functions of these entities to determine a unified policy and system for State land management. Since the powers of the Commissioner of State lands have over the years been diffused to these various other entities, it may be wise to consider the formal vesting of management powers over State lands into the hands of these entities with a proviso mandating that policy be followed by directive from the Commissioner of State lands. This will require an amendment to these Statutes, but is an effective way to counteract the weaknesses of the legislation and ensure harmony and uniformity in State land management policy. By delegating certain specified management functions and retaining a power of the Commissioner to coordinate the development of State land policy, the Commissioner can help avoid conflicting policies being embodied in legislation;**
- 4. That a State Land Management entity be established by Statute as a policy making body comprising the primary stakeholders in the public and private sectors, to include, *inter alia*, technocrats, and environmental representation with the mandate to formulate and supervise State land management functions and ensure the adherence to a set policy. This entity may itself be headed by the Commissioner of State lands and other members appointed by the President. The question as to the extent of ministerial power**

over the entity will have to be carefully addressed in any legislation governing the formation of this entity;

5. That the said Land Management entity shall have responsibility as an umbrella body to assist those statutory bodies vested with management of State lands. In doing so, the proposed Land Management entity may guide the policy and objectives sought to be achieved by a land management structure and assist the NPPC in the achievement of larger planning and development results and shall be mandated to contain squatting and illegal occupation of State lands as well as securing the State's interests in other lands.

This body may also have responsibility for commissioning and preparing surveys, and mapping and to oversee the compulsory acquisition of private lands by the State for public purposes.

6. The Land Management entity may also be vested with responsibility to set policy for land administration or management in conjunction with the various stakeholders and interest groups. It may establish the machinery for the granting of rights to perform economic activities on lands, and regulate the social aspects of land use.