LAND REFORM AND THE SEARCH FOR SECURITY OF TENURE:

THE BARBADOS EXPERIENCE

COUNTRY EXPERIENCES STUDY

PAPER PRESENTED TO THE WORKSHOP ON

LAND POLICY, ADMINISTRATION AND MANAGEMENT IN THE ENGLISH SPEAKING CARIBBEAN

March 19-21, 2003
Port-of-Spain, Trinidad

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This paper was prepared for the *Workshop on Land Policy, Administration and Management in the English - Speaking Caribbean*, which was supported in part by the Inter-American Development Bank (IDB), the US Agency for International Development (USAID), the Department for International Development (DFID) and the Ministry of Agriculture, Land and Marine Resources, Government of Trinidad and Tobago

Ministry of Agriculture, Land and Marine Resources
Government of the Republic of Trinidad and Tobago

Inter-American Development Bank

BARBADOS PROFILE

Barbados is the most easterly of the Caribbean Islands and is located in the Caribbean Sea. It is regarded the world over as one of the most stable parliamentary democracies and boasts the 3rd oldest Parliament in the world after Britain and Bermuda. In 2003 Barbados celebrates the 375th anniversary of the City of Bridgetown which is regarded as among the top three oldest capitals in the world. Research is still ongoing to determine if, in fact, it is not the oldest.

Barbados, an open economy, is not rich in natural resources and depends in the main on tourism and financial services for its economic survival. There are only small amounts of petroleum and natural gas. Over the years Barbados has developed an international reputation for the prudent management of its economy. After eight straight years of economic growth, Barbados recorded a slump in 2001 following the September 11 attacks on the United States which had worldwide repercussions. However, the economy recorded growth in 2002 and is projected to continue on this path during fiscal 2003.

The country was a colony of Great Britain from 1627 until 1966 when it became fully Independent on November 30. The Head of State is the Governor General whose functions are largely ceremonial. Real power in fact vests in a Prime Minister and his Cabinet. There is a bicameral Parliament which consists of the elected House of Assembly and the nominated Senate. Persons 18 years and older are entitled to vote for elected representatives every five years. There is no system of Local Government. There are two main political parties. The current ruling party is the Barbados Labour Party headed by Prime Minister The Rt. Hon. Owen Arthur, the country's fifth Prime Minister.

Barbados, which is a member of the Commonwealth, models its written Constitution on the Westminster system inherited from England. Its legal system is based on the English common law.

A densely populated country, Barbados is mainly flat with no real hills or mountains. Its population is currently estimated at 270,000 of which 93% is Black. The majority of the population is descended from African slaves. Caucasian, Asian and Syrian comprise the other ethnic groups.

The official language is English and the literacy rate is over 95%. The currency is the Barbados Dollar which is tied to the United States Dollar at a rate of US $1 = BDS $2

Barbados has one of the most impressive modern road, telecommunications and transport networks in the entire Caribbean. Its drinking water is one of the world's purest.

KEY LAND & SOCIAL INDICATORS

Total Area: ***430 sq. km / 43 085 hectares***

Area by major land use:

Land Use	**AREA (Acres)**	**AREA (Hectares)**
Agricultural	59 352	24 019
Commercial	11, 469	4 641
Residential	32, 213	13 036
Other (e.g. churches, cemeteries, schools, roads & rights-of-way, parks)	3 430	1 388
TOTAL	***106, 464***	***43 085***

Barbados is outside the earthquake belt. Although it is within the Hurricane belt, no hurricane has hit Barbados since 1955. Tropical storms are more likely to affect the island though the incidence is relatively rare.

Population Growth Rate: ***0.31% p.a.***

Per Capita GDP: ***(BDS $15,700.00; US $7,850.00)***

GDP by major Sectors (US$):

Sector of Origin	**2001 (BDS$) (Million)**	**2001 (US$) (Million)**
Sugar	21.4	10.7
Non-Sugar Agriculture & Fishing	35.7	17.85
Mining & Quarrying	7.5	3.75
Manufacturing	81.1	40.55
Electricity, Gas & Water	39.1	19.55
Construction	68.7	34.35
Wholesale & Retail Trade	189.7	94.85
Tourism	143.4	71.7
Transport, Storage & Communications	82.0	41
Business & General Services	165.8	82.9
Government	121.3	60.65
TOTAL	**955.7**	**477.85**

Number of Households: ***83, 026 (2000)***
Dwelling units: ***91,406***

LAND TENURE INFORMATION:

Total land area: ***43 085 hectares***
Percentage of Private lands: ***99.1%***
Percentage of Public lands: ***0.9%***
Number of Private Parcels ***98, 098***
Number of Public Parcels: ***907***
Number of Rural Parcels: ***Data unavailable***
Number of Urban Parcels: ***Data unavailable***

LAND TRANSACTION INFORMATION:

Number of legal transactions in past 5 years:	***47, 455***
Number of Conveyances recorded in last 5 years:*	***14, 546***
Number of Leases recorded in last 5 years:*	***25***
*Number of Condo Declarations recorded in last 5 years *:*	***21***
Regularization ratio:*	***Data unavailable at this time***

****Note:*** *The specific number of legal titles and leases is not easily available owing to the need to manually perform searches, which would be heavily time-consuming.*

INTRODUCTION

A cursory examination of Barbados' land tenure history since the turn of the 20th Century will reveal one unmistakeable thing: a rapid and I daresay a permanent transformation of the entire country's landscape.

At the turn of the 20th century, Barbados was a plantation-based sugar export-oriented colony of the British Empire. Land ownership meant everything to the extent that every available nook and cranny of the island was cultivated in sugar. Besides skin colour the principal determinant of one's position in society was the ownership of land. There were hardly any available Crown lands.

The fact of the unavailability of lands meant that the recently emancipated slaves were tied to the plantations. With no source of subsistence or income other than plantation work, recently emancipated, black Barbadians did not face any reasonable prospect of becoming landowners. In **White Rebel,** Lewis observes:

> *"…at the turn of the century, the mass of black Barbadians – then comprising nearly 70 percent of the island population – were predominately plantation based and poor. Most continued to live in portable "chattel houses" situated on small rented garden plots comprising less than half an acre. The portability of their houses reflected their precarious status. The plots were grouped into tenantries on the rural estates where it was highly probable that their occupants' forefathers had worked since the end of slavery. They tended to work the plot of land after a day's labour on the estate."*

At 430 square kilometres and approximately 107,000 acres, Barbados is one of the smallest islands in the Caribbean and the world. It never had the vast land resources of sister Caribbean countries Trinidad and Guyana on which the former slaves could squat after emancipation and apprenticeship. Laws such as the *Contract Act* 1840 guaranteed that the ex-slaves either worked on the plantations or faced starvation or imprisonment. Very few were able to purchase their way out from the plantation and earn some measure of independence.

This situation improved gradually and laws starting with the *Security of Tenure of Small Holdings Act* were passed in the mid-1950s granting plantation tenants an increased measure of security on rented plots that their forefathers had tilled for generations. But all the evidence still suggests that by Independence in 1966 Barbados was still largely an agrarian society in which sugar was king. An overwhelming number of Barbadians still did not own their land although they might own some type of makeshift chattel house.

A remarkable transformation has taken place during the last 50 years and particularly during the last twenty. Sugar has lost its crown, supplanted by a bustling tourist industry; Barbadians by and large have erected large, very comfortable and numerous dwelling houses where sugar and agricultural crops once stood; the number of golf courses has expanded; the social services infrastructure and road network have improved beyond recognition and Barbados has become a regional hub for trade and international financial services.

With this noticeable development, pressure has definitely been placed on planning authorities to balance the need for continued development against the need to ensure sustainability for generations to come. The challenge has been accepted and measures implemented to for example, tackle urban sprawl, protect the natural and built environments while at the same time allowing for continued maximisation of the benefits to be derived from Barbados' major natural resource.

EXECUTIVE SUMMARY

Barbados' major thrust in relation to land since Independence has been in the provision of social services. Utilising its powers under the *Land Acquisition Act* 1949, it acquired and paid for several plantations and other large tracts of land which were vested in the Housing Authority and later the National Housing Corporation for development and sale in lots to low and middle-income earners at lending rates substantially below the market. The passage of revolutionary legislation in 1980 and the creation of two important social service agencies in the mid-1990s accelerated the process of connecting Barbadians to affordable housing and vastly improved services and created an irreparable break with the plantation era.

But the reforms have still not dealt in a thorough way with the question of the shortage of affordable land. In an interesting twist of irony, the virtual near-extinction of the traditional tenantry has seen the rapid rise of the new Barbados tenant, holding of a landlord who himself was landless a generation before. Large numbers of these domestic tenancies have arisen in circumstances where rents are uncontrolled. The purpose of this paper is to discuss in a general way the movement toward security of tenure and leasehold enfranchisement. The suggestion will be made that since there is a perceived scarcity of lands available for development, new ways must be found of guaranteeing reasonable security of tenure for the new Barbados tenant while still allowing the new landlord to realise the benefits of his investment.

Connected with the problem of perceived land shortage are the questions of citizens' rights of access to beaches and whether lands should be restricted for purchase by Barbadians alone. This paper also briefly examines these issues as well as considers Barbados' attempts to reform its conveyancing processes in a modern environment.

1. OVERVIEW OF LAND TENURE PATTERNS IN BARBADOS

Undoubtedly one of the major social challenges Barbados has confronted since Independence in 1966 has been the need to adequately service the housing needs of its citizens. Although the population has only increased marginally over the last 25 years, the longing of every Barbadian to own a "piece of the rock" has intensified.

Government's policies, legislative and administrative, since the latter half of the 20th Century have been aggressive in tackling the related issues of lack of housing, lack of title to land and poverty. Four major pieces of legislation may be discussed in this regard.

In 1955 Barbados was still very much a plantation economy, characterised by plantation workers who worked on the plantations and lived on small rented adjoining plots, usually rab land on which they built their wooden chattel houses. These houses could be dismantled and removed at a moment's notice, indicative of the lack of security which tenants faced. It was in this environment that Parliament passed the *Security of Tenure of Small Holdings Act* although this Act did not apply solely to plantations. It was *entitled "An Act relating to terms of tenure of small holdings and for providing reasonable security of tenure for tenants thereof and for purposes incidental thereto or connected therewith."* The Act provided that the contract of tenancy of an agricultural holding or house-spot "shall not terminate" except in certain specific circumstances. But since it also allowed such tenancy to end by six months' clear notice on either side all it really did was to provide some mental relief to a tenant for six-month intervals.

The *Tenantries Control Act* of 1965 went substantially farther than this. The Act reinforced the concept of a "tenantry" a word that has a peculiar meaning in the Barbadian context. "Tenantry" was there defined as any area of land (other than Crown land) "which is now or shall be hereafter sub-divided into more than 5 lots for the purpose of being let to tenants as sites for chattel buildings used or intended to be used as dwellings." The Act prevented any owner or lessee of a tenantry from further subdividing it

without the permission of the Chief Town Planner and essentially prohibited such a landlord from ejecting his tenant unless the tenant committed some breach, for example, non-payment of rent, committing a nuisance or parting with possession. By an amendment in 1974, the rent was frozen at a maximum of 20% above that obtainable at May 30, 1974, and could not be increased further except on application to the court. So, in effect, this legislation guaranteed security of tenure at a reasonable rent to tenants.

In November 1980, the *Tenantries Freehold Purchase Act* completed the process. This legislation, rightly hailed as revolutionary, transformed the tenant from a position of tenant to one as potential landowner. Section 3 of the Act bears quoting in full:

> *3. (1) The purpose of this Act is to establish by law a right for tenants of lots in tenantries who satisfy the requirements of this Act to purchase the freehold at a purchase price governed by consideration of public policy and the requirements of the Constitution.*
>
> *(2) This Act shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of its purposes."*

Section 4 (1) is equally profound and showed that the Act also unilaterally altered specific agreements whether between landlord and tenant or licensor and licensee:

> *"Notwithstanding any other law or any term or condition of any lease, contract or licence relating to a tenancy, it is a term or condition of every tenancy within a plantation tenantry or other tenantry that the tenant, as of right and at his option may, if he is a qualified tenant, purchase the freehold of the lot of which he is a tenant…"*

Even more radically, the Act set the purchase price of a lot in plantation tenantries at $1.00 per square metre (ten cents per square foot) or by agreement between the parties "whichever is the smaller amount". Although non-plantation tenants could purchase at the open market price, the value of the land could not take into account improvements made by the tenant, only the landlord.

What is more, the Act was passed with the required majority to alter Section 16 of the Constitution which protects persons from deprivation of property except on payment of reasonable compensation.

Generally a person qualified to purchase if he was residing on the lot for 5 consecutive years prior to exercising the right to purchase or for five out of the preceding seven years.

When the *Tenantries Freehold Purchase Act* was first passed in 1980 it defined a tenantry simply as an area subdivided into lots and so a very large number of tenants qualified to purchase their freehold. Conversely, this measure significantly affected landowners by compelling them to sell and depriving them of their asset. In 1989 the Act re-defined tenantry to mean an area comprising at least six lots to remedy what was seen by some as an injustice to landlords. Tenants who qualified under the original law automatically lost the right to purchase unless they had previously signalled their intention to purchase or had made substantial improvements to their homes, for example, by installing water borne toilet facilities. However, those disenfranchised persons were given the right to be relocated on Crown lands or offered a Government subvention.

In some cases, persons residing in tenantries of less than 5 lots still were liable to have their tenancies determined on six months' notice except where they had resided on the lots for more than 20 years.

In 2001, the Act was again amended to allow non-plantation tenants the right to purchase at no more than $2.50 per square foot instead of the full market price for the first 5,000 square feet. If the actual open market price of the land exceeds $2.50 per square foot, Government pays the difference to the vendor up to 5,000 square feet. The tenant pays the open market price for the remaining lands above 5000 square feet.

To further facilitate land and home ownership, the 1980 Act also set up a loan scheme to enable tenants to access financing to purchase the freehold of their lots. Government also fully paid for surveying and legal services in the case of plantation tenantries and assisted landlords in the other tenantries on condition that costs were recovered on completion of the sale to the new owners.

In similar fashion to the *Tenantries Freehold Purchase Act*, the *Agricultural Holdings (Option to Purchase Act)* 1982 gave a right to tenants cultivating such holdings as at 9th April 1982, the right to purchase the freehold. Doubtless, these series of Acts formed the high-water mark for widespread land ownership and security of tenure for Barbadians.

Government figures suggest that just over 6 000 households living in tenantries of the more than 300-plus plantations have been "enfranchised" since passage of the legislation. Another estimated 4 000 non-plantation tenants have benefited. This would amount to approximately 40 000 Barbadians out of a population of approximately 270 000 assuming an average of four persons per household. The figures also suggest that another 2 000 households are qualified tenants but have not yet signalled their intention to purchase.

One footnote. Although a qualified tenant has been given the right under the *Tenantries Freehold Purchase Act* to purchase the lot there has been some debate whether the right vests in the estate of the tenant at his death. This point, unfortunately, has not been clearly addressed by the legislation and has never reached the courts. Some believe that the right is personal to the tenant and ceases at his death unless he had exercised the right to purchase. I would suggest that scheme of the legislation suggests otherwise though I do not explore the point here.

Despite recent amendments, which are not discussed here, the four pieces of legislation mentioned above, in particular the *Tenantries Freehold Purchase Act* of 1980, had a radical and irreversible effect on landholding in Barbados. From a situation where 30 elite families owned 80% of the island around the turn of the 20th century and the ex-slaves were landless and dispossessed, the end of the century saw 75% of dwellings being owner-

occupied. Official Census figures show that at the end of 2000, 56% of people acknowledged being owners of their land. It is possible that another 22% were indeed owners of their land but they did not respond to the census takers when interviewed. Be that as it may, it is clear that by 2000 at least 56% of lands were owned privately.

To be sure, the result has been that both the chattel house and the early uncertainty of land tenure has been seeing a rapid demise in Barbados as many former tenants have been able to upgrade from impermanent chattel houses and outdoor or pit latrines to in many cases elaborate concrete structures with indoor plumbing facilities.

Social Vehicles

This overriding emphasis on securing landownership and enhancing social conditions in post-Independence Barbados was also evident in the creation of three similar social vehicles designed expressly to fast track the delivery of social services to citizens. The common theme pursued was empowering citizens by creating mechanisms that allowed them to obtain title to land and subsequently or consequently improve their quality of life.

The first vehicle was the National Housing Corporation which replaced the Housing Authority. The National Housing Corporation, established by the *Housing Act*, 1973, has been heavily used by Government in its housing and land redevelopment thrust. The functions of the corporation include the acquisition, disposal and managing of land and it is also permitted to carry out development, building, maintenance, repair and other operations. The NHC can also provide water, gas, electricity, sewage and other services and execute plans for slum clearance and redevelopment.

Under its remit the corporation has added substantially to the housing stock. More important, however, since a conveyance from the National Housing Corporation (NHC) vested a perfect title in a purchaser, it facilitated security of tenure for thousands of Barbadians by transferring title to lands mainly in areas where tenantries did not exist.

Although the NHC had power to acquire land, the majority of its land was vested in it by the Crown, which utilised its considerable powers under the *Land Acquisition Act 1949*.

Although the *Land Acquisition Act* had been in place since the around the mid- 20th Century it has been utilised regularly over the last 20 years to compulsorily acquire portions of large estates and other areas for housing development, road improvement, sanitation services and other public purposes. The Housing Authority and NHC have been responsible for developing for low-income rental a large number of terrace units, characterised by units subdivided internally. In keeping with its policy of facilitating title transfer, these units are now in the process of being conveyed.

Consequent on Government's compulsory acquisition of lands, it is estimated that today the NHC has accumulated more than 1,000 acres of vacant land in its "land bank" to be made available for low-income housing development. Much of the development is expected to take place in joint venture projects with the private sector.

Of more recent vintage were the two other social vehicles - the Rural Development Commission established in 1995 by the *Rural Development Commission Act* and the Urban Development Commission, established in 1997. According to Government, there was the need to accelerate the delivery of social services to the urban and rural poor without the bureaucracy associated with central Government. Under the *Urban Commission Act*, for example, the Commission is given jurisdiction over a defined urban corridor and vested with powers to designate areas for slum clearance programmes with a view to tackling in a holistic and orderly way the redevelopment and renewal of entire communities within defined urban areas. A major part of its thrust has been to accelerate the Transfer of Title programme in urban tenantries which has seen thousands of persons gaining the opportunity to "own their own house spot", a major element in the Barbadian dream.

THE NEW BARBADOS TENANT AND SECURITY OF TENURE

The demand for land in Barbados has also resulted in a large and increasing number of private dwellings dedicated as rented accommodation to locals, but also to a significant number of overseas clients. This phenomenon has helped to somewhat alleviate the housing problems but has in itself raised the further issues of whether tighter minimum standards of rented accommodation are required and whether or not the rents exigible should be controlled by the State. This issue is addressed briefly here.

Rent Control

Rent control is not new to Barbados. It has existed in relation to the tenantries since before Independence. Application is normally made to the court for variation and the court has discretion to vary the rates after considering all the circumstances. The question now, however, is whether such legislation should now apply nationally to all rented domestic accommodation in a context where there is still a significant shortage of housing stock.

This issue has never really been fully ventilated in Barbados, perhaps because there are large numbers of such landlords. (Census 2000 figures, for instance, show that of 83 026 occupied dwelling units, 18, 286 or just over 21%, were leased, whether formally or informally). The debate has rather centred more on the minimum standards of housing required. But the conclusion is inescapable that this issue will eventually have to be addressed.

New Rent Restriction legislation was enacted in Trinidad and Tobago in 1981. Research showed that shortly after the legislation was enacted the construction industry declined sharply. Landowners shifted away from investing in housing development towards other types of development.

The number of rental units as dwelling houses also declined sharply. Landlords, faced with a statutory cap on rents, allowed their premises to deteriorate. The relationship between the passage of the new legislation and the drop in such economic activity was obvious. The level of activity rose once Government granted tax incentives to encourage the building of more rental units and the repair of existing ones.

Rent control, by itself, however, would not be enough to guarantee security of tenure for the new Barbados tenant. The analogy with the *Tenantries Control Act* 1965 is instructive. As discussed above, that legislation prohibited landlords in certain tenantries from ejecting tenants except for specified infractions. It thus created a type of statutory tenancy. With the widespread number of new tenancies emerging in Barbados today, the issue here, too, would be the extent of the public interest in legislating islandwide statutory tenancies. This issue will also raise the further question of the constitutionality of such legislation, particularly the right not to be deprived of property without compensation as enshrined in Section 16 of the Barbados Constitution.

Connected to the question of islandwide rent control and statutory tenancies is the question of voluntary long leases of domestic accommodation. Long leases have been in vogue for quite some time in places such as England but have traditionally been unfashionable in a country such as Barbados where nearly all lands were cultivated in sugar well into the 20th Century.

In the Barbados context of chronic land shortage, a policy might well have to be pursued of encouraging the long lease both of buildings or rooms within buildings.

The idea of common ownership of multi-unit properties subdivided internally, is addressed somewhat in Barbados' *Condominium Act* 1971. Under this Act, each unit is deemed to constitute an estate in real property and may be conveyed, leased, mortgaged or otherwise dealt with in the same manner and form as land.

Although the *Condominium Act* has been in force for more than 30 years, it is not widely used. Very few Declarations, a prerequisite for the creation of such units, have been found recorded at the Land Registry. However, within recent years, in an attempt to maximise the investment potential and marketability of land, a growing number of condominiums, duplexes and quadruplxes (quads) are being created. This approach has been sanctioned by planning authorities in appropriate cases and will, no doubt, be the way forward in terms of Barbadian land tenure.

2. PROPERTY LAW REFORM IN BARBADOS – LAND REGISTRATION SYSTEMS

Barbados has made great strides in terms of reforming and modernising its system of property law and conveyancing inherited from England. Barbados' *Property Act* 1979 was modelled on the United Kingdom's *Law of Property Act 1925* with only few exceptions. So, among other things which will not be discussed here, it abolished all the old feudal systems of tenure and created greater certainty in dealing with legal transactions, for example, by reducing the number of legal estates to two. It also facilitated greater ease of conveyancing by reducing the number of years needed to search a title from 40 years under the 1891 *Property and Conveyancing Act* to 20 and implied a number of covenants and conditions into legal transactions in order to promote simplicity. Where, before 1979, for example, conveyances and mortgages could easily reach 15 to 20 pages, these documents could now be condensed into about three or four.

The *Property Act* by itself, though, did not sufficiently expedite the process of land dealings in Barbados, particularly in a jurisdiction which, although small, cannot be said to have observed the highest standards of record keeping or property management. For example, complete land ownership details, by and large, cannot yet be provided at a speed that is satisfactory enough to Government in a competitive international environment. This also includes details relating both to the location and extent of Crown lands. This situation has been considerably improved within the last ten years by computerisation of the Land Tax Department and is currently being addressed by the country's new emphasis on registration of title to all lands in Barbados which began in 1988.

In that year, the *Land Registration Act* and the *Land (Adjudication of Rights and Interests) Act* came into force and with them a new system of dealing with land in Barbados. The object of these two symbiotic pieces of legislation was to cheapen, simplify and expedite dealings with rights and interests in land in Barbados in a new global economy.

It was well accepted at the time that the old process of unregistered conveyancing was cumbersome, expensive and time-consuming in facilitating transfers of rights and interests in land. The old law imposed a high duty of care and skill on a purchaser who was expected to make full and detailed investigations of his vendor's title to satisfy himself that he was getting a satisfactory title. These inquiries had to be repeated time and again on every transfer, often at short intervals. Needless to say, this process wasted effort, time and money. So, for example, a purchaser may have to make minute examinations into family settlements, joint ownership and other complex matters with the result that dealings with unregistered interests in land had become an obstacle to the ready marketability of land.

Registered Conveyancing

It was in this context that the decision was made to embark on the system of registered conveyancing based on the Australian Torrens model but still incorporating many English features. The complexity of rights and interests in land makes it impossible to transfer registered interests in land as easily as stocks or shares but in essence the principle is the same. The principal aim of the registered system is to substitute a single title, guaranteed by the State, for the repetitive, unproductive process involved in unregistered conveyancing. Generally there will no longer be the need to conduct long searches that are wasteful of much effort. Instead the official Land Register maintained by the Registrar of Titles provides an authoritative statement of the title as it stands at any given time.

In sum, the process begins with identification of a registration district by the Minister and the demarcation of all land, water and road boundaries within that district by the Chief Surveyor. This is followed by the adjudication or examination and declaration of titles in the registration districts by a Commissioner of Titles or adjudication officer as he is known under some statutes dealing with land registration. It is the Commissioner's duty to "settle" the state of the title before it is passed on to the Registrar of Titles for first registration and compilation of the Land Register.

The Commissioner's declarations are published in the *Official Gazette* and 60 days after such publication the titles are deemed registered and thenceforth transactions must take place under the new registered system. So that whenever a transaction will take place in respect of such land all you generally need to do is apply to the Registrar of Titles for an Official Search. An aggrieved party who suffers loss as a result of errors in the Register are compensated by the State hence the need for especial care in adjudication and registration.

Transactions involving registered land should normally take place in a fraction of the time when compared with the traditional process. They also relate to savings in costs. For example, legal fees payable in Barbados on a transfer of registered land are one-third cheaper than before. In mortgages, the fees are two-thirds less.

To date, approximately 10,000 out of an unofficially estimated 120,000 titles have been registered. There have also been noticeable differences in the time it takes to complete transactions in the new system when compared with the older version.

Many lessons have been learnt over the 15 years of the project. Chief among them has been the need to recognise that land registration involves utilisation of many resources, both human and particularly financial in a project that will not be expected to bear fruit in the short term. A programme that is to be successfully completed on target requires financial commitment plus the minimum number of competent land surveyors, draftsmen, registration officers, Commissioners of Title and legal assistants to conduct title searches. Presently an official review involving the operation of key aspects of the system is being conducted.

Guarantee of Legal Title

One particularly noteworthy aspect of the land registration programme involves the power of the Commissioner to declare absolute title to persons who have acquired a title by limitation. The important point is that where previously such persons would have had to pay expensively to acquire

a legal title through the old foreclosure proceedings, the Commissioner grants such a title free of cost. It is estimated that there are thousands of such persons in the island, particularly in the poorer rural districts who stand to directly benefit from this exercise.

Presently the Land Registry is well advanced in computerising several of its operations with a view to accelerating the speed of delivery of its services to the local and international customers. Within a short time it is expected that the public can benefit by on-line direct access to carry out searches of certain documents and make particular requests. In time, it is also expected that Barbados can follow the lead of the United Kingdom and other countries by facilitating the process of electronic conveyancing.

Properly executed, a land registration programme of this type is invaluable for a country and is indispensable in providing the necessary information to develop a national cadastral or land information system that can be of substantial benefit in an internationally competitive era.

In this connection, it is also expected that Barbados might within the next year embark on a digital mapping project of the entire island of Barbados to better co-ordinate and manage its land resources and develop a more organised modern land information system. Such a project has already been implemented or started in some Caribbean countries.

3. COMPULSORY ACQUISITION AND PUBLIC ACCESS TO BEACH LANDS

Two topical issues in Barbados within recent years have been Government's policies in relation to the provision of public access to beach lands and the question of the sale of land to non-nationals.

Public Beach Access

I am not acting as trumpet-blower for my country, but I can state that Barbados boasts some of the best beaches anywhere in the world. Within the last few years, Government policy in relation to these beaches has come more into focus owing principally to three factors, all of them interrelated:

i) the scarcity and affordability of vacant coastal lands;
ii) public access to these beaches;
iii) accretion of beach lands.

Coastal lands are now hardly available for sale and where available, they are usually at very high prices. Over the last two decades there has been a tremendous demand for and development of these valuable beachfront lands. Such development has been carefully monitored by the Town and Country Planning Development Office and the Coastal Zone Management Unit which discourage construction in the active beach zone and enforce specified setback limits from the high-water mark in the case of buildings and enclosures.

One consequence of such development, particularly unauthorised development, has been the conflict of views among some landowners adjoining the beaches and members of the public. The crux of this debate is straightforward. The public claim the right to unhindered access to and use of the beaches while landowners claim the right to delimit the boundaries of "their" property. In some cases, it has been argued that private development has encroached upon ancient easements of way created by prescription, for example, by the illegal erection of signs and structures, blocking of views and accesses.

In response to several cases, the Chief Town Planner has issued enforcement and stop notices prohibiting the erection of unauthorised structures on beach lands, the placing of boulders along access routes or otherwise impairing the public view of the sea. In addition, it would appear that applications for the development of coastal lands are always considered with regard to the need for the public to gain access to the island's beaches.

These criteria are captured succinctly in Barbados' National Physical Development Plan as amended in 1998. There, it is stated that policies are expressly designed to, inter alia:

? enhance existing views to the sea and create new opportunities during the development or redevelopment process;

? prevent the obstruction of existing pathways to the sea;

? create greater "visual space" in coastal management areas.

The Ombudsman of Barbados has shared these concerns. In a Special Report prepared in 1999, the Ombudsman opined that *"if the need for windows to the sea was pressing in 1980, it is immensely more necessary in 2000, to provide Barbadians with a continual view of their most precious natural asset. It seems to me that the retention and creation of windows to the sea is a clear must."*

Common law doctrine of Accretion

Undoubtedly, there is a public perception that any rights of enjoyment to beaches would be pointless unless access was assured. Closely intertwined with this perception is the fact that over the last 25 years several beaches have expanded considerably due to the common law doctrine of accretion.

Put simply, this doctrine holds that where lands are bounded by water, for example, the sea, any accretions to those lands above the high-water mark fall to be added to the landowner provided that those accretions were

"gradual and imperceptible". Conversely, such lands are also subject to the infirmity of being reduced in area owing to erosion. In *Southern Centre of Theosophy Inc. v. State of South Australia*, Lord Wilberforce put it this way in delivering the advice of the Judicial Committee of the Privy Council:

> *"To do so is also fair. If part of an owner's land is taken from him by erosion, or diluvion (i.e. advance of water) it would be most inconvenient to regard the boundary as extending into the water; the landowner is treated as losing a portion of his land. So, if an addition is made to the land from what was previously water, it is only fair that the landowner's title should extend to it."*

While this legal principle is settled beyond doubt and have been "in the English common law from the time of Bracton who derived it from Justinian" *(Southern Theosophy)*, it is the application of the "gradual and imperceptible" test that has led to debate the world over. The courts have never evolved a clear, satisfactory test, preferring to consider the facts of each case before deciding whether accreted lands belong to the Crown or to the adjoining landowner. "The real question," said Lord Wilberforce, "is how long it takes for a consolidation (of materials) to take place bringing about a stable advance of land." So that while in one case accretion of a year's duration might be held to be slow and imperceptible, in a different one, 20 years' accretion might be found to have been too sudden.

Although this issue has never been fully litigated in Barbadian courts as far as I have been able to discover, it is nevertheless of significant importance for Barbados owing to past and projected coastal works undertaken or planned by authorities. It is not unlikely that these works might result in the expansion in prime beach land. For instance, investigations show that between 1964 and 1982 a beach in Bridgetown, the capital, increased by 20 metres in width. Similarly, in 1954, one beach was measured at 6 000 square metres; by 1982, this had moved to 26 000 square metres. In his Special Report the Ombudsman observed that one parcel had increased by one acre, "a staggering increase in property value." He also highlighted "eight instances of significant accretion and the uncertainty which surrounds them."

The Ombudsman further reported that "adjacent landowners have not been slow to assume ownership over all accreted land" and added support for the need for legislation to address issues such as these. In the Special Report, he stated:

> *"I am of the view that there is an urgent need for local legislation which should be well publicised to determine who owns the beach, wet and dry – and what rights and responsibilities accompany that ownership."*

Policy of Public Beaches

Barbados' declared policy in this matter is that all citizens and visitors alike have or must have access to all beaches including where possible, windows to the sea. Accesses would be provided, where necessary, by compulsory acquisition.

During the plantation era where land ownership was not in question and sugar receipts were the mainstay of the economy, disputes relating to beachfront lands would not have arisen or, certainly, not to any strident degree. The common law of the old Bracton era, therefore, was thus sufficient despite its great uncertainties as to the ownership of alluvia. Today, however, the rise in a well educated, land owning population, the dominance of a tourism oriented economy, together with the unfettered saleability of scarce land, especially coastal lands, have made it imperative for a small jurisdiction like Barbados to tackle head-on the issue of the ownership of beach lands.

Published reports suggest that Barbados is well on the way to advancing an Accretion Bill which would give effect to the declared policy of preserving unhindered public access to beach lands. Government has not to date publicly announced the details of any proposed legislative changes and it would be previous or inappropriate for a civil servant to be making utterances best left for policymakers.

I would suggest, however, that to be meaningful, any legislation addressing the public ownership of beach lands, would consider squarely the issues of the abolition of the common law principles relating to private ownership of accreted lands and the express vesting of such lands in the Crown.

One issue that immediately arises in this regard is whether or not any proposed legislation should be declared retroactive to include all beach lands, including those already secured to landowners, or to capture only those lands accreting in the future. This is also a question of policymaking but it bears remarking that well settled principles of statutory construction require that laws cannot have a retrospective effect unless this is clearly intended and once they do not collide with the Constitution.

Other related matters that should be considered would be the definition of "beach" itself and how much of a landowner's beach land should be acquired to satisfy the public interest.

At common law, legal authorities are scarce on the definition of beach.

In *Tito v. Waddell (No. 2)*, Megarry V.C., in construing one of the myriad issues in that case, noted that "beach" was not a term of art. However, he ventured his analysis thus:

> *"From low water mark upwards to high water mark and beyond would all fairly be said to be part of the beach: but how far beyond? The terminus a quo may be clear, but what of the terminus ad quem?*
>
> *In my judgment, all that lies to the landward of high water mark and is in apparent continuity with the beach at high water mark will normally form part of the beach. Discontinuity may be shown in a variety of ways: there may be sand dunes, or a cliff, or greensward, or shrubbery, or trees, or a promenade or roadway…But until one reaches some such indication, I think the beach continues."*

Barbados has, however, for the moment, placed beyond doubt the question of what constitutes a beach. By Section 2 of the *Coastal Zone Management Act*, 1998, it defines "beach" as:

> *"the entire area associated with the shoreline, composed of unconsolidated materials, typically sand and beachrock that extends from the highwater mark to the area where there is a marked change in material or natural physiographic form or to a distance of 500 metres landward, from the mean highwater mark whichever is the lesser distance."*

Since the Act declared that this definition must thenceforth be used in all relevant wills, deeds, contracts, orders and instruments, it seems entirely reasonable to expect it to be employed in any definition of beach for the purposes of any new legislation dealing with accretion. In this case, it would appear, therefore, that it is not contemplated that all beach lands would be the subject of automatic vesting in the Crown - an undertaking that clearly would have heavy financial considerations. Rather the issue might be limited to access to beaches, access to accreted lands and the ownership of those accreted lands.

Compensation

If beach lands to be vested in the Crown under any proposed legislation include private lands, then any matter affecting the expropriation of private property would be the issue of compensation. It is a fundamental common law presumption that the duty to pay reasonable compensation is implied in every statute unless clearly expressed. Provision for compensation on the acquisition of property rights is a feature of several post-Independence statutes in Barbados, exemplifying a principle that is enshrined in the Barbados Constitution.

In this connection, any proposed legislation should, for clarity, expressly address the question whether compensation should be paid to landowners for lands accreting in the future but which are currently bodies of water owing to diluvion and erosion. Presently, under ordinary common law principles, such bodies of water vest in the Crown. On accretion, they vest in the landowner as discussed above and so compensation would become payable to a landowner if those lands were to be compulsorily acquired from him.

The pertinent question, therefore, is whether or not legislation should be framed in a manner that expressly allows this vesting in the Crown to continue whether or not the waters recede in the future so that it becomes unnecessary for the Crown to pay compensation on formation of alluvium?

Although provision for the payment of compensation may be expected in matters involving compulsory acquisition of lands, one issue that always would arise is the quantum payable. No doubt, acquisition of coastal lands would normally be a particularly costly undertaking if former landowners are to be compensated at market value. As discussed earlier, in deciding to remunerate former plantation landowners at $1.00 per square metre under the *Tenantries Freehold Purchase Act* 1980, Parliament expressly altered the Constitution to achieve this social purpose since the measure of compensation was below market value.

So how should they be compensated in a case such as this? Should coastal landowners be remunerated at market value or should they be compelled to sacrifice in the national interest? In the case of the acquisition of private lands for road improvement purposes, compensation is always paid at market value. Is there any meaningful difference of purpose between a public road and a public beach?

In my opinion, in resolving these issues, the question of potential cost to a small economy would be highly relevant. No official estimates have been provided for such a cost, though in a special Select Committee report on *Ownership of Land Interests in Barbados* published in 1998, it was found that 656 lots touch the West Coast of Barbados while 421 touch the South Coast. These are Barbados' most popular, developed coasts. Land values at that time were said to be often valued at $US $15.00 per square foot. No land acreages were provided.

Non-national ownership of land

Barbados has always been an island where land affordable to the majority of the population, particularly beachfront lands, has been in short supply. However, unlike some Caribbean countries, for example, St. Vincent and the Grenadines, Barbados does not possess Alien Landholdings legislation restricting the free sale of land to non-nationals.

There has been some debate in recent years, however, about whether or not restrictions should be placed on the quantity of land available for purchase by non-nationals. In 1998 one of the Houses of Parliament convened a special Select Committee which, inter alia, examined the quantum of non-national ownership of land in Barbados and the ownership and use of coastal land.

The Committee noted that some evidence revealed a "tentative concern by Barbadians that ownership of land in Barbados would be alienated to Non-Barbadians" and went on to outline a number of suggestions made by persons testifying before it. These included suggestions that:

a) external companies should not be allowed to own land in Barbados;
b) some land should be reserved for Barbadians by giving plots to Barbadians on their attaining adult age (18);
c) some land should be allocated for food security in priority to other purposes;
d) land should be made available to non-nationals on leasehold tenure only.

However, in reaching its conclusions, the Committee found that the evidence did not support the perception that there were tracts of land in Barbados owned by non-nationals; "rather…non-resident nationals own a large number of lots of land in Barbados."

It also heard evidence that land sold to non-nationals "almost always is resold to non-nationals", including project developers and others, the spending habits of whom were likely to create employment and generate foreign exchange.

Considering the evidence as a whole, it finally concluded that "foreign ownership of land does no harm to the economy and that Barbadians are not being dispossessed. The Committee therefore does not see the need to restrict land ownership by non-nationals at the present time."

No such restrictions have since been enacted and it is difficult to see any such restrictions now in an era of globalisation . On the contrary, Barbados' policy has been to attract direct foreign investment by making generous tax concessions available not only in relation to hotels in general, but also villas, restaurants and other entities that can show they are largely tourism related.

CONCLUSION

Although Barbados' population is not expected to significantly rise within the next 20 years, a steady influx of immigrants might be projected consequent on the soon-to-be-operational Caribbean Single Market and Economy (CSME). This market is expected to permit the free trade of goods and services within the region, which will also allow hassle-free travel of skilled regional labour. The availability of land for accommodation and business will therefore remain a burning issue. Wrapped up in that issue is the question of how best is a landowner to maximise the value of his land in a way that at the same time not only protects a tenant from exploitation, but, more important, prevents him from being disconnected from the land: in other words, in a way that gives a tenant a stake in the land.

Barbados' land history over the last 100 years has seen a phased improvement in the lot of the average Barbadian. From a society where only a handful of families owned nearly all of the country, Barbados evolved to a state where landlords were compelled to give up tenantry lands in the interest of the public; land rents were frozen where necessary and large estates acquired as needed. Today, the lands are distributed among a majority of the population. But the wheel has now come full circle. A new landlord has arisen to replace the old. But just as the law was sure, if not swift, to adjust the rights of the old in order to do justice to the new, so too, it is not farfetched to expect that it will also move to enhance the security of future generations of landless Barbadians.

It is reasonably certain that the law will also move to tackle the issue of public access to beaches, several of which adjoin hotels that market all-inclusive tourism packages.

In his Special Report referred to earlier, the Ombudsman quoted with agreement a 1980 report which stated:

> *"It is vital for the success of future tourist development that members of the Barbadian public should not feel that they are being prevented from enjoying the beauty of their coastline with its fine beaches and excellent sea bathing, by the construction of rows of high-rise hotels and apartment blocks dominating considerable stretches of the coast…"*

It bears remarking, however, that even before and particularly since 1980, Barbados' economic health has been boosted by commercial tourism-oriented physical development in relation to the said coastal lands. But should a line be drawn? If so, where? I would suggest that in its policies, Barbados, a small open economy heavily dependent on foreign exchange, might in the future find itself regularly forced to make tough choices between public sentiment reflecting Barbadians' strong attachment to their land and the country's ability to survive and compete internationally.