

RECOMMENDATIONS

Pursuant to its Terms of Reference, the COI carefully considered reported instances of historic land losses in Bermuda believed by Claimants to be *”through theft of property, dispossession of property, adverse possession claims and/or such other unlawful means.”* Whilst the historic land losses in Tucker’s Town and St. David’s Island are the most widely known and discussed in Bermuda, the COI heard cases involving historic land losses in other parts of Bermuda also. The COI subsequently agreed a number of recommendations that emerge from the concerns raised by persons who claimed that their ancestors’ lands were unfairly taken from them and who, where unfairness was determined, sought just outcomes where possible.

The recommendations that follow are based on evidence heard by and/or presented to the COI from 8th May, 2020 to 19th May, 2021.

I – Historic Land Losses in Tucker’s Town and St. David’s Island

Having considered whether the actions that caused the expropriations in Tucker’s Town in the 1920s and in St. David’s Island in the 1940s were lawful or unlawful, regular or irregular, the COI concluded that they were lawful as they were based upon provisions of various statutory instruments that received Parliamentary approval. At the same time, the COI concluded that the procedures adopted in dealing with the expropriations were in many instances irregular because the bodies established to oversee the expropriations process exercised their power in an unfair and inequitable manner.

Consequently, the COI recommends that:

- Government establishes a system to determine whether the level of compensation paid to the dispossessed landowners in Tucker’s Town and St. David’s was fair and equitable and, if such is the finding, establish a regime whereby the descendants of the owners of the expropriated property are appropriately compensated.
- Further research be undertaken to determine the total acreage of expropriated land purchased by Mid-Ocean Club Limited, Rosewood Tucker’s Point and any other purchasers in the Tucker’s Town area as a result of the on-sale of all dispossessed lands by Bermuda Development Company Limited.
- Discovery exercises be undertaken in relation to the land upon which Mid-Ocean Club Limited and Rosewood Tucker’s Point are located as a consequence of Furness Withy/Bermuda Development Company Limited’s expropriation/compulsory acquisition of land at the expense of the original landowners and residents in Tucker’s Town.
- Government explores the reason for the lack of enforcement of statutory restrictions or Company policy for on-selling expropriated land in contravention of any statutory

requirements imposed on BDCL in respect of all land expropriated and sold to both Bermudians and alien purchasers. Acquisitions of land in that area by aliens would have been made subject to the restrictions placed on such acquisitions by those statutory requirements and the relevant Alien Act in place at the time of purchase.

- Government commits resources to locate missing documents in cases of expropriation in Tucker's Town and St. David's Island.
- Government establishes a systematic adjudication process where previous landownership cannot be determined to ensure that the Land Title Register is a reliable resource for obtaining accurate land title details.
- Government finds a practical means whereby the concerns of the community, the people and descendants of those who were uprooted and lost their inheritance in Tucker's Town and St. David's Island might be addressed. The COI suggests that Clearwater Beach, located between both Tucker's Town and St. David's Island, could be designated and renamed to give recognition to the people for the losses they suffered.
- Government ensures that the history of the Tucker's Town and St. David's Island expropriations are memorialized suitably by mandating its inclusion in Bermuda history taught in our schools, its placement in libraries and other repositories and by erection of suitable physical monuments ideally situated in both Tucker's Town and St David's Island.
- Government gives a public apology and acknowledgement of the unjust loss of lands to the descendants of Tucker's Town and St. David's Island families who lost their lands unfairly.
- Government establishes a Heritage Trust specifically for descendants of those Tucker's Town and St. David's Island residents who were unfairly compensated and/or dispossessed of their lands. Funding of such Trust could be done, perhaps in partnership with the Bermuda Economic Corporation, by the creation of another Economic Empowerment Zone using dispossessed land already under the trusteeship of the Bermuda Land Development Company Limited. A detailed rationale for the establishment of the Heritage Trust and how it might function are set out on page 162 of this Report.
- A designated Government body be engaged in a consultative process and authorized to have oversight of the implementation of recommendations set out in the Ombudsman's Reports *A Grave Error* and *Today's Choice, Tomorrow's Cost* and the Ground Penetrating Survey conducted by Dr. John Triggs of the Department of Archaeology and Classical Studies, Wilfred Laurier University, Canada, as may be mutually agreed between all stakeholders.
- With respect to Case 031 -- Estate of Solomon Thaddeus James Fox, St. David's Island,

- Government considers inviting the United Kingdom to review its position with a view to providing financial assistance to delve deeper into and ultimately resolve the matter of St. David's Islanders who were treated unjustly following the expropriation of their lands upon the creation of the US military base at St. David's Island in the 1940s.
- With respect to Case 034 -- Estate of John Samuel Talbot, Tucker's Town,
 - The matter ought properly to be referred to the Office of the Director of Public Prosecution to take any and all legal actions required in addressing this matter. The COI recognizes that a criminal act may have been perpetrated but for the following reasons: (i) the passage of time, (ii) the identification of those actually culpable and (iii) the fairness of a process one hundred (100) years later, implying vicarious liability to any officer of the BDCL or the BDCL as a corporate body for actions of the company in 1921. However, the COI recognizes also that in all the circumstances it may not be in the public interest to pursue the matter and the DPP may decline to initiate a prosecution or compensation for loss suffered in historic circumstances as revealed in this case.

II – Marsden Methodist Cemetery

The COI recommends that:

- Government ensures the immediate commencement of remediation work at Marsden Methodist Cemetery and that the following measures as agreed between the concerned stakeholders are carried out:
 - Improvement and modification of the golf cart and walking access to the site;
 - Establishment of a protocol for family and guests to access the site and work around the adjacent golf operation;
 - Redirecting a part of the driving range to minimize any errant golf balls coming into contact with the graveyard area;
 - Installation of a canopy netting system over the graveyard area to prevent golf balls from entering site;
 - Cleaning and tidying the landscaping and establishment of a regular maintenance programme for the area;
 - Installation of a seating area within the graveyard walls;

- Establishment of permanent access rights to the site;
 - Erection of a “do not enter” sign to prevent golfers’ access to the area;
 - Implementation of a mechanism to review the improvement, modification and maintenance of the Marsden Methodist Cemetery on a periodic basis;
 - Inclusion of the site in the African Diaspora Trail information; and
 - The historical cemetery is bestowed the honour that the Commonwealth War Graves Commission envisaged.
- Government establishes a designated body to monitor a consultative process with a view to considering the timely implementation of the proposed and agreed next steps to address the concerns of the Marsden Church. The process should be subject to review by stakeholders including, but not limited to, Marsden Church, Tucker’s Town Historical Society and Gencom Ltd.

III – Historic Land Losses in Other Parts of Bermuda

It is to be noted that some of the recommendations made in individual cases have been collapsed into a single recommendation that appears elsewhere in this section of the Final Report.

- With respect to Case 001 – Matter of James Parris,
 - the ‘private property’ sign reportedly at the property per evidence at the Hearing should be removed by the public authority responsible for signage and replaced with signs clearly indicating that the dock is public property.
- With respect to Case 014 – Estate of Agatha Richardson Burgess, Hamilton Parish,
 - Government ensures that the stated intention of the Attorney-General in 1956 to grant a right-of-way to the land owned by Mrs. Burgess be carried out; and
 - Government changes the name of Francis Patton Primary School to Agatha Richardson Burgess Primary School.
- With respect to Case 015 – Estate of John Augustus Alexander Virgil, Sandys,
 - Government gives due regard to a mechanism being established to consider an award of compensation for loss through theft of property, dispossession of property or such other unlawful or irregular means by which land was lost in

Bermuda. The recommendation is being made acknowledging that this falls outside of the remit of the COI.

- the Office of the Commissioner of Police is being invited to give due consideration to locating the 'Investigation original and copy files' touching and concerning the complaint of Mrs. Barbara Lucille Brown relating to the Estate of John Augustus Virgil and having this investigation file reviewed with a view to considering next administrative steps in light of the fresh and compelling evidence from the Document Examiner. Further consideration should be given by the Commissioner of Police in the interests of justice and with a view to rewriting the unsavoury history of the matter. But more so, the role of the Office of the Commissioner of Police in 1975, that is, must be revisited to correct that Office's glaring omission, forty-five years ago, by failing to obtain the requisite expertise from a Document Examiner at that time rather than closing the file. The COI acknowledges that the likelihood of reconstructing this file is only remotely possible.
- Government considers making an award for compensation through the appropriate mechanism of the state machinery to the beneficiaries of the Estate of John Augustus Alexander Virgil, in light of the fact that an agent of the state, the Central Planning Authority, played an integral role, tantamount to a corruption enabling mechanism facilitating the theft of land. The Government ought to consider this matter seriously, one which the COI recognizes is outside its remit.
- With respect to Case 017 – Estate of Herman Montgomery Bascome Smith, Pembroke West,
 - the Department of Planning be invited to investigate the matter of subdivision and encroachment of Lot 33.3, 2 Plaice's Point, Pembroke West with a view to restoring the property to the beneficiaries of the Estate of Herman Montgomery Bascome Smith.
- With respect to Case 037 -- Estate of Fred Hendrickson, Sr., Smith's Parish,
 - the Registry General, following consultation with the Attorney-General's Department and the Department of Immigration, further examines the legitimacy of the various Power-of-Attorney documents that it has within its possession with respect to the sale and purchase of properties within the Estate of Fred Hendrickson, Sr.

- With respect to Case 039 -- Estate of Emelius Daniel Darrell, Southampton,
 - Government instructs that a Civil and Planning assessment be carried out by the relevant Government Departments to assess and correct, where necessary, the survey, planning and land registration issues raised by the Claimants and, contingent upon any discovery of unjust loss of land and or revenue by the Darrell family, consider that suitable, equitable restitution be made to surviving members of the Darrell family.
 - Government considers changing the name of Riviera Estate Road to Wellington Drive in keeping with the land owned by George Wellington Darrell and known as Wellington Lands in 1964.
 - Government considers changing the name of Sunnyside Park Road to Emelius Drive East and Emelius Drive West.

IV – Administration

The COI recommends that:

- Government considers establishing a permanent mechanism to review claims concerning the historic loss of properties. The mechanism should be fully resourced with human and financial resources to address all claims and concerns post this COI, ultimately with a view of having a legal framework in place to facilitate remedies and/or an award of compensation. Furthermore, more research is required, especially of the outcome of relevant Court proceedings initiated to address concerns and disputes. To that end, the COI recommends that the Government provide, at a minimum, assistance to the Claimants sufficient for them to conduct further research. The importance of this recommendation is highlighted by the fact that in many instances, Claimants were restricted from completing their research due to COVID-19 protocols rendering them unable to fully access documents upon which they sought to rely.
- Government ensures the availability of legal aid to qualified persons engaged in property disputes, matters involving expropriation in particular.
- Government gives due regard to the establishment of a mechanism to consider any award of compensation for loss through theft of property, dispossession of property or such other unlawful or irregular means by which land was lost in Bermuda and to consider devising a formula to calculate the compensation as may be determined to the Claimants, considering prevailing rates.

- Government ensures that the Land Title and Registration Department and the Registry General are adequately resourced to carry out due diligence checks of land title registration documents.
- The electronic and other safeguards put in place by the Land Title and Registration Department to detect and prevent acts of fraud must keep pace of emerging trends. The continuous engagement of the Bermuda Bar Association at a consultative level must be a priority, as the Registry General does not have the capacity to detect or prevent fraudulent conveyancing practices
- The role of the Registry General, the Land Title and Registration Department and all stakeholders is amplified through a continuing consultative process to provide through the Government an avenue for landowners who retain original deeds to come forward and seek redress, even in cases where they have been time-barred. These cases include but are not limited to landowners who have been dispossessed in circumstances other than by adverse possession such as land theft. f emerging trends. The continuous engagement of the Bermuda Bar Association at a consultative level must be a priority.
- Government prioritizes a review the storage and preservation of Government records in keeping with international best practice.
- Government ensures that all pre-1971 Vestry land registration processes and systems are easily accessible to anyone seeking registration records which would establish ownership of property by their ancestors.
- Government conducts an inventory of all public properties (buildings, land, docks, etc.) and identify any cases where public property has been appropriated by private owners. Any incidences of similar encroachment of public property should be addressed and property subsequently returned to public ownership.
- Further, research will also need to be conducted into the Vestry system in place in Bermuda pre-1971 and any other subsequent systems used for the registration of land transfers. This research is necessary to understand fully the impact of an incorrectly recorded transfer or fraudulent transfers on future landownership.
- Government establishes a Truth and Reconciliation Commission with the remit of exploring segregation and race in Bermuda to avoid unfair practices being implemented to the disadvantage of any group.

V – Public Legislation

The COI recommends that:

- An amendment to existing legislation be made to include a “first right of refusal” option for dispossessed owners if the original purpose for which the land (or any part thereof) was dispossessed fails, for whatever reason.
- Government considers restricting the exercise of governmental expropriation powers and oversight of expropriations to statutory authorities or bodies in lieu of their delegation to a private entity or body.
- Government considers the passage of legislative changes and/or the introduction of Regulations that would ensure that the expropriations process is transparent, fair and equitable in all respects for those being impacted by compulsory purchases.
- In order to promote social and economic growth, Government reviews and revises the laws and Regulations that govern the compulsory acquisition of land in Bermuda, mindful of the fact that legislation should protect land rights, facilitate an equitable compensation regime, reduce tenure security and conflicts of interest and guarantee the protection of the more vulnerable members of the community.
- Government amends or modernizes all Bermuda laws to restrict the number of years a corporate entity is able to hold Bermuda lands.

VI – Private Legislation/Other Statutory Mechanisms

The COI recommends that:

- A statutory mechanism be introduced specifically to:
 - identify the location of all land expropriated that will fall under the ambit of a proposed new Act or Declaration as may be determined for the purposes of establishing a remediation process to address such historic losses of land;
 - facilitate the issuance of a formal apology from the Bermuda Government and others, holding a series of public hearings on the destruction of the communities of both Tucker’s Town and St David’s Island and the establishment of a development fund to go towards historical preservation of those lands and social development in benefit of former residents and their descendants; and
 - create a Heritage Trust (Land and/or Accumulation) for the purpose of holding land or any other assets in order to make reparations or monetary distributions

to the descendants of dispossessed landowners or any other eligible beneficiaries of the Trust, as may be determined. One of the objectives of the Trust might be to design a museum and build replicas of the community landmarks that were demolished during the expropriation process, the funds for the purposes of the Trust to be paid out of moneys appropriated for those purposes by the Legislature or in public/private initiatives for the generation of income for the Trust in order to carry out its purposes. Alternatively, funding of such Trust could be done, perhaps in partnership with the Bermuda Economic Development Corporation, by the creation of another Economic Empowerment Zone using dispossessed land already under the trusteeship of the Bermuda Land Development Company Limited.

- An independent Land Tribunal be established to deal with all outstanding legacy issues involving historic losses of land in Bermuda and to make recommendations based on the findings of the COI and any others that may emerge as a result of the findings of the newly established Tribunal.