

**Sophia Frazer-Binns (Government Senator)**

**Contribution to the State of the Nation Debate**

**Friday, February 28, 2014**

Mr. President, I rise to make my contribution to the State of the Nation Debate. I am indeed indebted to the Most Honourable PM for the confidence reposed in me and I continue to strive to be a shining example for all young persons. I shall also extend my appreciation to my colleague senators especially on this side for their abiding support and mentoring. It is not often that one experiences the kind of mentioning as I have been so privileged to experience these past months. Mr. President, your able leadership in this House has redounded well to making this Senate the best in independent Jamaica and I know history will be kind to this Senate with you as our President.

To my friends and family, especially my mother Elsa May Binns, who continues to see the light at the end of the tunnel. To the team which assisted in research and information gathering. Finally Mr. President, I shall like to specially thank my friend, colleague and former Senator Fred Hamaty, whose constant support, guidance and words of wisdom have assisted in my growth and development and for which I am thankful. Indeed to God be the glory great things he has done.

Mr. President I make my contribution under the theme "continuing the growth" at a time when Jamaica is ripe for success. At a time when through the bold and fearless leadership of our Prime Minister the Most Honourable Portia Simpson-Miller, Jamaica has steadied her ship, at a time unlike any other save the period immediately before and after independence, when all Jamaicans are on board as we march towards the attainment of our vision 2030 goals.

Indeed even the naysayers among us will agree that this Government has been able to restore Jamaica's credibility, boost international and local confidence, and has achieved a feat that eluded us for four years, that is balancing the books while balancing our people's lives.

I am not saying Mr. President that we have landed safely ashore and are ready to dock, by no means, but what I am saying is that we have successfully navigated the choppy waters and are setting our eyes on smooth sailing ahead.

We know this Mr. President for it was only a few days ago that Fitch international rating Agency upgraded Jamaica's rating to B- from CCC [triple C]. This came on the heels of an article by Robert Loony published in the Foreign Policy magazine entitled **Is Jamaica Poised for a Turn-Around? Jamaican bobsledders have been getting all the attention, but the country's economy has been doing pretty well, too.**

*It stated "And the bobsled story may not be Jamaica's only good news. The country's approach to its current International Monetary Fund (IMF) stabilization/debt-reduction program is a welcome ray of hope, suggesting the long-troubled nation may at last be on track for a turn-around.*

*At the time of signing, Jamaica's Finance Minister Peter Phillips noted in his budget speech that "our present predicament will test the maturity and resolve of our democracy," signaling a new attitude towards the Fund's programs. And indeed, with the IMF's encouragement, the Jamaican government has become more pro-active in assuming ownership of its economic recovery.*

*Toward this end, after years of hard work, Jamaica's Prime Minister Portia Simpson Miller established the Partnership for Jamaica on July 31, 2013. The Agreement lays out a program for economic stabilization, growth with equity, and sustainable development through social partnership. Its priority areas include: fiscal consolidation (with social protection and inclusion); rule of law adherence (and timely justice outcomes); improved ease of doing business and employment creation; and energy diversification and conservation.*

*While there are still many uncertainties and a great deal of work to be done, Jamaica may finally have found a reason to hope for the future -- something that has been sorely absent for many years"*

Many Jamaicans have been called upon to make sacrifices. Indeed the sacrifices have been many, but the evidence shows it will lead to Jamaica's success. The positive growth in the economy, reduction in the import bill and increase in export have all taken place within the development plan and growth agenda so ably crafted and designed by this bold and visionary Administration.

Mr. President, it is within this context of the growth agenda that I shall make my contribution. My presentation will only focus on two areas namely the Creative Industries and Land titling and regularization. These sectors have the potential to transform the economy with a positive multiplier effect not before experienced in this country.

## **THE CREATIVE INDUSTRIES**

The creative industries comprise the arts, fashion, culture and music.

It has been established that the creative industries are among the fastest growing industries worldwide. Globally, the sector is estimated to account for more than 7% of the world's gross domestic product, and is forecast to grow at a rate of 10% annually. Jamaica is no exception. In 2012-2013 the local sector generated **\$267 million in local expenditure with a further** \$1.2 billion in capital expenditure, taking place in the economy through linkages with other sectors;<sup>1</sup> employing over 5000 persons.

Jamaica is known for its music, food, and rich culture, a place where persons from near and far travel to experience brand Jamaica. But yet the sector seems to be falling short of its true potential. It is characterized by among other things payola, lack of clear structures, lack of unity and even sufficient laws to facilitate and harness and grow the industry. There must be clear policies to encourage and protect this industry.

It is within this framework that I wish to make some recommendations to ensure we harness the full potential of this industry for the benefit of all participants while projecting Jamaica.

**Piracy-** One of the continuing problems within the creative industries especially the music industry is piracy. Increasingly we find persons showing scant regard for the work of the creators.

Mr. President it is not unusual to be in Half Way Tree on a given day and a man comes up to you with pirated CDs or DVDs for sale. Totally unrestrained and without any reservation. Such is the monster of piracy in the country. When this

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<sup>1</sup> Jamaica Gleaner November 28, 2013

happens it affects the entire sector: the singer and all the persons who worked behind the scenes, the songwriter, recording artist, audio engineers, computer technicians, talent scouts, publishers, directors, producers and countless others. *'The effect is not only illegal it is devastating* <sup>2</sup>. The Recording Industry Association of America states that a study on piracy by the Institute of Policy Innovation reveals that the annual harm of music piracy is US\$12.5 billion in loss to the US economy, plus 70,000 lost jobs and \$2b in lost wages.

In 2005, the Organization of Economic Co-operation and Development (OECD) estimated that the international trade in counterfeit and pirated products was approximately **\$200 billion**.

In Jamaica approximately \$2.7 million worth of illegally copied CDs and DVDs were destroyed in 2013, as part of efforts by the Jamaica Intellectual Property Office (JIPO) and the Organised Crime Investigation Division (OCID) to combat piracy in Jamaica.<sup>3</sup> Piracy is rampant in our country. It denies the creator of his earnings and reduces the value of the work. The fight against Piracy must be intensified if we are to take advantage of the recently passed Security Interests in Personal Property Act, [to allow IP to be used as collateral]. We must endeavour to maintain the value of the created work

While we applaud the efforts of OCID in seeking to bring the perpetrators to justice, more must be done to assist our creators to earn from their work. It is no wonder and [I'm not saying it is the sole reason,] but we are all too familiar with the stories of many artistes who spend their senior years in poverty or merely eking out an existence after many years of invaluable contribution to the creative industries.

I am therefore recommending for consideration a blank levy on all CDs and DVDs or media, similar to that which obtains in USA, Switzerland, Australia and Canada. This levy would not go to the consolidated Fund but used for the purpose of enhancing the creative industries. In Canada the monies go into a special fund managed by the Copyright Board of Canada which also has the task of collecting and distributing the funds.

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<sup>2</sup> RIAA [http://www.riaa.com/physicalpiracy.php?content\\_selector=piracy\\_details\\_online](http://www.riaa.com/physicalpiracy.php?content_selector=piracy_details_online)

<sup>3</sup> <http://jis.gov.jm/jamaica-clamping-piracy/>

If one uses the conservative figure of 450,000 (the total number of CDs seized by police in 2010) and attaches a levy of \$50 on each medium, the government can collect an approximate sum of \$22.5 million on blank media.

Additionally, monies could be obtained from funding bodies such as CHASE to supplement this Fund.

This Fund would operate in such a way that all monies received would go to a proposed special fund for development, called the 'Creative Industries Enhancement Fund'. It would provide funding for projects and programmes which impact the growth and development of the industry. It could be used to fund development workshops and seminars, to train persons and rights holders to better themselves to take advantage of the global creative industry. It could be used to provide low interest loans for individuals or groups involved in the sector, as well set up craft and artist villages and studios at the local level

Further, from the Fund, a special welfare or contributory pension scheme could be developed so players in the creative sector would feel comfortable that in their older years there is a security blanket on which they can rely, thereby resulting in less reliance on the state.

Additionally, from the fund, a percentage of collections would go to agencies such as (JACAP or JAMMS) to be shared among members on a pre determined basis as a means of compensating the rights' holders for loss of earnings, (royalties) due to piracy. In France 75% of the funds received go towards artiste royalties. Because the Fund would be distributed to registered rights holders, it would serve as an incentive for creators to register their work, thereby collecting royalties from the exploitation of their works globally. Finally, as the funds would be distributed through collecting societies, it would serve to increase the membership of said societies.

For the avoidance of doubt, it is not being suggested that the Fund should be created immediately, as clearly proper study and cost benefit analyses and stakeholder consultation must be undertaken before its implementation. Neither is it being suggested this will eliminate the fight against piracy, as no well thinking country could ever think of giving up this fight. Rather it would be a means of assisting those of our creators who have been so affected by piracy as most if not all have been.

**Foreign Content Quota-** another challenge to the creative industries is that of globalization. You see Mr. President one of the joys of technology and the opening of markets is that it allows one to be able to access goods and services from anywhere in the world, this includes the creative industries. However, with this joy comes great sorrow and deprivation if this process is not managed.

Such is the case of the creative industries where music, craft and various art forms the world over easily entered our market place. There is nothing wrong with this, as indeed diversification and globalization are important. However, within the music industry there appears to be a disproportionate influx of overseas music which has serious implications for our local talents.

In preparing for this presentation, I had the opportunity to meet with key players in the industry and to hear from them some of the challenges to the sector and Mr. President I can say that the issue of managing the quantity of foreign music on the air waves was big on their agenda.

Why is this important you may ask?, because it hits our artists where it hurts, in their pockets. The fact is, local music is not always the first to be played. There is an exception however, and IRIE FM which gives you "*reggae in the morning, reggae in evening, reggae at night*" must be commended. ( pay tribute to the 27 year old manager of IRIE who died today) We also commend those media personnel who endeavour to play and promote local music. But the fact is there are some of our young artistes who struggle to have their music played and if the music isn't played there is no royalty and if no royalty there is no money.

**To this extent I am recommending a discussion on the probability of content quota for foreign music.** Essentially what this would do is to make it mandatory for a set amount of local content to be promoted by all media houses. Jamaica will not be the first country to impose content quota, for indeed this is done in Canada and Australia. This will also allow for greater exposure of local talent and increased royalties for the rights' holders.

However, while promoting content quota Mr. President, let me hastily add that foreign content quota alone is not sufficient and will not solve the problem. Indeed the solutions lie within all participants, including the artistes. It in fact behoves the artistes to write lyrics which are suitable for airplay, because even with content quota, if the lyrics are not air friendly they will not be played.

Additionally, there must be a change in the behaviour and mindset of persons in the industry especially as it relates to the issue of payola. The effect of Payola is that you can't pay you can't play. Mr. President, I commend all efforts both from the Government and the private citizenry to fight payola and especially efforts by the Broadcasting Commission. I give full support to the BCJ which has proposed the criminalization of payola. Because it serves absolutely no good. *"Payola is a problem and ...contributes to the decrease in the variety of music. New talent is potentially stifled because upcoming artistes cannot get airplay, because they cannot afford to pay"* <sup>4</sup>

Speaking at a JACAP function recently Karlene Salmon from the BCJ used a real life example to show the dangers of pay-for-play. Here a young artiste from St. Thomas saved enough money to record his song then took it to a Kingston radio station. "He was told that the song sounds good, but he would need to fork out \$50,000 for it to be in rotation for a week!" <sup>5</sup>

Efforts must be accelerated to deal with this scourge in our industry

**Compulsory copyright Licence or permit-**Mr. President, whether it's a street dance, a barbeque, a church concert, an enclosed club house, there is a common thread which runs through these events and that is the requirement for a permit from the Police and a licence from the Parish Council, commonly known as Places of Amusement Licence. When an event is being held, the promoter must obtain his permit and licence or face a 'lock down' of his event. But an often overlooked basic common fact is that these events cannot be successful let alone take place without an essential ingredient... music

But if music is so important why is it that the copyright licences from the Jamaica Music Society (**JAMMS**) and Jamaica Association of Composers Authors and Publishers Limited (**JACAP**) are not obtained by all promoters, as is required for the Place of Amusement and the Police?

At year ending December 2012, the KSAC issued 6487 Places of Amusement licences and collected approximately \$27million compared to JACAP which issued 199 licences and collected approximately \$5.5 million, this was the same

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<sup>4</sup> Karlene Salmon –BCJ in Jamaica Observer, September 2, 2013

<sup>5</sup> ibid

in St. James where only 5 licences were issued by JACAP for the period compared with 624 issued by the St. James Parish Council. The situation is worse in St. Elizabeth where 2625 places of amusement licences were issued earning approximately \$9 million compared to the \$50,000 earned by JACAP for issuing ONE copyright licence in that parish<sup>6</sup> The situation is more severe with JAMMS who for the entire year issued a total of 205 copyright licences.

If music is the essential thread in all these events and I do believe it is, then how does one explain the anomalies in the number of licences and permits issued? The fact is that whereas one knows that the police will shut down his event for failure to show a Parish Council licence or police permit, he also knows its highly unlikely that the same will happen for failure to show JACAP or JAMMS licences. The result of which is financial loss to the rights' holders.

To this extent Mr. President I recommend for consideration the compulsory copyright licensing from JACAP/JAMMS for all events. I go further and suggest that not only should it be a requirement to obtain a JACAP or JAMMS licence for the holding of an event, but that the legislation be amended to make it a precondition for the issuing of all other licences required for holding an event including the Places of Amusement and Police permit.

This will inure to the benefit of the rights holders and ripple positively into the economy.

Mr President, the evidence shows that compulsory licensing, works. During the months **May – December 2013, JAMMS issued over 4500 copyright licences for events.** This is in excess of the previous year. In fact this is more than the years 2009-2012 combined. The reason- greater support from the Police and stronger directives from the Constabulary Force requiring event promoters to obtain the JAMMS Permit before being granted the usual approval from the Police. Unfortunately this was subsequently challenged. Therefore what is required is legislative amendment to make this a prerequisite to obtaining all other licences.

**Public Education : As part of** protecting the intellectual property rights of all creators, it will be necessary to undertake continuous public education

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<sup>6</sup> Parish council figures were obtained from data compiled by the PIOJ and the JACAP figures from JACAP

programmes, for creators, legal practitioners including judges, Justices of the Peace and the average Jamaican.

The importance of public education cannot be overemphasized, as we do not have a culture of accepting peoples' creative work as a property from which they can earn. The majority of people generally see work as getting up every morning getting dressed and going to work in an office and at the end of the week or month they receive a salary.

Creators of work do not always put on a jacket and tie and go to an office. But this in no way negates their value to the country.

Our population must be educated. It is the only way to change our mindset, therefore sufficient funds must be available to ensure this ongoing national campaign. Note however, that this funding must not only come from the Government, it has to be a joint effort between Government, the private sector and right holders. Perhaps Mr. President some of the monies from the Fund mentioned above could be used to fund this campaign.

Mr. President, perhaps it is not coincidental that this presentation comes as we draw the curtains on another Reggae month, when we remember the struggles and celebrate the success of the creativity of our people. As we reflect should we not consider the real effect an organized Public Private Partnership in the creative Industries will have on the economy? Michael Witter stated *'Unlike mineral and many energy sources, cultural industries are based on a renewable resource – that of the creative human spirit.'* He continued *"The challenge facing Jamaica at this time is to ensure that we safeguard the development of this creative human resource and build on Jamaica's comparative advantage [in music,] as a catalyst for developing other competitive export industries based on indigenous talents and knowledge"*<sup>7</sup>

Should we not consider that the time is ripe for all to rally around our creative industries, for the private sector including the banks to review their practices and give support to the industry through loans and the use of IP as collateral? Additionally, agencies such as JBDC can become more involved and assist persons in the creative industries to write business proposals or market their craft in a way to better leverage themselves.

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<sup>7</sup> Brown, H. 'National Strategy and Action Plan to further develop the Jamaican Music Industry' (2004) 11.

It is beyond dispute that the creative industries make a significant contribution to the economy.

A recognized fact is that the success and popularity of Jamaica in the international arena is due in part to the influence of Jamaican music. How does one quantify this? How does one measure the economic and social effects of Bob Marley's album "Exodus" being nominated as album of the century, or his song 'One Love' being the song of the millennium?, or that Bob Marley's "Legend" was so profound that a movie starring Will Smith was given that name and a major scene in the movie featured Bob and his work. Or that Reggae is a genre which now forms a main category in 'the Grammys'?. Or that we have a radio station which only plays real rocking reggae"

Mr. President when one thinks of an entertainment event be it Hot Mondays, Boasty Tuesday or Weddi Wednesdays, fresh Fridays or Sting, Sunfest or Jamaica Jazz Festival, Pantomime or our plays, consider the vendors who ply their trade be it the corn soup or cane man, the jerkman, the bar tender or snack counter, the fashion industry. The ladies who have to ensure they have their hair, eyes, toes and bodies all done up, not to mention the outfit that must stop traffic. One can only conclude that their impact on the economy is far reaching.

Given this benefit to the economy, we must move post haste to assist and facilitate the maturing of the entire creative industries, to create a real business of creative industries, like the manufacturing industry or import/export sector. We must as government and private entities work to protect our creativity as a people. To show the world that the country which boast Bob Marley, Peter Touch, Jimmy Cliff, Edna Manley, Rex Nettleford, Olive Senior, Louise Bennett, Claude McKay and Tessane Chin is serious about the creative industries. Action Mr. President is *sine qua non* to success.

For development we must begin to see the industry as capital which translates into money. Our artistes can no longer see the industry as an opportunity to 'cut a tune" but must see it as a real career path and we must create opportunities to facilitate this option, starting in our schools. Only then can we unlock the true potential of the creative industries and go for growth.

Come with me Mr. President, Senators on a journey as we visualize a country having a month long celebration of the arts, where the streets are lined with the best of our crafts, the creative lyrics of our poets fill the celebratory air. Where while the artists draw their portrait, the subjects sit and enjoy some cold jelly

coconut while the music of creative minds and hands consume our feet and send us dancing in a way that only the ancestral spirit of our African heritage can truly comprehend but yet is so admired by all the world around.

Persons from all countries come to this event and locals are able to rent rooms and flats as the hotels are filled beyond capacity. The excitement is contagious and so it's no longer in the capital city but the celebration catches a fire in neighbouring towns and soon the entire country is caught up in the euphoria of the creative expression of its people, so that the government agrees to make it an annual affair. Very soon it becomes the 'go to' event, where all hungry souls attend for their creative fill. The economic effect is incredible and the wheels of development spins faster; faster than it has in years gone by.

Can you feel it Mr. President, Senators, now let's live it. This is not utopia, this is Jamaica. This is the Jamaica that we can attain if we put our minds and hearts and commitment to invest and facilitate the creative industries. This is the power of the creative industries and its impact on the development of this our beloved country.

Mr. President, we must ask ourselves why so many countries want our culture, why do they crave it so much. Why would an Asian youngster unable to speak a word of English travels 15-20 hours across the Pacific, leave her family, uproot herself and settle in Jamaica?

The answer is simple- it's our culture, our creativity, our music, our dance, our people, it's the rhythm in our legs, the intonation in our voices, the sway of our hips, it's that certain *je ne se qua* that has defined us and continues to define us, that thing which comes naturally to us.

James (2007) in his study on the economic impact of the Creative Industries, concluded that, a dollar of foreign exchange put into creative industries and other recreation forms yields \$6.18,[while] that same dollar put into communications yields [only] \$1.49

Why should we not capitalize on this, why should we not harness it in such a way so that each creator, participant and the country benefits. Mr. President the time has come. If ever a time we need to coalesce and focus on the creative industries, Surely the time is now!

## **LAND TITLING AND REGULARIZATION**

As a second step in spurring the development of the country and enhancing the economy, there is a need to accelerate the process of land ownership and regularization. The policy of the government is to increase the number of persons who own land in Jamaica. Indeed it was under the PNP Administration that the much talked about Land Administration and Management Programme (LAMP) commenced. In fact the issue of land ownership started earlier with the visionary leadership and policies of the father of Independence Rt. Excellent Norman Washington Manley. Yet with all the success there remains a lot to be done to ensure we unravel the mystery of capital and the potential financial benefits which are embedded in the productive use of land.

The simple fact is that land in use is money, land not in use is waste land.

The issue of land ownership is at the heart of fighting poverty. As a government we have a duty to facilitate and design the best system which will assist the poor to obtain ownership and realize their economic dream and by extension Jamaica's dream. Hernando De Soto argued that "*Most of the poor already possess the assets they need to make a success.... But they hold these resources in defective forms, they lack the process to represent their property and create capital, they have houses but no titles. It is the representation of assets in legal property documents that gives them the power to create surplus value..*" We have a duty to help these persons perfect their assets, demystify the mystery of capital.

The fact Mr. President is that "*Land has been characterised as a key issue for development; whether from a basic need or a more market oriented perspective. Land has both an economic and social dimension and the right to land is not just a source of economic production but is also a basis of social relationships and cultural values and a source of pride, prestige and often power*"<sup>8</sup>

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<sup>8</sup> Manchester p. 13

We must put the land to work for us, and by doing so we should seek to increase land ownership, thereby increasing cultural values and economic and social power.

Hernando De Soto, noted in his book that “ **The total value of real estate held but not legally owned by the poor of the third world... is at least \$9.3 trillion. He continued, citing Haiti where unregistered land is worth \$5.2billion which is 4 times the total assets of all legally operating companies in Haiti, 9 times the value of all assets owned by government and 158 times the value of all foreign direct investment in Haiti’s history up to 1995. But Haiti is not the sole country. The same obtains in the Philippines, Peru and Jamaica. If the United States were to hike its foreign aid budget to that recommended by the UN 0.7% of national income, it would take the richest countries 150 years to transfer to the world’s poor; resources equal to those they already possess**<sup>9</sup>.” Mr. President such is the mystery of capital, the value of land.

Jamaica is 4244 square miles with over 40% of its land being unregistered. This translates to 1698 sq. miles of land being unregistered. In other words we are operating with approximately 40% less of our resources/capital.

This section of my presentation therefore is to reposition and place this issue into the public discourse because it is so essential to our development.

To make the land work for us, there are some basic truths we must accept:

- a. People need to have indefeasible rights and security of tenure so they can start investing in housing and business improvements
- b. Security of tenure and the resulting access to credit can only be provided by legalization of informal settlement
- c. The need to provide universal title ownership through individual freehold titles and enforceable rights to enable persons to leverage themselves
- d. Regularization by itself is not sufficient but must be a part of a broader public policy to promote economic development.

### **Why are land ownership and regularization so important:**

1. **Morale Builder.** It brings about a newfound sense of pride and belonging. I am of the belief that some of our problems today, and certainly those

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<sup>9</sup> Hernando De Soto pp.33-35

related to the care of the environment are directly linked to how persons perceive their existence in the country.

They do not feel a sense of belonging, a sense of ownership. And why should they? After all between them, their parents and fore parents they have been living on a piece of land for years and some despite their many efforts have failed to secure title. They see themselves as transient merely passing through. Why should they bother to invest in something which is legally not theirs? Which they believe someone may at any given time come and take? In so many ways their minds are nomadic. Where there is no security of tenure persons will not plant permanent trees or erect permanent structures. Studies Mr. President have shown that there is a direct correlation between land ownership and the rate of crime in society.

2. **Financial effect.** As mentioned earlier, in 2007 De Soto posits that within the third world the total value of real estate not legally owned amounted to \$9.3 trillion which at the time was twice the amount of money in circulation in the US economy and 20 times the total direct investment in all third world countries<sup>10</sup>. **He argues that unused/ untitled land is dead capital that can be easily turned into liquid capital so people can gain access to formal credit, invest in their homes and business, thus reinvigorating the economy as a whole.**

When one owns land it is ready capital; ready capital that a single mother can use to get a loan to start a business, to send her child to school to obtain an education. Capital to expand a business thereby leading to self sufficiency; employment. All of these have a direct positive effect on the economy. Imagine a NHT contributor who now owns land. He can build on it or expand to take in borders or can let to tenants which represents an added source of income. Added source of income equals less reliance on State and the State benefits from taxes be it GCT, property taxes or otherwise. Indeed. *"Property seeds the system by making people accountable and assets fungible. The connection between capital and modern money runs through property"*<sup>11</sup> ( pg. 63] **Land ownership will add to the nation's growth thereby irrigating the economy.**

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<sup>10</sup> Do Soto p. 35

<sup>11</sup> De Soto p. 63

In light of these positive effects the question then is why are we not achieving more from our land”

Commend LAMP which has been able to assist thousands of persons to obtain title to their land, but there remains more to be done to increase this number and ensure Jamaica is a titled country. How can we achieve our 2030 goals with nearly half of our land holdings outside the formal economy?

Let me also extend commendations to the National Land Agency particularly the Office of Titles on the speed at which it registers and deals with applications before it. The Titles’ Office represents what’s right in the public sector, indeed Jamaica.

Amidst the successes of LAMP, there are some challenges which operate to hamper the progress. These include:

**Land disputes. This** has always been a feature of land ownership, be it registered or unregistered land, family land, estates (dead lef’ property) or otherwise. This has its genesis in the Bible if we recall the story of Abraham and Lot. “Let there be no disputes between your herdsmen and my herdsmen for we are brethren” So Lot ended up in Sodom and Gomorrah. **500 land disputes and estates matters are in the court system in 5 parishes for which data was secured, of which 114 have been there for more than 5 years. These figures do not include the Supreme Court**

Land/ estates must be seen as people’s lives, must be given a face. It must be seen as something tangible which affects people’s welfare. The length of time it takes to resolve these disputes, process grants of Probate and Administration affects the livelihood and ability of individuals to really move on or live their lives.

Until we start seeing land and treating with it as live capital we will not begin to discover the mystery of capital.

More must be done to expedite the resolution of land related matters so that the land can be put to real use. In this regard it is recommended that the Adjudication Committee as provided in The Registration of Titles, Cadastral

Mapping and Tenure Clarification (Special Provisions) Act, 2005. (SPA) must be extended . Already two committees have been established in Rose Town St. Andrew and Narine Land in St. Catherine, but we must move to expand the role of the Adjudication committee within the larger framework of the reform of land administration in Jamaica to speed up the titling process.

In addition, perhaps the time has come to consider a special land court similar to the Traffic or Family Court. This land Court would be charged with the mandate of adjudicating land disputes including estate matters such as probate and administration of estates. It will be staffed with judges lawyers and paralegals who possess special expertise in succession, conveyancing, property and land law. This could be an itinerant court moving from parish to parish to adjudicate matters. The Special Land Court would make provision for mediation/alternate dispute resolution and would provide recourse for matters not settled at the Adjudication Committee.

In addition to the court a land dispute tribunal similar to the Industrial Dispute Tribunal as well as alternative dispute resolution methods could be considered as further means to resolving land disputes.

Indeed there is a need for a full appreciation of the magnitude of the effect of the failure to resolve land related issues on civil society. This has in many cases caused long standing feuds in communities and has in some instances resulted in citizens taking the law into their own hands.

Jamaica would not be the only country with a land court as indeed in the state Massachusetts, USA, a land court exists. This best practice can be utilized in Jamaica, the result being speedy and more timely disposal of land matters. The ease and speed at which these matters are dealt with would impact on how quickly we can put land to productive use.

**Titling and Planning-** a check at LAMP shows that approximately 75 percent of applications for title lodged are rejected for the want of subdivision approval and in parishes such as St Elizabeth and Manchester the figure is as high as 80 to 85%

Of the over **23,000 files at LAMP, approximately 80% require subdivision approval.** It is therefore recommended that the issue of planning should be separated from titling. Regardless of land use persons should be given their titles

and then the relevant authorities move to enforce land use. The unholy and uncharitable marriage of titling and planning has only served to delay the land regularization process. The fact is all the lands in Jamaica are invariably part of a larger parcel of land and therefore the requirement to obtain subdivision approval to cut off the parcel of land for which title is being sought operates as a deterrent. One of the major challenges which affects the ability of persons to obtain titles is their inability to satisfy the requirements of Local Planning Authorities and other agencies in order to obtain subdivision approval.

The Local Authorities should not use titling as a means of enforcement. Persons should be allowed to secure title for their land regardless of its state and location and then the planning authorities determine the use and establish proper enforcement mechanism to ensure compliance. The conditions as imposed in order to receive subdivision approval are often unattainable for the poor unresourced person. I go further and say it is anti-poor. Therefore planning must be separated from titling.

The Jamaican reality is that the four children who inherit a one acre land from their father will not be able to construct the 40 foot barber green road, the turning circle, the fire hydrant and stop sign the curve wall as required for subdivision and the reality is that they have already been living on the land in their individual houses and all that is lacking is a title to improve their lot.

### **Existing Approval Process**

Mr. President the existing approval process for subdivision approval in and of itself is a deterrent to development.

A summary of the process is as follows:

- i. The applicant submits the application forms in triplicate to the Parish Council plus over twenty copies of the blue print
- ii. These are submitted to the NEPA for comments and advice. Depending on the location, size and type of subdivision, then submitted to numerous other Agencies .
- iii. After comments are received the final recommendations are sent back to the Parish Council which then imposes its own conditions.

This process can take up to two years.(2 years). **This delay will Mr. President operate to affect the ability of the country to attain the goals embodied in vision 2030.**

This is why I recommend that there should be a separation of titling from planning. Further Mr. President I am suggesting that the titling process is anti poor. It is too rigorous. No wonder the assurance fund, provided to safeguard the Register Book of Titles where title have been issued in error has been used only about 2 or three times in living memory. Let us speed up the titling process. If errors are made there is the Assurance Fund as provided in the ROTA. The benefits will greatly exceed the risk. Therefore let us give the title to individual land owners and enforce conditions later. The reality is that the house spot on one square is here to stay as some cannot even afford so large a plot.

My suggestions Mr. President are not unusual, the example of what obtains in Canada which shares a similar Torrens system like Jamaica is instructive. Canada has a system where the titling process is far easier; titling is separated from planning but once title is obtained, then the registered owner must obtain approval before any development commences. I humbly suggest that Jamaica needs to be going in this direction. Should we fail to do this we will be penalizing persons by denying them title for failure to meet our lofty standards, even in the face of the establishment of a good root of title.

In Canada only a consent, not approval required from the local authority for small developments. However, any development or change of use of the property requires planning permission, which is issued by the local authority..

The separation of this union is not deleterious to the country. In fact, we know it is possible as under the Section 5 of the SPA, the Minister has power to sign Ministerial orders, waiving the requirement of subdivision, and it is a power that is familiar to agencies like the UDC and Ministry and Housing.

In fact between 2006- Feb 2014, a total number of 445 ministerial orders have been granted impacting over 2,000 parcels of land, and between 2012 to 2014 , 360 orders have been granted impacting 1,682 parcels of land. This is progress Mr. President and we commend the present Minister of Land and Environment for his bold and unequivocal leadership in this regard. However the intent of the legislation was not for this provision to be used in the normal operation but rather in exceptional situations, but the expense and time associated with obtaining subdivision approval is prohibitive and increasing applications are being made to the Minister for the exercise of this power, a power that he is using for the greater good.

I would be greatly misunderstood if it were thought that I am promoting disregard for the importance of planning. . Rather it must be seen as advancing the process of titling. In fact this is very workable as evidenced in present day operations where conditions are imposed on the titles issued under section 5 of the SPA, Here the owners are obligated to undertake certain actions in the development of the land. These conditions are like Restrictive covenants, they affect the rights of the user but do not prevent the owner from dealing with the land.

**LAND SETTLEMENT** In spurring economic development, land must be an integral part of the developmental agenda, and in so doing it will be critical to deal with the issue of Land Settlement.

The Most Hon. PM PSM speaking about land settlement noted recently that “ *land settlement schemes were designed and are still primarily used as tools to ensure that the most vulnerable persons in society, the landless and the poor have the opportunity to own land so they can have an avenue to fight poverty and improve their livelihood...*” this Mr. President is the *raison d’etre*, the purpose of land settlement and we commend the government in its efforts to provide titles for the hundreds of persons under the land settlement. However, there remains some 17000 lots that are to be titled.

One of the challenges to delivering titles under this scheme is the requirement for the surveying of these parcels. This is prohibitive as surveys can be costly and to the poor unresourced persons it is an expense they can ill afford. The ROTA provides for the establishment of the **Assurance Fund**, into which monies are paid by persons applying to register land for the first time or making an adverse possession application. Out of these funds monies are paid to anyone who has successfully made a claim against the registration of a parcel. The Act also provides that monies from this Fund may be used for cadastral purposes. In this regard, it is recommended that there be an exploration of the possibility of monies from the funds being used for the surveying of these land settlement lots. It is a win win situation, as more persons would receive their titles and placed on the road to independence. **More title equals more economic activity. Titling is a sine qua non of such activity.**

**Legislation** there is a need for more strategic legislation. Presently there are several pieces of legislation which govern land matters in Jamaica. This presents

a complicated situation where one has to go from law to law depending on the matter before at hand.

Indeed De Soto noted that "*the genesis of capital is such a mystery because it is hidden in thousands of pieces of legislation, statute, regulations and institutions that govern the system*".<sup>12</sup> What is therefore needed is a condensed yet comprehensive legislation which deals with all matters related to land. An omnibus legislation maybe?

Similarly, there is a need to amend the relevant legislation to give effect to the separation of planning from titling.

- *Local Improvements Act , The Town and Country Planning Act, Land Development and Utilization Commission Act, The Natural Resources Conservation Authority Act, The Building Act, Restrictive Covenants(Discharge and Modification) Act*

Mr. President, De Soto speaking about the Industrial Revolution in Europe noted that "*.... by reducing the obstacles engendered by obsolete regulations, and allowing existing local arrangements to influence law making, European politicians eliminated the contradictions in their legal and economic systems and allowed their nations to carry the Industrial Revolution to new heights.*"<sup>13</sup>

The European experience teaches that *the ability of the law to adapt to the needs of the ordinary people, including their expectations about property rights assisted in the transformation of the country. "The problem was not the people but the law, which was discouraging and preventing people from being more productive."*

***The past European experience strongly resembles the present Jamaica.*** Oh that history in reflecting on this country would say ..... in 2014 Jamaican politicians eliminated the contradiction in the system and carried the development agenda to new heights.

Indeed legislation is "*the instrument that fixes and realises capital*". We saw this with the passing of the Facilities for Titles Act commonly referred to as the Poor People's Act. In marshalling the FTA Bill NW Manley said "*It is long overdue and*

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<sup>12</sup> De Soto p 48

<sup>13</sup> De Sot p. 102

*it is likely to bring great satisfaction to thousands of small persons who occupy land and find it difficult if not impossible to prove that it is theirs”<sup>14</sup>*

So too must our legislation of the day reflect today's realities. That is, to adapt to the needs of the people, to encourage and facilitate them in being more productive. For example under the Statute of Frauds all land transactions must be in writing and this is reflected in the ROTA, however this is diametrically opposed to how we have evolved as a people. For indeed we are an oral society.

### **Dead left/ family or generational land**

Another challenge in our legislation is seen in estate matters or what we call “dead left” or family matters. Under the relevant Act all estates must be administered before property can change hands. In Jamaica we have family land where members have lived for decades orally passing their property from one generation to another. Families often relocate leaving one or two members who have occupied the said property for years, without opposition, often without any contact from any other family member but are unable to obtain title because of the legislative requirements. It is easier for a squatter to obtain title than a legitimate heir. Our laws must be de-webbed of the historical cobweb which has become so tightly woven into a bureaucratic standstill. This is the way to unravel the mystery of capital in land.

I therefore recommend the establishment of a special committee to examine the issue of generational lands. This committee would be comprised of the Administrator General, LAMP, Ministry of Land, Attorney General's Chambers, Ministry of Justice, the Bar Association and other relevant stakeholders. It is time that a full and focused deliberation be undertaken to find inexpensive and timely ways to resolve the issue of generational or dead left Property which in most instances is dead capital...,,

Yet Mr. President in all of this an important component must be, the involvement and change in the mindset and culture of the people. The government can do all it can, modernize all the laws, make all the monies available for surveying or assisting in titling, but unless and until each and every person starts to see the power that lies in land titling and regularization we will

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<sup>14</sup> Manley and the New Jamaica p. 206

not reap the full benefit of titling.. Part of the change must be an acceptance of basic principles such as estate planning. How many of us in this house can say we have will. There seems to be a thinking that if you make a will you will immediately die. But estate planning helps to reduce the time and money spent on resolving dead lef' property and gives s peace of mind to prolong our lives. These suggested changes will require us to see land as a means to an end and not an end in itself. That titling should be only the beginning and not the end.

After all Mr. President, lest we forget, we should remind ourselves of the word of Norman Manley who said " *Land is the only source of the material life of the people. It provides food and shelter. It furnishes work and wealth. It is the basis of all production, of all development, of all security, of all growth. It is in very truth, the root of our being...*" We must note Mr. President that our colonizers in seeing the power in land restricted the right to vote to land ownership a legacy which remains in some of our outdated legislations.

## CONCLUSION

Mr. President, the focused attention to land and the creative industry will aid in the economic transformation of the country. But as we venture in these areas, we must consider the importance of re-culturing our people.

Too often we hear people say the country has lost its value and we lament on a society bereft of notions of shared values and norms.

We must recommence our values and attitude campaign, we must get back to the days where we wake in the morning and say good morning to our family members and neighbours, sweep our yards, help our children cross the street, be a part of the community labour day and share the bunch of banana. To the days when it was common place for the village to raise the child, and an adult could reprimand a child without fear of reprisal from the parent. Where we respect each other's rights and Mr. Brown or Ms. Brown who is a housewife would watch over the children until the parent came home from work without fear of the child being abused.

If we cannot get back to those days then the development will be stymied. It will be a world of each man for himself, survival of the fittest, a most intolerable reality.

Therefore as we embark on these development activities, we must buttress them with the correct values and attitude required to move the country forward.

To achieve these we must move quickly to review the red tape and bureaucracy which sometimes characterise and delay how we do business. To do otherwise is to do so to our detriment. As Norman Manley speaking about the land policy for Independence said in 1964 and it is as relevant today as it was then " *...Of course it will not be easy but if this country does not see big and try big this country will fail.... Nothing is more needed in Jamaica today than to challenge ourselves with new and difficult tasks, firmly started on a road that leads to better things ....But we set the stage for a battle for the future, [for Jamaica.] Let the battle rage, ... let us start to live with a new dynamic for a new destiny.*<sup>15</sup>

Mr. President as we continue along the development path and embolden by the confidence others have in us, I am positive that a focus on the creative industry and the issue of land ownership and regularization will only accelerate the development of this country.

The recommendations are not all new. Some have been touted already however, wherever they have generated, whomever may claim ownership, what we must agree is that time come. The time has come for action, for bold visionary action and I am confident that our Prime Minister has been prepared to captain the ship at a time like this and that she remains the person best able to steady the ship Jamaica through troubled waters unto safe shores. The success of the last two years, has established unequivocally that she possesses the type and calibre of bold leadership to transform Jamaica, a country whose time has come.

Let us therefore regardless of in which divide we fall recommit to Jamaica land of beauty and promise faithfully to serve her with our talents and bring our gifts to her.

Indeed let us commit to working together to work positively and diligently so that Jamaica may under God increase in beauty, fellowship and prosperity and continue to play her path in advancing the welfare of the whole human race.

Finally Mr. President, Norman Manley said in his speech at the opening of Independence Parliament August 6, 1962 " *... and what of the future that lies before us?..... I believe in one single hope that we may make our small country a safe and happy home for all our people..... many of us dare to believe that*

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<sup>15</sup> Norman Manley p. 328

*this country so blended in origins so fashioned in times so wrought on by our own history may go out into the world to make a contribution larger than our size alone would lead one to expect..." he continued "..... I believe that as an independent nation we can ... become a worthwhile and shining example of the sort of world men sometimes dream to live in.... he concluded ...You, Princess have handed us the formal title deeds to our heritage. For us the task is to plough the land and gather the fruit." P. 312*

Indeed Mr. President, let us start to live with a new dynamism for a new destiny, it is gathering time.