

An Investigation of an anonymous
allegation on a Home Ownership
Scheme property in Santa Luċija

Report by the
Auditor General
May 2018



An Investigation of an anonymous allegation on a Home Ownership Scheme property in Santa Luċija

Table of Contents

List of Abbreviations	4
Glossary	5
Executive Summary	6
Chapter 1: Terms of Reference	9
1.1. Introduction	9
1.2. Allegations and implications	9
1.3. Investigation objectives and methodology	11
1.4. Report Structure	12
Chapter 2: Home Ownership Scheme	13
2.1. Introduction	13
2.2. The pre-2003 scenario	15
2.3. Post-2003	16
Chapter 3: Investigating the anonymous allegations	18
3.1. Introduction	18
3.2. The purchasing of HOS property from the original beneficiaries	19
3.3. Government policy on the compensation of outstanding HOS land expropriation	19
3.4. GPD's undocumented criteria for settling HOS expropriations	20
3.5. Settlements of outstanding HOS St Lucia expropriations	22
3.6. Legal and administrative compliance	23
3.7. Conclusions	24
Chapter 4: Administrative weaknesses within Home Ownership Scheme processes	25
4.1. Introduction	25
4.2. HOS undocumented settlement prioritisation policy	25
4.3. Audit trail weaknesses	26
4.4. Unidentified owners of HOS related land acquisition	26
4.5. Impact of prolonging settlement of HOS acquired land	27
4.6. Conclusions	28
Appendix I: Bibliography	30

List of Figures and Tables

Figure 1: Alleged timeline of events as per anonymous letter	10
Figure 2: The process adopted to expropriate private land for public purpose	14
Figure 3: Utilisation of available budget to settle outstanding HOS expropriations (2009)	21
Table 1: Timeline of HOS expropriation settlements in Santa Luċija and Għar Barka, ir-Rabat	22
Table 2: Outstanding HOS areas	27
Table 3: Expropriations settlements carried out by GPD in 2010	28

List of Abbreviations

GPD Government Property Division

HOS Home Ownership Scheme

NAO National Audit Office

NTT Notice to Treat

Glossary

HOS beneficiaries	Persons who applied and subsequently were awarded a portion of land to construct their terraced house in accordance with the provisions of the Home Ownership Scheme.
Land owners	Persons whose land was expropriated by Government for public purposes, including the HOS.
Notice to Treat	This document established the compensation value that the Government will be awarding to the land owners for acquired land. This procedure was repealed through the 2003 amendments to Chapter 88.
President's Declaration	This document proclaims Government's intention to expropriate land for public purposes. Following the 2003 amendments to Chapter 88, this document also establishes the compensation due to land owners with respect to the acquired land.
Public purpose	Through the President's Declaration, land is expropriated for public purposes as was previously defined in Chapter 88 and currently in the Government Lands Act, 2017.

Executive Summary

Introduction

1. An anonymous letter received at the National Audit Office (NAO) on 25 January 2016 alleged that the former Parliamentary Secretary responsible for Small Business and Land used his influence to expedite the process for the payment by the former Land Department within the Government Property Division (GPD)¹ of land expropriated for the Home Ownership Scheme (HOS) purposes in Santa Luċija. The letter also included allegation that the former Parliamentary Secretary together with his spouse were negotiating the purchase of a house, built on a proportion of the acquired land under the conditions of the HOS.
2. By implication, the expediting of the land acquisition process by GPD would have benefitted the former Parliamentary Secretary by facilitating the legal processes involved in Government formally transferring ownership of housing units to the respective beneficiaries. Subsequently, the beneficiaries of houses built in HOS areas would become the actual owners of the dwellings. Such a status minimises legal complexities concerning ownership and the potential transfer of the property. Moreover, now as freehold properties, their intrinsic value would increase.
3. Since the anonymous letter included various details which could be verified or otherwise, in line with NAO policy, it was decided to proceed with the Investigation.

Investigating the anonymous allegations

4. The Investigation of the anonymous allegation received did not lead to NAO uncovering evidence suggesting legislative, administrative or ethical irregularities on the part of the former Parliamentary Secretary. The following are the main justifications and evidence corroborating this statement:
 - a. The former Parliamentary Secretary commenced negotiations to purchase the HOS property in question after the declaration of Government's intention to embark on a drive to settle outstanding HOS cases in Budget 2010. Similarly, such negotiations were subsequent to the commencement of GPD administrative processes in November 2009 to settle outstanding land acquisition cases in HOS Santa Luċija.

¹ On 3 February 2017, the Lands Authority has been set up by virtue of the Lands Authority Act Chapter 563 and the full powers previously held by the Commissioner of Lands within the Government Property Division were assumed.

- b. The payment of dues to owners of expropriated land for HOS purposes followed the undocumented criteria utilised by GPD. To this effect, the Investigation confirmed that the selection of outstanding HOS-related land acquisition cases considered funds availability in terms of the maximum number of HOS beneficiaries that subsequently would be in a position to sign ownership contracts with Government through the Housing Authority.
- c. GPD practically concluded the administrative and legal processes pertaining to all of the outstanding HOS acquired plots in Santa Luċija at the same time. To this effect, the Parliamentary Secretary endorsed the transfer of expropriated land relating to various plots in this locality, upon which were built 64 houses, on 15 March 2010.
- d. In some cases, the time taken by GPD to conclude HOS land acquisition processes was shorter than that taken with respect to the case in question. For example, processes related to Għar Barka necessitated an average period of 47 days from authorisation to commence the settlement process by GPD officials to the endorsement by the Parliamentary Secretary. On the other hand, the same process concerning Santa Luċija took 60 days more.
- e. The processes undertaken by GPD and the Housing Authority to conclude the HOS land acquisition process with respect to the case in question adhered to legal and administrative requirements.

Administrative weaknesses within GPD's HOS processes

- 5. Although strictly speaking not within its scope, this Investigation uncovered administrative shortcomings concerning the settlement of outstanding dues in relation to land acquired by Government for HOS purposes. The following refers:
 - a. The absence of a documented policy concerning the prioritisation of settling outstanding dues emanating through expropriated land transgresses on the principle of transparency and deviates from good administrative practices. A documented policy reduces the burden of decision-making on public officials as it significantly reduces the possibility of subjective decisions. Moreover, a documented policy is conducive to the consistent implementation of administrative processes and procedures over time.
 - b. Value for money considerations arise through the prolonging of the land acquisition process. Indeed, this Investigation estimated that, on the basis of 2010 statistics, Government incurred 22 times more in settlement fees than the value of land on its date of acquisition. Consequently, the longer Government takes to pay owners their dues, the higher the costs incurred by the former due to the financial damages accrued.
 - c. The administrative shortcomings at the GPD also have a critical impact on the owners of the acquired land. Property ownership is an inalienable right and consequently owners whose land has been expropriated justly expect that they be compensated within a

reasonable period. As noted in the Report proper, historical decisions played their part in the accumulation of outstanding HOS expropriation cases. Nonetheless, the issues surrounding HOS expropriations were not holistically addressed over time as can be seen by the various legal and administrative amendments and the limited annual budgetary allocations.

- d. Not least, the administrative shortcomings also prolonged HOS beneficiaries the opportunity to sign ownership contracts with the Housing Authority. Although in the recent past the position of many tenants has been regularised, there were still around 400 outstanding cases as at end January 2018.

Conclusions

6. The anonymous allegations received at this Office implied that the former Parliamentary Secretary responsible for Small Business and Land used his influence to expedite the process for payment by GPD. Such action, it was alleged, would personally benefit the former Parliamentary Secretary, specifically as he was in the process of procuring a property built on land expropriated by Government for HOS purposes.
7. Although the information provided within the anonymous letter in relation to specific events is mostly correct, it does not consider the historic, legal and administrative context. All of these variables play a critical part in assessing whether the former Parliamentary Secretary influenced processes related to HOS for his own personal benefit. To this effect, this Investigation did not reveal evidence to support the claims and implications made in the anonymous letter.
8. The Investigation also identified administrative weaknesses that impinged on the land acquisition process. These shortcomings encroach on the principle of transparency, value for money, the right of compensation for expropriated property within a reasonable period and the right of beneficiaries of HOS properties to be granted the unfettered ownership of their homes.

Chapter 1

Terms of Reference

1.1. Introduction

- 1.1.1. On 25 January 2016, the National Audit Office (NAO) received an anonymous letter, wherein it was alleged that the former Parliamentary Secretary, responsible for Small Business and Land used his influence to expedite the process for the payment by the former Land Department within the Government Property Division (GPD)² of expropriated land in Santa Luċija. During the same period, it was further alleged that the former Parliamentary Secretary together with his spouse were negotiating the purchase of a housing unit, which was built on a proportion of the acquired land under the Home Ownership Scheme (HOS).
- 1.1.2. In line with its policy to proceed with its investigations even in the case of anonymous letters, provided that sufficient information was provided therein, the NAO investigated these allegations during the period November 2017 to April 2018. The Investigation undertaken did not elicit any evidence that the former Parliamentary Secretary used his influence to gain an unfair advantage or to make unwarranted personal gain.
- 1.1.3. This Report discusses the basis of the statement portrayed in the preceding paragraph. The main aim of this Chapter is to provide the context within which the NAO carried out this Investigation. To this effect, the next Sections within this part of the Report highlight the following:
- a. A reproduction of the allegations received at NAO;
 - b. A case specific timeline of events; as well as
 - c. The Investigation objectives and methodology.

1.2. Allegations and implications

- 1.2.1. The anonymous letter received at this Office noted that the local media, namely newspapers, were in copy of such correspondence. The main thrust of this letter raised the issue that the former Parliamentary Secretary influenced GPD and Housing Authority processes by expediting procedures leading to the settlement and case conclusion of expropriated land in question.

² On 3 February 2017, the Lands Authority has been set up by virtue of the Lands Authority Act Chapter 563 and the full powers previously held by the Commissioner of Lands within the Government Property Division were assumed.

1.2.2. The anonymous letter referred to a situation whereby the original beneficiaries of the HOS Unit (Plot 2) had been waiting since 1983 for the expropriation settlement and the eventual transfer of ownership from the Housing Authority. On the other hand, Government Authorities concluded this process in around five months from when the former Parliamentary Secretary started negotiating the purchase of this property. Figure 1 presents a graphical illustration of the timeline of events outlined in the anonymous letter.

Figure 1: Alleged timeline of events as per anonymous letter



1.2.3. The timeline and events outlined in the anonymous letter imply that the former Parliamentary Secretary gained an unfair personal advantage by directing GPD to conclude the expropriation process in relation to HOS acquired land in Santa Luċija at the same time that he was in the process of negotiating and purchasing a terraced house built on the same acquired land. By implication, such a benefit would have materialised since the conclusion of the expropriation process:

- a. facilitated the legal processes involved in Government formally transferring ownership of housing units to respective beneficiaries after having secured the ownership of the acquired land upon which such units were built;
- b. implied that the property is rendered freehold, as root of title can be legally established and that the beneficiaries are the actual owners of the dwelling. Such a status minimises legal complexities concerning ownership and its potential transfer as well as increases the intrinsic value of the property.

1.2.4. Chapter 3 of this Report will discuss in detail the allegations raised in the anonymous letter.

1.3. Investigation objectives and methodology

1.3.1. This Investigation sought to determine if there was a breach of any regulations in the settlement of a plot of expropriated land used for HOS purposes in Santa Luċija. Moreover, this Investigation, sought to assess whether the former Parliamentary Secretary for Small Business and Land exerted undue influence to expedite administrative and legal processes in connection with this expropriation settlement to gain an unfair personal advantage. To this end, the audit's objectives seek to determine whether:

- a. the expropriation process followed the usual legal and administrative processes adopted by the GPD; and
- b. there is any evidence to support the anonymous allegation that the former Parliamentary Secretary exerted undue influence to expedite the conclusion of the expropriation case referred to in Section 1.2 with the intention of gaining an unwarranted advantage.

Methodology

1.3.2. The NAO carried out this Investigation in accordance with Para 9(a) of the First Schedule of the Auditor General and National Audit Office Act, 1997 (XVI of 1997). The methodological approach's main aim was to enable triangulation of evidence collected and entailed the following:

- a. **Documentation review** – This Investigation comprised review of 35 files maintained by the GPD and the Housing Authority. Five of these files were directly related to the case under

review. The remaining either included general references or were files processed by these Governmental entities during or around the same time as the case in question.

- b. **Comparative analysis** – NAO carried out comparative analysis to enable comparisons of the decision making process and the execution of administrative procedures with respect to the case under Investigation and similar cases involving land acquisition for HOS purposes.
- c. **Semi-structured interviews with Lands and Housing Authority officials** – NAO conducted interviews with incumbent and former officials who were either directly referred to in official documentation or were responsible for implementing HOS related processes at either GPD or the Housing Authority. In total nine interviews were carried out, involving GPD and Housing Authority officials. Interviews conducted under oath pertained to the former Parliamentary Secretary for Small Business and Land, the former Commissioner of Land, the former Director General GPD and the former Assistant Director, responsible for expropriation settlement at GPD.
- d. **Expropriation settlement simulation exercise** – In the absence of robust audit trails relating to the decision making process concerning the conclusion of the land acquisition process with respect to HOS, NAO simulated the decision making process at GPD. This entailed verifying the extent to which GPD followed the undocumented policy with respect to the prioritisation of settlement of land acquired by Government for HOS purposes. This exercise involved determining which areas would be prioritised for settlement against criteria of optimising the availability of funds in terms of the number of HOS beneficiaries that could become signatories to a contract whereby Government would transfer ownership of the land upon which their dwellings were developed.

1.4. Report Structure

1.4.1. Following this introductory Chapter, the Report proceeds as follows:

- Chapter 2 provides an outline of the HOS objectives as well as a brief presentation of related legal and administrative processes.
- Chapter 3 considers the various sources of evidence collected and aims to triangulate such information. To this effect, the discussion therein also presents the findings and conclusions elicited through this Investigation.
- Chapter 4 discusses administrative weaknesses in the HOS expropriation process, which are not exclusive to the case under review.

1.4.2. The overall conclusions are included in the Report's Executive Summary on pages 6 to 8.

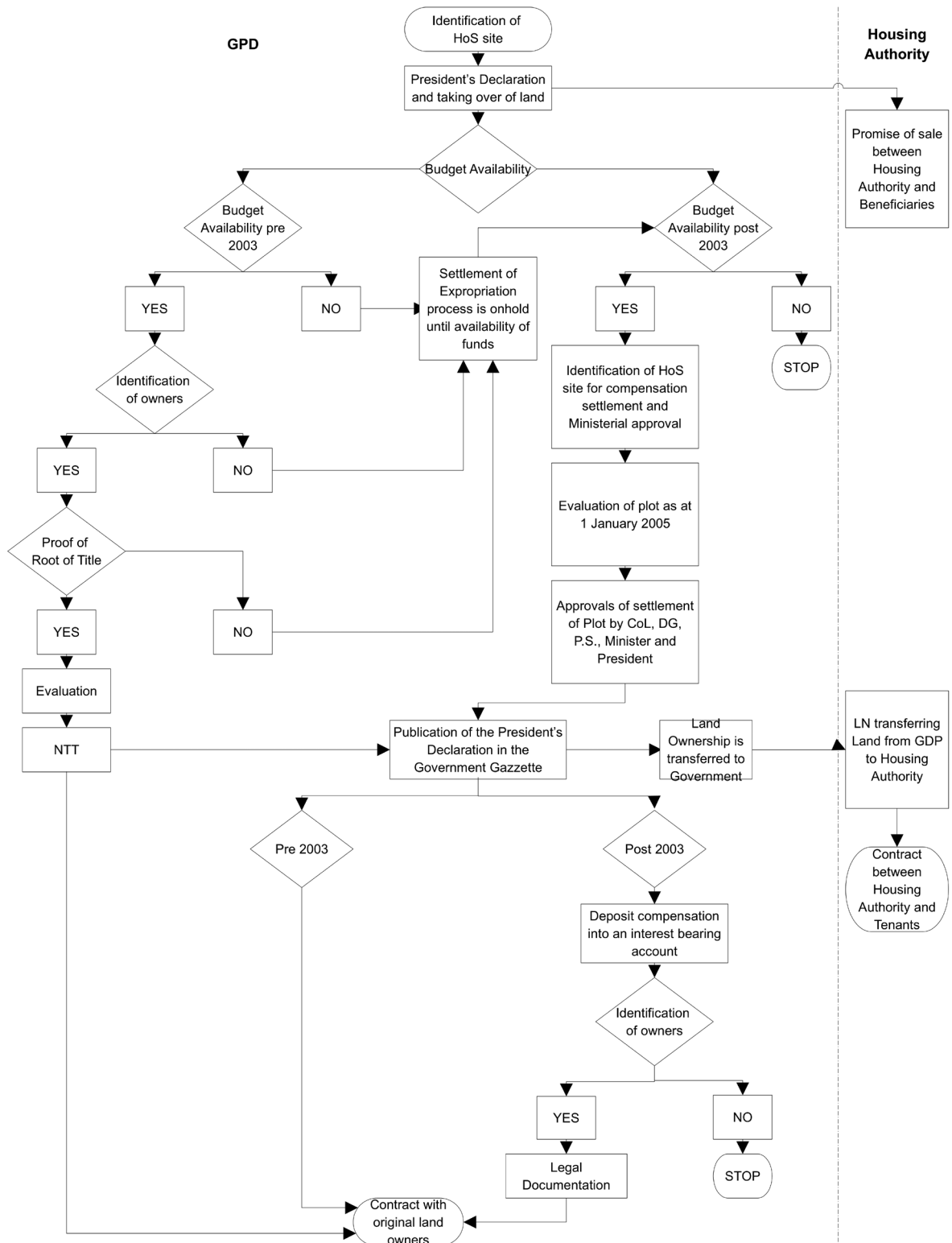
Chapter 2

Home Ownership Scheme

2.1. Introduction

- 2.1.1. To better contextualise the allegations and the circumstances portrayed in the anonymous letter, this Chapter aims to provide a brief outline of the Home Ownership Scheme (HOS) objectives as well as related processes and administrative concerns. Largely, the administrative problems surrounding the HOS are linked to budgetary considerations and the determination of ownership of the acquired land.
- 2.1.2. The principal objective of HOS was to address the prevailing housing problems. During the 1970s, 1980s and early 1990s, Government expropriated a number of privately owned parcels of land to transfer to third parties, on which the latter could develop their place of residence, as part of the HOS. The process for Government to expropriate privately owned land for public purpose involved a number of key stages. At the time, Chapter 88 '*Land Acquisition (Public Purposes) Ordinance*', which was significantly amended in 2003 and eventually repealed in 2017, regulated the acquisition of land by Government for public purpose.
- 2.1.3. This Investigation is primarily concerned with the legal situation presented by Chapter 88 and its amendments in 2003. To this end, Figure 2 presents the land acquisition process within the context of the case under Investigation.

Figure 2: The process adopted to expropriate private land for public purpose



2.1.4. Figure 2 distinguishes the land acquisition process as was regulated by Chapter 88 before and after the amendments to this Chapter in 2003. Both the pre and post-2003 provisions influenced the case under Investigation.

2.2. The pre-2003 scenario

2.2.1. Chapter 88 stipulates the major phases of the land acquisition process, which include the following:

- a. The President's Declaration proclaimed Government's intention to expropriate the land identified therein for public purposes.
- b. The Notice to Treat (NTT) set the value that was to be paid by Government for the acquired land. The GPD would issue the Notice to Treat only if ownership was established and funds were available to settle the value indicated in the Notice.
- c. Compensation due to owners comprised the value of the land as established by the NTT and the computation of damages.³
- d. Once settlement with the owners of the acquired land would have been completed, Government would then have become the owner of such land and could then proceed to transfer the land in question to the various HOS beneficiaries who had developed their residences at their own expense. This stage marks the fulfillment of the primary HOS objective of addressing housing problems.

2.2.2. However, Government through the Government Property Division (GPD) was stalled in compensating expropriated land owners, as funds were not made available. Consequently, the acquisition process could not proceed in accordance with the provisions of the pre-2003 amendments of Chapter 88 that is through the issue of the NTT. This situation resulted in a backlog of outstanding expropriation cases, not just related to HOS but also with respect to all other cases of land acquisitions.

2.2.3. Budgetary limitations, thus, resulted in a situation where many beneficiaries residing in HOS houses could not legally become the owners of their properties, and their claim with respect to the property on the acquired land was only through a promise of sale agreement (konvenju). Beneficiaries of these dwellings could not be termed 'owners' in accordance with the law as Government never paid the original owners for the expropriated land. This situation considered as extremely unjust by the NAO, prohibited, Government from passing on the title or ownership of the land to the occupants of dwellings built on the acquired land.

³ Although not indicated in Figure 2, owners of expropriated land could challenge the NTT valuation at the Land Arbitration Board in accordance with provisions of Chapter 88.

1993 amendments

2.2.4. The increasing value of land, the passage of time together with budgetary and proof of ownership limitations showed that Government, through the GPD, could not mitigate the social and financial issues posed by outstanding expropriations through Chapter 88 provisions. Consequently, in 1994, following the initial direction through a Ministry of Finance Circular (MF 9/1993), these provisions were amended so that henceforth all expropriations would proceed only if the department acquiring land transferred funds equivalent to the value of land to GPD. While such a provision ascertained that GPD could process immediately future acquisitions, these amendments did not provide a remedy for previous expropriations or in cases of unknown owners.

2.3. Post-2003

2.3.1. This situation depicted in the above paragraphs was largely addressed through the 2003 amendments to Chapter 88.⁴ The new provisions outlined that henceforth the issue of a President's Declaration would make Government the owner of the acquired land. Moreover, the funds provided in advance by acquiring departments would be deposited in interest bearing accounts.

2.3.2. From an HOS point of view, these two principal amendments imply that if a second President's Declaration is issued with respect to outstanding land expropriated for such a purpose, then Government would become the *de facto* owner. Consequently, it could then engage in a contractual arrangement to ensure that the resident in HOS units become owners of the respective properties. Secondly, GPD now had two courses of action available. It could either proceed with settlement with the owners of the expropriated land (as the new President's Declaration would also express the value of the acquired land) or if owners remain unknown, the Department could deposit the relative funds in an interest bearing account.

2.3.3. The 2003 amendments to Chapter 88 still necessitated that GPD secure funds to enable them to invoke these provisions. As all HOS related acquisitions predated the 1994 requirements for departments to pay GPD prior the commencement of the expropriation process, the Department funded HOS cases through its own budgetary allocation. This was a general line item catering for all expropriations, including HOSs. Later, Budget in respect of 2011 created a specific line item catering specifically for outstanding HOS related expropriation cases.

⁴ The amendments were carried out in 2002 but came in force in March 2003. Thus, for the purpose of this Report, these amendments are going to be referred to as the 2003 amendments.

2.3.4. As at January 2018, there were 389 out of the 8,193 beneficiaries of HOS houses that were still awaiting to sign contracts with the Housing Authority regarding the transfer of ownership of the portion of the acquired land upon which their residence is built. The foregoing implies that the longer it takes Government to issue the Second President's Declaration, the costlier the settlement of these cases will be.

2.3.5. The next Chapter of this Report discusses the allegation and presents the findings emanating from this Investigation.

Chapter 3

Investigating the anonymous allegations

3.1. Introduction

3.1.1. The Investigation of the anonymous allegation received did not lead to the National Audit Office (NAO) uncovering evidence suggesting legislative, administrative or ethical irregularities. This Chapter highlights the main justifications and evidence corroborating this statement. Moreover, the discussion herein considers the seven main allegations and their implications against the evidence collated and the outcome of this Investigation.

3.1.2. Within this context, the discussion in this Chapter focuses on the following:

- a. The former Parliamentary Secretary commenced negotiations to purchase the Home Ownership Scheme (HOS) property in question after the declaration of Government's intention to embark on a drive to settle outstanding HOS cases in 2008, which culminated in Budget 2010.
- b. The conclusion of the HOS land acquisition process by the Government Property Division (GPD) and Housing Authority adhered to Government's declared policy.
- c. The payment of dues to land owners of expropriations for HOS purposes followed the undocumented criteria utilised by GPD.
- d. GPD practically concluded the administrative and legal processes pertaining to all of the outstanding HOSs Santa Luċija plots at the same time.
- e. In some cases, the time taken by GPD to conclude HOS land acquisition processes was shorter than that taken with respect to the case in question.
- f. The processes undertaken by GPD and the Housing Authority to conclude the HOS land acquisition process with respect to the case in question adhered to legal and administrative requirements.

3.2. The purchasing of HOS property from the original beneficiaries

- 3.2.1.** During the interview with NAO officials, the former Parliamentary Secretary outlined that he could not recall the exact date when negotiations with the former beneficiaries of the HOS property in Santa Luċija took place. According to his reckoning, negotiations commenced up to a maximum of six months prior to the signing of the contract. Moreover, the former Parliamentary Secretary stated that he could not recollect the exact date of the signing of the Promise of Sale, but that this document was valid for either three or six months.
- 3.2.2.** This Office was not in a position to verify the date of the Promise of Sale Agreement. This situation materialised as neither the former Parliamentary Secretary nor his Public Notary retained a copy of this Agreement. The Public Notary explained the non-retention of this document relates to the Promise of Sale Agreement being superseded by the Contract between the two parties after five years. Moreover, enquiries revealed that this Document was not registered at the Capital Transfer Duty Section of the Inland Revenue Department. However, it is to be noted that such registration is not mandatory for promise of sale agreements.
- 3.2.3.** Within this context, the former Parliamentary Secretary's assertion that he first approached the former beneficiaries during the late 2009 or beginning of 2010 is deemed reasonable. This statement is supported by the negotiation timeline indicated in the paragraph 3.2.1, which in turn is corroborated by the date that the Parties signed the Contract for the transfer of use of the property under discussion, that is 29 April 2010.

3.3. Government policy on the compensation of outstanding HOS land expropriation

- 3.3.1.** Within the context of this case, Government policy has an important bearing on two counts. Firstly, it highlights the direction that Governmental entities were to pursue. Secondly, the dates relating to Governmental policy declarations provides indicators as to whether the former Parliamentary Secretary sought to influence GPD processes relating to the settlement of outstanding HOS expropriations to his advantage.
- 3.3.2.** Upon assuming his position in 2008, the former Parliamentary Secretary sought to address outstanding compensation settlements for pending HOS expropriations. To this effect, during the interview with NAO officials the former Parliamentary Secretary stated that he had internal discussions with the Ministry for Finance, where he presented the case for concluding outstanding HOS land expropriations. He emphasised that he considered this initiative to be a high priority issue.
- 3.3.3.** Budget Speech 2010, delivered on 9 November 2009 outlined Government's intention to speed up the settlement of pending land acquisitions, including those related to HOS. As a

result, Government expended €841,455 towards the settlement of land acquisitions pertaining to HOS, including the land upon which the property under Investigation was located. In subsequent years, the annual budgetary allocations to GPD included a specific line item to address outstanding HOS related land acquisitions.

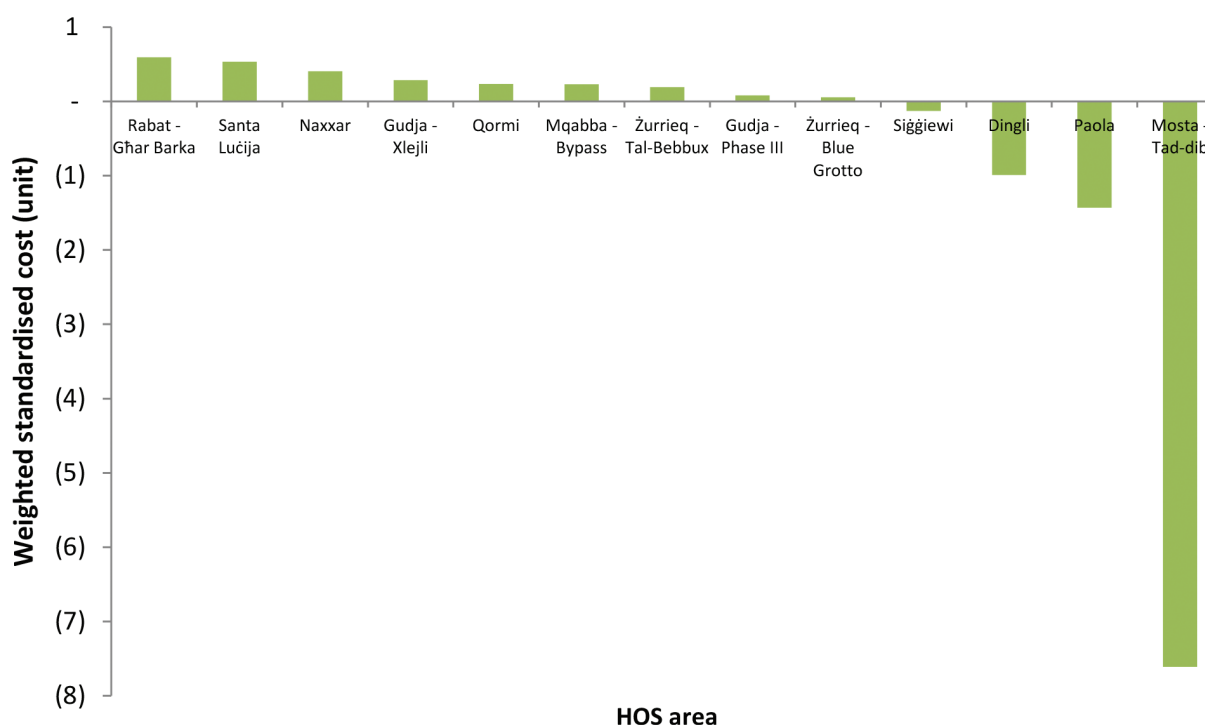
- 3.3.4. The foregoing illustrates that work connected with the establishment of Government policy regarding the settlement of HOS expropriated commenced in 2008 and culminated in Budget Speech 2010, delivered in November 2009. These events predate the claimed start of the former Parliamentary Secretary's negotiations with the former beneficiaries of the HOS property as outlined in paragraph 3.2.1. These circumstances preclude the possibility that the former Parliamentary Secretary sought to use his influence to expedite GPD proceedings relating to land acquisitions upon which he was subsequently to negotiate and eventually purchase an HOS property.

3.4. GPD's undocumented criteria for settling HOS expropriations

- 3.4.1. GPD does not have a documented internal policy to complement Government's strategic direction declared in various budget speeches. Incumbent and former GPD officials interviewed remarked that, historically, settlement prioritisation was, in instances, influenced through pressure exerted by land owners and HOS beneficiaries requesting that their respective cases are expedited by GPD. This sort of pressure is understandable in view of the funds that may be involved with respect to the payment to individual owners of expropriated land and the lengthy time that would have elapsed. Similarly, pressure would be expected, particularly in cases where HOS beneficiaries would not have entered into a formal agreement with the Housing Authority regarding the transfer of ownership. In such cases, beneficiaries' only claim to their property would be a Promise of Sale signed with the Housing Authority a number of years previously – a situation, which raises significant legal complexities and restrictions, which render the sale of such premises as highly problematic.
- 3.4.2. While confirming the above situation, the former Parliamentary Secretary stated that the main criteria adopted to prioritise the settlement of outstanding dues with respect to HOS related expropriations entailed the optimisation of available funds in terms of the number of beneficiaries that would be able to benefit through the formal transfer of home ownership. The former Assistant Director, Contracts, GPD confirmed this statement during the interview at the NAO.
- 3.4.3. GPD files do not provide sufficient documented evidence with respect to decision making concerning the settlement of HOS related land acquisitions. Moreover, at the time, GPD files did not include an updated snapshot of total outstanding HOS land acquisitions cases, together with estimated settlements costs. Consequently, the confirmation of the GPD's prioritisation criteria necessitated that NAO simulates the selection process. This entailed considering the product of fund availability and the number of outstanding HOS Units in the various localities

still awaiting the formalisation of the transfer of ownership concerning their property as at the last quarter of 2009.⁵ Since budgetary information concerning HOS expropriations was not specifically available (at the time the GPD budget comprised a line item for all expropriations), the NAO mitigated this methodological limitation by assuming a €1 million budget for HOS expropriations. This assumption considered budgetary allocations for HOS expropriation cases in subsequent years. In practice, however, the simulation exercise would emulate the same results irrespective of the assumed budgetary allocation since the exercise would utilise this figure to allocate a weighting to the value of land in various HOS localities. Figure 3 refers.

Figure 3: Utilisation of available budget to settle outstanding HOS expropriations (2009)



3.4.4. Figure 3 shows that given a €1 million budget for HOS expropriations, the largest number of beneficiaries that would have benefitted related to HOS areas in Santa Luċija and Għar Barka – limits of Rabat. The foregoing confirms that GPD fulfilled the HOS expropriation settlement criteria of optimising its budget in terms of the highest number of beneficiaries that would benefit by being in a position to sign ownership contracts with the Housing Authority. To this end, 210 beneficiaries residing in HOS areas in Santa Luċija and Għar Barka, ir-Rabat became eligible to sign ownership contracts.

3.4.5. Incidentally, this Investigation notes that the GPD criteria for prioritising settlement of outstanding HOS cases as cited in paragraph 3.4.2 was not strictly followed in subsequent years. A case in point relates to Għajn Dwieli in Paola. Moreover, in 2011, the specific line item budgetary allocation for outstanding HOS expropriations was exceeded by €346,351.

⁵ Statistical and financial information derived for the purpose of this exercise were sourced from GPD.

3.5. Settlements of outstanding HOS St Lucia expropriations

- 3.5.1. This Investigation also sought to determine whether GPD expedited legal and administrative processes relating to the property under review. This issue was considered since the anonymous letter implicated that these processes were accelerated to favour the former Parliamentary Secretary.
- 3.5.2. Various GPD sources show that the administrative and legal processes pertaining to all of the outstanding Santa Luċija HOS plots were concluded at practically the same time. The following timeline refers.

Table 1: Timeline of HOS expropriation settlements in Santa Luċija and Għar Barka, ir-Rabat

Locality	File number	Authorisation to commence settlement of expropriation	Endorsement by Parliamentary Secretary	President Declaration published in Government Gazette	Money deposited in an interest bearing account
Santa Luċija	L259/74/1 Plot 1	27/11/2009	15/03/2010	15/04/2010	20/04/2010
	L259/74/2 Plot 2	25/11/2009	15/03/2010	10/05/2010	11/05/2010
	L259/74/5&8 Plot 5	27/11//2009	15/03/2010	29/04/2010	03/05/2010
	L259/74/5&8 Plot 8	27/11//2009	15/03/2010	29/04/2010	03/05/2010
Għar Barka - Limits of Rabat	L33/81/3	03/02/2010	11/03/2010	15/04/2010	20/04/2010
	L33/81/4	03/02/2010	11/03/2010	29/04/2010	03/05/2010
	L33/81/5	03/02/2010	25/03/2010	29/04/2010	03/05/2010
	L33/81/6	03/02/2010	15/03/2010	29/04/2010	03/05/2010
	L33/81/7	03/02/2010	07/04/2010	10/05/2010	11/05/2010
	L33/81/II/1	03/02/2010	25/03/2010	29/04/2010	03/05/2010
	L33/81/II/2	03/02/2010	25/03/2010	10/05/2010	11/05/2010
	L33/81/II/3	03/02/2010	11/03/2010	15/04/2010	20/04/2010
L33/81/II/4	03/02/2010	25/03/2010	29/04/2010	03/05/2010	

- 3.5.3. Table 1 confirms that the legal and administrative processes related to the settlement of outstanding expropriated lands in Santa Luċija, essentially, followed the same path. This assertion considers the negligible time difference of two days between the initiation of the process concerning Plot 2 (the one on which the property in question is located) and the remaining plots in Santa Luċija, namely Plots 1, 5 and 8. Furthermore, the minor deviation whereby the former Commissioner of Land initiated the settlement process is deemed as immaterial on two counts.
- 3.5.4. Firstly, the former Parliamentary Secretary authorised the settlement pertaining to all of the outstanding Santa Luċija plots simultaneously on 15 March 2010. Secondly, although the Commissioner for Land initiated the settlement process, this does not imply that there was any influence on the case. To this effect, this Investigation did not elevate any evidence that any

party exerted any pressure. Moreover, the file assumed the normal course up to the issue of the President's Declaration on 10 May 2010. This date shows that the President's Declaration for Plot 2 was the last one published for the Santa Luċija area.

3.5.5. Secondly, this Investigation also benchmarked the length of the administrative process taken to conclude the outstanding HOS Santa Luċija land expropriations with the similar process conducted by GPD with respect to Għar Barka, in the limits of Rabat. As outlined in Table 1, in the former case, GPD initiated the process concerning all the outstanding cases in this area by 27 November 2009. Subsequently the former Parliamentary Secretary authorised settlement on 15 March 2010. On the other hand, GPD embarked on the Għar Barka cases on 3 February 2010 and subsequently authorised for settlement by 7 April 2010.

3.6. Legal and administrative compliance

3.6.1. This Investigation confirmed that the legal process relating to the settlement of outstanding dues to owners of the expropriated land under review, namely Plot 2 in HOS Santa Luċija, adhered to the legal requirements stipulated in Chapter 88. GPD documentation illustrates that the Division followed the legal process presented in Figure 2, within the previous Chapter. Subsequent to the 2003 amendments to Chapter 88, GPD issued a second President's Declaration, whereby Government became the owner of the expropriated Plot in question. As stipulated in Chapter 88, GPD deposited the equivalent amount to the value of the land together with the accrued damages in an interest bearing account as outlined in Table 1. GPD then transferred the title of this expropriated land to the Housing Authority through Legal Notice 438 / 2010, published on 17 August 2010. This enabled the latter to proceed with the transfer.

3.6.2. In the interim, the Housing Authority proceeded with the legal process by enabling the transfer of use of the property built on the expropriated land in Santa Luċija from the previous beneficiaries to the former Parliamentary Secretary, where the interested parties signed the contract on 29 April 2010.⁶ The approval of the transfer was granted within one day. The Housing Authority Officer responsible for these approvals outlined that these approvals are granted in a short period of time and usually the process does not take more than five working days.

3.6.3. The Housing Authority concluded the legal process concerning this case on 26 May 2011 through the signing of Agreement for the transfer of ownership between the Housing Authority and the former Parliamentary Secretary.

3.6.4. This Chapter of the Report has already outlined that the settlement of the expropriated Land in question by GPD and the subsequent steps undertaken by the Housing Authority concerning the transfer of ownership followed the established administrative procedures. To this effect,

⁶ This legal step concerning the Housing Authority did not necessarily need to follow the legal process undertaken by GPD to conclude the land expropriation process on which the property in question was built. The transfer of use could have been affected between the interested parties regardless as to whether Government owned the acquired land or not.

the necessary approvals concerning the various phases of the processes were on file together with the relevant supporting administrative tasks, such as land valuations.

- 3.6.5. However, the administrative documentation was subject to some limitations. GPD did not document in the relative files the workings upon which the Division bases its decision-making process concerning the prioritisation of settlement for outstanding expropriated land.

3.7. Conclusions

- 3.7.1. The anonymous allegations received at this Office implied that the former Parliamentary Secretary responsible for Small Business and Land used his influence to expedite the process for payment by GPD. Such action, it was alleged, would personally benefit the former Parliamentary Secretary, specifically as he was in the process of procuring a property built on land expropriated by Government for HOS purposes.
- 3.7.2. The anonymous letter concluded by comparing the 27-year period it took the aforementioned Governmental entities to regularise the former beneficiaries' position. Conversely, it necessitated just five months to address similar issues concerning the same property when the former Parliamentary Secretary had an interest in this HOS unit.
- 3.7.3. This claim raises a number of issues. Firstly, the 27-year period materialised due to administrative shortcomings concerning the HOS since its inception. Secondly, the comparison does not consider the legislative changes to Chapter 88. These changes expedited the payment to owners of expropriated land, including those that were HOS related. Moreover, these amendments ensured that Government would assume immediate ownership of the acquired land. Consequently, GPD was not only able to mitigate the financial and social disadvantages emanating from prolonging expropriations related settlements but also to significantly expedite the relative processes. Thirdly, estimating the settlement process to five months when the former Parliamentary Secretary was involved is not accurate since it does not consider the preliminary work undertaken by GPD prior to the Commissioner's of Land approval to proceed with the settlement of the Santa Luċija Plot 2 in late November 2009.
- 3.7.4. Although the information provided within the anonymous letter in relation to specific events is mostly correct, it does not consider the historic, legal and administrative context. All of these variables play a critical part in assessing whether the former Parliamentary Secretary influenced processes related to HOS for his own benefit. To this effect, this Investigation did not uncover evidence to support the claims and implications made in the anonymous letter.
- 3.7.5. The next Chapter of this Report provides an outline of the administrative weakness noted during the course of this Investigation with respect to the lands acquisition process.

Chapter 4

Administrative weaknesses within Home Ownership Scheme processes

4.1. Introduction

4.1.1. During the course of this Investigation, the National Audit Office (NAO) noticed a number of administrative shortcomings within the Government Property Division's (GPD) processes. Although not strictly within the scope of this Investigation, these shortcomings, to varying degrees, influenced GPD processes relating to the settlement of outstanding Home Ownership Scheme (HOS) related expropriated land. Within this context, this Chapter discusses the following:

- a. There is an absence of documented policies at GPD concerning outstanding HOS expropriation cases.
- b. In instances, the decision-making process relating to the prioritisation settlement of outstanding land acquisitions is not supported by the necessary documentation.
- c. Many owners of land expropriated for HOS purposes remain unidentified.
- d. Government will incur higher costs when the conclusion of HOS cases is prolonged.

4.2. HOS undocumented settlement prioritisation policy

4.2.1. GPD policies concerning the settlement prioritisation of outstanding HOS cases are not duly documented. This Investigation revealed that, at the time, the settlement prioritisation criteria sought to ensure that budgetary allocations are optimised in terms of enabling the highest number of beneficiaries of houses in HOS areas that could be in a position to sign ownership contracts with the Housing Authority. Although undocumented, this policy criteria was confirmed through separate interviews undertaken with former senior GPD officials. Such circumstances raise the following points:

- a. The need for a formalised policy framework particularly arises in view of the historical developments concerning HOS related land acquisition. Throughout the development of HOS, especially during the 1970s and 1980s, GPD expropriated land regardless of the unavailability of specific budgetary allocations. Consequently, a significant number of outstanding cases and financial dues to the owners of the acquired land accrued.

- b. Documented policies are conducive to good practices, in terms of administrative safeguards and continuity. Ultimately, the documentation of policies manifestly emphasises the principle of transparency and consequently, good governance.
- c. In the absence of a documented policy, as confirmed by interviewees' statements, it was not uncommon for GPD to react to justified pressures from owners of the acquired land to receive the respective compensation. Similarly, some HOS beneficiaries regularly exercised pressure on GPD to conclude the process of acquired land to enable them to proceed with transfer of ownership contracts with the Housing Authority. Consequently, a non-formalised policy framework raises the risk that administrative processes deviate from strategic objectives.

4.3. Audit trail weaknesses

- 4.3.1. This Investigation uncovered a number of weaknesses pertaining to documented evidence regarding the prioritisation of the HOS settlement process. These shortcomings pertained to HOS expropriation cases and were not just evident with respect to the cases reviewed for the purpose of this Investigation. Specifically, workings outlining the reasons why GPD pursued a specific expropriation settlement instead of another were not on file. Such workings would ideally consider the GPD budget as well as the opportunity costs involved when opting to settle a particular HOS area. These circumstances also detract from the principle of transparency.

4.4. Unidentified owners of HOS related land acquisition

- 4.4.1. Prior to the 2003 amendments to the now repealed Chapter 88, the non-identification of owners of the expropriated land proved to be one of the main stumbling blocks (together with the unavailability of funds) to conclude HOS acquisition cases. Over the years, this led to the accumulation of HOS expropriation cases as root of titles become more complex to determine due to issues such as inheritances and multiple owners.
- 4.4.2. The post-2003 legal amendments enabled the acquisition settlement process to proceed regardless as to whether the original land owners were identified or not. Nonetheless, the issue of unidentified owners remains an issue. During the period 2003 to 2017, €7,090,211 were deposited in an interest bearing account. However, due to data limitations, this Office was not in a position to identify the number of cases whereby the funds were actually transferred to the original land owners.
- 4.4.3. In recent years, however, unknown ownership of the expropriated land remains an issue. This is mainly due to a policy direction to enable as many HOS beneficiaries as possible to proceed with the signing of ownership contracts with the Housing Authority. These circumstances lead to a situation where, upon the issue of the President's Declaration, GPD made deposits in interest bearing accounts without always embarking on legal researches to confirm ownership of the acquired land.

4.5. Impact of prolonging settlement of HOS acquired land

4.5.1. As at end January 2018, there were 389 out of a total of 8,193 HOS beneficiaries who were still awaiting to sign ownership contracts with the Housing Authority. This implies that GPD has not yet concluded the land acquisition process with respect to various localities. Table 2 refers.

Table 2: Outstanding HOS areas

Locality	Number of outstanding housing units
Birkirkara	12
Bugibba	3
Burmarrad	5
Ħ'Attard	7
Ħad-Dingli	53
Ħal Kirkop	18
Ħal Luqa	5
Ħal Qormi	44
Ħaż-Żebbuġ	23
Il-Fgura	1
Il-Gudja	14
Il-Kalkara	11
Il-Marsa	6
Il-Mosta	42
In-Naxxar	28
Il-Qrendi	18
Is-Siġġiewi	8
Ir-Rabat, Għawdex	6
L-Imġarr	42
L-Imqabba	12
L-Imsida / Swatar	16
Iż-Żurrieq	15
Total	389

4.5.2. While over 95 per cent of HOS cases have been settled, financial implications of prolonging the HOS land acquisition process implies higher costs to Government. As an example, Table 3 considers expropriation settlements carried out by GPD in 2010.

Table 3: Expropriations settlements carried out by GPD in 2010

Locality	HOS properties involved	Land value as at date of taking over €	Land value as at 1 January 2005 €	Damages accrued €
Il-Gudja	16	2,460.74	41,291.34	31,657.33
Ir-Rabat	146	28,211.29	339,400.00	254,530.18
Santa Luċija	64	6,750.52	101,730.00	72,846.56
Total	226	37,422.55	482,421.34	359,034.07

4.5.3. A review based on HOS related expropriation in 2010 show that on average damages amounted to over nine times more than the land value on its expropriation date. Such circumstances mainly materialise for two principal reasons:

- a. Land values increased substantially over a period spanning in excess of 20 years up to 2005 when land values are frozen for expropriation purposes.
- b. Furthermore, Government is obliged to pay damages at the legally established rates in cases of prolonged settlement for land acquisition. These consider an annual simple interest at five per cent for the number of years that would have elapsed since Government would have taken over the acquired land. This calculation assumes the average of the valuation as at the date that Government acquired the land and the valuation as at 1 January 2005 – the date the legislative provisions stipulate the freezing of value with respect to expropriated properties.

4.6. Conclusions

4.6.1. This Chapter highlighted that a number of administrative weaknesses impinge on the land acquisition process. In turn, these shortcomings encroach on the principle of transparency, value for money, the right of compensation for expropriated property within a reasonable period and the right of beneficiaries of HOS properties to be granted the unfettered ownership of their homes.

4.6.2. The absence of a documented policy transgresses on the principle of transparency. Such a circumstance also deviates from good administrative practices. Both of these factors are critical within the sensitive environment of land acquisition. Moreover, a documented policy reduces the burden of decision-making of public officials as it mitigates the possibility of subjective decisions and is conducive to the consistent implementation of administrative processes and procedures over time.

4.6.3. Value for money considerations arise through the prolonging of the land acquisition process. Although not within its scope, this Investigation estimated that, on the basis of 2010 statistics, Government incurred 22 times more in settlement fees than the value of land on its date of

acquisition. Consequently, the longer it takes to pay owners their dues, the higher the costs incurred by Government due to the accrued damages.

4.6.4. The administrative shortcomings at the GPD also have a critical impact on the owners of the acquired land. Property ownership is an inalienable right and consequently owners whose land has been expropriated justly expect to be compensated within a reasonable period. As noted earlier in this Report historical decisions played their part in the accumulation of outstanding HOS expropriation cases. Nonetheless, the issues surrounding HOS expropriations was not holistically addressed over time as can be seen by the various legal and administrative amendments and the limited annual budgetary allocations.

4.6.5. Not least, the administrative shortcomings also prolonged the opportunity for HOS beneficiaries to sign ownership contracts with the Housing Authority. Although in the recent past the position of many beneficiaries has been regularised, there are still around 400 outstanding cases. It is recommended that such cases are dealt with immediately.

Appendix 1: Bibliography

Chapter 88. Land Acquisition (Public Purposes) Ordinance.

Government Lands Act, 2017.

L.N. 438 of 2010. Housing Authority Act (CAP. 261), Housing Authority (Transfer of Assets) (No.4) Order, 2010.

L.N. 65 of 2011. Housing Authority Act (CAP. 261), Housing Authority (Transfer of Assets) Order, 2011.

Ministry for Finance, 2009. Budget Speech 2010.

Ministry for Finance, 2010. Budget Speech 2011.

Ministry for Finance, 2011. Budget Speech 2012.

Ministry of Finance Circular 9/1993. Business and Financial Plans 1994/1995/1996.

2017-2018 (to date) Reports issued by NAO

NAO Work and Activities Report

April 2018 Work and Activities of the National Audit Office 2017

NAO Audit Reports

May 2017 Performance Audit: Protecting Consumers through the Market Surveillance Directorate's Monitoring Role

June 2017 Performance Audit: Procuring the State Schools' Transport Service

July 2017 An Investigation of Property Transfers between 2006 and 2013:
The Transfer of the Property at 83 Spinola Road, St Julian's

July 2017 An Investigation of Property Transfers between 2006 and 2013:
The Expropriation of the Property at Fekruna Bay, St Paul's Bay

September 2017 Performance Audit: Landscaping Maintenance through a Public-Private Partnership

October 2017 Performance Audit: Maintaining and Repairing the Arterial and Distributor Road Network in Gozo

November 2017 Follow-up Reports by the National Audit Office 2017

November 2017 Performance Audit: Outpatient Waiting at Mater Dei Hospital

November 2017 Report by the Auditor General Public Accounts 2016

December 2017 Annual Audit Report of the Auditor General - Local Government 2016

December 2017 An Analysis on Revenue Collection

January 2018 The use of IT systems to identify skills and professional development needs within the Public Service

February 2018 Performance Audit: The designation and effective management of protected areas with Maltese waters

March 2018 Performance Audit: Evaluation of Feed-In Tariff Schemes for Photovoltaics