

STATEMENT

**SENATOR THE HON REGINALD T. A. ARMOUR S.C.,
ATTORNEY GENERAL & MINISTER OF LEGAL AFFAIRS**

The Public Procurement and Disposal of Public Property Legislation

Madame Speaker, I have been authorized by the Cabinet to make the following statement

I make the following statement with respect to stage of our work on the proclamation of the Public Procurement and Disposal of Public Property legislation, and supporting Regulations.

Madam Speaker, permit me to provide a brief overview of The Public Procurement and Disposal of Public Property legislation.

The Public Procurement and Disposal of Public Property Act, 2015 (“the Act”) was amended three (3) times namely; in 2016, 2017 and 2020. The 2020 amendment was passed in the House of Representatives on December 4, 2020, and in the Senate on December 8, 2020 and thereafter with amendments made in the Senate in the House of Representatives on December 11, 2020. The Act was assented to on December 29, 2020 and is currently awaiting proclamation. The ten (10) Regulations were proclaimed on January 14, 2022.

The Act introduced a new regime for public procurement and retention and disposal of public property, in accordance with established principles of good governance namely; accountability, transparency, integrity and value for money, to which this government is committed. The Act also serves the purpose of, among other things to criminalize bid-rigging, to standardize procurement processes, to provide for e-procurement and to improve transparency.

Prime Minister the Honourable Dr. Keith Rowley has been driving the work of the Cabinet during the period of the many amendments to this legislation and efforts to refine and make that legislation workable. However, recent reviews clearly indicate that we are not there yet and that more work and consultation are required if a workable piece of legislation is to be the anticipated outcome.

Madam Speaker.

The GORTT has placed its highest priority and is fully committed to take the final steps to fully proclaim and to bring into operation this important law. To this end I highlight that the GORTT has adopted a coordinated approach, with the Office of the Attorney General and Ministry of Legal Affairs operating in tandem with the work led by several Divisions of the Ministry of Finance, the Office of the Procurement Regulator and other various Ministries.

Less than one month after my assumption of my responsibilities as Attorney General and Minister of Legal Affairs on March 16, 2022 and, so as to inform myself of the readiness of the GORTT fully to proclaim this very significant piece of legislation, I engaged in correspondence with two important stakeholders, namely the Office of the Procurement Regulator (OPR) and the Judiciary. By correspondence dated April 12, 2022 I wrote separately to each of these important stakeholders, concerned to be able to advise the Cabinet to move toward the fullest proclamation of the Act in the shortest possible time..

In the case of the OPR, among other things I asked to be apprised by the OPR of a full checklist of what will be required from that Office for the various ministries and agencies of government to be fully prepared for the proclamation of the Act.

In the case of the Judiciary, I asked for a checklist of those steps which are necessary to ensure that the Judiciary is fully ready for compliance on the proclamation of the Act.

Madam Speaker.

I received a reply from the OPR on April 13, 2022. Under cover of that letter the OPR provided my office with six (6) documents namely; (i) Letter to stakeholders, (ii) Readiness Assessment Checklist (iii) Roadmap for

compliance with the Act (iv) Pictorial Roadmap for compliance, (v) List of Public bodies and (vi) List of responding Public bodies. That letter concluded that “[r]esponses collated thus far revealed that some public bodies have commenced the process of getting ready for compliance with the Act, however there is significant work to be undertaken to establish the required system and processes.” (emphasis mine)

The reply of the Judiciary to me was dated the 25th and received on the 27th May. It consisted of a comprehensive twenty nine (29) page *Commentary by the Judiciary in its Administrative Capacity*. The cover letter of the Honourable Chief Justice was explicit: “For obvious reasons we have refrained from commenting on the policy underlying the legislation or the legality of its provisions. Our comments are therefore made in an administrative capacity and are not intended to proffer any legal opinion or advice. That however, inevitably involves flagging areas of concern based on our understanding of the legislation in its current form.”

The introduction to the *Commentary by the Judiciary in its Administrative Capacity* stated that, in response to my request of the 12th April, the Judiciary has reviewed the Act (as amended) as well as the Regulations issued by the Minister of Finance on Jul 1, 2021 and “has identified critical issues relative to the operationalisation of the legislation in its current form.”

Under separate headings (and these are not exhaustive) the Judiciary commented as follows, in part. Time does not allow me to quote full details.

Madam Speaker.

The remarks of the Judiciary, one of our co-equal arms of government, are traffic stopping:

- a) **No separation of powers:** *“The legislation in its current form suggests ... minimal adherence to the principle of separation of powers which is of grave concern ...”*¹;
- b) **Wide Authority of the OPR:** *“...several instances ...including the power of entry without notice, search and removal...”*²;
- c) **Insufficient assurance of due process:** *“The legislation does not sufficiently provide for due process in the exercise of the powers of the OPR or its procedures....It is unfortunately made too easy by this (sic) act for someone to mischievously ‘throw a spanner in the works’ in an effort to delay or frustrate the work of a public body.”*³
- d) **Can halt public body’s procurement activity:** *“We have ... observed that the Act gives supplier/contractors/members of the public numerous opportunities to challenge the procurement activities of a public body (see section 51)...this right may be subject to abuse and can bring the operations of a public body with respect to its procurement activities to a halt.”*⁴;

¹ Paragraph 2; p.3/29

² Paragraph 3; p.4/29

³ Paragraph 4; p.4-5/29

⁴ Paragraph 8; p.5/29

e) **Real potential of the Act to frustrate and hinder the functioning of the Courts and other public bodies;**⁵

f) **Judiciary mindful of obligations as public body but procurement unit remains unstaffed:** *“ The Judiciary[‘s] ...procurement unit which at present consists of one member of staff and one officer, is not resourced to undertake the requirements of the legislation with regard to its own procurement”;*⁶

Under the Heading **“Potential impact on the Court system”** the following were further particularised:

g) **Great increase in public law litigation:** *“The operationalization of the Act will lead to a plethora of disputes of public law including Judicial Review and of commercial disputes. The Judiciary anticipates and must prepare for an increase in said matters. The Judicial Review Act enables matters to be taken to the Privy Council as of right. The decision making of the OPR is conceivably subject to judicial review at every step. It is fairly obvious to the Judiciary that the subject of this legislation will require adjudication without any delay and possibly a dedicated and resourced Commercial Court in the Civil Division. Without this, the functioning of the nation's public bodies may*

⁵ Paragraph 10; p.5/29

⁶ Paragraph 12; p.6/29

be so hindered as to affect the operations of the State. This we anticipate will require special Rules of Court to be prepared by the Rules Committee”⁷;

h) Increase in number of State Attorneys available to support the speedy hearings⁸;

i) Reversion to unmanageable workload: *“After 25 years of seeking to handle its workload by removing from its responsibility matters which it should not have had to undertake the judiciary is finally beginning to be able to implement systems to manage its caseload. These extraneous matters had put an unnecessary strain on the Judiciary's resources ... The expected workload due to expected adjudication and provision of services to all public bodies arriving from this Act, will negative these gains and improvements. This means that the Judiciary will require far more resources. Without this, the delays in adjudication in procurement related matters fighting for the same resources as the rest of the court's caseload can conceivably bring the public operations of the State to a dead halt”⁹;*

j) Extensive effect on internal processes and operations and need for dedicated legal focus: *“...It is the view of the Judiciary that the effect of this legislation on the processes and operations of the Judiciary (and other public bodies) has not yet been truly understood and that the level of bureaucracy, record keeping, paper work as well as the staff needed to ensure*

⁷ Paragraph 14; p.6/29

⁸ Paragraph 15; p.6/29

⁹ Paragraph 17; p.7/29

its proper application are not yet properly assessed. The policy requiring existing staff to undertake this work is unrealistic. There must be recognition of the need for in-house attorneys to handle the drafting of contracts and review the preparation of tender documents for every procurement. The responsibility placed on the Procurement Officer and the Accounting Officer is immense and to require them to address it without sound legal support, at at risk of grave penalty, is unwise.

*“The judiciary is aware that the OPR has put much time and effort into studying and planning its operations and has addressed certain public bodies along the way. The OPR has probably presumed that public bodies have taken the time and opportunity to develop their internal processes and procedures and their record management and record and reporting procedures in preparation for the implementation of this Act. While that may be so for some public bodies, many have not been able to focus their attention and their change management on it as yet. ...many organizations and persons are yet unaware of their responsibility on proclamation of this Act. Proclamation without everyone being ready is a recipe for disaster. [The implementation of this legislation] ... must be planned for and resourced and at the very least, organizational re-engineering of some kind will be necessary....”*¹⁰

¹⁰ Paragraphs 1-20; p.7-8/29

Against the background of the last comment of the Judiciary, quoted immediately above, the statement of the OPR in his letter to me dated 13th April 2022 (already referred to) is worth repeating: *“[r]esponses collated thus far revealed that some public bodies have commenced the process of getting ready for compliance with the Act, however there is significant work to be undertaken to establish the required system and processes.”*

Madam Speaker, The Honourable Prime Minister expressly and recently directed in Cabinet that this legislation should be referred to the Attorney General and Minister of Legal Affairs for his advice on the expeditious proclamation of the same. I have drawn the concerns which are highlighted in this Statement to the attention of the Honourable Prime Minister and I am authorised by him to make clear and to emphasise that this Government will not shirk from its responsibility to proclaim this very important piece of legislation.

At the same time, no Government, charged as this Government is with adherence to the principles of good governance, can ignore the red flags which this most recent consultation has highlighted. The Ministry of the Attorney General and Legal Affairs has a committed Team of very competent attorneys who are examining the concerns that have been brought to our attention.

As Attorney General and Minister of Legal Affairs and, in full consultation with the Minister of Finance who is the Minister charged with responsibility under this legislation, it is my intention to reach out to all relevant stakeholders for a meaningful and candid consultation on the practicalities necessary for the full proclamation of this legislation in the shortest possible time, at which consultation we will share the *Commentary by the Judiciary in its Administrative Capacity* and invite all stakeholders to join with this Government in the practical full proclamation of this Act.

Madam Speaker, as I end, permit me to emphasise that the Government of Trinidad and Tobago led by the Honourable Prime Minister Dr. Keith Rowley remains committed to the full proclamation of the Act and, will continue to work assiduously and responsibly towards that goal in the shortest time possible.

Thank you.

Reginald T. A. Armour SC

Attorney General and Minister of Legal Affairs.

22nd June, 2022

end