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Case No: 015

The Truth, Reconciliation and National Unity Commission

In the Complaint of Antoine Ally

31 December 2022

Determination on the Complaint of Antoine Ally

Complainant:
Antoine Ally

I. ADMISSIBILITY

1. The following determination is made pursuant to Section 11 of the Truth, Reconciliation and National Unity Commission Act ("Act"), 2018, which provides that the Commission shall make decisions and recommendations. The determination made is in accordance with the mandate of the Commission as set out in Section 3(3) of the Act, "to receive complaints in respect of alleged violations, to gather, collate and analyse information and evidence with respect thereto, and to make decisions". Pursuant to Section 2(8) of the Act, a violation means a human rights abuse committed during or in relation to the Coup d'état of 5 June 1977 and includes a non-exhaustive list of enumerated acts.[1]

2. Prior to the investigation and determination of a complaint, Rule 25(1) of the Commission's Rules of Procedure and Evidence ("Rules") mandates that the Commission must be satisfied that the complaint before it can be considered admissible. For a complaint to be admissible before the Commission, a number of criteria must be satisfied.

3. Pursuant to Section 3(4) of the Act, complaints shall be filed within six months of the Commission's commencement of mandate. The mandate of the Commission commenced on 9 August 2019. Thus, to be admissible, complaints must have been filed with the Commission on or before 9 February 2020. Furthermore, pursuant to Section 3(5), complaints may be filed by victims, representatives of victims, or close surviving relatives of deceased victims.

4. The complaint of Mr. Antoine Ally, who brings his complaint as a victim, was received by the Commission on 13 August 2019. Consequently, Mr. Ally's complaint satisfies the admissibility requirements of Sections 3(4) and 3(5) of the TRNUC Act.

5. Further, pursuant to Section 2(8), complaints must allege a violation of human rights that was committed during or in relation to the Coup d'état of 1977. The requirement that a complaint be related to the Coup d'état of 1977 requires the Commission to establish that there is an alleged connection between the allegation and the Coup d'état of 1977. Pursuant to Rule 25(2) of the Rules, a complaint ". . . will be deemed inadmissible where the information contained within the complaint falls manifestly outside the mandate of the Commission". The threshold for admissibility to be granted is low, though a complaint deemed by the Commission to be admissible may later be deemed inadmissible following investigation.

6. In his complaint, Mr. Ally alleges victimisation on political grounds, denial of the right of employment, and denial of a scholarship on political grounds. The temporal timeframe of his alleged victimisation is from 1997 until well into the 2000s. As per its mandate, the Commission considers that these allegations correspond to and should be characterised as the violations of wrongful termination of employment and wrongful denial of the right to employment.

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[1] "[...] (a) unlawful killing; (b) unlawful imprisonment or other deprivations of physical liberty; (c) torture; (d) rape; (e) enforced disappearance of persons; (f) kidnapping; (g) forceful eviction from legally owned building or land; (h) unjustified acquisition or loss of property or business; (i) wrongful denial of the right to employment; (j) wrongful termination of employment; (k) forced exile; (l) abuse of office by a Government official, including the executive, judiciary or legislature; or (m) other acts of a similar character causing suffering or injury to body or to mental or physical health". Truth, Reconciliation and National Unity Commission Act, 2018, Act 9 of 2018 (14 September), sec. 2(8) [hereinafter "TRNUC Act"].

II. PROCEDURAL HISTORY

7. The Commission finds that while the allegations of victimisation of Mr. Ally occurred outside the primary temporal time frame of the mandate of the Commission, it recalls that the Government at whose hands the alleged victimisation occurred was the same government that took power with the Coup d'état of 1977. This Government retained legislative power until 2016 and executive power as of the date of the Commission's admissibility determination on 21 August 2019. As Mr. Ally alleged before the Commission that his victimisation was directly tied to his vocal opposition to this Government, the Commission determined his complaint sufficiently related to the Coup d'état of 1977 to be prima facie admissible before it for determination.

8. On 9 October 2019, the Commission began hearing evidence in the case of Antoine Ally.[2] The Commission heard evidence from three witnesses.[3]

III. EVIDENCE RECEIVED

A. Evidence of Antoine Ally

9. Mr. Ally presented his evidence before the Commission on 9 October 2019.[4] Mr. Ally alleged long-term victimisation by the Ministry of Health and denial of the right to employment in his chosen field of dentistry. The following chronological factual allegations set out the history and basis for Mr. Ally's complaints.

10. Mr. Ally alleged several possible bases for his claim of victimisation. First, Mr. Ally testified that he had been a vocal political activist for the opposition party, the United Opposition (UO) and later the Seychelles National Party (SNP). Second, he alleged that when he started working for the Ministry of Health in 1997, he was assigned to the clinic at Les Mamelles as an oral health therapist, and while there he pointed out the terrible conditions of the clinic to the administrative team of the Hospital Services. The administrative team came to carry out an assessment of the conditions. After the assessment, Mr. Ally was thanked by the Hospital Services for his cooperation, but later he was apparently expected to cover up the poor conditions; this, he alleged, is one of the bases for his claim of victimisation by the authorities in the Ministry of Health.

11. Mr. Ally further stated that when he started working with the Ministry of Health in February 1997, having studied for three years at the School of Health Studies,[5] he found a lot of clinical issues at Les Mamelles clinic, which could put patients' lives in jeopardy. Mr. Ally stated these issues included deficiencies in sterilisation and radiation. Mr. Ally claimed that he informed the Minister during a meeting she held with staff. After this, Occupational Health Officers came to write a report, which Mr. Ally described as his "capital sin". Mr. Ally claimed that after the report was released, he was constantly harassed and transferred around. Mr. Ally stated the report was released on 3 September 1998, and he resigned on 18 September 1998.

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[2] Hearing No.13 of Wednesday 9 October 2019.

[3] Antoine Ally, Hearing No.13 of Wednesday 9 October 2019; Mitcy Larue, Hearing No.26 of Monday 11 November 2019; Jude Gedeon, Hearing No. 14 of Thursday 10 October 2019.

[4] Hearing No. 13, 9 October 2019.

[5] Now known as the National Institute of Health and Social Studies (NIHSS).

12. Mr. Ally stated that he had become a resident of Mahé in 1997 when working with the Ministry of Health; he was then transferred to Praslin in 1998 without the provision of accommodation by the Ministry of Health. Mr. Ally had originally been a Praslin resident; however, his family situation changed, and he no longer had accommodation in Praslin. Mr. Ally resigned from his position on 18 September 1998, but was able to negotiate some accommodation on Praslin and attempted to withdraw his resignation on 22 September 1998. However, the withdrawal was refused by the Ministry of Health. Consequently, Mr. Ally sought to reapply for a position with the Ministry of Health many times over the following years but was unsuccessful. Mr. Ally claimed that someone had told him there was an issue with his security clearance. Mr. Ally was unable to find any work until April 1999 when he got a job with the Ministry of Environment as inspector for environment control on Praslin.

13. Mr. Ally understood that "if someone in the Government said something bad about you, you would not receive the security clearance", as required for many positions in the public service pursuant to the Security Clearance Act. Mr. Ally recalled that while he worked at the Ministry of Environment, he saw a file that someone, who had applied for building permission at Beau Vallon, was refused due to a lack of security clearance. Mr. Ally stated that individuals would get security clearance for supporting the Government and "good behaviour", like participating in pro-Government rallies.

14. Mr. Ally claimed that the Ministry of Health had made things very difficult for him, which is why he resigned. Mr. Ally told the Commission that he had returned to Praslin and was not able to find work; he had resorted to helping a friend on their farm. One day, Mr. Ally was speaking with the local Member of the National Assembly (MNA), Mrs. Larue, who had previously been Mr. Ally's teacher. Mrs. Larue asked what had happened to Mr. Ally, and he explained. Mr. Ally stated that he was known as outspoken and that he would say what he thought. Mrs. Larue helped Mr. Ally get the job with the Ministry of Environment in April 1999.

15. Before Mrs. Larue had intervened on Mr. Ally's behalf, Mr. Ally had written to President René on 28 February 1999 and was granted a meeting with the President. When Mr. Ally arrived, President René had all of Mr. Ally's documents, and Mr. Ally explained his situation. Mr. Ally claimed that President René pointed his finger at his face, saying: "who do you think you are in this country? You're giving yourself airs, aspiring too high, so bring yourself down, as otherwise I cannot do anything for you". Mr. Ally panicked and responded, "but I am nothing in this country" and then he said to Mr. René: "But who are you? Why are you speaking to me like that?" Mr. Ally alleged that the President did not open the door for Mr. Ally to leave until Mr. Ally had apologised. Mr. Ally believed the system required a person to beg.

16. Mr. Ally stated that he had requested the meeting because he was not receiving security clearance, and he needed that to get work. Mr. Ally recalled that there were a lot of drugs on Praslin, and he did not want to have to go into the business of drugs. Mr. Ally stated that he never told Mrs. Larue what had happened, but she managed to get him a job with the Ministry of Environment; all he had to do was send in his application. The job was based on Praslin as an Environmental Assessment and Pollution Control Inspector. Mr. Ally recalled that on his first day, his superior, Mr. Sheils Barra, told him: "ok, you got a job, we know your affiliation, so be careful".

17. Mr. Ally recalled that after the election when the opposition received 47% of the votes, in 2002, politics were heating up. Mr. Ally felt he could no longer keep quiet as he was looking for change, so he continued with his political activities, despite the fact that it was forbidden. One day, Mr. Ally received

a letter transferring him from Praslin back to Mahé. Mr. Ally stated that when being transferred to Mahé, his accommodation was to be at the Environment Reserve at Port Glaud, in a house that was for the forestry workers. When Mr. Ally arrived, he was warned by some friends to "...get out of there, this place is a danger to you". Mr. Ally felt he did not have a choice and had to stay there. Mr. Ally claimed that at night he could hear stones being thrown on his roof, the doors being shaken, and even found a bullet casing outside the door one morning. Mr. Ally reported this to the Ministry of Environment, but they did nothing about it. Mr. Ally noted that at the time he received a letter that stated, "Government will not be held liable for acts of third party (sic) against you".

18. Mr. Ally then decided that his best option was to try and obtain a scholarship and leave Seychelles. Mr. Ally recalled there was a scholarship offered, possibly by the bank, but required permission from his employer. Mr. Ally claimed that the Ministry of Environment told him to apply, but they would not recommend him for the scholarship. Mr. Ally then found another scholarship offered by the Turkish Government, and as he had already done all the administrative work for the other scholarship it was relatively easy for him to apply for this one too. Mr. Ally claimed that as he was being harassed at work, he was concerned as to how he would be able to leave Seychelles. He believed that when he presented the documents to the Ministry of Foreign Affairs, they would refuse his exit or cancel the scholarship. Mr. Ally believed that no one really knew about Turkey, so no one had applied, which is why he was successful. Mr. Ally stated that he had all his documents ready, and despite the Ministry of Environment not endorsing the application, when he applied to the Ministry of Foreign Affairs, the documents were sent directly to the Turkish Embassy in Nairobi.

19. When Mr. Ally's scholarship was approved, he was supposed to be in Istanbul on 4 October 2004, but Mr. Ally was scared that the Ministry of Environment would interfere. Mr. Ally went to see a person at Foreign Affairs, as well as a person at the Ministry of Education, and did not pass the relevant documents to the Ministry of Environment. Mr. Ally waited for his supervisors to be in a meeting before he informed his team and got on the Kenya Airways flight the next day, to collect his visa from the Turkish Embassy in Nairobi. When Mr. Ally landed, someone told him "They were asking after you, but now they have left and now they cannot cancel your scholarship".

20. Mr. Ally arrived in Turkey on 4 October 2004, and was enrolled in the Language Faculty at the Ankara University. Mr. Ally quickly noticed there were security issues in Turkey, there were terrorist issues, a ban on cults, and bombs. Mr. Ally claimed within the first month, he attended the funeral of a Nigerian friend who was stabbed in a taxi one night. Another incident occurred when attempting to collect his stipend, where a man in a 'suicide vest' who had been shot in the head was lying dead in the building from where he was to collect the stipend. Eventually, Mr. Ally was granted entry into the Faculty for Dentistry at Cukorova University Eastern Turkey, near the border with Iraq. This was at the time of the US invasion of Iraq, and the security situation was very unstable in Turkey. There were then some issues with visas and qualifications, which meant that Mr. Ally effectively had to return to Seychelles at the end of 2005 and to work in the Ministry of Environment. Mr. Ally further stated that he then went to see the Minister of Education and was put on the training plan for 2007.

21. In 2006, he had secured a scholarship with the University of Hungary and he went to seek approval from the Ministry of Health as he was told that as he would be following a Dentistry course, the Ministry of Health would be the parent Ministry. Mr. Ally recalled that there were then some issues with the Hungarian scholarship, so it was delayed in 2006 and was meant to start in 2007; in the meantime, he continued to work for the Ministry of Environment. Mr. Ally claimed only a few ministers knew what he was planning to study in Hungary but then he was told that he would need the

support of the Ministry of Health, because he was planning to study dentistry. Mr. Ally claimed that he went to see Dr. Jude Gedeon, as the Principal Secretary of Health at the time, who apparently enthusiastically approved his application. A couple of weeks later, Mr. Ally went to see Dr. Gedeon again. Dr. Gedeon wrote a letter, which Mr. Ally opened to find that Dr. Gedeon had encouraged the department to "give priority consideration to other more deserving candidates". When Mr. Ally asked Dr. Gedeon, "what happened? Why did you do that? You have compromised my future", Dr. Gedeon told Mr. Ally to leave, as Dr. Gedeon had made up his mind.

22. Mr. Ally claimed that when he returned to the Ministry of Environment, he was told to go and look in his personnel files, but in hindsight, he considered that this was a trap. Mr. Ally stated that he saw nothing of significance in his files, and he believed the Ministry just wanted evidence that he had accessed the file. Immediately after he had accessed the files he was accused of stealing them. Mr. Ally stated that they used the 'missing files' as an excuse to fire him. Mr. Ally stated that his access to the file was pursuant to the legal requirements set out in the PSO. Following that procedure, he had sent the email requesting access and had accessed the file in the presence of an officer from the relevant Ministry.

23. Mr. Ally claimed that following the accusation that he had stolen his personnel files he received a letter telling him to take 'voluntary departure'. Mr. Ally stated that as he was the only person certified in inspecting for chemical and biological warfare and similar environmental hazards, he told the department, "No, you can terminate my appointment". The Ministry of Environment terminated Mr. Ally's appointment in January 2009, and he filed a case with the Public Service Appeals Board. The Board found in Mr. Ally's favour, and he was compensated, but could not return to the same position. Mr. Ally claimed that from that time he offered to retrain in dentistry and to open a private practice.

24. Mr. Ally started to drive a pirate taxi, while he applied to do what he had trained for, dentistry. Again, Mr. Ally applied to the Ministry of Health, with the relevant certifications to operate a private practice, however Dr. Gedeon recommended against allowing Mr. Ally operating a private practice.

25. At this point, Mr. Ally decided to go to Australia to study further and complete his medical qualifications. Mr. Ally wrote to the Australian Dental Council, who informed him that he needed clinical practice hours to complete his studies. Mr. Ally stated that Dr. Gedeon allowed him the 40-50 hours of practice, thanks to assistance from Mrs. Larue, who was the Minister of Health and ensured Mr. Ally got access. Mr. Ally went to Curtin University, Australia, to complete his studies in 2013. Mr. Ally stated that he failed the orthodontics exam by two points, and claimed that he would have passed, had he had more time in clinics.

26. Mr. Ally provided the Commission with two certificates as evidence of his registration as a Health Professional Dental Therapist by the Health Professionals Council of Seychelles. The first registration is dated 31 July 2014, and the second is stated as valid from 31 July 2018 to 2020. The registration certifies that Mr. Ally is authorised to practice as a Dental Therapist in Seychelles.

27. When Mr. Ally returned to Seychelles, he applied for private practice again, and was told he had been away from practice for too long. Mr Ally went to NIHSS and paid for a certificate of competency, however, he was never given the report he had paid for. Further, Mr. Ally also attempted to apply for the Bachelor of Dental Therapy degree through the Agency for National Human Resource Development (ANHRD) but he never received any response to his application. Mr. Ally claimed to have not heard anything since, he just kept calling and never heard back.

28. Mr. Ally claimed that he spoke with Dr. Gedeon, who had told him that he (Dr Gedeon) had cancelled the scholarship because Mr. Ally would never get work in Seychelles. Mr. Ally stated that since the Truth and Reconciliation process started, he had been discussing with the ministry and that negotiations were underway to organise a scholarship to Australia for him. However, there were some issues as to whether the universities concerned would accept Mr. Ally's previous training as he now has a gap of twelve years out of practice.

29. In January 2019, Mr. Ally obtained a loan from the MCB in the amount of SCR 2,000,000.00 to enable him to build a house. The loan was to be repaid at the rate of SR 16,278.24 over a period of 240 consecutive months. Mr. Ally stated that he believed it would be fair if the perpetrators covered the costs of his loan, as the scholarship would not extend to help him repay his loan, which he would have otherwise been in a position to do had he not been continually denied his employment and past scholarships.

B. Mitcy Larue

30. On 11 November 2019,[6] the Commission heard evidence from Mrs. Mitcy Larue, having heard evidence that Ms. Larue had assisted Mr. Ally in getting a position with the Ministry of Environment in 1999, after he had left the Ministry of Health. Ms. Larue clarified that she had not been the Minister of Health in 1999, she had been the Member of the National Assembly (MNA) for the district of Baie St Anne. Ms. Larue stated that she had only been the Minister of Health in 2012. Ms. Larue stated that as the MNA, her mandate was to look into the welfare of her constituents, to support them, to guide them and to ensure that whatever their grievances were, to try her best to help the constituents solve their problems.

31. Ms. Larue recalled Mr. Ally's case very well. He had come to her with a grievance regarding employment at the Ministry of Environment. Mr. Ally had come to Ms. Larue, stating that he had not been given a job at the Ministry of Environment "as a matter of security clearance", to which Ms. Larue responded, "I do not know because I am not in the Ministry, I do not know what criteria they use to give you employment there". After speaking with Mr. Ally, Ms Larue told him as he was a constituent, that she would try her best to lobby the Ministry and see how she could help Mr. Ally.

32. Ms. Larue claimed that she called the Ministry of Environment in 1999; she did not recall who she spoke with, but she told them "I have got Antoine there and he is asking for my advocacy to help him out getting the job… I do not know your criteria but whatever there is, please let us give him a chance to work because he needs a job". The person on the phone told Ms. Larue they did not have the file so could not tell her why Mr. Ally was not given the job.

33. Ms. Larue informed the Commission that as an MNA, she was able to advocate for somebody, however, they did not have the final say, as that was with the Ministry that would have the final say in whether they would employ someone. Ms. Larue asked the person on the phone to communicate with her the result of Mr. Ally's application. Ms. Larue did not recall the details but shortly after the call, Mr. Ally was offered the job. When she informed Mr. Ally he had the job, she told him, "take the job and make sure that you do not come back to me". She had told him to take the job seriously, improve on any issues that arose, and to try and stay in the job.

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[6] Hearing No. 26, Monday 11 November 2019.

34. Ms. Larue recalled that Mr. Ally had an attitude problem. She had been a teacher prior to being the MNA, and Mr. Ally had been one of her students. Ms. Larue was not sure if the attitude issue was why he had lost his job with the Ministry of Health but noted that a good attitude was required to work with clients in the health profession. When asked further about Mr. Ally's attitude, Ms. Larue stated that even as a student he had always wanted to have the last word, and always wanted to be right.

35. When asked about security clearance, Ms. Larue stated that she thought that when people spoke of security clearance people meant whether there was anything to do with police cases, as someone with a criminal record could not just go into a job without that being disclosed. It was Ms. Larue's belief that criminal records were looked into, not other issues such as an individual's "political issues". She stated that at least that was what the Ministry looked into now. They may also check certificates of education level and ability within the profession.

36. Ms. Larue did not recall Mr. Ally coming back and seeking a position in the Ministry of Health during the time that she had been there as Minister.

C. Mr. Ally's Employment File

37. The Commission requested and was granted access to Mr. Ally's file from the Ministry of Health. All correspondence and evidence in this section have been obtained from this file. From the documents contained in the file, in respect to his allegation of victimisation by the Ministry of Health, the Commission has received the following information:

38. The file stated that Mr. Ally joined the School of Health Studies to take the Dental Therapy course in January 1994 and concluded those studies in December 1996. He was thereafter granted security clearance to be employed by the Ministry of Health as Dental Therapist/Hygienist Grade II and was to be assigned to work with the School Dental Services program at Mont Fleuri.

39. On 13 January 1997, Mr. Ally informed the Principal Secretary of the Ministry of Health that he had not commenced his duties because he was having difficulty finding accommodation in Mahé. Mr. Ally had grown up in Praslin, and did not know Mahé well. The response to that letter, written by Mrs. E. Arissol, explained that there was only one vacancy for Praslin in 1997 and a decision had been taken to have both students from Praslin, Mr. Ally and Mr. Jose Emmanuel, remain on Mahé to do their training. After finishing the training, Mr. Emmanuel would be sent to Praslin. The reason for this was that Mr. Emmanuel always stated that he wanted to go back to Praslin, whereas Mr. Ally had never told them that. Mrs. Arissol went on to say:

> The more reason why Antoine Ally needs to be monitored very closely is that, as a student he did not have a good record where his behavior was concerned. He was too often over confident, unwilling to take advice from his tutors and even towards the completion of his training he was still making serious mistakes that could have adverse consequences, such as gibing (sic) a block to an adult patient without prior consultation with his tutors, and injecting one side of a patient's mouth when it should be the other side.

40. In the same letter, Mrs. Arissol further advised that all students had been asked to report on Monday 6 January. However, Mr. Ally did not report on that day, was absent since, and did not come to discuss the problems with her other than informing that her that he had no accommodation.

41. Notably, while Mrs. Arissol had a negative perception of Mr. Ally, the report of his Class Instructor G. Azemia of 6 December 1996 identified no problems of a similar nature. Mr. Azemia stated the following:

> During the three years Antoine has continuously proven himself to be an active student in his studies. An extrovert (sic) person who has a strong devotion to know more. He is always cheerful and is above academic ability.
> Antione has participated actively in several projects at school and at Dental Section level.
> Given the proper guidance and encouragement, support and opportunities Antoine can develop into a good Dental Therapist.

42. Mr. Ally eventually resolved his accommodation problems and commenced work in Mahé on 3 February 1997 on a six-month probationary period.

43. A letter on file from Mrs. Arissol to Mr. Ally dated 7 July 1997 referenced his failure to report to Anse Royale Dental Campus for assignment. The letter stated that his medical certificate did not verify the claim that he cannot travel long distances. This meant that he had to report to Anse Royale School Campus on that date and that his failure to do so would be interpreted as insubordination. He was instructed to comply and warned that any failure would result in disciplinary action.

44. An additional letter dated 8 July 1997 from Mr. H. Pothin stated that he considered the action to be a very serious offence and recommended that Mr. Ally be suspended, and summary proceedings instituted.

45. A letter of 9 July 1997 from the Director General of Administration to the Director of Dental Services referenced a meeting with Mr. Ally. It stated that Mr. Ally would proceed to Anse Royale Hospital from 14 July 1997 until 18 July 1997. It suggested that his attitude towards his work and colleagues be monitored, and it was noted that Mr. Ally received counselling and was asked to apologise to Mrs. Arissol for the way he handled the matter.

46. A further letter dated 2 September 1997 from the Director of General Administration to the Director of Dental Services referred to Mr. Ally being dissatisfied with his appraisal review and stated: "This guy is a **problem**. We should maybe confirm him in post and once his rotation training is completed send him to Praslin – The Ministry will save accommodation costs since he is a Praslinois!"

47. A performance appraisal of Mr. Ally dated 23 September 1997 rated him mostly as satisfactory, but extends his probation period for an additional three months. The general comments of the supervisor stated that "Antoine has shown signs of being a good clinician in the coming future. He has to improve in clinic management, communication and inculcate more flexibility in his approach. To conclude Mr. Ally will need to go on probation for some more time (3 months)".

48. On 6 October 1997, a letter from the Principal Secretary of the Ministry of Education referred to Mr. Ally's request in July 1997 for a scholarship in dentistry in Cuba. The letter stated that his application was not approved, and he could not be reconsidered as he did not have a Certificate in any 'A' Level subject, which was a requirement for entry to the course in dentistry.

49. On 14 October 1997, Mr. Ally was subject to another performance appraisal. He was assessed as mainly satisfactory and the general comments of the supervisor stated that "Antoine is sound

technically as a dental therapist. He is ready to work and manage a dental clinic on his own. Hope that he applies himself on the advice given especially his communication as it is of great importance and contributes to client satisfaction. He should develop with experience".

50. After this appraisal, Mr. Ally expressed his disagreement with the appraisal, claiming that it contradicted the first appraisal and complained that he was a left-handed operator working in a clinic built for a right-handed operators and nothing had been done to solve this problem.

51. A memo on file from Mr. H. Pothin to the Personnel Manageress stated that Mr. Ally should have been satisfied with his second appraisal, that it is better than the first and that many discussions with Mr. Ally took place. A handwritten note in response, dated 10 December 1997, stated that he was a Praslinois and the quicker they could get him back to Praslin the better.

52. Mr. Ally was confirmed in his post on 22 December 1997. That confirmation included a note that stated "it is recommended that he is monitored closely and guided accordingly. Submit a report in six months' time i.e., May 1998".

53. On 8 July 1998, Mr. Ally was informed by Mrs. Arissol, Principal Dental Therapist, that he would be transferred to Baie Ste Anne School Dental Clinic, Praslin, as of 3 August 1998.

54. On 24 July 1998, Mr. Ally informed Mrs. Arissol that he had become a permanent resident of Mahé in the district of St. Louis and that he was no longer a resident of Praslin. Therefore, he was entitled to work on Mahé.

55. A letter from Mr. H Pothin to the Director of Administration dated 3 August 1998 referenced Mr. Ally's response and stated that: "I find his protest flimsy, reflecting a negative attitude which has characterised his work since joining the service". A letter dated 14 August 1998 from the Personnel Manager to the Director of Dental Services stated that it was agreed that Mr. Ally should move back to Praslin as he had completed his training on Mahé and there was need for a surgical therapist for children at the Praslin Hospital. It stated further that "Mr. Ally should be reminded that the Ministry supported him to come to Mahé to complete his training by providing housing assistance and other allowances. He must also be reminded that when he joined the service, he agreed to work at any Health Centre where his services would be required".

56. A letter dated 17 August 1998 from the Director of Dental Services informed Mr. Ally accordingly. On 19 August 1998, Mr. Ally responded to that letter stating that it would be impossible for him to start work on Praslin for the following reasons:

> First of all, I am now a permanent resident of Mahé in the district of St. Louis. Secondly, it's been seven years since I have left Praslin and the situation is not as it used to be.
> i) When I left Praslin, I didn't have a family and now the situation is reversed, and I have lots of social commitments and moral obligations towards my family
> ii) Accommodation on Praslin is now a problem for me due to the fact that our family house has been sold, and I have settled on Mahe permanently.

57. A letter dated 27 August 1998 from the Director of Dental Services to the Personnel Manager stated that they know Mr. Ally was from Praslin and that he would be an appropriate choice for the post. Additionally, it stated that when they selected students for training the service needs of each region

were taken into consideration and some were selected from Praslin and La Digue as it was felt that they would go back to their community after the training. It further noted that:

> Mr. Ally has been dissatisfied with the surgeries here though we have gone to great lengths to show understanding and carry out alterations or additions possible. Since there is no other vacant post in Mahe it is felt that the new modern spacious surgery on Praslin may satisfy him. The surgery cannot remain idle while all the children of Baie Ste Anne district are waiting for this service; and Mr. Ally is employing all kinds of delaying tactics. I would therefore recommend that Mr. Ally still goes to Praslin and under the circumstances the service will have to operate on a rotation basis; duration of service of possibly two years.

58. On 4 September 1998, the Principal Secretary for Health informed Mr. Ally, with respect to his claim, that he was now a resident of Mahé. That letter advised that in January 1997, Mr. Ally stayed on Praslin and was adamant he could not come to Mahé because he had no place to stay. The Principal Secretary stated that they rented a flat for him for the period of induction and that he was well aware that, as per the agreement, he had to go back to Praslin thereafter. It is noted that at the time, he reaped the benefit of free housing and never once told them that he was a resident of Mahé. The Ministry was of the opinion that the case was dragging on for too long and that he should proceed to Praslin to resume his duties by 7 September 1988, latest. Failure to comply would leave no alternative but to take appropriate disciplinary action.

59. On 8 September 1998, Mr. Ally was served with a notice to appear at a Disciplinary hearing from the Ministry of Health for failure to resume his duties on Praslin by 7 September 1998.

60. On 18 September 1998, Mr. Ally submitted his resignation. He stated that he wished to resign due to his assignment to Praslin which would be impossible for him as he had an accommodation problem on Praslin even though he had advised the Ministry of Health of that issue. However, the Ministry had not given any serious consideration to his problem and they proposed resignation as the only practical alternative to immediate dismissal.

61. On 21 September 1998, Mr. Ally sought to withdraw his letter of resignation which consequently was refused on 22 September 1998 by the Ministry of Health Director of Administration, on behalf of the Principal Secretary.

62. On 23 September 1998, Mr. Ally sent in an application for the post of Dental Therapist/Hygienist with the Ministry of Health. A note on file from the Minister stated: "This man is definitely not well".

63. On 16 October 1998, Mr. Ally was advised by the Director of Administration on behalf of the Principal Secretary that, "Due to the various problems surrounding your resignation, we regret to inform you that your application for re-employment cannot be considered".

64. On 4 November 1998, Mr. Ally appealed this decision before the Public Service Appeals Board. The hearing on the complaint took place on 17 December 1998. On 31 December 1998, the Board gave its judgment. In the relevant part it held that:

> The Ministry denied that the Complainant was forced to resign. He could not be appointed to the post since, following the Complainant's resignation, the Ministry had to realign responsibilities in Praslin and La Digue Islands. The consequence of the realignment of the responsibilities was that the post to which the Complainant could have been appointed was abolished. One person now serves

> both islands whereas before the resignation of the Complainant each of the two islands had a technician on location.
> [...]
> In our opinion, Mr. Antoine Ally is not aggrieved as alleged in his Complaint.

65. Mr. Ally's Ministry of Health file revealed that on 6 December 1999 and 21 December 1999, Mr. Ally applied for the post of Dental Therapist with the Ministry of Health. A response dated 18 January 2000, from the Principal Secretary, advised that there was no vacancy that could be offered to him.

66. The file also provided that on 17 October 2000, Mr. Ally applied for the post of Dental Therapist and Hygienist and, on 26 October 2000, was advised that there was no vacancy to offer him at that time.

67. On 2 May 2001, Mr. Ally applied for the post of Dental Hygienist/Dental Therapist. A handwritten post-it note attached to the letter reads: "We have discussed, we've had enough of him. I am not the least interested. Furthermore, there is no vacancy".

68. A letter in the file dated 15 May 2001, Mr. Ally was informed that there was no vacancy that can be offered to him at that time.

69. On 27 June 2001 Mr. Ally filed a complaint before the Public Service Appeals Board. His complaint was specified as follows:

> Mr. Ally was employed with the Ministry of Health from 1997 and resign (sic) in September 1998 after several problems. He applied for the same post in December 1999 and was informed that there were no vacancies. But at the same time in January two students were employed. In October 2000, he again applied for the post and was informed that there was (sic) no vacancies but three students who had to resite (sic) their exams was (sic) employed in January. In March this year again he applied and they employed a person who had resign (sic) like him. He felt aggrieved by the decision of the Ministry not to employ him.

70. On 12 July 2001, a memo from Mr. H. Pothin to the Director General of Administration referred to Mr. Ally's complaint and stated:

> It was his decision to resign because of problems of his own making. It is clear if there is no vacancy someone cannot be employed. Naturally provision has to be made in the budget for any new graduates.
>
> He was probably referring to Mr. Norris Maria who was re-employed. The decision was not a difficult one. Mr. Maria resigned with a clear record and did not have a serious attitude problem which he had and which characterizes his employment.
>
> He concentrated more on criticizing the whole system and all senior dental staff and the top officials on the Ministry of Health hierarchy.
>
> I do not understand why he wants to be part of a service for which he never had a kind word and never tried to be part of the team.

71. A letter dated 1 October 2001 from the Personnel Assistant to the Minister of Health referred to Mr. Ally's meeting with the Minister of Health and his letter of 7 September 2001. It informed him that his application for re-employment with the Ministry of Health had been carefully considered but they were unable to offer him employment.

72. The file provided that on 3 October 2001, the Ombudsman contacted the Ministry of Health and requested access to the file of Mr. Ally which was provided.

73. On 19 October 2001, Mr. Ally applied for the post of Dental Therapist/Hygienist and on 7 November 2001 was informed by the Ministry of Health that there was no vacancy that could be offered to him at present.

74. The hearing of Mr. Ally's complaint before the Public Service Appeals Board was held on 8 November 2001. On 14 November 2001, the Ombudsman returned the file of Mr. Ally, noting that

> I have seen at M.23 on the file that Mr. Ally was offered accommodation on Praslin on the same terms as that of a Mahe resident. Mr. Ally denies ever having been made this offer. May I please be informed of the location of the house that was to have been allocated to Mr. Ally had he accepted to go to Praslin.

75. In a response dated 22 November 2001, the Director of General Administration for the Ministry of Health wrote to the Ombudsman saying that as the incident occurred in 1998, they had no recollection of the location of the house that was earmarked for him. The letter stated that as the Ministry needed to provide a service on Praslin and "as it was agreed that he should be provided with housing", he would have been allocated whatever house was available.

76. On 28 November 2001, the Public Service Appeals Board issued its decision on the complaint of Mr. Ally. It found that the Ministry's response to his allegation, when Mr. Ally was told there was no vacancy while other people were then appointed to positions, was appropriately answered by the Ministry. The Ministry had advised that the persons appointed were new polytechnic graduates which the Ministry had included in their planning projections for future years and were bound to employ them. The Ministry had made no provision for the appointment of other already qualified persons. It held that the Complainant was not aggrieved as alleged in his complaint.

77. On 9 December 2001, Mr. Ally filed a complaint with the Principal Secretary of the Ministry of Health, alleging that his application in November 2001 had not yet been answered although he was verbally informed on the phone over two weeks previously that an answer had been sent by physical mail.

78. On 24 December 2001, the Ombudsman forwarded his report of 19 December on the complaint of Mr. Ally against the Ministry of Health for not re-employing him. In relevant parts it stated the following:

> In forming my opinion I allowed myself to be guided by certain fundamental principles. An employee is free to take up employment and to resign when he/she so wishes for whatever reason. Likewise an employer is free to employ a person if it so wishes, and to terminate his/her appointment in accordance with the law. An employer cannot refuse the resignation of a worker. It is justified and reasonable for an employer, when seeking to employ a person, not only to consider whether the applicant is suitably qualified, but also to consider whether the applicant, in the circumstances, is suited for the job.
>
> In the present case, I find that Mr. Ally exercised his rights without hindrance from the Ministry of Health and the Ministry did not transgress any of the above-mentioned principles by not re-employing Mr. Ally upon his applying to join the Ministry again.
>
> I am of the opinion that it is not unreasonable for the Ministry of Health to give priority of employment to Dental Therapists who had just completed their training if such vacancies were part of the manpower plan of the Ministry to employ those that were being trained.

I am also of the opinion that it was not unreasonable for the Ministry to consider the antecedents of Mr. Ally, during the period of his previous employment, when he re-applied for employment.

However, I note that the Ministry of Heath responded to the Complainant that he has not been successful because there was no vacancy. I am of the opinion that may not be necessarily correct. There were vacancies at the time, but these vacancies had been earmarked for newly trained Dental Therapists. If the Ministry is really mindful of re-employing Mr. Ally as a Dental Therapist should a vacancy occur in the future, the Ministry is free to do so if it wishes. On the other hand, if the Ministry is not prepared to re-employ Mr. Ally even if there is a vacancy in the future, I am of the view that the Ministry is also free to do so with reasons.

For these reasons, I recommend that the Ministry informs Mr. Ally that:

(a) Even if he is qualified, the Ministry now finds him unsuitable for employment in the Ministry of Health as a Dental Therapist, or

(b) If the Ministry really intends to do so, then the Ministry informs Mr. Ally that he will be re-employed when a vacancy occurs. In the latter case the Ministry should ensure that this is done.

In the circumstances, I cannot sustain the complaint of Mr. Ally that the Ministry has in any way been unfair in its decisions towards him so far.

79. On 11 January 2002, the Principal Secretary of the Ministry of Health wrote to Mr. Ally and referred to his letter of 1 December 2001. She noted that he had made several applications for re-employment by the Ministry and informed him that, even though he is qualified as a Dental Therapist, the Ministry finds him unsuitable for employment with the Ministry of Health.

80. In a letter in the file dated 22 January 2002, Mr. Ally sought clarification from the Principal Secretary as to the relevant reason why he was considered unsuitable for employment with the Ministry. A note on file dated 4 February to the Minister referred to Mr. Ally having called and being dissatisfied with the feedback received, and consequently seeking a meeting with the Minister. The Minister advised him that he agreed with the feedback he received from the Principal Secretary and that he considered the matter closed.

81. On 11 February 2002, Mr. Ally wrote to the Minister of Health, challenging the representations made by the Ministry before the Public Service Appeals Boards and alleging that he was victimised by some of the members of the Ministry and that while he had been informed that he was deemed unsuitable for employment he had not been given the reasons why. He requested reconsideration of his case by the Minister.

82. A letter dated 19 February 2002 from the Ombudsman to the Ministry referred to the Ombudsman's report of 19 December 2001 and recommended that the Ministry provide Mr. Ally with the reasons why he was found unsuitable for re-employment.

83. In a letter dated 13 March 2002, the Principal Secretary of the Minister of Health referred to Mr. Ally's letter to the Minister dated 11 February 2002 and advised Mr. Ally that: "Based on your previous service, the Ministry considers that you will not fit in the team".

84. On 13 March 2002, the Ministry of Environment Director General wrote to the Ministry of Health. Within the letter, the Director General advised that Mr. Ally was an employee of the Division of Environment residing at Anse Boudin, Praslin and was an outpatient at the Baie Ste Anne Hospital. The letter also noted that the Division of Environment intended to transfer Mr. Ally to Mahé and give him accommodation at a house in Port Glaud which is about 4 to 5 kilometres from the Beoliere clinic. Mr. Ally advised that he was suffering from malaria and epilepsy and needed to have immediate

medical assistance when having such attacks. The Ministry was requested to advise whether Mr. Ally could be housed in the proposed accommodation without adverse impacts upon his health.

85. In a letter dated 11 July 2002, the Ministry of Health responded to the request of the Ministry of Environment stating that the conditions mentioned by Mr. Ally should not be a reason for any special localisation of his house and that, medically speaking, the position of the house is never an indication or contradiction for medical condition with sudden onset. In general, he averred, this is not a medical question but rather a request for meeting his needs from a social and psychosocial view.

86. On 28 November 2002, Mr. Ally made an application to the Ministry of Health for the post of Dental Hygienist/Therapist. By response dated 26 December 2002, Mr. Ally was informed that the decision taken in the letter of 13 March 2002 was maintained.

87. A letter from Mr. Ally dated 23 January 2003 to the Minister of Health requested reasons for the determination that Mr. Ally would not fit into the team.

88. On 6 March 2003, Wavel Ramkalawan, Leader of the Opposition in the National Assembly, wrote to the Minister of Health referring to Mr. Ally's unsuccessful attempts to regain employment with the Ministry of Health and requested a provision of the reasons why, so that he could explain the matter to Mr. Ally.

89. By a letter in response dated 17 March 2003, Mr. Ally was informed by the Principal Secretary of the Ministry of Health that as far as the Ministry was concerned, the matter would now be closed.

90. In a letter dated 28 March 2003, the Minister responded to Mr. Ramkalawan as follows:

> Mr. Ally was employed as a Dental Therapist in the Ministry of Health from February 1997 until his resignation in August 1998.
>
> During the time he was employed, Mr. Ally had difficulty working with colleagues and fitting into the organization of the dental health services. He frequently complained and expressed his dissatisfaction with the procedures of the Ministry. His resignation was accepted as he clearly was not happy and it was agreed that he may find satisfaction elsewhere.
>
> He has applied for employment in the same post on a number of occasions since. In considering his application, due regard was taken of the previous situation. His application has not been successful because it was judged that it would not be in the interests of the Ministry to re-employ him.

91. On 15 December 2006, Mr. Ally emailed Dr. Gedeon, Principal Secretary for Health, and referenced their earlier meeting. He again raised issues of victimisation and informed Dr. Gedeon of a friend that was approached to apply for a vacancy that was not advertised. Dr. Gedeon forwarded the email to Marie-Claire Marie: "MC His case was discussed with Mr. Pothin and Mrs. Nicette. We cannot employ him again. I had sent the file to you to give him a formal reply".

92. On 11 January 2007, a reply was sent to Mr. Ally from Miss Dine on behalf of the Principal Secretary, in which he was informed that after appropriate consideration the following conclusion had been reached:

> You have not been performing as a Dental Therapist since September 1998. When perusing your employment record it could also be noted that you were not happy with the working conditions and

> there were constant complaints on your part. You could not fit yourself to continue working in the health service and chose to resign.
>
> Taking into consideration these factors and the fact that during your term of employment with the Ministry you adopted a negative attitude rather than a positive one, we regret to inform you that we are not in a position to re-consider you application for re-employment.

93. A letter dated 12 February 2007 from the Semmelweis University in Budapest, Hungary, referred to the acceptance of Mr. Ally as a student of the Faculty of Dentistry for the academic year 2007/08. Attached was a letter dated 21 September 2006 from the Ministry of Education, stating that Mr. Ally was on the training plan for 2007 for dentistry under the Government of Seychelles Scholarship. Also attached was a letter dated 30 September 2005 from the Ministry of Education and Youth to the Principal Secretary of the Ministry of Environment, providing an explanation for Mr. Ally's discontinuation of studies in Turkey. It ended with a strong recommendation that the Ministry consider employing Mr. Ally while Mr. Ally awaited a new scholarship for 2006. Mr. Ally subsequently sought a delay to commence the studies in 2007.

94. A handwritten note was attached to these documents from Mrs. H. Nicette to Ms. Sharon Vidot, which stated as follows: "Sharon, we spoke, Mr. Ally is not an employee of the Ministry of Health. Mr. Pothin cannot comment or make recommendation for him to proceed on this course".

95. On 26 February 2007, Mr. Ally wrote to the Principal Secretary, Dr. Gedeon, again. He attached a report dated 5 September 1998 from the Director of Occupational Health Unit on Occupational Health and Safety at Les Mamelles Dental Clinic. In this report, Mr. Ally was thanked for taking her around and giving the necessary cooperation, and additionally she referred to a number of complaints by staff and issues that needed improvement. Referring to this letter, Mr. Ally told Mr. Gedeon that he acted like a "true patriot" for the Seychelles, "as [he] had the strength to bring to the attention of people responsible when managers in Ministry of Health wanted to risk the life of their staff and clients and insisted that everything was fine [...]". He again requested reconsideration of the decision not to re-employ him.

96. On 4 April 2007, Mr. Ally emailed Dr. Gedeon referring to the absence of any reply to his last correspondence, alleging victimisation and informing him that he had brought the matter to the attention of the President.

97. On 4 April 2007, a reply was sent to Mr. Ally's letter of 26 February 2007, advising that the decision taken in the letter of 11 January 2007 would be maintained.

98. A letter dated 3 July 2007 from the Principal Secretary of Health to the Ministry of Education referred to the training in dentistry of Mr. Ally. It stated that the Ministry of Health strongly recommended "the training of both pre- and in-service candidates who meet the eligible criteria for overseas training in the referred field".

99. On 22 August 2007, Dr. Gedeon wrote to the Principal Secretary of the Ministry of Education regarding Mr. Ally. In that letter he stated as follows:

> Further to our telephone conversation I relooked at Mr. Ally's employment history with the Ministry of Health. He joined the Ministry of Health Dental Service a dental therapist in January 1997 and tendered his resignation just over 18 months later. During that time there were some difficulties

between Mr. Ally and Ministry of Health administration regarding his placement. One of the issues was his attitude. Since he left he has been in employment with the Ministry of Environment.

While I still maintain that training for dentistry remains a priority for Department of Health, the opportunity for further training should be given to dental staff who have spent longer in service and have proven track record of good attitude and excellent performance. Recently it has come to my attention that we do have such candidates who have shown an interest for further training.

Given the above the Ministry of Health and Social Development may have difficulty reemploying him. May I request that the Ministry of Education give priority consideration to other more deserving candidates.

100. On 30 August 2007, Karen Domingue, an attorney, advised the Ministry of Health that she acted for Antione Ally, and requested access to his personnel file. A response dated 28 September 2007 refused that access. On 10 October 2007, the Ombudsman wrote to the Ministry of Health querying the basis of the refusal to allow Mr. Ally access to his file, so that he could determine whether the matter warranted further investigation by that office. A response from the Ministry of Health dated 17 October 2007 stated that there was no documentation on the file stating that Mr. Ally had sought access. In a response dated 25 October 2007 the Ombudsman requested the Ministry of Health to set a time and date for Mr. Ally to review his personnel file and to inform him accordingly.

101. A letter dated 7 November 2007 informed the Ombudsman that "Mr. Ally cannot have access to his personal file as requested in view that Public Service Orders 52 and the Constitution of Seychelles make provision for an employee and the public authorities performing a government function for the right of excess (sic) to information on personal files".

102. A letter dated 12 November 2007 to the Ombudsman from the Ministry of Health referred to the letter of 7 November and subsequent telephone call of 8 November, and attached was Mr. Ally's personnel file. A letter dated 24 December 2007 from Mr. Ally to the Ombudsman referred to a missing letter from the file, which was confirmed by Mr. Gedeon.

103. On 13 November 2007, Mr. Ally made an application to the Ministry of Health for the post of Dental Hygienist. By letter dated 9 January 2008, Mr. Ally was informed that there was no suitable vacancy to offer him at present

104. Mr. Ally was at this time employed with the Ministry of Environment, but in 2008, he was advised to take a voluntary departure due to the financial situation in Seychelles. He refused to do so, and his contract was terminated in January 2009 on the grounds that he had allegedly destroyed his personnel file.

105. On 19 February 2008, the Ministry of Education Principal Secretary requested from the Ministry of Health a copy of the correspondence sent by the Health Department whereby Mr. Ally was not recommended for training in Dentistry.

106. By letter dated 28 March 2008, the Ministry of Health informed Mr. Ally that it was not possible to support his application for training in dentistry.

107. On 10 May 2008, Mr. Ally wrote to Mrs. Berlouis, the CEO of the Seychelles Health Authority, requesting re-examination of his case and referencing his victimisation by the Ministry of Health.

108. Mr. Ally went to the Public Service Appeals Board in January 2009. The Board found that he was unfairly dismissed from the Ministry of Environment and that there was no basis for the allegation made in respect to the file. In addition, one of the files Mr. Ally allegedly destroyed was found.

109. On 26 December 2012, Mr. Ally applied for the post of Dental Therapist and Dental Hygienist to the Minister of Health, Mitcy Larue. In a response dated 8 January 2013, Mr. Ally was requested to forward his CV, certificates, and passport photo in order to process his request.

110. In a memorandum dated 9 April 2013 from the Chief Dental Officer to Human Resources, reference was made to the application of Mr. Ally. The memorandum stated as follows:

> To my knowledge, since 1998 Mr. A. Ally has not been practicing Dentistry per se. According to the Health Professional Council, I doubt if Mr. A. Ally will be able to register after all these years that he has been out of service. I do not see the point in interviewing someone if he will not be able to register to practice as a Dental Therapist.

111. By a letter dated 10 April 2013, Dr. Gedeon responded to a letter of Mr. Ally dated 26 March 2013, where he made an application for a license to provide health services. Dr. Gedeon stated that the request was sent to the Seychelles Hospital Dental Services for comment and the Chief Dental Officer noted that his period of employment with the Ministry of Health was short and ended after 18 months of experience. Since then, there was no record of Mr. Ally practicing the profession at that time, the Chief Dental Officer recommended that he should have a dentist on staff to supervise his work in a private dental clinic.

112. As per his file, Mr. Ally received a letter dated 12 April 2013, which informed that because he had not been practicing for so long, he would not be able to register, and thus his application could not be considered at the moment. The Chief Dental Officer was also copied on the letter, with the note that: "We spoke, kindly advise us in writing if Mr. Ally registered will you take him".

113. In a memo dated 19 April 2013, the Chief Dental Officer advised Human Resources and responded that a health worker could be registered but that does not mean he can practice. Additionally, he stated that the oral health directorate is not a training institute and "we will not employ someone to practice Dentistry if he had not been practicing for all these years".

114. An email dated 2 July 2013 from R. Philo to the Chief Dental Officer referred to Mr. Ally having applied for a position with the Ministry of Health and that he had seen Mr. Ally's documents from Australian Dental Council, which he sent in September 2012. It requested approval for Mr. Ally to undergo some practical sessions in a clinical setting "whereby NIHSS can assess him to see if he is competent to practice".

115. A letter received by the Ministry of Health on 4 July 2013 from Mrs. E Arissol referred to an interview with Mr. Ally, and stated in relevant part as follows:

> Attitude wise the dental service encountered problems with Mr. Ally whilst he was doing his internship and after being confirmed in post. He rebelled against his superiors and even refused to go to clinics where he was posted (please refer to his files). He resented directives from management and preferred to have his own way. Such attitude is not conducive to team building.
> During the interview which took place on that 2 July 2013 at 9.00am in the presence of chief dental officer, Mr. Wix Cupidon and desk officer Mrs Anette Jolicoeur, I personally refrained from talking

> because of experiences encountered with Mr. Ally. I was in charge of the school dental service during the time he was employed in the dental services and following his resignation, he maintained a hostile attitude towards me. He will cross my path, sometimes in the dental services corridors; he will not even acknowledge my presence. I was told by Chief dental officer that he directed him to come and see me when he came for observation in the service (June-August 2012) and he refused.
>
> Considering these attitudes and behavior mentioned above I personally feel that he is not the right candidate for employment in the school dental service.
>
> I recommend that the Human Resource Section also liaises with his past employers regarding his behavior and attitudes, e.g., Ministry of Environment.

116. On 4 July 2013, a report from the Chief Dental Officer regarding Mr. Ally's interview was received by the Ministry of Health. The panel and Minister of Health recommended that he must practice under supervision for six months due to the number of years he was absent from the service. It was also decided that he should work on his attitude if and when he is re-employed.

117. On 9 July 2013, the Director General of the Ministry of Environment provided a reference for Mr. Ally. The Director General stated that he was Mr. Ally's supervisor between 2003 and the time he left in 2009. He praised Mr. Ally's analytical skills and his grasp of technical concepts, and the reference was generally very positive. The Director General also stated the following:

> During the time that I have worked with Mr. Ally I have known him to be knowledgeable in the area of work and highly confident. He enjoyed good relations with other members of staff but is known to be very forthright, which has strained his relationship with management at times.

118. On 17 July 2013, Mr. Ally was informed that approval was not given for him to be re-appointed to the post of Dental Therapist at the moment. It was advised and considered that given his long break in serving, it is advisable for him to follow any relevant programme that would enhance his technical knowledge and skills before he could be employed at the Ministry of Health.

119. In an email dated 3 August 2017 addressed to Dr. Louange from Mr. Ally titled "Application for Permission to Operate a Dental Clinic", a reference was made to a letter sent by Mr. Ally on 22 August 2016 to the CEO of Seychelles Health Care Agency requesting permission to operate a Dental Clinic. Mr. Ally complained regarding the fact that he had received no response from Dr. Louange's department, contrary to the 14 days deadline imposed on all Government Departments. Mr. Ally stated that in the case of absence of a response, he would file a case with the Anti-Victimisation Committee.

120. Dr. Louange responded to the email on 11 September 2017 and started an investigation regarding the matter. He said he would respond as soon as possible. No further information was provided to the Commission as to the outcome on this matter.

121. The Commission notes that Mr. Ally brought his complaints concerning the Ministry of Health to the Anti-Victimisation Committee of the National Assembly. Before the Anti-Victimisation Committee, Mr. Ally stated that he was responsible for writing the report about the conditions at Les Mamelles Clinic back in 1998. He informed the Committee that when he arrived there, he was not comfortable with what he saw, so he took Dr. Shoba on site and asked her to write a report.

122. Mr. Gedeon appeared before the Anti-Victimisation Committee to answer the allegations of victimisation and the withdrawal of support for Mr. Ally's scholarship. During that hearing, it was explained that Mr. Ally's scholarship with Turkey was a bilateral agreement between him and Turkey.

It was further explained that there are certain policy issues that guide any awarding of scholarships by the Seychelles, including those to a person under a training plan with their respective Ministry.

123. Mr. Ally challenged this view on his scholarship by reference to the fact that, when he encountered difficulties in Turkey, he communicated with the Seychelles Ministry of Education. Additionally, he also communicated that when he lost his Turkish scholarship, the Seychelles Government replaced that scholarship with a scholarship in Hungary.

124. Based on the evidence on the file, the Committee was satisfied that Mr. Ally was on the training plan for dentistry under the Government of Seychelles scholarship in 2007. The Committee further found that granting Mr. Ally a scholarship did not depend on him being employed by the Ministry of Health. If Mr. Ally wanted, he could enter into private practice.

125. The Anti-Victimisation Committee issued its decision on the complaint on 28 November 2017. It recommended as follows: "Should the complainant still be interested in the scholarship The National Human Resources Development Council should have a sit down and discuss the way forward so as to award the complainant the scholarship which was cancelled for no apparent reason".

126. On 27 December 2019 and following his appearance before the TRNUC, Mr. Ally was awarded a scholarship by the Government of Seychelles to pursue his Bachelor of Biomedical Science with the Griffith University in Queensland, Australia from February 2020 for a duration of three years. That scholarship was funded by the Government of Seychelles.

127. With respect to Mr. Ally's complaint concerning his dismissal from the Ministry of Environment, the Commission notes that Mr. Ally also placed this matter before the Anti-Victimisation Committee. In this complaint, Mr. Ally asked the Committee to place on record that he did not take his personal file as had been alleged, as this file had been found. Before the Committee, he claimed that people at the Ministry were trying to dismiss him from his job. In this regard, Mr. Ally claimed that the Ministry of Environment was thus incentivised to hide his personal file and then start an investigation alleging that Mr. Ally had taken his personal file. My Ally further claimed that he was then placed on voluntary departure as his position was deemed "redundant". Before the Anti-Victimisation Committee, Mr. Ally stated that he would not be addressing the voluntary departure as that had been dealt with by the Public Service Appeals Board.

128. Mr. Dogley, the Principal Secretary of the Ministry of Environment at the time, appeared before the Anti-Victimisation Committee to answer the allegations made. Mr. Dogley explained that the internal investigation that had taken place and one of the personnel files of Mr. Ally had been found, so the investigation was closed. He also addressed the claims of voluntary departure and explained that the departure concerned restructuring and downsizing from a staff of 400 to 130 staff members and that this matter had already been adjudicated by the Public Service Appeals Board.

129. On 28 November 2017, the Anti-Victimisation Committee provided its decision on Mr. Ally's complaint, holding that it could not hear the case as it was based on the same facts adjudicated by the Public Service Board. It nevertheless granted Mr. Ally's request that the complaint be placed on the record.

130. The Public Service Appeals Board rendered its judgment on Mr. Ally's complaint on 15 October 2009. In the relevant part, the Appeals Board found that:

> The evidence on record reveals that the complainant had his employment terminated for reasons of redundancy. We were not able to identify any departmental procedure that was used to determine whether the post which the complainant held had become redundant.
>
> Examination of the record reveals to us that there was a desire to terminate the employment of the complainant. This was because he was associated with the disappearance of his personal files (two volumes) from the Registry of the Department of Environment. There was no evidence that this was indeed the case.
>
> We felt that this was a disguise, the intention was for the Department to remove the complainant from the Ministry, after he has refused to apply to retire under the Voluntary Departure Scheme. The Complainant felt that there was no reason given to him that convinced him that he should accept the advice to so retire.
>
> All in all, we have come to the view that the alleged redundancy was a disguise to terminate the employment of the Complainant".

131. The Public Service Appeals Board determined that the lack of confidence between Mr. Ally and the Ministry of Environment would be detrimental to both so did not order the reinstatement of Mr. Ally. However, it did order the letter of redundancy of 16 January 2009 to be withdrawn and the complainant to be re-instated, terminated effective 1 October in the interests of the organisation, all arrears of salary and benefit to be paid to him by 1 December 2009, his certificate of employment to be reconsidered, and the rating shown as good. This was complied with in full by the Ministry of Environment.

132. Finally, the Commission received evidence that many years after this, and after Mr. Ally submitted his complaint before the Commission on 13 August 2019, the Government of Seychelles granted Mr. Ally a fully funded scholarship on 27 December 2019 to study biomedical science at Griffith University in Queensland, Australia, for three years starting from February 2020. It was noted in the Government's Letter of Financial Guarantee that Mr. Ally was to use the degree obtained at Griffith University, a Bachelor of Biomedical Science (BSc), as a pathway to obtain a Bachelor of Dental Surgery, and that Mr. Ally would be bonded with the Government of Seychelles and as such was to return to Seychelles following his studies.

D. Dr. Jude Gedeon

133. On 10 October 2019,[7] the Commission heard evidence from Dr. Gedeon, having received evidence that Dr. Gedeon had been the authorising officer at the Ministry of Health, who in 2006 approved Mr. Allly's letter of application for a scholarship related to training in dentistry. Further, that it had been alleged that having done so, Dr. Gedeon had contacted the Human Resources Department of the Ministry of Education, that dealt with scholarships, advising them not to approve his training application because he was a negative individual.

134. Dr. Gedeon recalled that he had been the Principal Secretary of the Ministry of Health for about 18 months, from 2006 to 2007. Dr. Gedeon clarified that he did not approve applications because that was not part of his job, the letter sent to the Ministry of Education was a letter of recommendation. Dr. Gedeon claimed that he had a conversation with Mr. Ally, when Mr. Ally returned from Turkey, in which Mr. Ally had told him that Mr. Ally had done the language school in Turkey, but could not complete the studies due to security issues. In this conversation Dr. Gedeon recalled that Mr. Ally had expressed a strong desire to proceed with his studies in dentistry.

[7] Hearing No. 14, Thursday 10 October 2019.

135. After this conversation, Dr. Gedeon wrote to the Principal Secretary of Education, where scholarships were awarded, and approval given. Dr. Gedeon stated that he had written, on 3 July 2007, that the 'Ministry of Health strongly recommends the training of both pre- and in-service candidates who meet the eligible criteria for overseas training in the referred field that was Dentistry'.

136. Dr. Gedeon claimed to have received a call from the Principal Secretary of Education informing him that she had received a call from the Director of Dental Services asking how can they send somebody on training, who was not in service, and who had been out of service with the Ministry of Health. Further, they had been told there were other candidates waiting in line, and that it would have been unfair to the other candidates, with longer in-service, better work attitudes, and excellent performance, to give preference to Mr. Ally.

137. Dr. Gedeon claimed that he had said that Mr. Ally could still be put on a priority list to be allowed to follow those "already in line". The Education Ministry's representative said that they could not do that, and that Dr. Gedeon needed to write a letter to explain why Mr. Ally's scholarship had been cancelled, so the other two candidates could take "precedents". Dr. Gedeon stated that he wrote the second letter on 27 August 2007, in which he maintained that training in dentistry remained a priority for the Health Department. Further, he stated that further training should be given to dental staff who have spent longer in service and have proven track records of good attitude and excellent performance, which is what Doctor Harold Pothin, the Director of Dental Services at the time, and the Chief Dental Officer, had indicated. Dr. Gedeon claimed that Dr. Pothin had been very unhappy that in- service staff were receiving lower priority.

138. Dr. Gedeon stated that it just happened that he was the one who had to write the letter to express the situation having discussed it with the Principal Secretary for Education and Chief of Dental Services. Dr. Gedeon claimed to have never insinuated that Mr. Ally was a negative person, and suggested that this may have been elsewhere in his file.

139. Dr. Gedeon recalled that Mr. Ally had applied for re-employment several times before he became the Principal Secretary of Health. Dr. Gedeon stated that these applications had not been looked at favourably, as there was information on file that had he completed the training the Ministry of Health would have difficulty employing him. Dr. Gedeon read from the previous file of Mr. Ally things like "he is vocal, negative, he seems to upset everyone around him. He refused to go to certain services. Insubordination. Constantly Complaining". It was Dr. Gedeon's view that it would be unfair on individuals who were already waiting for training to hire Mr. Ally over them.

140. Dr. Gedeon was unaware of the situation of the inspections at Les Mamelles Dental Clinic, as it was before his time. However, Dr. Gedeon maintained that the Ministry of Health might have had difficulty re-employing Mr. Ally, given the contents of his personnel file, especially given the number of times he had been turned down.

141. Dr. Gedeon stated that his judgement of Mr. Ally had come from the numerous comments contained on the file. Personally, Dr. Gedeon had nothing against Mr. Ally, stating that his "first impression, before I saw all these documents, was neutral". Dr. Gedeon claimed to be a-political, and that he had no political affiliation. He had assumed the role of the Principal Secretary on request of the Government, who had not been able to find someone to take the position.

142. Dr. Gedeon claimed that the Ministry of Health did not grant scholarships, and that it was up to the Ministry of Education to decide whether it was appropriate to grant Mr. Ally a scholarship, or whether to put him on a waiting-list.

IV. FINDINGS OF THE COMMISSION

A. Mandate and Applicable Law

143. The Truth, Reconciliation and National Unity Commission Act, 2018 ("Act") directs that the Commission shall "abide by universally recognised legal principles and human rights norms" and is "to observe applicable and appropriate rules of natural justice and international fair trial standards".[8] These principles must guide the Commission's determination of whether the conduct alleged constitutes a human rights abuse pursuant to its Act.[9]

144. The reference to "universally recognized legal principles and human rights norms" within section 3(9) of the Act directs the Commission to consider international human rights standards as the substantive applicable law, while the reference to "applicable and appropriate rules of natural justice and international fair trial standards" within section 6(8)(a) of the Act primarily concerns the procedures for the Commission's determinations, particularly where it is determining perpetrator status.[10]

145. The Commission recalls that pursuant to Section 7(b) of the TRNUC Act, in order to achieve its objectives the Commission may "determin[e] the responsibility of individuals in respect of any violations".[11] Any finding of individual responsibility is to a balance of probabilities standard.[12] In that regard, the Commission, underscores that any such determination of individual responsibility is not made in a criminal legal sense, but rather to reveal the truth about events that occurred during or in relation to the Coup d'état of 1977. Thus, the Commission interprets Sections 3(9) and 6(8)(a) of the Act discussed above to direct it to provide certain due process guarantees, such as notice of determination of suspect and perpetrator status, the right to reply before the Commission, and respect for a perpetrator's assertion of the right against self-incrimination, among others.

146. The Commission further notes that a person who admits responsibility or is found by the Commission to bear perpetrator status may, pursuant to Section 12 of the TRNUC Act, petition the Commission for amnesty upon providing "a full and frank disclosure of his or her culpable acts in relation to any

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[8] TRNUC Act, Act 9 of 2018 (14 September), sections 3(9), 6(8)(a).
[9] *Id.*, section 2(8).
[10] Hearing of Attorney-General Frank Ally, TRNUC, 6 July 2020 ("This law is giving you the opportunity for you to fly right over whatever thing had been done by a law, and will tell the Commission, Commission you can make whatever findings that you feel if there was...if there are violations of human rights. This was the reason why there have been the Truth, Reconciliation Commissions in those countries. In South Africa also apartheid was legal, it was legal, but it was obvious for the national reconciliation of South Africa that the law that made apartheid legal infringed - it was a gross violation of one's human rights and therefore when it made a finding it did not take it into consideration. So you are not there to take into consideration if a law was a lawful or it was not. You are here to see whether that action taken in relation to that complainant is a violation or not, and when you will define that violation you will have to define it in relation to that definition and that provision which tells you have to look at universal human rights".).
[11] TRNUC Act, sec. 7(b).
[12] *Id.*, sec. 6(8)(c).

violation and [offering] sincere apologies to the victim or victims".[13] The Commission considers that these provisions, in light of Sections 3(9) and 6(8)(a), provide sufficient protection for the human rights of individuals holding suspect or perpetrator status within the context of the Commission's proceedings.

147. The Commission notes that while an alleged human rights violation will be assessed by reference to universally recognised legal standards and human rights norms, that enquiry does not render the domestic legal framework in which the alleged violation took place irrelevant. The domestic legal framework is instead an important starting point for the examination as to whether the act complained of was legal and then whether it breached human rights standards and norms.

148. In this respect, one important universally recognised human rights norm relevant to the Commission's identification of the substantive standard, but also pertinent to issues of natural justice and fair trial standards, is the prohibition on the retroactive application of the law. Pursuant to this principle the conduct complained must have been criminalised by some source of law that was previously applicable and which was sufficiently accessible and foreseeable to the individual. At the heart of this principle is the notion of fairness. A person should not be held to account for conduct that was not criminal at the time it took place.

149. The Commission considers that this principle of non-retroactivity is equally applicable to its consideration of allegations that an act constituted a violation of human rights. As human rights are evolving rights, the Commission considers that when determining whether the conduct complained of breached international human rights standards, fairness requires it to assess that conduct by reference to human rights principles applicable at the time of the alleged violation.

150. Accordingly, the Commission will consider, where relevant, the domestic legal framework under which the alleged act occurred and the consistency of that framework with "universally recognised legal principles and human rights norms" at the time of the act complained. This approach will render the Universal Declaration of Human Rights applicable in all cases along with early co-existing principles of customary international law. Additionally, and by reference to the temporal scope of the allegation, the Commission will consider domestic constitutions and laws and applicable treaties to which Seychelles has committed.

B. Approach to the Evidence

151. Pursuant to Section 6(8) of the Act, the TRNUC is not bound by evidentiary rules. All evidence deemed probative is admissible, including hearsay evidence. The Commission has been careful to assess the evidence of all witnesses in determining the veracity of their testimonies. In so doing, the Commission has been mindful that the vagaries of perception and human recollection, especially when there is a

[13] *Id.*, sec. 12(4). However, should the perpetrator exercise their right against self-incrimination, Section 12 would not be applicable as the requirement of a "full and frank disclosure" would not be met. Notably, where a perpetrator petitions for amnesty before the Commission, Section 12(6) provides that regardless of any other written law, "(a) a criminal investigation or criminal or civil proceeding shall not be commenced or shall be discontinued, as the case may be, in respect of any matter for which an amnesty has been sought, until the final determination of the Commission" and Section 12(6)(b) provides that "a perpetrator who has been granted amnesty in respect of a violation shall not be criminally or civilly liable in respect of the acts or omissions that were part of the disclosure and apology. The amnesty shall not affect any order by the Commission for remedies, reparations or rehabilitation". *Id.*, sec. 12(6).

long passage of time between the event and the witnesses' evidence before the Commission, may impact on the reliability of the evidence given, even though a witness is honestly giving that evidence before the Commission.

152. Nonetheless, as a matter of principle, provided the witness has recounted the essence of the incident in acceptable details, the Commission does not consider discrepancies in peripheral details in the evidence of a witness, or between the evidence of various witnesses, as necessarily undermining the establishment of the basic allegations made. In this respect, the Commission finds that due to the passage of time, witnesses cannot be expected to recall with complete accuracy the precise time or dates of events or other peripheral details.

153. The Commission may rely on the uncorroborated evidence of a single witness as establishing a fact alleged, provided it is satisfied of both the credibility and reliability of that witness's evidence. The Commission may also accept accomplice evidence to establish a fact, provided it is satisfied that a motive to lie has been reasonably excluded.

154. The standard of proof applicable to establishing findings of the Commission is the balance of probabilities. The Commission must be satisfied that it is more likely than not that a fact alleged is true.

C. Merits of the Case

1. Wrongful Denial of the Right to Employment

155. The Commission recalls that Mr. Ally claimed the violation of wrongful denial of the right to employment under Section 2(8)(i) of the TRNUC Act.[14] The Commission recalls that myriad sources of international human rights law recognise fundamental rights in this context, including the right of everyone "to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment",[15] and the right to do so without discrimination.[16] The Commission also recalls that the right to non-discrimination and the right to work are respectively enshrined in Articles 27 and 35 of the 1993 Seychelles Constitution.[17] Specifically, Article 27(1) states that "every person has a right to equal protection of the law including the enjoyment of the rights and freedoms set out in this Charter without discrimination on any ground".[18]

156. In relation to this alleged violation, the Commission is first required to consider whether the alleged act has the required admissibility link to the Coup d'état of 1977 so as to bring the claim(s) within its mandate.[19] The Commission notes in this respect that all the alleged events—from Mr. Ally's original resignation from the Ministry of Health, 10 days after a disciplinary hearing in 1998, and the refusals of the Seychelles Government to re-hire Mr. Ally, despite multiple applications thereafter—occurred

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[14] TRNUC Act, sec. 2(8)(i).
[15] Universal Declaration of Human Rights [UDHR], art. 23, G.A. Res. 217 (III), 10 December 1948.
[16] UDHR, art. 2. *See further*, International Covenant on Economic, Social and Cultural Rights [ICESCR], art. 2(2), 19 December 1966, 993 U.N.T.S. 3 (ratified 5 May 1992).
[17] Constitution of the Republic of Seychelles, Constitution of the Republic of Seychelles (Preparation and Promulgation) Act, 1992, Act 2 of 1992 (21 June 1993), arts. 27, 35 [hereinafter "Constitution of 1993"].
[18] *Id.*, art. 27(1).
[19] TRNUC Act, sec. 2(8).

after the time of the one-party State and thus not during its primary temporal mandate. The Commission recalls, however, that Mr. Ally alleged that the refusal to hire him back was a result of victimisation either due to his political beliefs or his refusal to "cover-up" poor conditions within the Les Mamelles clinic, which would be perceived as being critical of the Government. The Commission recalls Mr. Ally's allegation that he was being denied opportunities due to the lack of security clearance. Further, that the public service was under the control of the SPUP/SPPF who were empowered by the Coup d'état and ruled on the basis of "with us or against us". This principle was deeply embedded in the public service and guided government decision-making even past the official reintroduction of the multiparty system in 1993. As such, the Commission finds that the alleged violation of Mr. Ally's wrongful denial of the right to employment on his political allegiances of perceived criticism of the Government run clinic can be sufficiently linked to the Coup d'état to satisfy its thematic mandate.

157. The Commission considers that the violation of wrongful denial of the right to employment under the TRNUC Act involves a systematic denial of a person's ability to pursue a career in their chosen field. It includes a 1) direct refusal to hire or promote or other systematic interference 2) in pursuit of employment in that person's chosen field, 3) for reasons other than business necessity or some other reasonable and articulable basis 4) by a perpetrator. This violation applies to employment in either the public or private sector.

158. In consideration of whether there was a refusal to hire or promote Mr. Ally or other systematic interferences in Mr. Ally's profession, the Commission recalls the evidence before it that Mr. Ally worked for the Ministry of Health, resigned 10 days after receiving notice of a disciplinary hearing with the Ministry amid ongoing difficulties regarding his relocation to Praslin, and subsequently was unsuccessful in reapplying for employment with the Ministry multiple times.

159. The Commission finds that Mr. Ally resigned from the Ministry of Health on 18 September 1998. The conditions leading up to his resignation involved difficulties with his employer, accommodation, and residency: Mr. Ally had originally been from Praslin and went to Mahé for dental training, and was first assigned to Mont Fleuri in 1997 following which he become a resident of Mahé. On 8 July 1998 he was informed by the Ministry of Health that he would be transferred to Praslin as of 3 August 1998. In response to that notification, Mr. Ally voiced his objection and advised that he was now a resident of Mahé, and that he was entitled to work in Mahé. As a result of Mr. Ally's failure to report to Praslin for duty as required, on 8 September 1998, he was served with a notice to appear before a Disciplinary hearing. Mr. Ally thereafter submitted his letter of resignation. In his letter of resignation Mr. Ally noted that he had been assigned to Praslin even though he had advised the Ministry that he was then a resident of Mahé and had difficulties with accommodation on Praslin, of which he had advised the Ministry. Mr. Ally also stated in that letter that the Ministry had not taken steps to help him with the matter but had instead proposed that he resign or face immediate dismissal. After Mr. Ally resigned, he tried to retract his resignation three days later, and the Ministry did not accept the withdrawal and proceeded with the initial resignation request. Further, the Commission notes that Mr. Ally applied for similar roles with the Ministry of Health in, December 1999, October 2000, May 2001, October 2001, November 2002, November 2007, and December 2012, each of which were denied.

160. The Commission further notes that Mr. Ally also applied for scholarships to further his skills as a dentist starting in 2004. He first secured a scholarship to study in Turkey but after the security situation in Turkey deteriorated, he returned to Seychelles and secured another scholarship with the University

of Hungary. His commencement of this scholarship needed the approval of the Ministry of Health which was denied.

161. In consideration of the above, the Commission finds that there was a direct refusal to hire Mr. Ally and other interferences in Mr. Ally's employment on multiple occasions, in satisfaction of the first element.

162. Regarding the second element, the Commission finds that Mr Ally's chosen profession was that of a dental hygienist, in which he was qualified and continued to seek further specialisation and upskilling. The specialisation had originally been supported by the Seychelles Government from their investment in his initial training. The interferences above prevented Mr. Ally from continuing his career in this chosen field, satisfying the second element.

163. Regarding the third element, the reason for the denial of employment having been grounded in an arbitrary or unlawful basis, the Commission finds that the interference in Mr. Ally's employment was indeed for reasons other than business necessity or reasonable articulable basis. The Commission recalls at the outset that as a general matter, employers must accept resignations if filed correctly, but are not obliged to accept subsequent withdrawals of resignations.[20] The Commission is also guided in this case by fundamental values and human rights protections such as set out in Article 35 of the Constitution of the Republic of Seychelles, 1993 ("The State recognises the right of every citizen to work and to just and favourable conditions of work" and "to promote vocational guidance and training"),[21] and in Article 23 of the Universal Declaration of Human Rights ("Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment").[22] Further, the International Covenant on Economic, Social and Cultural Rights also sets out "the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts".[23]

164. The Commission notes that on its face, without other evidence, the Ministry of Health may have been within its right to deny Mr. Ally from withdrawing his resignation and denying his later re-applications to the ministry. The Commission also notes that actions such as resigning and then attempting to withdraw that resignation can damage the bond of trust between employer and employee, which is an important aspect of a successful working relationship. The Commission recalls that Mr. Ally's employment file contained inconsistent reports: while some reports noted Mr. Ally's technical ability, with good academic performance, other reports noted some behavioural and attitude issues.

165. The Commission finds that several of the purported issues first arose in January of 1997, where Mr. Ally was reprimanded for his failure to report as required, due to difficulties in finding accommodation on Mahé. There were other comments around this time from Mrs. Arissol, stating he was too confident, and did not take instruction well. In 1997, Mr. Ally became a permanent resident of Mahé and as part of his rotational training was assigned to School Dental Services at Mt. Fleuri, Anse Royale Dental Clinic and Les Mamelles Dental Clinic. A failure to properly report to Anse Royale Dental Clinic on the grounds of a claim to be unable to travel long distances, purportedly not supported by the medical

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[20] LAWS OF SEYCHELLES, Ch. 69, Employment Act, 2 April 1995, Part VIII: Termination of Contract.
[21] Constitution of the Republic of Seychelles, 1993, art. 35.
[22] Universal Declaration of Human Rights [UDHR], G.A. Res. 217 (III), 10 December 1948, art. 23.
[23] International Convention on Economic, Social and Cultural Rights [ICESCR], art. 6, 16 December 1966, 993 U.N.T.S 4, *ratified* 5 May 1992.

certificate adduced, led to the Director of Dental Services noting that Mr. Ally's attitude towards his work and colleagues should be monitored. The Commission highlights a note from September 1997 on Mr. Ally's record from Mr. Pothin, stating "This guy is a problem. We should maybe confirm him in post and once his rotation training is completed send him to Praslin – The Ministry will save accommodation costs since he is a Praslinois!". In July of 1998 Mr. Ally was then informed that he would be transferred to Praslin, despite him no longer having accommodation in Praslin, and having started and settled with a family in Mahé. These circumstances led Mr. Ally to protest his being transferred. Mr. Pothin commented on Mr. Ally's file regarding his protests to moving to Praslin as flimsy and reflective of a negative attitude.

166. Regarding Mr. Ally's professional skills, several individuals provided evidence before the Commission or expressed their opinions in correspondence regarding Mr. Ally's work ethic, the majority having put forward that Mr. Ally's attitude towards work was substandard and unacceptable. The Commission notes that this was purportedly one of the main reasons for the Ministry of Health's decision to not re-employ Mr. Ally. It also notes that the evidence provided by the Ministry suggests that Mr. Ally was neither happy nor performing up to standard in his position at the Ministry of Health, and, consequently, the Ministry believed it would not be in the best interest of either party to re-employ Mr. Ally. Indeed, the 12 July 2001 memo of Mr. Pothin stated: "He concentrated more on criticising the whole system and all senior dental staff and the top officials on the Ministry of health hierarchy. I do not understand why he wants to be part of a service for which he never had a kind word and never tried to be part of the team".

167. The Commission finds, however, that Mr. Ally's actual training and employment prior to the issues with accommodation on Mahé and being forced to relocate to Praslin were quite good, or at least mixed, as multiple supervisors did note his appetite for new information and prospective to become a good clinician. In this regard, the Commission finds that most of the issues with Mr. Ally's attitude arose after Mr. Ally raised issues of sterilisation and radiation with the Ministry of Health, and Mr. Ally refused to treat patients in such conditions, that would put the patients at risk.[24]

168. The Commission recalls that after Mr. Ally reported issues with the Les Mamelles Dental Clinic, the Ministry of Health sent an official to review these issues, but Mr. Ally alleged that he was thereafter constantly transferred around and harassed. The Commission further notes that the same month that the report was filed, Mr. Ally was subjected to a disciplinary hearing in regards to the difficulties he faced resettling in Praslin. In this regard, the Commission highlights the difficulty Mr. Ally had gone through to relocate to Mahé and no longer had accommodation on Praslin and had started to experience other harassment at the Ministry having raised issues with the Clinic. In this regard, as the dispute over relocating Mr. Ally to Praslin escalated on 8 September 1998 Mr. Ally was served a notice to appear at a disciplinary hearing, having not reported to Praslin to commence his duties. The Commission also notes that Mr. Ally's resignation made note of the fact that the Ministry had only presented him with resignation as the only alternative to immediate dismissal.

169. As such, the Commission finds that the Ministry of Health were making it difficult for Mr. Ally to remain in the employment of the Ministry. In this regard, the Commission notes that it was in light of these difficulties that Mr. Ally resigned and then attempted to withdraw that resignation. As such, the Commission finds on the balance of probabilities that the Ministry had started taking steps to try to push Mr. Ally out. The Commission further finds that leaving the Ministry and the profession of

[24] *Supra*, para. 11.

dentistry was clearly not the will of Mr. Ally, as he immediately tried to withdraw his resignation just three days later, but of course the Ministry would not be inclined to re-hire him, having created the situation in which he felt it best to resign. As such, the Commission finds on the balance of probabilities that Mr. Ally was subjected to these conditions in retaliation for raising issues he saw within the dental clinic, which could be construed as being critical of the Ministry of Health, and thus the Government.

170. The Commission further recalls that Mr. Ally was an outspoken political dissident following the 1977 Coup d'état. The Commission finds that Mr. Ally's political affiliations were well known by those in Government, as evidenced by the warning received from his superior, Mr. Sheils Barra, when starting at the Ministry of Environment. Further, Mr. Ally testified before the Commission about his meeting with President René, shortly after leaving the Ministry of Health, in which the President grabbed his chin and pointed at his face asking, "who do you think you are?" The Commission finds this as further evidence that Mr. Ally's raising of issues at the clinic was taken as a critique of the Government. In this regard, the Commission recalls that the highly politicised nature of the public service did not dissipate with the reintroduction of the multiparty system and entry into force of the Constitution of 1993, but rather it may have even increased because the Government that took power with the Coup d'état was now subject to the ballot box. From the evidence the Commission has received, any criticism of the policies or practices of the Government was more likely than not interpreted as indications of being against it, and there was effectively no place in the public service for persons perceived as against the Government. Indeed, the Commission has received evidence in several cases where public servants such as Mr. Ally were penalised for criticising Government practices or policies or for merely being associated in some way with those known to be against it.[25] In this regard, the Commission is satisfied that Mr. Ally's political affiliations compounded and influenced the way he was treated as a public servant in violation of Mr. Ally's human rights to freedom of association[26] and political participation or non-discrimination on the basis of political opinion.[27] It follows that the Seychelles Government more likely than not wrongfully denied Mr. Ally's right to employment on an unlawful and arbitrary basis.

171. The Commission further notes that Mr. Ally had been allowed to become a dental therapist in the first place: the Government had invested in his training and then employed him for a time. Given this, the Commission is of the view that the Ministry would have accepted his retraction of resignation, and would have quickly re-employed Mr. Ally had he been a supporter of the ruling party. There was every indication, for instance, that his services were needed and would be valued on Praslin, but the Ministry was apparently unwilling to consider that as Mr. Ally had pushed back against the system, in a manner that was perceived as critical of the Government.

172. The Commission finds that over the course of the next decade, Mr. Ally re-applied repeatedly to the Ministry of Health to work as a dental therapist and was repeatedly denied. In April 2013, after he had applied in December 2012 for the post of Dental Therapist and Dental Hygienist to the Minister of Health, Mitcy Larue,[28] he was apparently not accepted for the post due to a note from the Chief Dental Officer that Mr. Ally had not been practicing dentistry for many years and doubting that he would be able to register as a dental therapist after so many years out of service. Indeed, the response given to

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[25] *See* Case Determination No. 039: Luc Chang-Ko.
[26] UDHR, arts. 2, 20; International Covenant on Civil and Political Rights [ICCPR], art. 22, 16 December 1966, 999 U.N.T.S. 171, *ratified* 5 May 1992.
[27] ICCPR, arts. 25, 26.
[28] *Supra,* para. 105.

Mr. Ally was that as he had been out of practice for many years, he would not be able to register, and so his application would not be considered. The Commission takes this as another instance of victimisation; having caused Mr. Ally's circumstances of being out of service, the Government then relied on this fact to further deny him the opportunity to work in his field.

173. Following this, recommendations were made for Mr. Ally to undergo additional clinical sessions to supplement his experience and allow for supervision for a period of six months should he be re-employed. In particular, the Ministry of Health recommended that he follow any relevant programme that would enhance his technical knowledge and skills. Mr. Ally set to applying for several clinical programmes in other countries, as he had in the past, but these proved unsuccessful. Nevertheless, Mr. Ally was apparently allowed to register as a Health Professional Dental Therapist, as his first registration is dated 31 July 2014, and the second is stated as valid from 31 July 2018 to 2020. The registration certifies that Mr. Ally is authorised to practice as a Dental Therapist in Seychelles.

174. Because Mr. Ally repeatedly re-applied to work for the Ministry of Health in his chosen field as a dentist and was repeatedly denied, more likely than not due to his political affiliation, and having raised issues which were likely perceived as critiques of the Government which the Commission notes is an improper basis, or to his lack of registration as a dental professional, which the Commission sees as arbitrary given the fact that he was apparently allowed to so register as of 2014, the Commission finds that the third element is met, that Mr. Ally suffered a wrongful denial of the right to employment for reasons other than relating to business necessity or some other reasonable and articulable basis.

175. Finally, the Commission turns to the "perpetrator" element. On the evidence received, the Commission finds on a balance of probabilities that several members of the Ministry of Health were involved in creating the conditions that led to Mr. Ally's resignation. The Commission notes, however, the politicisation of the public service that had become so ingrained because of decades of "with us or against us", leaving these individuals within the Ministry of Health's positions fraught if they were perceived to be assisting someone who was known to be a supporter of the opposition and critical of conditions within the Ministry of Health. Therefore, the Commission considers that the responsibility of these individuals is mitigated so as to not characterise them as perpetrators, as they were acting within a larger system which likely would have victimised them too if they were perceived to act against it.

176. The Commission recalls the power of President René, contained in the Public Service Orders at the time, who had the ultimate authority over who worked in the Public Service of the Seychelles.[29] The Commission recalls the need for a security clearance process to participate in the public service which required approval by President René. This system was used to ensure that those who were perceived to be against the Government were systematically denied security clearance and thus employment opportunities.[30] The Commission recalls Mr. Ally's evidence that he had been told that there were issues with his security clearance shortly after his resignation. As such, the Commission finds that President René bore primary responsibility for Mr. Ally's continued denial of other opportunities with the public service through the perpetuation of the systemic denial of Security Clearance to those perceived against the Government. It thus designates Mr. René as a perpetrator of this violation.

[29] Public Service Orders, June 1996 Vol.1 Cap II, sec. 17(a).
[30] *See* Final Report, Security Clearance.

177. The Commission finds that as those within the Ministry of Health, and the President, were acting in their official roles within the Government and furthering a widely acknowledged but unofficial policy of the public service, they were acting as agents of the State. Therefore, responsibility for these acts may be attributed to the State.

178. Based on the foregoing, the Commission finds on a balance of probabilities that Mr. Ally suffered a systematic wrongful denial of the right to employment under the TRNUC Act, in contravention of his human rights.

2. Abuse of Office – Denial of Scholarships

179. The Commission notes that Mr. Ally alleged victimisation in the form of the denial of a scholarship on the basis of his political beliefs. The Commission considers that this claim is better classified under the TRNUC Act as an abuse of office by a Government official under Section 2(8)(l) of the Act.[31]

180. At the outset, regarding the required nexus to the Coup d'état of 1977, the Commission recalls that the alleged abuse of office relates to Mr. Ally's attempt to further his career in dentistry through overseas study; however, the Commission notes that the alleged denials of the scholarship occurred outside the temporal mandate as the alleged acts occurred in 2007 onwards. Further, the Commission also recalls that Mr. Ally was granted a scholarship to Turkey in 2006, which was only terminated due to the deterioration of the security situation, not in relation to the 1977 Coup d'état. Further, the Scholarship to Hungary in 2007 was overturned, shortly after received he received it. The Commission notes Mr. Ally was able to move to Australia from 2009-2013 where he failed the last exam. While the Commission appreciates that Mr. Ally claimed this was due to lack of time in practice, the Commission finds these examination results are too far removed from the Coup d'état. In these circumstances the Commission is not convinced that its thematic mandate has been made out, and declines to consider it further.

3. Wrongful Termination of Employment – Ministry of Environment

181. The Commission turns next to Mr. Ally's allegation that his dismissal from the Ministry of Environment constituted the violation of wrongful termination of employment.

182. In determining whether this claim falls within the Commission's mandate, the Commission first notes that it clearly falls outside its primary temporal mandate, having occurred after the time of the one-party State. The Commission next recalls that by 2008, Mr. Ally was employed at the Ministry of Environment. As this was during the time of the global economic recession, the financial situation in the Seychelles had become alarming. Apparently in light of that, the Ministry requested Mr. Ally to take a voluntary departure. The Commission finds that Mr. Ally refused to do so, and the Ministry consequently terminated his contract in January 2009. The stated reason for termination was that Mr. Ally allegedly destroyed a part of his personnel file. Mr. Ally placed this matter before the Public Appeals Board in October 2009, which ruled that his dismissal was unfair and the reason for termination was unjustified as the file, that was allegedly destroyed, was found. The Commission notes that no other reason for his termination had been given by the Ministry.

[31] TRNUC Act, sec. 2(8)(l).

183. The Commission notes that these events could very well amount to the violation of wrongful termination of employment, as Mr. Ally was excused from his position with the Ministry of Environment for an unjustified reason. However, the Commission is of the view that Mr. Ally has already received redress for these issues through the Public Appeals Board's decision of October 2009. It thus finds that Mr. Ally's allegation is inadmissible as a violation under its Act, and therefore the Commission is not able to issue any recommendation on this part of the claim.

V. RECOMMENDATIONS ON REPARATIONS

184. On the basis of the above findings, the Commission recommends reparations as per the reparations policy for the violations laid out above.

VI. CONFIRMATION OF KNOWLEDGE OF THE RECORD

185. Each of the undersigned Commissioners swears or affirms that he or she has comprehensively familiarised him or herself with the record in Case 015.

186. Each of the undersigned Commissioners hereby swears or affirms that his or her deliberations in this case are based on his or her knowledge of the entire record of the case.

On this 31 December 2022

The Commission

Gabrielle McIntyre, Chairperson G. McIntyre

Michael Green, Vice Chairperson Dissent. Green

Marie-Therese Purvis, Commissioner

Jacques Koui Gbilimou, Commissioner

Archbishop James Wong, Commissioner