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Case No: 029

The Truth, Reconciliation and National Unity Commission

In the Complaint of Roland Jose Gabriel Hoarau

31 December 2022

Determination on the Complaint of Roland Jose Gabriel Hoarau

Complainant:

Roland Jose Gabriel Hoarau

The Truth, Reconciliation and National Unity Commission ("Commission"), seized of the complaint of Mr. Roland Jose Gabriel Hoarau,

OBSERVING that the complaint of Mr. Hoarau, who brings his complaint as a victim and on behalf of his two deceased brothers, Gérard Hoarau and Owen Hoarau, was filed on 11 August 2019, in conformity with Sections 3(4) and 3(5) of the Truth Reconciliation and National Unity Act, 2018 ("TRNUC Act");

NOTING that pursuant to Section 2(8) of the TRNUC Act, the complaint must allege an abuse of human rights that was committed during or in relation to the Coup d'état of 1977,[1] and that the complainant alleged unlawful imprisonment or other deprivation of physical liberty,[2] wrongful termination of employment,[3] wrongful denial of the right to employment,[4] forced exile,[5] and unlawful killing of Gérard Hoarau on 29

[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"].

[2] TRNUC Act, sec. 2(8)(b). The Commission considers that the violation of unlawful imprisonment or other deprivation of physical liberty consists of 1) an arrest, detention, imprisonment, or other deprivation of one's physical liberty 2) executed unlawfully, arbitrarily, or without due process 3) by a perpetrator. The Commission notes that the term "detention" corresponds to the state of being under police or State custody for any amount of time, whereas "imprisonment" references being detained specifically as the result of a conviction. Hence, the "detention" prong falls into the broader "other deprivation of physical liberty" provision of Section 2(8)(b) of the TRNUC Act. This violation stems from a violation of the fundamental rights to personal liberty and to due process of law, among others, which are at the status of customary international law. *See* Universal Declaration of Human Rights [UDHR], G.A. Res. 217A (III), 10 December 1948, arts. 3 (right to liberty and security of person), 7 (equal protection of the law), 9 (freedom from arbitrary arrest, detention, or exile), 10 (right to fair and public hearing by impartial tribunal).

[3] TRNUC Act, sec. 2(8)(j). The Commission has considered that the violation of wrongful termination of employment under the TRNUC Act consists of the 1) dismissal of a person from their position at work, 2) whether by unlawful or arbitrary means, including but not limited to reasons of retaliation or discrimination, 3) by a perpetrator. The Commission notes that this violation applies to discrete events, i.e., single acts of firing, either where the State made a direct termination of one or more of its employees in a wrongful manner or where the State interfered with the private employment of an individual resulting in the person's termination. The violation applies equally to dismissal of employment from either the public or private sector. Fundamentally, this violates an individual's rights "to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment". UDHR, art. 23(1).

[4] TRNUC Act, sec. 2(8)(i). The Commission has considered the violation of wrongful denial of the right to employment to include a 1) repeated refusal to hire, promote, otherwise interfere with or refuse a person 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. As with the violation of wrongful termination, this violation applies equally to dismissal of employment from either the public or private sector and is a fundamental violation of an individual's rights "to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment". UDHR, art. 23(1).

[5] TRNUC Act, sec. 2(8)(k). The Commission considers that forced exile involves 1) the expulsion, deprivation of access to re-enter, or removal of a national from his or her country 2) unlawfully or arbitrarily through either direct deportation or expulsion or by making living conditions unbearable for the national to stay in the country due to ongoing or potential persecution, victimisation, violence, or other difficulties, 3) by a perpetrator. The violation of forced exile is fundamentally a violation of the customary rights freedom of movement and to re-enter one's country. *See* UDHR, arts. 9 (freedom from arbitrary exile), 13 (freedom of movement and right to return to one's country).

November 1985[6]—all acts that fall within the primary temporal mandate of the Commission from the Coup d'état of 1977 until the return to multiparty in 1993 and are thus admissible before it;

RECALLING that pursuant to Rule 25 of the Rules of Procedure and Evidence of the Commission, the test for admissibility is low but a "complaint will be deemed inadmissible where the information contained within the complaint falls manifestly outside the mandate of the Commission", and in this case, the Commission rendered the complaint of Mr. Hoarau prima facie admissible on 27 August 2019;

RECALLING FURTHER that the Commission, having rendered the complaint prima facie admissible pursuant to Section 3(3) of the TRNUC Act, heard Mr. Hoarau's complaint on 30 May 2022,[7] and investigated the veracity of the complaint as evidenced by the hearing record and the file in this case;

CONSIDERING the evidence heard by the Commission, coupled with the Commission's consideration of similar cases;

HEREBY determines, pursuant to Section 11 of the Truth, Reconciliation and National Unity Commission Act, 2018 ("TRNUC Act"), as follows:

1. The Commission recalls Mr. Hoarau's evidence that in 1978, his brother, Owen Hoarau was arrested following a speech Owen had made on Praslin requesting a return to democracy, the reinstatement of the Seychelles Democratic Party, and the reinstatement of deposed President James Mancham. Mr. Hoarau claimed that Owen was held without charge for three months and then he was released and forced into exile abroad. Mr. Hoarau stated that Owen lost everything in the process, including his possessions, his job, and his family;

2. The Commission recalls Mr. Hoarau's evidence that Owen was granted political asylum in the United Kingdom and was not allowed to return to Seychelles until 1992, when Mr. Hoarau claimed that Albert René was forced to reinstate the multiparty system and issued an invitation to all exiles to return. The Commission recalls Mr. Hoarau's evidence that Owen died in November 2012, and that he never came back to live in Seychelles;

3. The Commission obtained a document from the United Kingdom archives, purportedly obtained by the British High Commissioner to Seychelles at the time, Mr. John Pugh, under the cover of a note to file dated 11 September 1978. The document explained that the attachment was a report by the Commissioner of Police which was put before the Detention Review Tribunal to consider the detention of Owen and others. The document recorded as follows:

> REASONS FOR THE ISSUE OF DETENTION ORDERS
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> Investigation revealed that D. Joubert, J. Mancham and A Uzice, had, during the months of February, March and April, contacted a prominent mercenary leader and asked for 200 men to support an attack on the Seychelles. They had received over two million rupees from a highly financially influential Arab and had already made contact with certain Seychellois domiciled in the Seychelles and elsewhere. The plot, when revealed, proved to be simple but well conceived.

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[6] TRNUC Act, sec. 2(8)(a). The Commission has considered the violation of unlawful killing to comprise 1) the unlawful deprivation of life of one or more persons, 2) by a perpetrator. This violation is a severe violation of the right to life. UDHR, art. 3.

[7] Hearing No. 268 of Monday, 30 May 2022.

> Certain yachts has [sic] already been to the Seychelles and had smuggled arms into the Republic. Arms had been hidden in caves and in certain houses. The mercenaries in the meantime, had purchased a boat called ADVENTURA which was in Mombasa. The mercenaries, after being flown to Kenya, would take the boat and come to Seychelles. On the day of their arrival, groups of Seychellois on Mahe and Praslin were to stage an armed uprising. Roads would be blocked and houses also set on fire. The security forces would be bound to disperse to the various districts to put down the uprising. At the same time, the 200 mercenaries would land and take over key points in Seychelles, i.e. airports, power stations, Radio Seychelles, the New Port and Police Headquarters. The Army Camp and the house of the President were to be blasted out completely. Heavy arms had already been purchased by the mercenaries from a Monsieur DUPON from France. As soon as the take-over was complete, the ex-president and ex-ministers would fly in and take command. There would be a purge of all personnel connected with the present government and, contrary to the belief of some people, Joubert would take over as "Dictator".
>
> Role of Persons Detained
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> Investigation has revealed the role that each of the persons detained was to play in the invasions:
> [...]
>
> Owen Hoarau
> Had been passing information to Joubert and Mancham on the present situation in Seychelles, advising them who could be relied upon, the position of the Army Camp and other places where arms were kept. He was also receiving information to pass to the various persons involved.

4. On the basis of the above and considering its findings in other cases concerning the September 1978 detentions,[8] the Commission recalls that no genuine investigation was carried out by the police to ascertain whether there was any evidentiary basis against those detained. The Commission finds on the balance of probabilities that this was also the case for Owen's detention. Further, the Commission finds that Owen was not accorded any of his due process rights, including the right to legal advice, or being brought before a court within a reasonable time. The Commission has received no evidence that Owen was even brought before the Detention Review Tribunal within 30 days—or at all—as its establishing Act provided;[9]

5. The Commission finds on a balance of probabilities that Owen thus suffered the violation of unlawful imprisonment or other deprivation of physical liberty with respect to his detention of eight and a half months, under Section 2(8)(b) of the TRNUC Act, for which President René, and by extension the State, bears responsibility;

6. The Commission recalls Mr. Hoarau's evidence that once Owen was released from detention, Owen was told by Minister Berlouis that the Government of Seychelles could no longer guarantee his safety and that he should leave the country;

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[8] *See* for example, Case Determination No. 025: Parvez Udwadia; Case Determination No. 005: Carlette Tall.

[9] The Commission recalls the Detention Review Tribunal Decree of 1978 provided for such procedural safeguards including legal review within 30 days of the commencement of detention. Detention Review Tribunal Decree (Cap. 62), 19 May 1978. The Commission finds that the failure to bring Owen Hoarau before the Detention Review Tribunal as required by law and his denial of his right to counsel were violations of his rights under the Detention Review Tribunal Decree. Further, the Commission considers that even had Owen been brought before the Detention Review Tribunal as he should have been, the protection offered by that body would still have been insufficient due process, as the Tribunal could only recommend that a detainee be released and had no power, as an independent court presumably would have, to order the release of Owen. *See* Case Determination No. 003: Daniel Auguste.

7. The Commission is thus satisfied that following his release from detention, Owen was forced into exile by the Government authorities. The Commission recalls as notable the fact that Owen was granted political asylum in the United Kingdom,[10] which would not have been granted without a sufficient evidentiary basis establishing that Owen could not return to Seychelles;

8. The Commission therefore finds it established that Owen was forced into exile, amounting to a violation under Section 2(8)(k) of the TRNUC Act, and that President René bears perpetrator status for the violation as he created the conditions of life for Owen in Seychelles such that Owen was forced into exile;

9. As President René was acting in his official capacity, and the Minister of Defence himself told Owen his safety could not be guaranteed and that he should leave, the Commission finds that the responsibility for Owen's forced exile is attributable to the State;

10. The Commission recalls Mr. Hoarau's evidence that his other brother, Gérard Hoarau, was employed as the Head of Seychelles Immigration when Gérard was arrested in November 1979, along with 70 other Seychellois, and that he was held without charge or without trial;

11. The Commission recalls Mr. Hoarau's evidence that during the period following the Coup d'état of 1977, Albert René "had a pre-occupation" that Gérard was working against him, towards the restoration of the multiparty system;

12. The Commission recalls the evidence of Paul Chow in Case No. 017,[11] along with that of numerous other witnesses who appeared before the Commission, confirming the arrest of Gérard Hoarau in November 1979;

13. The Commission recalls Mr. Hoarau's evidence that Gérard was held without charge for a period of over nine months at Union Vale Prison. Mr. Hoarau further claimed that accusations of treason were made against Gérard without any evidentiary basis;

14. The Commission recalls Mr. Chow's evidence that he and Gérard Hoarau were among the last to be released from Union Vale Prison, and while he and Gérard had been responsible for the preparation and circulation of anti-government leaflets, Mr. Chow had never been questioned about them during his detention;

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[10] The Commission notes that under international law, those who fled the Seychelles due to persecution, victimisation, or other forms of discrimination would be considered refugees. *See* Convention and Protocol Relating to the Status of Refugees, 28 July 1951, 189 U.N.T.S. 137. Seychelles ratified both the Convention and Protocol on 23 April 1980. Under the 1951 Refugee Convention, a refugee is a person "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear is unwilling to return to it". *Id.*, art. 1(A)(2). Although this is not a required element of the violation of forced exile under the TRNUC Act, the Commission considers evidence of asylum or successful refugee claims to be particularly persuasive.

[11] Case Determination No. 017: Paul Chow.

15. On the basis of the above, and considering its findings in other cases concerning the 1979 detentions,[12] the Commission is satisfied that no genuine investigation was carried out by the police to ascertain whether there was any evidentiary basis for the detention of Gérard and that Gérard was not accorded any of his due process rights, just like Owen, above;[13]

16. The Commission finds on a balance of probabilities that Gérard thus suffered the violation of unlawful imprisonment or other deprivation of physical liberty with respect to his detention of over nine months, under Section 2(8)(b) of the TRNUC Act, for which President René, and by extension the State, bears responsibility;

17. The Commission recalls that Mr. Hoarau's evidence that when Gérard was released, he told his family that during his detention, he had been subjected to physical and mental torture by Tinal Marengo, which included gun shots being fired at his tiny cell at night and being held in solitary confinement for three months;

18. The Commission recalls the evidence received in numerous other cases concerning the conditions of detention at Union Vale Prison being unsatisfactory.[14] However, the Commission highlights the evidence of Mr. Chow, who was detained at the same time as Gérard, who stated that no one was tortured or mistreated, and that the only "torture" at Union Vale Prison was the incarceration itself.[15] On this basis, the Commission is not satisfied to a balance of probabilities that Gérard suffered the violation of torture under Section 2(8)(c) of the TRNUC Act,[16] or even other acts of a similar character causing suffering or injury under Section 2(8)(m) of the TRNUC Act;[17]

19. The Commission recalls the evidence of Mr. Hoarau that following Gérard's release from Union Vale Prison, Gérard was terminated from employment as Head of Seychelles Immigration, stripped of his possessions, and forced into exile in South Africa;

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[12] *See* for example, Case Determination No. 002: Lewis Betsy; Case Determination No. 17: Paul Chow.
[13] *Supra*, para. 4.
[14] *See* Case Determination No. 254: Jason Esparon; Case Determination No. 106: Bill Mohammed.
[15] Case Determination No. 17: Paul Chow, para. 28.
[16] TRNUC Act, sec. 2(8)(c). The Commission considers the violation of torture as (1) the intentional infliction (2) of severe pain and suffering (3) in a cruel, inhuman, and degrading manner (4) by a perpetrator. The Commission notes that in the Declaration on the Protection of All Persons from Being Subjected to Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly, the consensus definition of torture requires the act of torture to be "intentionally inflicted… for such purposes as obtaining from him or a third person information or a confession". U.N. General Assembly, *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, art. 1, 9 December 1975, U.N. Doc. A/RES/3452(XXX). This was adopted and modified in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [CAT], art. 1(1), 1465 U.N.T.S. 85 (1984), *ratified* 1992. *See also* UDHR art. 5 (freedom from torture).
[17] TRNUC Act, sec. 2(8)(m). The Commission has considered the violation of other acts to be a catch-all provision intended to include any other conduct not immediately defined or covered by the other violations enumerated in the TRNUC Act, and generally contemplates a human rights violation of sufficient significance as to warrant redress. It generally requires 1) the infliction of suffering or injury to body or to mental or physical health, 2) by a perpetrator. The conduct must be sufficiently grave or severe so as to be a cognisable violation of comparable magnitude to the other violations in the Act, such as victimisation by the State that causes physical, mental, economic, or other damage. Among the rights violated in this regard are the customary international law-based rights enshrined in the UDHR. *See* UDHR, arts. 3 (right to life), 4 (prohibition of slavery), 5 (freedom from torture), 7 (equal protection), 12 (protection from arbitrary interference and attacks upon honour and reputation).

20. The Commission recalls the evidence received in numerous other cases that persons subject to periods of imprisonment who had been employed by the Public Service were terminated from those positions. In the circumstances, the Commission is satisfied that following his release from Union Vale Prison, Gérard was terminated from his position. The Commission finds that his termination was motivated by the perception that he was against the Government that had taken power with the Coup d'état of 1977. The Commission thus finds that this termination was discriminatory and in contravention of his freedom from discrimination on the basis of his perceived political opinion, as well as his fundamental rights to freedom of association and assembly.[18] Thus, the Commission is satisfied that Gérard suffered the violation of wrongful termination under Section 2(8)(j) of the TRNUC Act;

21. The Commission recalls the evidence of Willy Confait, given in reference to another case,[19] that at the time in question, it was President René who determined employment, promotion, and termination in the public service. As such, the Commission finds that President René bears perpetrator status for this violation. Further, as President René was acting in his official capacity, responsibility is attributed to the State;

22. The Commission recalls Mr. Hoarau's evidence that when Gérard was in detention, Gérard wrote a letter to the family and informed the family that Minister Berlouis had made clear to him that the Government could not guarantee Gérard's safety once he was released from prison. Mr. Hoarau believed that President René personally told Gérard the same thing, and noted that his family was related to President René's wife, Geva René;

23. The Commission is also satisfied that, like many other detainees released from detention on political grounds, that Gérard thereafter was forced into exile through denial of employment and direct representations by Governmental authorities that his personal safety could no longer be assured in Seychelles as he had been marked as an enemy of the revolution;

24. The Commission therefore finds it established that Gérard was forced into exile, a violation under Section 2(8)(k) of the TRNUC Act, and that his exile was forced by President René, who created the conditions of life for Gérard in Seychelles such that he felt he had to leave for his safety;

25. As President René was acting in his official capacity at all material times, the Commission finds that responsibility for Gérard's forced exile is attributable to the State;

26. The Commission recalls Mr. Hoarau's evidence that once in exile, Gérard became the leader of the Mouvement Pour la Résistance (MPR), an underground movement that opposed President René's dictatorship. The Commission recalls the evidence it has received of Gérard's direct involvement in the planning and preparation of the mercenary attack in Seychelles in 1981;

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[18] UDHR, arts. 2, 20.

[19] *See* Hearing of Willy Confait of 13 September 2019, Case Determination No. 002: Lewis Betsy. The General Order 1966 dictated the terms and conditions of those in the public service, and was created during the colonial times and updated to the Public Service Orders in 1985.

27. The Commission recalls Mr. Hoarau's evidence that after spending a period of time in South Africa, Gérard went into exile in the United Kingdom. It further recalls the evidence it has received from other witnesses that the South African authorities had agreed with the Government of Seychelles to expel Gérard from South Africa following the mercenary attack of 1981;

28. The Commission recalls Mr. Hoarau's evidence that in the United Kingdom, Gérard was placed under surveillance by Seychelles authorities. This was confirmed before the Commission by UK national Ian Withers, a private detective who had been contracted by the Government of Seychelles to spy on Gérard. Mr. Withers confirmed to the Commission that he purchased a house nearby for the purpose of spying, that he bugged Gérard's phone, and that he regularly transmitted tapes of Gérard's conversations in the United Kingdom back to Seychelles;[20]

29. The Commission recalls Mr. Hoarau's evidence that on 28 November 1985, Gérard was assassinated in the United Kingdom. Mr. Hoarau noted that at the time of his evidence before the Commission, the unlawful killing of Gérard was still the subject of an investigation by Scotland Yard, so he could not disclose all that was known to the Commission as to do so may harm that investigation;[21]

30. The Commission recalls Mr. Hoarau's evidence that certain court proceedings conducted in the United Kingdom against three individuals for perverting the course of justice had ruled that Gérard's murder was politically motivated and that the Government of President René was involved. The Commission notes that it attempted to access this judgment, but through web searches was only able to find the following information concerning that case:

> Following the investigation by Scotland Yard's anti-terrorist squad, three men, all British nationals, including a British Telecom employee, were arrested. They were later convicted of obstruction of justice and corruption for their parts in bugging the house telephone where Hoarau was killed and in trying to remove the equipment after the murder. On sentencing the British Telecom engineer, London's Central Criminal judge, Justice Potts said "until the killing occurred you had no knowledge that the operation you had arranged in Edgware, would have that result. But by the evening of the day Mr. Hoarau was killed you knew, I have no doubt whatsoever, that the operation you had set up had played a part or was likely to have played a part of the death of the man;

31. The Commission recalls the evidence it has received in relation to unlawful killings of persons associated with the MPR.[22] The Commission finds that Gérard suffered the violation of unlawful killing under Section 2(8)(a) of the TRNUC Act;

32. The Commission notes the evidence it has received that the MPR was seen as the biggest threat to the revolution by President René's Government. The Commission finds it more likely than not that Gérard's unlawful killing was ordered by the Government of Albert René and sanctioned by members of the Defence Forces Council, charged with the security of Seychelles;

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[20] *See* Case Determination No. 022: Olivia Vincent.

[21] The Commission notes that as neither the assassin nor any accomplices have ever been found, and the British police have never solved the murder, the case remains open and the file more likely than not cold.

[22] *See* Case Determination No. 022: Olivia Vincent; Case Determination No. 020: Ah-Time Family.

33. The Commission notes that while it is satisfied that that is more likely than not that the Seychelles Government was involved, as there is a criminal investigation pending, it declines to accord any individual perpetrator status in this case;

34. The Commission finds that Owen and Gérard Hoarau each suffered the violations of unlawful imprisonment or other deprivation of liberty pursuant to Section 2(8)(b) of the TRNUC Act, as well as forced exile pursuant to Section 2(8)(k) of the TRNUC Act. Further, the Commission finds that Gérard suffered the violations of wrongful termination of employment pursuant to Section 2(8)(j)of the TRNUC Act; wrongful denial of employment under Section 2(8)(i) of the TRNUC Act; and unlawful killing pursuant to Section 2(8)(a) of the TRNUC Act;

35. The Commission notes that where the complainant brought the foregoing claims as a close surviving relative of his deceased brothers, any recovery of reparations should be paid to the estate of the respective brother. However, for the violation of the unlawful killing of Gérard Hoarau, the Commission notes that under international law, the complainant is also a direct victim of that severe violation of the right to life of his brother, and so can also himself recover reparations for that finding;

36. The Commission recalls that it is mandated pursuant to Section 3(7) of its Act to make recommendations for reparations for victims for human rights violation it has determined to have been established as a result of its investigations;

37. The Commission finds therefore that the complainant in this case should be awarded monetary and symbolic reparations in accordance with the recommendations set out in the Commission's Reparations policy, which reflects the views of the victims and international human rights principles as to appropriate recommendations due for the human rights violations established above.

Each of the undersigned Commissioners swears or affirms that he or she has comprehensively familiarised him or herself with the record in Case 029.

On this 31 December 2022

The Commission

Gabrielle McIntyre, Chairperson

Michael Green, Vice Chairperson

Marie-Therese Purvis, Commissioner

Jacques Koui Gbilimou, Commissioner

Archbishop James Wong, Commissioner